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parliament, judges and prosecutors

EVALUATION REPORT BULGARIA

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EXECUTIVE SUMMARY

1. The prevention and fight against corruption have been long-standing priorities in Bulgaria. Over the last decade, substantial resources have been injected into building integrity, facilitating transparency and strengthening accountability in its public institutions, including specifically the legislature and the judiciary. Still, proven anti-corruption results have been few and scattered and appreciable breakthroughs are yet to be seen. Tackling what is believed to be a systemic problem across the public and private sectors in a cohesive, thorough and tangibly effective manner has remained a perennial challenge. Over this period, the levels of public perception of corruption have been relatively stable and saw some improvement after the country's accession to the EU in 2007.

2. Bulgaria has overall a reasonably good legislative framework and many institutions and tools are in place to deter corruption in respect of the three professional groups under review. These include notably the systems for disclosure of private interests and assets, which are regarded as the two cornerstones of the country's anti-corruption policy. That being said, the legal framework is complex, subject to frequent and often unpredictable changes and the actual regulation, in some instances, tends to rely on secondary legislation which is not always congruent with the principles and objectives pursued by primary laws. Also, the abundance of reporting instruments and oversight bodies has failed to bring in the desired cumulative effect or attain qualitative changes in corruption prevention efforts. Thus, the high degree of fragmentation and self-containment of relevant oversight bodies as well as their alleged susceptibility to undue influence have meant that a holistic vision of corruption-related risks and vulnerabilities in the relevant sectors cannot be formed or the necessary inter-institutional co-operation forged and sustained.

3. Above all, most of the bodies are paper tigers, denied the power to conduct substantive checks. Scrutiny, if it is effected at all, is cursory and their role has been mainly confined to placing the declarations of private interests, incompatibilities and assets of MPs, judges or prosecutors in the public domain. In the absence of any thorough checks and discernible results in detecting and punishing violations of the conflicts of interest and asset disclosure rules by MPs, judges and prosecutors, transparency is perceived as being ostensible and has not therefore been conducive to boosting public confidence in the three institutions, judges being most vulnerable to public mistrust. For these reasons, carrying out independent evaluations of the effectiveness of the systems of disclosure and ascertainment of conflicts of interest and of disclosure and verification of assets, and of the impact that these have on the prevention and detection of corruption amongst MPs, judges and prosecutors, and undertaking appropriate corrective action is of primordial importance. It is also recommended that the private interests of MPs, judges and prosecutors – irrespective of whether these are declared regularly or *ad hoc* – be made subject to substantive and regular checks and that the respective professionals undergo intensive training on integrity, conflicts of interest and corruption prevention measures.

4. Turning to the contentious issues specific to each of the three professional categories, there is a need to further increase the transparency and inclusivity of the law-making process within the legislature by ensuring the effective enforcement in practice of the provisions of the Rules of Procedure regulating the Assembly's interaction with civil society, commercial and non-commercial entities and citizens and putting in place adequate timelines for considering bills within the Assembly so as to secure meaningful and effective engagement by all interested parties. Also, although the first-ever inclusion of a section on the ethical conduct of parliamentarians in the 2014 Rules of Procedure is a praiseworthy development, the implementation framework remains to be tested and the relevant oversight body is yet to prove its effectiveness in seeking out unethical practices. The long legacy of mistrust in politicians demands that the momentum initiated

by the adoption of the 2014 Rules of Procedure be maximised and the legislature's image enhanced. MPs need to be seen not only to be delivering a clear message of expectations but also to be reinforcing ethical comportment in practice, including by deepening their awareness of parliamentary ethics.

5. As for the judicial system, its vulnerability to undue political interference remains significant due to the decision-making processes within the Supreme Judicial Council, the key judicial self-governing body responsible for selection, appointment, promotion, in-house training and disciplinary action in respect of judges and prosecutors. Given that the Prosecution Service is part of the judicial branch, its membership of the Council's structures responsible for decisions on judges' careers allows for undue pressure to be exerted also by one arm of the judiciary on the other. That opportunity needs to be eliminated. Even though integrity compliant with the Code of Ethical Behaviour of Bulgarian Magistrates is the criteria for appointment and career progression of judges and prosecutors, the law does not require it to be taken into account on appointment or during periodic performance reviews and attestation for acquiring life tenure. Since the effectiveness of enforcement of integrity standards within the judiciary has been called into question, it is important that its strengths and weaknesses and its impact on corruption prevention within the judiciary are analysed and ascertained. Furthermore, implementation of the principle of random case allocation in the courts and prosecution offices needs to be ensured in practice and made subject to more stringent controls, with due regard being had to a fair and equitable workload. While motivating exceptional performance via incentives, including pecuniary bonuses, is an established practice, clear, objective and transparent criteria for their application must apply.

6. In conclusion, continued reforms are needed to consolidate the existing legal framework, reinforce the powers, independence and effectiveness of the oversight institutions, and, no less importantly, to overcome fragmentation and instil a greater sense of ownership and motivation. Promoting such a cohesive and systematic approach to corruption prevention is essential if tangible results and sustained enforcement are to be guaranteed. In this regard, the political will is yet to match public consensus.

I. INTRODUCTION AND METHODOLOGY

7. Bulgaria joined GRECO in 1999. Since its accession, Bulgaria has been subject to evaluation in the framework of GRECO's First (in September 2001), Second (in December 2004) 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).

8. 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 public administration, and the Third Evaluation Round, which focused on corruption prevention in the context of political financing.

9. 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.

10. 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.

11. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2014) 9E) by Bulgaria, 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 Bulgaria from 20-24 October 2014. The GET was composed of Ms Cornelia GÄDIGK, Senior Public Prosecutor, Prosecution office Hamburg (Germany), Mr Vladimir LAFITSKIY, Deputy Director of the Institute of Legislation and Comparative Law Studies at the Government of the Russian Federation (Russian Federation), Mrs Sidonie DESSART, Deputy President, Tribunal d'instance, Bobigny (France) and Mr David WADDELL, Retired as Secretary to the Irish Standards Commission, Secretary, Standards in Public Office Commission (Ireland). The GET was supported by Ms Liubov SAMOKHINA from GRECO's Secretariat.

12. The exchange of views with the Minister of Justice kicked off the visit. The GET interviewed members of the National Assembly and of the judiciary, including notably representatives of the Supreme Cassation Court, the Supreme Administrative Court, the Prosecutor General's Office, other judges and prosecutors, as well as representatives of the unions of judges (The Union of Judges of Bulgaria, the Bulgarian Judges' Association and the Association of Bulgarian administrative court judges) and of prosecutors (The Association of Prosecutors of Bulgaria). It also held interviews with the representatives of the Supreme Judicial Council and its auxiliary bodies, the Commission for Prevention and Ascertainment of Conflicts of Interest, the National Audit Office, the National Revenue Agency and the National Institute of Justice. Moreover, meetings were organised with Transparency International Bulgaria, Institute "Open Society" – Sofia, Foundation "Bulgarian Institute for Legal Initiatives", the Centre for Study of Democracy, as well as

with representatives of the Bulgarian Chamber of Commerce and Industry, the Bulgarian Industrial Association and the Confederation of Employers and Industrialists.

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

II. CONTEXT

14. The prevention and fight against corruption have been Bulgaria's long-standing priorities. Over the last decade, substantial resources have been injected into building integrity, facilitating transparency and strengthening accountability in its public institutions. Still, proven anti-corruption results have been few and scattered and appreciable breakthroughs are yet to be seen. Tackling what is believed to be a systemic problem across the public and private sectors in a cohesive, thorough and tangibly effective manner has remained a perennial challenge. Over this period, the levels of public perception of corruption have been relatively stable and saw some improvement after the country's accession to the EU in 2007.

15. Not surprisingly, corruption has and continues to be regarded as a "major problem" throughout society: 97% of respondents in 2009 and 95% in 2011 (EU average: 78% and 74%, respectively).¹ In 2013, 84% believed that corruption was widespread in their country (EU average: 76%) and 82% considered national public institutions to be corrupt. The highest prevalence was associated with the police and customs (67%), the courts (58%) and agencies issuing building permits (46%) and awarding public tenders (42%).² Compared to 2011, a significantly lower number of respondents in 2013 felt they had been personally affected by corruption (-24 percentage points, or 21% against 26% EU average).

16. Interlocutors met on-site opined that the judiciary remains one of the least trusted institutions and that its vulnerability to undue external influence and corruption is perceived as being marked.³ In 2013, only 7% of respondents mentioned the justice system as the institution they would most trust to resolve a corruption-related complaint.⁴ Allegations of bribe-taking have been supported by surveys, indicating, e.g. that in 2011 one in four citizens offered money, a gift or a favour to a judge, as opposed to one in five in 2010.⁵ A lack of independence and attempts to control the appointment of senior judges by political, business and financial groups have been repeatedly alleged as have deep-rooted practices of nepotism, influence peddling and unpredictable decision making.⁶ According to the Minister of Justice, who was met by the GET, corruption in the judiciary is not so much a matter of cash bribes to judges, but rather of undue influence being brought into play with regard to career progression, allocation of work-related benefits, case assignment and misuse of disciplinary procedures.

17. The closeness of ties between business and politics was a source of concern for 83% of respondents in 2013⁷ and may explain the suspicions of influence being exerted by powerful economic and political interests on the legislature in the exercise of its law-making function (i.e. adopting acts without proper justification and prior expert and public debate).⁸ The lack of strategic legislative policy is also said to have undermined the autonomy of parliament vis-à-vis the executive: the high number of amendments and bylaws originating from the latter has reportedly been routinely used to strengthen the dominant role of the government and to increase its discretionary powers in vital policy areas.⁹ The ensuing instability and unpredictability of the regulatory framework have instilled insecurity, particularly, in the business community.¹⁰ Moreover,

¹ ec.europa.eu/public_opinion/archives/ebs/ebs_325_en.pdf and ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf

² ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

³ See also, for example, www.bili-bg.org/cdir/bili-bg.org/files/INDEX_FINAL_ENGLISH.pdf, pages 94 and 96.

⁴ ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

⁵ www.euractiv.com/europes-east/corruption-bulgaria-year-report-news-514996

⁶ Corruption and anti-corruption in Bulgaria (2012-2013), Policy Brief No. 43, November 2013 and www.business-anti-corruption.com/country-profiles/europe-central-asia/bulgaria/land-administration.aspx,

⁷ ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

⁸ Corruption and anti-corruption in Bulgaria (2012-2013), Policy Brief No. 43, November 2013

⁹ The average ration of bylaws to laws is 12:1 but there are laws with 91 bylaws. See www.transparency.org/whatwedo/nisarticle/bulgaria_2011, p. 40.

¹⁰ www.novinite.com/articles/134999/Bulgarian+Business+Outraged+by+Govt+Corruption+-+Poll

parliamentary appointments to key public posts, including in the judiciary and the anti-corruption bodies, have often been tainted by controversy and ended in resignations, including after interventions or reactions by the EU authorities in the most emblematic cases.¹¹

18. The anti-corruption legal framework consists of two principle acts - the 2008 Law on Prevention and Detection of Conflicts of Interest and the 2000 Law on Transparency of Assets of Officials Holding High State and Other Positions (the adequateness and effectiveness of their provisions with regard to MPs, judges and prosecutors is examined in the subsequent sections of this report). Most recently, anti-corruption efforts have been implemented pursuant to the 2009 Integrated Strategy for Preventing and Countering Corruption and the 2011-2012 Action Plan, prepared by the Commission for Prevention and Countering Corruption under the chairmanship of the Minister of the Interior.¹² Since 2010, responsibility for assessing risks within public institutions and supporting corruption prevention within the three branches of power in a co-ordinated fashion through innovative methods has been assigned to the Centre for Prevention and Countering Corruption and Organised Crime under the Council of Ministers.¹³ In the absence of any manifest results, there is an intention to review the Centre's mandate in the context of the new anti-corruption strategy which is under preparation.

19. Overall, public confidence in specialised anti-corruption bodies and the criminal justice system has remained low and has enhanced the perception of impunity for perpetrators of corrupt acts.¹⁴ In 2008, the National State Security Agency was given the powers to fight high-level corruption. However, the restructuring and personnel changes it and the Ministry of the Interior underwent in 2013 provoked public outcry and raised doubts about the political allegiance of officials responsible for fighting corruption and overall continuity in this area. In 2013 and 2014, new specialised units were set up at the Supreme Cassation Prosecutor's Office to investigate crimes committed by magistrates and senior public officials, including members of parliament (the units also comprise personnel from the National State Security Agency). Corruption in general is not believed to be prosecuted effectively: measures are said to be selective, cases not properly solved, often politically motivated and only opened after the relevant persons have left office.¹⁵ In 2013, only 16% of respondents assessed anti-corruption efforts positively (EU average: 23%) and only 9% held the view that there were sufficient prosecutions to deter corrupt practices. 12% were of the opinion that anti-corruption measures were applied impartially and without ulterior motives, while 82% felt that high-level corruption was not pursued sufficiently.¹⁶

20. Since Bulgaria's EU accession, the European Commission has reported regularly on the country's efforts to prevent and fight corruption and organised crime, and to reform the judiciary through a special "cooperation and verification mechanism".

¹¹ See www.inge-graessle.eu/view-aktuelles/items/439 and Corruption and anti-corruption in Bulgaria (2012-2013), Policy Brief No. 43, November 2013.

¹² On 27 February 2015, the Government approved new Strategic Guidelines and Priorities for the Prevention and Fight against Corruption.

¹³ borkor.government.bg/en/page/11

¹⁴ Corruption and anti-corruption in Bulgaria (2012-2013), Policy Brief No. 43, November 2013

¹⁵ Corruption and anti-corruption in Bulgaria (2012-2013), Policy Brief No. 43, November 2013

¹⁶ ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

21. Bulgaria is a parliamentary republic with a multi-party system. Its Constitution dates from 1991 and was last amended in 2007. The unicameral National Assembly (*Narodno Sabranie*) is composed of 240 members, elected for a four-year term through general, equal and direct suffrage by secret ballot. It is a proportional system with candidate lists registered in multi-member constituencies by (1) parties and coalitions and 2) independent candidate nomination committees. All citizens over 18 years of age, except those recognised incapable by court or serving a prison sentence, have the right to vote, and any citizen over 21 years of age with the right to vote who does not possess dual citizenship may participate in elections.

22. The independence of the Assembly is guaranteed by the Constitution. The Assembly is a standing body with the discretion to determine its own budget and the time during which it shall not be in session. The Assembly has legislative power and exercises parliamentary oversight. The independence of MPs is ensured by the prohibition of a binding mandate, the imperative to act in pursuance of the Constitution and the law, in accordance with their conscience and convictions, and immunity. They represent not only their constituency but the entire population.

23. A parliamentarian's mandate terminates in case of resignation, the entry into force of a prison sentence for an intentional offence or where such a sanction is not deferred, ineligibility or incompatibility, or death.¹⁷ If appointed to a ministerial post, the parliamentary mandate is suspended not terminated.

24. The Assembly is presided over by a President and three Deputies who, together with leaders of eight parliamentary factions¹⁸, form the President's Council. The Assembly elects from among its members standing and *ad hoc* committees and its internal organisation and conduct of work are governed by the Rules of Procedure. The new Rules were adopted after the most recent elections of 5 October 2014. They entered into force on 25 November 2014, i.e. after the GET's visit.

25. Since the most recent elections, the Assembly has been composed of the following political parties: "Gerb" (84), "BSP – Left Bulgaria" (39), "Movement for rights and freedoms" (36), Reformist Bloc (23), Patriotic Front (18), "Bulgaria without Censorship" (14), "Ataka" (11) and "Alternative for Bulgarian Revival" (11). Of those elected, 49 are women, including the President, one Vice-President and five committee chairs.

Transparency of the legislative process

26. The right to initiate legislation is vested in each deputy and the Council of Ministers. Bills initiated by the latter are to concur with the 1973 Law on Normative Acts (LNA). Notably, they are to be drafted respecting the principles of justification, stability, openness and co-ordination and, before being presented to the Council, they are to be published on the institution's (e.g. a ministry's) official web site together with the justification (report). The parties concerned by the bill are to be given at least 14 days to submit proposals and statements. Governmental bills can also be published and debated on the Public Consultation Portal (www.strategy.bg/).

27. Bills and related explanatory memoranda are submitted to the President of the Assembly and entered forthwith into the public register of Bills

¹⁷ Termination of credentials requires in the first two cases an Assembly resolution, and in the case of ineligibility/incompatibility – a Constitutional Court judgment.

¹⁸ Such groups are to consist of at least 10 members.

(www.parliament.bg/bg/bills). Within three days, they are circulated to standing committees and a reporting committee is designated. Dialogue with civil society is to be maintained by the Committee on Interaction with Civil Organisations and Movements, which is to conduct public hearings on matters of great public interest and forward to the reporting committees the conclusions of public debates. Civil organisations and movements as well as any citizen may send written opinions on bills and there is an obligation for these to be placed on a reporting committee's web site and distributed to its members. The Committee is furthermore obliged to respond to complaints and proposals emanating from those organisations and movements,¹⁹ although its exact format has not been prescribed, and to prepare written replies to complaints submitted in writing by any citizen, which are not anonymous, pursuant to the rules of the Administrative Procedure Code.²⁰ For bills tabled by MPs, the opinion of the Council of Ministers or relevant ministry may be sought.²¹ Within no more than two months of a bill's submission, a report in view of its first reading is prepared and placed on the reporting committee's web site. It analyses the expected consequences, including financial, of the bill's execution and summarises the opinions expressed, including those by civil organisations and movements, as well as the committee's own position.

28. As a rule, bills are debated and passed in two votes held in separate sittings.²² In view of the second vote, all written motions tabled by MPs in accordance with the special procedure are to be published on the reporting committee's web site together with the committee's own substantiated report and the text of the bill. Written opinion of civil organisations and movements may be sought anew at this stage.

29. Parliamentary sessions are open. Any person may attend (seats are specifically designated) the Assembly's sitting at its discretion, in accordance with the rules set by the President. *In camera* sittings may only be held if they concern state interests and classified documents or if the President of the Assembly, one tenth of its members or the Council of Ministers requests it. Resolutions adopted at closed sittings are public. Laws and other acts are generally passed by a majority vote of more than a half of the deputies present. Voting is open, unless otherwise decided by the Assembly following a request by a parliamentary group or no less than one tenth of its members. Voting results are announced immediately. Full verbatim records are kept and posted within 7 days on the Assembly's web site, together with the texts of bills, amendments, explanatory reports and printouts of computerised voting results. Minutes are also drawn up. Open sessions are live-streamed on the Assembly's web site and, if the Assembly passes a resolution to that effect, broadcast live by the national radio and television and the special parliamentary TV channel. Live broadcasting is mandatory for sittings dedicated to parliamentary oversight.

30. Committee meetings are generally open and may be streamed live on the Assembly's web site²³, with the exception of those dealing with the security services, special surveillance and data access. A committee is quorate if more than half of its members are present and its decisions are adopted by a majority vote of the members attending. Reports from open meetings are public and available on the Assembly's web site. A summary record of each meeting is also drawn up and lists the decisions made. In respect of the reporting committees' meetings also verbatim records are kept which are posted online within seven days unless a meeting is held *in camera* and a special procedure applies. Any person concerned by matters under review may attend a

¹⁹ Article 41 (5) of the 2014 Rules of Procedure

²⁰ Article 27 of the Committee's Internal Rules

²⁰ Article 27 of the Committee's Internal Rules

²¹ A response is to be given within two weeks, following which it is to be circulated among the reporting committee's members and placed on its web site.

²² During the first reading, the bill is debated in principle and in its entirety, during the second reading – chapter-by-chapter, title-by-title or paragraph-by-paragraph.

²³ All meetings of the Interaction with Civil Organisations and Movements Committee are to be live-streamed on the Assembly's web site.

committee sitting if invited by its members. Moreover, representatives of trade unions, professional, industrial and civil society organisations may, on their own initiative, attend meetings, send written opinions and participate in the deliberations if relevant to their area of activity. Committee meetings are also open to accredited and other journalists with access. There is a requirement for all to comply with the Assembly's and each committee's access policy as well as the rules on protection of classified information and the information constituting personal privacy and good standing of citizens.

31. The Rules of Procedure regulate MPs' relations with third parties, including lobbyists, by forbidding MPs to consent to exercise duties in favour of the private interests of any person and to be bound by financial or other dependency in their regard if that might influence the exercise of their duties. MPs are also to declare private interests *ad hoc* while tabling bills, making statements and voting, pursuant to the Law on Prevention and Detection of Conflicts of Interest (see further below). The names of consultants who were involved in the drafting, deliberation and adoption of bills and the names of all participants attending committee sittings must be included in a register.²⁴

32. The adopted act is sent to the President of the Republic who signs a decree on its promulgation. The act is to be published in the State Gazette within 15 days of adoption and, as a rule, it comes into force within three days of promulgation.

33. Overall, the normative framework governing the law-making process can be qualified as strong and the process itself as transparent to a large degree. The 2014 Rules of Procedure have brought improvements to the 2013 Rules in effect at the time of the on-site visit which already safeguarded the openness of sittings and access to bills in a public register. First, the various requirements for initiating bills have been harmonised – previously for a bill sponsored by an MP only the expected implications (including financial impact) of the bill's execution had to be provided²⁵ whereas bills initiated by the Council of Ministers were subject to more exhaustive LNA requirements.²⁶ Under the 2014 Rules, the reporting committees are to assess all bills against the LNA criteria during the first reading and to eliminate any inconsistencies within seven days. An attempt has also been made to mitigate the likelihood of the original philosophy behind draft legal acts being diverted before the second reading. MPs are compelled to submit motions for the purpose of the second reading in writing only and pursuant to a special procedure which facilitates greater transparency. The consideration of and voting on proposals inconsistent with the principles and scope of the bill as first voted and of proposals deviating significantly from those backed by the reporting committees are banned. Moreover, endeavours have been made to regulate - for the first time - MPs' relations with third parties and a public register has been set up to record external consultants' engagement. Notwithstanding these positive aspects, there is scope for the transparency, inclusivity and quality of the process to be further enhanced in several domains.

34. Possibilities for broad public involvement in the law-making process and the designation of a committee to interact with civil society are the distinct features of both the 2013 and 2014 Rules. Nonetheless, the "audibility" of external voices by the Assembly has allegedly remained low (less than 10%, according to some estimates). The GET's interlocutors claimed active attendance of various sittings but insisted these had

²⁴ Articles 29 (1) 140 (1), 141 (1) and 147 of the 2014 Rules of Procedure

The register was made public after the on-site visit. It consists of three parts: the list of consultants of members of parliament (www.parliament.bg/bg/parliamentaryregister/1), the list of consultants of parliamentary groups (www.parliament.bg/bg/parliamentaryregister/2) and the list of consultants of parliamentary committees (www.parliament.bg/bg/parliamentaryregister/3).

²⁵ Article 72 (2) of the 2013 Rules of Procedure

²⁶ Pursuant to Article 28 LNA, the justification (report), accompanying governmental bills, is to contain 1) the reasons for its adoption, 2) the objectives pursued, 3) the financial and other means required for its adoption, 4) expected results from its application, including financial ones, and 5) the assessment of compatibility with the EU law. Failure to meet those prerequisites jeopardises the bill's examination by the Council of Ministers.

marginal effect as most of their proposals were either neglected or abandoned without explanation, breeding suspicions of significant lobbying influence, unrevealed conflicts of interest and corruption amongst the MPs. Also, the requirement for the Committee on Interaction with Civil Organisations and Movements to respond to complaints and proposals filed by civil society has reportedly not been implemented in practice, while each of the other standing committees has different arrangements in place for dealing with civil society²⁷ and these other committees are also said to have failed to provide feedback on the proposals of interested non-governmental organisations and entities. Furthermore, meaningful public engagement has been hampered by the tight deadlines prescribed for considering draft legislation: for committees as not earlier than 24 hours and not later than three weeks following receipt of a bill by its members, and for plenaries, as a general rule, not later than 24 hours before the commencement of a sitting (for the first and second reading).²⁸ The pervasive practice of holding debates within 24 hours of receipt of bills was criticised as frustrating the effective involvement of all interested parties and jeopardising the quality review and improvement of draft legal acts. In light of the foregoing and in order to enhance the transparency, openness and quality of the legislative process, **GRECO recommends i) ensuring the effective enforcement in practice of the provisions of the Rules of Procedure regulating the Assembly's interaction with civil society, commercial and non-commercial entities and citizens and their participation in the law-making process; and ii) putting in place more adequate timelines for considering bills within the Assembly as the means of securing meaningful and effective engagement by all interested parties.** On a more general note, too many different rules appear to govern the Assembly's interaction with civil society, rendering mutual relations arduous and complex. GRECO takes the view that it would be more appropriate to elaborate a consistent and unified policy on co-operation with civil society and to include a set of basic standards in the Rules of Procedure. This would facilitate greater transparency and put in place a functioning mechanism for co-operation between the public and the parliament rather than just creating that impression.

35. As concerns MPs' interactions with third parties, lobbying groups are said to exert significant undue influence on primary legislation and bylaws behind closed doors (e.g. in the energy, fuel, grain, forestry, banking and customs sectors), and the impossibility to track lobbyists' amendments has fomented the perception that transparency is deficient and it has been at the origin of much criticism on unequal access to the law-making process. At least two initiatives to adopt a Lobbying Act have failed in the recent years. From this perspective, the 2014 Rules represent a noticeable upgrading: the inclusion of a section on "Ethical rules of conduct" (see below) is the first-ever attempt to define a parliamentarian's ethical conduct and to regulate, as part of it, MPs' relations with lobbyists and other third parties whose intention may be to sway public policy on behalf of partial interests. Nevertheless, the requirements of openness and transparency of the law-making process will be incomplete as long as there is no possibility to identify interest groups, enterprises and others with partial interests who may exert influence on bills under review through individual MPs. The authorities therefore are encouraged to keep under review the various means of further increasing the transparency of third party influence on bills under review. As for the weaknesses related to enforcement of

²⁷ For example, it is the Head of the Agriculture and Foods Committee who is responsible for interaction with civil society on the Committee's behalf, and representatives of civic, union, trade and other organisations are to address to him/her in writing their requests for attending the Committee's sittings. The same applies to the Culture and Media Committee, which may also establish civil councils comprising representatives of civic organisations and movements. The meetings of the councils are to take place once a month. The Head of the European Affairs and Oversight of European Funds Committee has the right to invite to the Committee's sittings individual citizens or legal entities that have an opinion on the issues at stake. This Committee is also supported in its activities by a Public Consultation Council with advisory functions. The internal rules of the Legal Affairs Committee are not available on the Assembly's web site and could not be scrutinised.

²⁸ Articles 75 (1) and 76 (1) of the 2014 Rules of Procedure
The regulation is identical in the 2013 and the 2014 Rules.

both ethical and conflicts of interest rules, these are dealt with elsewhere in this report (cf. paragraphs 42-43 and 60-62).

36. On a more general note, frequent amendments and poor enforcement were often cited as undermining the stability of the Bulgarian legislation and eroding legal certainty. Amongst others, references were made to cases where laws entered into force retroactively. Bylaws were said to be subject to numerous amendments as well and, in terms of importance, estimated to take precedence over primary law. The carrying out of impact assessment – both at the preparatory stage and *ex post facto* – was largely missing. As noted previously, the 2014 Rules have made it compulsory for each bill to be assessed against the LNA criteria during the first reading. However, in the absence of any means to return a bill which does not meet those requirements to its sponsor, the risks are high that the verification process might constitute a pure formality and strain the reporting committees by forcing them to work under time pressure (as inconsistencies are to be eliminated within seven days). The authorities might therefore consider carrying out the preliminary impact assessment of the draft legislation at an earlier stage, i.e. *prior* to the first reading. This would not only help strengthen the Assembly's policy expertise and power to legislate but also address the concern of the alleged discrepancy between the number of bills tabled by MPs and of acts finally adopted.

Remuneration and economic benefits

37. The basic monthly salary of a regular MP, which currently stands at BGN 2 700/EUR 1 350, is equivalent to three times the average monthly salary of a public sector employee. It is calculated by the National Statistics Institute and subject to quarterly adjustments. The receipt of any other employment compensation is prohibited. The President of the Assembly receives a monthly salary that is 55% higher than the basic monthly salary of an MP, the Vice-President – 45%, chairs of standing committees and leaders of parliamentary groups – 35%, deputy committee chairs – 25%, members of standing committee – 15%, parliamentary secretaries²⁹ – 10%, participants of sub-committees, *ad hoc* committees and working groups – not more than 5%, which is decided in each case in proportion to the time spent on work. Occupation of several positions gives rise to only one - the highest - salary. Bonuses are paid for length of service and seniority (1% each year), qualifications (10% for a Ph.D. and 15% for a Sc.D. degree) and execution of tasks qualified as "national priority". Deputies are bound to attend parliamentary meetings, and absence without a valid reason leads to the deduction of a corresponding daily/supplement pay from their monthly salaries. In 2013, the average annual salary in Bulgaria stood at BGN 9 690/EUR 4 845.

38. MPs' travel within Bulgaria is reimbursed, certain limitations apply to air travel. MPs who do not own a home in the Greater Sofia Municipality are provided with one free of charge for the duration of the mandate. When visiting constituencies, deputies have the right to accommodation and per diem allowances. Additionally, each deputy is provided with a fully equipped office in Sofia and a personal web page. For parliamentary factions and unaffiliated MPs, additional expenses (e.g. for the recruitment of assistants and consultants,³⁰ preparation of expert opinions, etc.) are reimbursed at the rate of two-thirds of an MP's basic monthly salary. A lump sum thus calculated is subject to quarterly internal control by the faction and public control in respect of unaffiliated MPs (such information is to be posted each quarter on the MP's personal web site; factions have the right to do likewise but it is not mandatory). The budget for an MP's office can be provided solely from public resources.

²⁹ The Assembly elects 8 such secretaries from among MPs. They monitor MP attendance and assist in performing quorum checks and holding and counting votes.

³⁰ The 2014 Rules of Procedure stipulate an MP's entitlement to not more than three assistants who are not part of the regular administration. The Assembly maintains a public register of such assistants and of consultants who participate in the development, discussion and adoption of the Assembly's documents and acts.

39. Compliance with the rules is checked internally by the Parliamentary Budget and Finance Directorate when annual cash flow reports are prepared. The report is presented for comment to the sub-committee on Public Sector Accountability (under the Budget and Finance Committee) and then considered and adopted by the Assembly no later than six months after the close of the calendar year. External control is performed by the National Audit Office which is accountable to the Assembly.

Ethical principles and rules of conduct

40. At the time of the on-site visit, standards of conduct applicable to MPs were scattered through different legislative acts, notably the Constitution (taking and signing an oath of office, obligations to represent the entire population and to act in pursuance of the Constitution and the law, incompatibility of office), the 2013 Rules of Procedure (incompatibilities, gifts, compartment and discipline), the Law on Prevention and Detection of Conflicts of Interest (disclosure of incompatibilities and of private interests), the Law on Transparency of Assets of Officials Holding High State and Other Positions (asset disclosure) and the Criminal Code (provisions on bribery, abuse of office, trading in influence and disclosure of classified information). Despite several drafting attempts, MPs, due to their satisfaction with the rules in place, were reticent to adopt a code of conduct. That situation gave rise to some public concern.

41. In November 2014, as an alternative to what was perceived to be an aspirational and non-binding code, a Section on "Ethical rules of conduct" was incorporated into the new Procedure Rules. The Section brings under one heading the principles which are to guide the exercise of MPs' duties (respect for the rule of law, protection of the public interest, impartiality, openness, accountability and transparency) and the specific obligations imposed by the Rules. Responsibility for establishing infringements of ethical principles, adopting decisions and referring materials to relevant competent bodies has been assigned to the Anti-Corruption, Conflicts of Interest and Parliamentary Ethics Committee (ACCIPEC), which adopted separate rules for implementing this section on 22 January 2015. Any MP concerned is entitled to express an opinion on the ACCIPEC's decision, following which both are to be put in a public register.

42. The inclusion of standards of ethical conduct in the binding Rules of Procedure is emblematic of a crucial evolution of the Assembly's stance on integrity matters and a sign of the political resolve to promote understanding and ensure ownership of parliamentary ethics. The Rules not only codify the ethical principles and rules of conduct applicable to MPs but also create a mechanism meant to ensure that ethical breaches are tackled and that information on them is placed in the public domain. A robust integrity system however requires effective enforcement, underpinned by tools capable of bringing any misconduct to light and subjecting it to appropriate penalties. From that perspective, the key elements of the new integrity system could not be assessed as the implementing regulation was adopted after the GET's visit and the oversight body is yet to make proactive efforts against unethical practices. As for the applicable penalties, the situation is rather uncertain. Most ethical violations appear to fall under the sanctioning regimes established by separate laws (i.e. failure to declare assets or disclose private interests) but references to those laws have not been consistently included. This and the fact that the disciplinary measures foreseen by the Rules do not apply in cases of ethical breaches (see further below) may lead to misunderstandings. Also, it is unclear whether the ACCIPEC's decisions establishing infringements are binding on oversight bodies in the relevant areas. If they are not, the risks are high that an inconsistent case law might ensue. Consequently, associating each infringement of the ethical rules with the applicable sanctioning regime and clarifying the status of the ACCIPEC's decisions vis-à-vis those that are to be made by relevant oversight bodies would be beneficial.

43. Furthermore, considering that the prerequisites of ethical conduct have been defined fairly recently and the understanding of professional ethics is unlikely to have

fully permeated the deputies' ranks, investing sustained resources into deepening MPs' awareness of obligations and expectations connected to their role as elected representatives remains paramount. This would entail providing individual guidance and counselling (including confidential) on ethical dilemmas and other issues that raise ethical concerns and holding regular debates on integrity matters and conducting orientation and other training aimed at MPs obtaining a good grasp of the legal framework and at analysing practical cases and clarifying provisions which might appear too abstract. The long legacy of mistrust in politicians demands that the momentum initiated by the adoption of the 2014 Rules of Procedure be maximised in order to enhance the legislature's image and for MPs to be seen as not only delivering a clear message of expectations but also reinforcing ethical comportment in practice. In this light, **GRECO recommends that i) consistent enforcement of Section II of the Rules of Procedure on "Ethical rules of conduct" be ensured and the specific sanctions triggered by each infringement of ethical principles clarified; and that (ii) awareness of the ethical standards of conduct be promoted and deepened via designated guidance, training and counselling (including confidential) for MPs on issues such as conflicts of interest, the limits on contacts with third parties, gifts, etc.** On the latter point, the involvement of the Commission for Prevention and Ascertainment of Conflicts of Interest and the wider distribution of its guidelines would be an asset.

Conflicts of interest

44. Conflicts of interest are regulated in respect of MPs by the Rules of Procedure and the 2008 Law on Prevention and Detection of Conflicts of Interest (LCI). The Rules impose the following obligations on MPs: 1) not to consent to exercise duties in favour of the private interests of any person; 2) not to allow themselves to be bound by financial or other dependence in regard to any person if this may influence the exercise of their powers; 3) exercise their mandate without seeking or receiving material or other gain for themselves or persons with close ties to them, in the sense of the LCI; and 4) to disclose private interests, in accordance with the LCI, when tabling bills, making statements and voting in a plenary or a committee sitting. The LCI defines a "conflict of interests" as a situation where a public office holder, including an MP, has a private interest that may affect the impartial and objective performance of his/her official powers or duties. "Private interest" denotes any interest whereby a public office holder, or any person with close ties to him/her, obtains a financial or non-financial benefit³¹, including any obligation assumed. The private interest may be both that of the office holder and of a person with close ties to him/her.³²

45. Mechanisms aimed at preventing conflicts of interest comprise (i) compliance with the incompatibility rules (see further below) and ii) declaration of private interests. With regard to the former, within 7 days of election, MPs are to submit a declaration of compatibility with the office, and if an incompatibility is declared it has to be eliminated within a month. In respect of the latter, as stated before, an MP is to disclose private interests *ad hoc*, i.e. when initiating bills, making statements or voting; there is no obligation however to withdraw from voting.³³ Also, within 30 days of election and subsequently within 7 days of a change in the circumstances declared, MPs are to submit a declaration of private interests, using a model appended to the LCI. The declaration is

³¹ Benefit is defined by the LCI as any asset in money or property, including acquisition of interests or shares, as well as granting, transferring or renouncing rights, receiving privileges or honours, acquiring goods or services gratuitously or at prices below market value, assistance, vote, support or influence, advantage, obtaining or receiving a promise to obtain a job, a position, a gift, a reward or a promise to avoid a loss, liability, sanction or another adverse event.

³² I.e. spouses or *de facto* cohabitantes, lineal relatives, collateral relatives up to the fourth degree of consanguinity and extends to the second degree of affinity, as well as where a public office holder is dependent on another natural or legal person economically or politically which gives rise to reasonable doubts about his/her impartiality and objectivity.

³³ See Article 143 of the 2014 Rules of Procedure.

to cover past and on-going participation in commercial corporations, business activities as a sole trader (and the field concerned), positions held as a managing director or member of a management or supervisory body of a not-for-profit entity, commercial corporation or cooperative, obligations towards credit or financial institutions and other persons above BGN 5 000/EUR 2 500, contracts with any person carrying out activities in areas which are related to the decisions made within the range of an MP's official powers or duties and private interests in the activities of persons with close ties to an MP. Declarations are submitted to the Assembly, put in a register and made accessible on the Assembly's web site, subject to the Personal Data Protection Act. For failure to make an *ad hoc* declaration administrative fines ranging from BGN 7 000/EUR 3 500 to BGN 10 000/EUR 5 000 are imposed, while failure to file a declaration of incompatibilities and other declarations of private interests is subject to fines ranging from BGN 1 000/EUR 500 to BGN 4 000/EUR 2 000 (BGN 3 000/EUR 1 500 to BGN 5 000/EUR 2 500 – in case of a repeated violation). The procedure set forth for resolving conflicts of interest provides that when in doubt as to whether a particular situation qualifies, an MP may request the opinion of the Commission for Prevention and Ascertainment of Conflicts of Interest via the medium of the ACCIPEC.

46. In comparison with the 2013 Rules, which only included a reference to the obligation on MPs to declare their private interests *ad hoc*, the 2014 Rules have made an important step forward by incorporating a whole set of requirements pertaining to the prevention and disclosure of potential and actual conflicts of interest. Another positive feature has been the inclusion in the 2014 Rules of Article 142 reiterating the deputies' duty to disclose assets in conformity with the Law on Transparency of Assets of Officials Holding High State and Other Positions (LTA, see further below). Considering that the LCI and the LTA were designed as Bulgaria's principle legal acts aimed at dissuading and detecting corruption, bridging them with the Assembly's Rules has reinforced the accountability and rendered more visible and transparent the obligations and duties by which MPs are bound.

Prohibition or restriction of certain activities

Incompatibilities, accessory activities, financial interests and post-employment restrictions

47. The rules on incompatibilities applicable to MPs are set out in the Constitution, the Rules of Procedure and the LCI. These stipulate that holding a seat in parliament is incompatible with any governmental and civil service post. For the duration of the mandate, deputies employed in government or municipal bodies, state-run or municipal enterprises, companies with more than a 50% state or municipal share or other entities supported by the national budget are to take unpaid leave. The same applies to managers of commercial companies with more than a 50% government or municipal share who are parties to a management contract, for the term of the contract. Additionally, MPs may not participate in the management or supervisory bodies of commercial companies or co-operatives nor consent to the use directly or indirectly of themselves or of their official status for commercial advertising purposes. Participation in the collective management and academic bodies of higher education establishments and the Bulgarian Academy of Science, with the exception of individual managerial positions, does not qualify as an incompatibility. As was previously stated, any other employment compensation in regard to MPs is prohibited and, within seven days of election, they are to submit a declaration of compatibility with the title. The holding of financial interests is not restricted but needs to be disclosed, alongside the information on lawful auxiliary activities, in an asset declaration. Receiving fees or remuneration as an independent contractor is also expressly allowed.³⁴ While on-site, concerns were expressed over MPs' exercising accessory activities as private lawyers and receiving substantial consultancy

³⁴ Article 129(2) of the Rules of Procedure

fees in areas with no obvious links to their qualifications or jobs held previously. This has reportedly engendered multiple latent conflicts of interest which are neither disclosed nor properly sanctioned. Since the problems pertaining to the execution of the conflicts of interest rules are dealt with elsewhere in this report, GRECO refrains from discussing them here. It must be noted that the approach whereby, in the regulation of incompatibilities, the principles of openness and transparency were given precedence over those of restriction and control is not called into question.

48. As concerns post-public employment, MPs are expressly excluded from the scope of Articles 20a and 21 LCI. The former establishes a ban on a former public office holder who has been released from office following the establishment of a conflict of interests occupying a public office within one year after release. The latter imposes a one year "cooling-off" period by prohibiting employment, entering into contracts (including for the exercise of managerial or control functions) with any commercial corporation or co-operative in respect of which the office holder performed any action involving disposition, regulation or control or concluded any contracts in the last year of execution of official powers or duties, being a partner, holding interests or shares or a position as managing director or member of a management or supervisory body in any such commercial corporation or co-operative. The reported extent of abuse of the conflicts of interest rules by MPs was the reason for some interlocutors to propose that the "revolving-doors" phenomenon in regard to MPs be addressed and a cooling-off period of an appropriate duration introduced. GRECO concurs with this opinion and encourages the authorities to give this matter due consideration, although it also notes that the LCI imposes an obligation on persons occupying a public position, including MPs, to abstain from using the information obtained while in office in pursuit of a private interest for a one-year period after vacating office.

Gifts

49. Pursuant to Article 145 (2) of the Rules of Procedure, in the exercise of their duties, MPs may only receive protocol gifts of a value that does not exceed one-tenth of their basic monthly salary. Any gifts in excess of this value are to be handed over to the Assembly and recorded in a public register set up for this purpose. Although a blanket prohibition on the acceptance of gifts does not exist, the regulations have further advanced, compared to the 2013 Rules. Only *protocol* gifts may now be accepted on the condition that they do not exceed a certain value. Furthermore, a *public register* has been established to record any renounced gifts. The credibility of those new provisions however relies primarily on their effective enforcement, including the possibility to impose very specific sanctions for non-compliance. The recommendation included in paragraph 43 above, asks for clarification of which sanctions would apply in respect of each ethical breach incorporated into Section II of the Rules. This is of direct relevance to the provision on gifts since any irregularities will not only trigger an ACCIPEC decision, published on line, but are also likely to fall under the sanctioning regime under the LCI and carry administrative fines. Public scandals which have erupted in the past due to MPs accepting gifts suggest there are legitimate public concerns and that this sensitive matter deserves to be accorded proper attention. As for benefits, hospitality and sponsorship, GRECO notes that expenses above BGN 500/EUR 250 incurred by or in favour of an MP with his/her consent for education, travel abroad and other purposes must be included in his/her asset declaration. Information is to be submitted in respect of an MP, his/her spouse and under age children.

50. As persons "holding a responsible official position", MPs are furthermore prohibited from accepting bribes by virtue of Articles 302-303 (passive bribery) and 304-304a (active bribery) of the Criminal Code. Such offences carry a prison sentence of up to ten years, a pecuniary fine of up to BGN 20 000/EUR 10 000 and deprivation of rights.

Misuse of confidential information

51. According to the Law on Protection of Classified Information, MPs are granted an *ex officio* right to access classified information or a committee sitting held *in camera* for the duration of their mandate, subject to a properly made decision by the committee or an Assembly resolution. Participation of an MP in an *in camera* sitting of a committee of which s/he is not a member requires a written undertaking by him/her or registration of documents/subjects s/he gains knowledge of. Infringements carry liability in accordance with Article 357 CC as well as administrative liability under the aforementioned law.

Misuse of public resources

52. MPs may not spend the Assembly's funds on any activities that is not regulated by the Rules. As mentioned previously (cf. paragraph 38), the lump sums provided to factions and unaffiliated MPs are subject to quarterly verification, and the Parliamentary Budget and Finance Directorate carries out annual checks the results of which form part of the annual cash report on the implementation of the Assembly's budget. Additionally, Article 9 LCI stipulates that a public office holder, including an MP, may not dispose of any state or public property, spend any on-budget or off-budget resources, including funds belonging to the EU or made available by it to the Bulgarian State, issue any certificates, authorisations or licences, or exercise control over any such activities in the interest of any not-for-profit legal entity, commercial corporation or co-operative wherein s/he or any person with close links to him/her sit on a governing or supervisory body, are managing directors, partners, or holders of interests or shares. For violations administrative fines ranging from BGN 5 000/EUR 2 500 to BGN 7 000/EUR 3 500 (up to BGN 10 000/EUR 5 000 in case of a repeated violation) apply.

Declaration of assets, income, liabilities and interests

53. Pursuant to the 2000 Law on Transparency of Assets of Officials Holding High State and Other Positions (LTA), as well as Article 142 of the Rules of Procedure, MPs are to submit declarations of property, income and expenses in Bulgaria and abroad as follows: i) within one month of taking up duty; ii) annually by 30 April (only if property status has changed in the preceding year); and iii) after release from position. Declarations cover: 1) real estate; 2) motor vehicles and air craft; 3) cash, monetary assets and liabilities in excess of BGN 5 000/EUR 2 500 in local and foreign currency; 4) securities, shares in limited liability companies and limited partnerships, registered shares in joint stock companies, including those acquired via participation in privatisation transactions other than bond (mass) privatisation; 5) income other than that accruing from the position held, received during the preceding year in excess of BGN 2 000/EUR 1 000; 6) security guarantees and expenses incurred by or in favour of an MP with his/her consent for education, travel abroad and other purposes where a unit price exceeds BGN 500/EUR 250 and where such payment is not made by an MP him/herself or the Assembly. Information is to be submitted in respect of an MP, his/her spouse and under age children.

54. Declarations are transmitted on paper and electronically to the National Audit Office (NAO), using a specially designated form. Being public documents, subject to the Personal Data Protection Act, within two months of the deadlines prescribed for their submission, the declarations are placed in a public register accessible on the NAO's web site (register.bulnao.government.bg) and the names of MPs who have failed in their reporting obligation are made public at the same time and sent to the National Revenue Agency for checks and audits and to the National State Security Agency for information. The declarations are kept for a ten-year period. The NAO-run helplines are meant to assist declarants in completing the form (which in any event contains instructions on its completion) and answers to frequently asked questions are published.

55. Failure to declare or late submission of a declaration are subject to administrative fines ranging from BGN 1 000/EUR 500 to BGN 5 000/EUR 2 500 (the latter, for a repeated violation), which can be challenged under the Administrative Violations and Sanctions Act. Concealing and withholding the contents of a declaration are criminal offences and carry a sentence of up to three years or a fine of BGN 100/EUR 50 to BGN 300/EUR 150 (Article 313 CC).

Supervision and enforcement

Supervision over conflicts of interest and incompatibilities

56. The ACCIPEC, which is formed on the parity principle and comprises two MPs per faction, supervises the fulfilment by MPs of the obligation to file the declarations of incompatibilities and of private interests. The Committee monitors MPs' compliance with the incompatibility rules and, in case of a suspicion, is to send an MP's declaration to the Commission for Prevention and Ascertainment of Conflicts of Interest for examination. If a conflict of interests is established by the latter, a parliamentary mandate is to be terminated via a ruling of the Constitutional Court. Where an MP fails to file a declaration of compatibility with the office or of private interests, the ACCIPEC is to notify the Commission for the purpose of issuing a penalty order. Notifications of failure to submit a declaration have been sent to the Commission with regard to 2 MPs in 2012 (41st Assembly), 2 MPs – in 2013 (42nd Assembly), and 11 MPs – in 2014 (43rd Assembly). The ACCIPEC keeps a public register of declarations, the period of their retention being ten years.

57. The Commission for Prevention and Ascertainment of Conflicts of Interest is the only authority competent to establish the existence of a conflict of interests in respect of some 120 000 officials who are subject to the LCI, including MPs. The Commission is an independent body which operates on the principles of legality, publicity, transparency and political neutrality. It is responsible for preventing conflicts of interest³⁵, ascertaining their existence and imposing administrative penalties. The Commission is accountable to the Assembly and consists of five members of whom three, including the Chair, are elected by the Assembly on the basis of a faction quota; one is appointed by the President of the Republic and one elected by the Council of Ministers and appointed by the Prime Minister. The Commission is elected for a five-year term renewable once. It is quorate if more than half of its members are present and its decisions are made by an open majority vote. At the time of the on-site visit, the Commission's staff comprised 24 persons of the 36 persons foreseen by its Rules.

58. Proceedings for ascertaining a conflict of interests may be instituted upon written notice from any person (except an anonymous one), a request by an official, or *ex officio*. To make an assessment, the Commission is to request information from the Constitutional Court, the ACCIPEC, any state or local self-government body, other institution or person. Where the Court or the ACCIPEC themselves are in possession of information on a violation by an MP, they are to notify the Commission forthwith and to transmit to it the relevant documents. All institutions are to respond within 14 days. Proceedings within the Commission conform to the Administrative Procedure Code and entail a hearing of an MP who may in turn lodge a complaint. Where a possible conflict of interests is to be ascertained in respect of one of the Commission's own members, the decision is taken by secret ballot, excluding the person concerned.

59. The decision as to whether there is a conflict of interests is to be pronounced within two months from the start of the process and communicated to the MP, the ACCIPEC and the district prosecutor's office with jurisdiction over the ACCIPEC's Chair

³⁵ The Commission prepares guidelines, which are published on its web site, and participate in the training of officials subject to the LCI.

(i.e. the Sofia City Prosecutor's Office). The Commission's decision may be contested before court at two instances and, if the absence of a conflict is ascertained, by a prosecutor within one month. Fines are imposed by the Commission's Chair within one month after the entry into effect of a decision ascertaining a conflict and can be challenged at two instances as well, pursuant to the Administrative Violations and Sanctions Act. Should there be reason to believe that a criminal offence has been committed the records are to be transferred forthwith to the prosecuting authorities. The names of MPs in respect of whom a conflict of interests has been established by an effective act are to be published on the Assembly's web site. In the last three years, the Commission has rendered decisions in respect of 14 proceedings concerning MPs (8 - following citizens' complaints, 5 - *ex officio* and one - upon an MP's request). Thirteen decisions have been adopted, and one proceeding is still pending. Four administrative penal proceedings were initiated in respect of MPs of the 41st and 42nd Assemblies, and fines were imposed under relevant penalty orders for failure to file a declaration under the LCI within the statutory limit. Notifications in respect of MPs of the 43rd Assembly who had failed in their reporting obligation were sent by the ACCIPEC to the Commission in December 2014. The related proceedings are currently on-going.

60. Deputies' compliance with the incompatibility rules seems to be the sole issue raising no apparent controversies. Only one pronouncement on this matter has been made by the Constitutional Court and no parliamentary mandate has been withdrawn in nearly 25 years. In contrast, the implementation of other LCI rules has been characterised by deficiencies and shortcomings, mostly caused by the imperfect regulatory framework, lengthy procedures, the too restrictive mandates of oversight bodies, their vulnerability to undue influence and insufficient expertise. Although there is no explicit requirement for *ad hoc* disclosure to be effected in writing, those MPs the GET met claimed compliance and insisted not only that disclosure was habitually recorded in the relevant minutes but also that the MPs concerned had withdrawn from voting. This information was challenged by other interlocutors who referred to multiple flagrant violations and contended that there is a lack of enforcement and due supervision. Under the LCI, the responsibility lies with MPs themselves to make *ad hoc* disclosures (and the chair of a plenary or committee meeting is responsible for recording them in the minutes). However, although the ACCIPEC has been vested with the power to keep a register of all declarations to be submitted under the LCI, including those filed *ad hoc*, it does not exercise oversight in this area and neither does the Commission for Prevention and Ascertainment of Conflict of Interest. As for the obligation to withdraw from voting in case of a private interest there is an apparent incongruity between the relevant LCI articles and the Rules of Procedure, which has to be eliminated.³⁶

61. As for disclosure of other private interests, relevant declarations are said to be filed within statutory timelines. The *authenticity of their contents* however may only be checked by the prosecuting authorities upon a signal from the Commission. The Commission itself is only bound to ascertain the existence of a conflict of interests if a particular case is reported to it and, as for the ACCIPEC, it only supervises the fulfilment by MPs of the obligation to *file* relevant declarations on time, and is to report any irregularity or any information on a potential violation of the conflicts of interest rules to the Commission. It is worthy of note that the Committee's latter competence extends not only to MPs but also a broad range of officials in respect of whom the Assembly acts as

³⁶ Article 7(1) LCI stipulates that public officials shall not have the right, in the execution of their duties, to vote in a private interest; Article 8 LCI states that the public office holder shall not have the right to participate in the preparation, discussion, adoption, issuance or rendition of any act [...] if a private interest exists; Article 19 (1) LCI requires a public official to suspend him/herself from the execution of powers in case of a private interest *on a particular occasion* but there is an exemption in Article 19 (3) LCI by virtue of which this provision may not apply to any public office holders where a special law provides otherwise; finally, Article 143 of the 2014 Rules of Procedure only stipulates that MPs are to disclose private interests with regard to the issue at hand when moving a bill, making a statement or voting in a plenary or a committee sitting but there is no express requirement to withdraw from voting.

an appointing or electing authority.³⁷ No sanctioning powers have been vested in the ACCIPEC either, as this is the Commission's prerogative, so the ACCIPEC's role has in essence been that of a declarations' depository. Ascertaining a conflict of interests takes on average four months, and the two-tier procedure for appeal, first of the Commission's decision and, second, of the administrative fine imposed, is complicated. It can, therefore, require four court decisions (and some four years) before a sanction can be imposed with finality.

62. The allegedly arbitrary nature of the Commission's decisions has attracted criticism too. The GET was provided with examples of allegations of instances of conflicts of interest involving MPs that have not been acted on by the Commission, without any explanation being provided. Some of the Commission's findings have also been rejected by the courts, although only one of them concerned an MP and that proceeding is still on-going. One possible explanation might be insufficient staff resources and competence (24 staff cover some 120 000 officials), another might be the Commission's susceptibility to undue political influence. It is worth noting that the reputation of both oversight bodies has been tainted by scandals³⁸ that have been particularly damaging to the Commission's image, leaving it without an effective leadership since 2013 and undermining the public perception of its capacity to carry out duties in an independent and impartial manner. Even more important to public opinion is the fact that the establishment of a rather complex system for disclosure and ascertainment of MPs' private interests with the involvement of two oversight bodies has not brought any major visible results nor has it been instrumental in preventing and detecting corruption to the extent originally planned. Both the effectiveness of the LCI and the practice of its enforcement require re-examination to prioritise the systematic and exhaustive scrutiny of declarations – whether regular or *ad hoc* – of those officials who may be exposed to corruption, such as MPs. It is essential that the system is underpinned by an oversight body free from undue influence not only in law but also in practice and that it has commensurate staff and resources to proactively uncover and sanction irregular practices within a reasonable timeframe. Also, bearing in mind that the disclosure of private interests and assets are the two cornerstones of the country's anti-corruption policy, establishing regular and efficient interaction between relevant oversight bodies seems indispensable. In view of the preceding, **GRECO recommends i) carrying out an independent evaluation of the effectiveness of the system for disclosure and ascertainment of conflicts of interest and of its impact on the prevention and detection of corruption amongst officials most exposed to it, including MPs, and taking appropriate corrective action (e.g. eliminating any contradictions in the regulatory framework, revising the mandates of responsible oversight bodies, supplying them with commensurate resources, etc.); and ii) ensuring that MPs' private interests – irrespective of whether they are declared regularly or *ad hoc* – are subject to substantive and regular checks by an independent oversight body within a reasonable timeframe and that an efficient co-operation is established between the authorities supervising MPs' compliance with the rules on conflicts of interest and on asset disclosure.**³⁹ Last but not least, the fact that the functioning of the Commission for the Prevention and Ascertainment of Conflicts of Interest has been affected by the absence for more than a year of a legitimate Chair may not be ignored and calls for expedient steps preventing such long vacancies in the future.

³⁷ See Article 25 (2.1) LCI.

³⁸ One of them had the Commission's Chair arrested and charged with abuse of office on the basis of evidence of politically manipulated proceedings. In spring 2014, the former Commission's Chair was sentenced to three and a half year imprisonment and the Sofia City appellate court confirmed the sentence.

³⁹ Part (i) of this recommendation applies *mutatis mutandis* to judges and prosecutors (cf. paragraphs 116 and 147).

Supervision over declarations of assets, income, liabilities and interests

63. Ensuring compliance by MPs with the asset disclosure rules and holding MPs' asset declarations are responsibilities vested specifically in the NAO's President. They are considered as supplementary and are conducted separately from the core auditing mandate of the NAO as a collegiate body, by personnel who do not qualify as NAO audit staff. The NAO, which exercises as its key function control over the correct implementation of the state budget and other public funds, is an independent collegiate body comprising five members, including the president, who are appointed by the Assembly for a seven-year term⁴⁰ (the president may not be re-elected). The NAO reports directly to the Assembly and operates *inter alia* on the principles of objectivity, professionalism, integrity, impartiality, openness and transparency, although, as indicated by the authorities, the stipulations of the NAO Act are irrelevant for the purposes of carrying out asset verifications which are governed entirely by the LTA.

64. Within six months of the deadline prescribed for their submission, the NAO is to verify the accuracy of all declarations. The checks are based on the documents submitted and ascertain the facts that require registration, disclosure or certification by state or municipal bodies, judicial authorities and other institutions. Those bodies are given two months to respond, while the NAO is also entitled to directly access their databases⁴¹ (in such cases the duty to respond in writing continues to apply). The verification process is concluded by the NAO establishing one of the following: 1) the correspondence of facts or a discrepancy of no more than BGN 10 000/EUR 5 000; or 2) the lack of correspondence. On completion, all findings are made public on the NAO's web site within one month, and the names of those MPs who have failed to declare and whose declarations are found not to correspond are sent to the National Revenue Agency for tax examinations and audits and to the National State Security Agency for information. Once received, the results of all additional checks are also published.

65. In so far as the sanctioning of irregularities is concerned, fines for failure to file or late submission of a declaration were imposed by the NAO on one MP in 2012, 2 MPs in 2013 and 5 MPs in 2014. In 2010, cases of non-compliance (lack of correspondence) were established in regard to 4 MPs, in 2011 - 8 MPs, in 2012 - 9 MPs and in 2013 - 2 MPs. Statistics from the National Revenue Agency⁴² are also available: in 2010, tax examinations were initiated and completed in respect of 34 MPs, and subsequent tax audit was carried out in respect of one MP; it identified additional tax obligations of a particularly large amount in the meaning of Article 93 (14) of the Criminal Code⁴³. In 2011, tax examinations were initiated and completed in respect of 4 MPs, and subsequent tax audits were carried out with regard to 2 MPs; the same conclusion as above was drawn in one case. In 2012, tax examinations were initiated and completed in respect of 8 MPs. In 2013 and 2014, tax examinations were initiated with regard to 3 and 11 MPs, respectively. The results of all completed examinations were transmitted to the NAO and made available on its website.

66. Asset disclosure by nearly 15 000 officials holding high state and other positions and persons related to them, including 240 MPs and their relatives, is widely regarded as

⁴⁰ The new NAO Act entered into force on 17 February 2015. It reduced the composition of the Office from nine to five persons (president, two vice-presidents and two members) and made sure that the two members are nominated by the Institute of Certified Public Accountants and the Institute of Internal Auditors, respectively.

⁴¹ I.e. The Property Register, the Company's Register, the Motor Vehicles Register, the Special Pledges Registry (kept by the Ministry of Justice), other vehicles' registers (kept by the Ministry of Transport), the Register at the National Revenue Agency. The NAO also signed co-operation agreements with institutions keeping registers that are relevant for verifying compliance with the LTA such as the Ministry of the Interior, the Ministry of Transport, Information Technologies and Communications, the Ministry of Regional Development, the Registry Agency, the National Revenue Agency and the National State Security Agency.

⁴² The Agency exercises control pursuant to Chapter 14 "Assessment of Taxes" and Chapter 15 "Tax and social insurance control" of the Tax and Social Insurance Procedure Code.

⁴³ This article defines as "taxes of particularly large amount" those exceeding BGN 12 000/EUR 6 000.

beneficial to strengthening the transparency and accountability of Bulgaria's public institutions, including the legislature. The system is said to encourage self-discipline and to have helped ensure respect of the applicable incompatibility rules and to reveal certain conflicts of interests. According to the NAO, the deputies have largely complied with the reporting obligation, although the declaration of shareholdings by spouses has occasionally posed problems. Those positive aspects aside, most interlocutors concurred that the asset disclosure and verification system has not produced the desired incremental impact in terms of preventing and detecting corruption and latent conflicts of interest (or illicit enrichment) nor has it reduced public perception of significant and persistent corruption-related vulnerabilities and risks surrounding MPs. The weakness of the oversight mechanism is apparent and underscores several gaps. Most importantly, asset verifications are categorised as autonomous auxiliary activities, which are unrelated to the NAO's core function, and, therefore, they may not be performed by the NAO's auditors as there are no legal or other reasons for such engagement.⁴⁴ The formalistic approach pursued by the NAO allows for irregularities to be uncovered only where there is a discrepancy with officially registered information (as verifications are essentially an automated process performed by a software application). There is no access to banking data and no comparison is made with the declarants' data from previous years.⁴⁵ Substantive audits may not be conducted due to the lack of legal basis and no provision has been made for referring suspicious cases to the law enforcement bodies, other than the National State Security Agency whose role in this process is nominal.

67. In effect, the system has only aided the uncovering of few tax evasion cases, and the engagement of the National Revenue Agency does not qualify as effective supplementary checks as its audits can only focus on the revenue part of the declaration and generate legal consequences if a tax debt is established.⁴⁶ Moreover, the whole process of tax examinations and audits has an average duration of one and a half years, whereas an MP's term in office is four years. It appears obvious that with the NAO's current resources (10 staff being in charge of all of the country's declarants) and restrictive mandate, the in-depth analysis and systematic investigation into suspicious assets cannot be performed nor an effective supervision attained. Furthermore, although the authorities disagree, and insist on distinguishing between the NAO's performance as a collegiate auditing body and the role in ensuring compliance with asset disclosure rules which is assigned to the NAO's President, the fact that the NAO's members, including its President, are appointed and dismissed by parliament and that this institution is subject to frequent restructuring, allegedly as a result of "political instrumentalisation"⁴⁷, is relevant for the purposes of this evaluation and renders the whole picture more complex and raises doubts about the NAO's autonomy. GRECO is of the strong view that the asset disclosure system in Bulgaria will only acquire a distinct value and instil credibility and confidence if it is equipped with a system of checks based on an on-going assessment of risks and prioritising full audits of those officials who are vulnerable to corruption and undue influence, including specifically MPs. Given the flaws identified in paragraphs 66 and 67, **GRECO recommends i) carrying out an independent evaluation of the impact of the asset disclosure and verification system on the prevention and detection of corruption amongst officials most exposed to it, including MPs, and taking appropriate corrective action (e.g. revising the mandate of the oversight body, supplying it with commensurate resources or designating, as the need**

⁴⁴ The authorities explain that this is due to the high level of independence of the NAO and its position in the hierarchy of public bodies. The NAO is of the opinion that further expanding the checks performed by its employees (including e.g. by vesting investigative powers in the NAO) and of the data to be declared in the public registry would be inappropriate as it would shift the focus away from the audit activity which is the prime task of the supreme audit institutions.

⁴⁵ The authorities indicate in their written submission that such comparisons can be performed by any person at any moment as, since 2007, all declarations are in the public domain.

⁴⁶ In any event, most discrepancies identified by the NAO concern facts and circumstances that are not related to the tax obligations

⁴⁷ cf. paragraph 57 of GRECO's Third Round Second Compliance Report on Bulgaria (Greco RC-III (2014) 12E, [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2014\)12_Second_Bulgaria_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2014)12_Second_Bulgaria_EN.pdf)).

may be, another institution equipped with adequate means for this purpose); and ii) ensuring that MPs' declared assets are subject to substantive regular checks by an independent oversight body within a reasonable timeframe.⁴⁸

GRECO understands that some steps in the direction suggested by this recommendation are already foreseen as part of the Strategic Guidelines and Priorities for the Prevention and Fight against Corruption approved by the Government on 27 February 2015.

Supervision over other duties

68. MPs are subject to the following disciplinary measures by the plenary chair:

- a call to order – for not keeping to the matter at hand;
- reprimand – for using offensive language, gestures or threats;
- censure – for violating and disrupting order in the plenary room;
- rule out of order – for above, following a double application of the previous three measures, as well as for continuing to speak beyond the time limit in disregard of the chair's instructions to conclude;
- suspension for one session – for disputing a disciplinary measure in a rude and unbecoming manner (this also entails the suspension of remuneration in respect of the session concerned), continuously or repeatedly disrupting the normal progress of business in the plenary or voting with an another MP's card;
- suspension for up to three sessions – for insulting the Assembly, Council of Ministers or the Head of State, the Vice President or other state organs, inciting or committing violence in the plenary room or on the Assembly's premises.

69. Within three days of its imposition, a disciplinary measure may be challenged by an MP before the President of the Assembly who can sustain, annul or amend it in a reasoned manner. In the last five years, disciplinary measures of removal from session were applied in respect of two MPs. As for MPs' unjustified absences, such information is placed on the Assembly's web site (according to the Rules, not later than within 7 days of the end of the month concerned).

70. Deputies are furthermore liable to criminal sanctions for offences such as bribery, trading in influence (Article 304b CC), mediation in bribery and trading in influence (Article 305a CC) and disclosure of classified information (Article 357 CC). Sanctions for such offences include fines or a prison sentence of up to 20 years. A deputy who has committed a corruption offence or an aggravated abuse of office is to be tried by the Specialised Criminal Court.

71. An MP enjoys immunity ("irresponsibility") in that s/he is not criminally liable for the opinions expressed or votes cast in the Assembly. Furthermore, a deputy may not be detained and prosecuted unless a crime has been committed, in which case the Assembly (or its President if the latter is in recess) is to give its authorisation within 14 days, following a reasoned and substantiated request by the Prosecutor General. No authorisation is required where an MP is caught in the act of committing a serious crime, and the Assembly (or its President) is to be notified forthwith.⁴⁹ Also, no permission to initiate criminal proceedings is necessary where an MP has given his/her written consent. Once given, the consent cannot be withdrawn, and the Assembly and the Prosecutor General are promptly informed. If an MP is convicted of an intentional crime punishable by imprisonment and the prison sentence is not deferred, the Assembly is to terminate his/her mandate. The same procedure applies in cases where criminal proceedings have been instituted against an MP prior to election or where the Prosecutor General has requested that the MP concerned be taken into custody. In the latter case, the Assembly is to pass a separate resolution and may rescind a permission already given.

⁴⁸ Part (i) of this recommendation applies *mutatis mutandis* to judges and prosecutors (cf. paragraphs 118 and 149).

⁴⁹ Articles 69 and 70 of the Constitution

72. The Prosecutor General requested the institution of criminal proceedings in respect of 6 MPs (10 requests) during the 41st National Assembly, 5 MPs (7 requests) during the 42nd Assembly and 5 MPs (7 requests) during the current 43rd Assembly (as at 18 December 2014). All MPs concerned authorised in writing the conduct of proceedings, therefore obtaining the Assembly's consent was not necessary. In the last five years, there have been no cases of MPs accepting bribes but one MP has been indicted for participation in an organised criminal group and transferring money abroad using false documents and a case against another MP for trading in influence is still pending.⁵⁰

Advice, training and awareness

73. MPs familiarise themselves with the standards and rules applicable to them by consulting the relevant laws and through information provided by the ACCIPEC. If in doubt they may seek advice from the Commission for Prevention and Ascertainment of Conflicts of Interest which is bound to issue an opinion if consulted. In practice, such issues are more often resolved at the Assembly's level. As for access to information on the effective legislation and on the parliament's mode of operation, the public has unimpeded access to laws, regulations and to registers containing *inter alia* MPs' declarations of private interests (the Assembly's web site) and assets (the NAO's web site).

74. In its earlier observations concerning ethical parliamentary conduct, GRECO already drew attention to the desirability of strengthening MPs' awareness of the obligations and expectations connected to their role as elected representatives since this constitutes one of the key prerequisites for building the sturdy and robust integrity system envisaged by the 2014 Rules of Procedure. The allegedly high number of MPs who enter the office for the first time following each parliamentary election and who often lack parliamentary experience implies that sustainable mechanisms are to be put in place in order to provide extensive support, training, advice and guidance to MPs on entry and throughout their mandate. The recommendation found in paragraph 43 of this report aims to attain this goal and to transform current weaknesses into clear integrity and corruption prevention outputs.

⁵⁰ The MP in question resigned after the Prosecutor General had requested that his immunity be waived in order for the criminal proceedings to commence.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

75. Bulgaria has a system of “unified judiciary” with an independent budget, consisting of the courts, the prosecution service and the investigation service. Justice is administered by the Supreme Cassation Court, the Supreme Administrative Court, the specialised criminal appellate court, the military appellate court, the specialised criminal court and 5 appellate, 28 regional, 113 district, 28 administrative and 3 military courts. The Constitutional Court is not part of the judicial system. Unless prescribed otherwise, civil and criminal cases are tried within a three-level court procedure (first instance, appellate review and cassation) and administrative cases within a two-level procedure (first instance and cassation). In cases envisaged by law, justice is administered with the participation of lay judges.

76. The principles of independence of the judiciary and of judges, of their impartiality and of their subjection only to the law are enshrined in the Constitution and in the Law on the Judiciary (LOJ). The latter determines the structure and operational principles of the bodies of the judicial system and their interaction with the other branches of power.

77. In Bulgaria, judges, prosecutors and investigating magistrates belong to a single professional corpus of “magistrates” (some 4 170 persons). At 31 October 2014, there was a total of 2 206 judges of which 727 (33%) were men and 1479 (67%) women. Of the 182 court presidents, 85 were men and 97 women.

78. Overall, the legal framework contains adequate safeguards for the independence of the judiciary. Steps have been taken with a view to enhancing the accountability, transparency and effectiveness of the administration of justice, notably by maintaining only the functional immunity of judges, introducing national competitions for judicial posts at all levels, developing objective and transparent criteria for electing court presidents, organising prior hearings with candidates to such posts and obliging them to disclose assets, adopting a binding Code of Ethical Behaviour for Bulgarian Magistrates and monitoring judges’ impartiality under the relevant procedural rules. Notwithstanding this generally positive trend, conspicuous shortcomings persist and these erode, amongst others, the public trust in the impartiality and independence of the judiciary. Some deficiencies stem from frequent legislative changes pertaining e.g. to the regulation of appointment and career of judges, others derive from inappropriate oversight. Others have been prompted by allegations of undue influence being exerted on judicial self-governing bodies and their auxiliary structures as well as of discretionary and non-transparent powers being vested in court presidents. These and other concerns are addressed in the relevant sections of this report with the hope that the authorities will take them into account in the context of the commitment they have made to implementing the 2014 “Updated strategy to continue the reform of the judicial system”⁵¹.

Judicial self-governing bodies

79. The Supreme Judicial Council (SJC) is a permanent body safeguarding the independence of the judiciary, chaired by the Minister of Justice (who has no vote). It consists of 25 jurists of high integrity and public standing who have practiced law for at least 15 years. Eleven members are elected by the National Assembly (from among magistrates, law professors, attorneys-at-law and other lawyers), eleven (six judges, four prosecutors and one investigating magistrate) - by the judicial authorities, by means

⁵¹ The Strategy was adopted by the government on 17 December 2014 and endorsed by the parliament on 21 January 2015. The updated strategy lays the basis for future legislative and organisational actions, as well as for the analysis of the constitutional framework of the judiciary. It replaced the 2010 Strategy which was deemed to be only partly implemented.

of separate general delegate assemblies of judges and of prosecutors.⁵² The Presidents of the two Supreme Courts and the Prosecutor General are *ex officio* members. All elected members have five-year tenure and may not be re-elected immediately. The SJC is responsible for the selection, appointment, promotion, in-house training, demotion, transfer and removal from office of judges and for imposing disciplinary sanctions. It approves and reviews the Code of Ethical Behaviour for Bulgarian Magistrates, provides comments to the Council of Ministers and parliament on draft legislation that has a bearing on the judiciary, discusses - on the proposal of the Minister of Justice - the draft budget for the judiciary, hears and approves the annual reports of the two Supreme Courts and transmits them to the Assembly.

80. The SJC's meetings are public, except where disciplinary sanctions are being discussed (in such cases, SJC decisions are made public). The presence of more than half of the SJC's members is required to hold a session and resolutions are adopted by a majority vote⁵³ and can be challenged before the Supreme Administrative Court.

81. Two standing commissions - on the Nomination and Attestation of Judges, Prosecutors and Investigating Magistrates and on Ethics and Corruption Prevention, which are established pursuant to the LOJ, are elected from among the SJC's ranks. Each consists of ten members. The former manages appointments, promotions, relief from office and acquisition of tenure by judges. The latter prepares opinions on the moral standing of candidates to judicial posts, carries out studies and analyses information on the existence of corruption within the judiciary. It examines complaints from any person alleging breaches of ethical rules and submits inspection results to the SJC. The Ethics and Corruption Prevention Commission also co-operates with ethics commissions established in courts (see further below).

82. An Inspectorate is also attached to the SJC, which is an autonomous and independent constitutional body, not under SJC management. It consists of an Inspector General and ten inspectors elected by a two-thirds parliamentary majority for five and four years, respectively, without the right to immediate re-election. All inspectors are independent and subject only to the law. The Inspectorate assesses the operation of the judicial system bodies (without interfering with their independence), including notably their compliance with procedural time lines. It reviews complaints, proposes disciplinary sanctions in respect of judges and court presidents and carries out planned and *ad hoc* inspections in respect of concrete judicial system bodies or judges. If it encounters or suspects a corrupt practice, the Inspectorate is to notify the prosecuting authorities. The Inspectorate's findings can be challenged before the Inspector General within seven days. The Inspectorate's annual reports are public and presented directly to the Assembly. Although only some of the findings were made available on the Inspectorate's website at the time of the on-site visit, this work is said to have been accorded priority. The fact that the post of the Inspector General has remained vacant since October 2013 illustrates one of the many challenges surrounding high-level appointments within the judiciary. Considering the importance of the Inspectorate's functions, GRECO calls upon the authorities to take urgent measures preventing such long vacancies in the future.

83. Securing the proper functioning of the judicial branch through an independent judicial council, endowed with guarantees for its composition, powers and autonomy and competence to decide on the appointment and career of judges, has become a salient feature in many of the GRECO member States and can only be qualified as a positive

⁵² Pursuant to Article 21(2) LOJ, the assemblies of judges and of prosecutors elect delegates for such assemblies. In respect of judges, such assemblies have been established separately for: 1) ordinary cassation and appellate court judges; 2) cassation and appellate administrative court judges; 3) regional and district court judges; 4) military, including appellate military, court judges; and 5) specialised criminal, including appellate, court judges.

⁵³ An SJC member may not participate in a vote on a decision which concerns him/herself personally, his/her spouse or any direct relative or relative up to the fourth degree or relative by marriage up to the third degree, or if any other circumstances undermine his/her impartiality.

development. Yet, the exposure of such bodies to undue influence is a recurrent concern, and the SJC is not an exception. The fact that eleven of its members are elected by the Assembly (by a majority vote) elevates the risk of the SJC becoming politicised and subject to partisan considerations. Scandals leading to the resignation of some of its members and the inaction by parliament to fill the vacancies add credence to this fear. Also, one needs to bear in mind that the judiciary consists of three parts and yet the courts are represented by only six judges who are not elected directly but through delegated assemblies in which court presidents reportedly enjoy predominant influence. Furthermore, through membership in the SJC, prosecutors partake and are said to display interest in the appointment, attestation, promotion and disciplinary matters in respect of judges, not to mention their involvement in the dispensation of justice and operation of courts. The SJC's failure to appoint the President of the Supreme Cassation Court in 2014 and the elongation of the selection process into 2015 highlight the internal tensions which require to be overcome. Additionally, the inconsistencies of the SJC's case law on disciplinary matters, largely attributed to undue political influence, were frequently referred to on site, along with calls for the SJC to account better for the different functions of courts and of prosecution.⁵⁴ Considering that there is no model for the setting up of judicial councils, the existence of a single body, dealing with the three separate judicial branches, is not called into question. Still, it is imperative that the SJC is insulated from any undue interference by other branches of power and that any risks of influence or undue pressure by one branch of the judicial authorities on the other within the SJC in matters such as judges' selection, appointment, attestation and discipline are eliminated.⁵⁵ Accordingly, **GRECO recommends that, in order to help the Supreme Judicial Council to fully assert its legitimacy and credibility and to strengthen its role as guarantor of the independence of judges, decisions on judges' appointment, career, attestation and discipline should be taken by a composition of the Council that is made up of a majority of judges elected by their peers.**⁵⁶ GRECO is of the opinion that it would be preferable that judges directly elect the members of such a (SJC) composition.⁵⁷

Recruitment, career and conditions of service

84. The requirements for appointment are: Bulgarian citizenship, a university degree in law, moral and professional qualities compliant with the Code of Ethical Behaviour for Bulgarian Magistrates, having completed the appropriate internship and obtained legal competence, no prison sentence for a deliberate crime (no regard being had to rehabilitation), not being an elected SJC member, not having been dismissed from office on disciplinary grounds that undermine the image of the judiciary and not suffering from a mental illness. All appointments (initial, promotion, transfer, appointment as court president) are made via publicly announced competitions. Entrance to the profession is possible via 1) recruitment as a junior judge or 2) initial appointment to the post of judge. Both competitions consist of written and oral exams, following which applicants are ranked by their score. Promotions and transfers are based on an interview and attestation results, and the applicants are also ranked. Competitions are held by commissions formed by the SJC, of which the SJC members and courts presidents may not be members.⁵⁸ Based on the commissions' conclusions, the SJC's Nomination and

⁵⁴ As demanded by Recommendation Rec (2000)19 of the Committee of Ministers of the Council of Europe on the Role of the Public Prosecution in the Criminal Justice system (wcd.coe.int/ViewDoc.jsp?id=376859).

⁵⁵ See also the 2008 Opinion of the Venice Commission on the Constitution of Bulgaria ([www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2008\)009-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)009-e)).

⁵⁶ Cf. Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities (wcd.coe.int/ViewDoc.jsp?id=1707137).

⁵⁷ Cf. paragraph 30 of Opinion no. 10(2007) of the CCJE on the Council of the Judiciary at the service of society: [wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2007\)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3](http://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2007)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3)

⁵⁸ Competition commissions comprise a chair, four regular and two substitute members. The commissions overseeing competitions for junior judges are to include district court judges and a law scientist; for initial

Attestation Commission prepares a substantiated proposal to the SJC. The SJC's appointment-related decisions are approved by secret ballot and can be challenged before the Supreme Administrative Court. As mentioned earlier, judges are appointed, promoted, demoted, transferred and dismissed by the SJC, except for the presidents of the two Supreme Courts who are appointed by the President of the Republic on a motion by the SJC for a single seven-year term (the President can only refuse a candidacy once). All SJC's decisions are public and accessible on its web site.

85. Junior judges are appointed for a two-year term which may be extended by six months. During this period, they are assigned to regional courts and assisted by judge mentors and subsequently appointed to district courts without competition. As for initial appointments to the post of judge as well as those by way of promotion or transfer, suitable applicants are to meet the requirements of the legal service record as follows: a) at least three years for appointment as a district court judge (two years and nine months for a junior judge); b) at least ten years, of which five years as a judge specialising in criminal cases for appointment as a specialised criminal court judge; c) at least eight years for appointment as a regional or administrative court judge; d) at least ten years for appointment as an appellate court judge; e) at least twelve years, of which at least eight as a judge specialising in criminal cases, for appointment as an appellate criminal court judge; and e) at least twelve years for appointment as a Supreme Cassation or Administrative Court judge. After completing the fifth year of service and upon attestation by the SJC's Nomination and Attestation Commission, affirmed by the SJC's resolution, a judge is appointed indefinitely and acquires life tenure.

86. The challenges that a lengthy probationary period pose for judges' independence have been addressed in previous GRECO's reports. It is equally disconcerting that life tenure can only be acquired after five years in office. The principle of irremovability pursues the goal of shielding judges from possible undue interference in their work and decision-making process. Therefore where a probationary period extends over a long period of time, the risks are high that judges may become susceptible to pressure to decide cases in a particular way and their impartiality might be eroded. While the practical need to keep the performance of a recently-appointed judge under scrutiny is not called into question, GRECO is of the firm view that such a trial period has to be short, or at least no longer than is necessary to assess a judge's suitability for the post. The scope and the process of conducting attestations for the purpose of acquiring life tenure need to be re-examined as well. Pursuant to Article 197 (1) LOJ, such attestations are to ascertain, in an objective manner, the professional qualifications and performance of a judge, with due regard being had to his/her periodic attestations. A certain number of flaws in that procedure are analysed further below. What remains missing is a methodology that assures that the qualifications, integrity, ability and efficiency of a judge are assessed more rigorously and in greater depth compared to the periodic performance reviews. The fact that no judge has ever failed an attestation for acquiring life tenure suggests a perfunctory approach that might diminish the value of this exercise and also jeopardise its crucial gate-keeping role, i.e. admitting to judicial ranks only those persons who exhibit high professional and ethical values. In view of the foregoing, **GRECO recommends that the judicial independence be further strengthened by i) substantially reducing the five-year term established for judges acquiring life tenure; and ii) introducing a distinct methodology for a rigorous and in-depth evaluation of qualifications, integrity, ability and efficiency of a judge for the purpose of acquiring life tenure.**

87. Court presidents are appointed for a renewable five-year term. Candidates are to have high professional and moral qualities, requisite managerial competences, a positive overall score in the last attestation and a service record as prescribed above. The

appointments – judges of the equal rank to the post for which the competition is made; and for promotions - appellate and Supreme Court judges (to be drawn by a public lot).

procedure for appointment of court presidents, including presidents of the two Supreme Courts, enables other judges, not-for-profit entities pursuing activities for the public interest, universities and research organisations to present their opinion on candidates to the SJC and to propose questions for interviews. Candidates' former colleagues and institutions may also submit questions and references on integrity and professional competences. Additionally, judges at the court at which the appointment is made may invite candidates to a hearing and inform the SJC of their view. Such a possibility has apparently not been used so far, except for the procedure – albeit unsuccessful – for the appointment of the President of the Supreme Cassation Court. Unless categorised as classified or private, the information relevant to the selection process is posted on the SJC's web site.

88. As part of the initial recruitment, the SJC's Commission on Ethics and Corruption Prevention prepares opinions on candidates' integrity drawing on previous employers' references. In respect of those judges who are subject to promotion or transfer, more comprehensive checks are conducted using data from the SJC's Inspectorate (complaints or records of disciplinary proceedings), from the Commission for Prevention and Ascertainment of Conflicts of Interest, the prosecuting authorities, other competent bodies, as well as the information from the media and public registers. A final reasoned opinion is to certify the absence or presence of facts casting doubts on a candidate's integrity and public standing. Between January 2013 and June 2014, 284 opinions were issued on various candidates for judicial posts (i.e. as part of an initial appointment, appointment as a junior judge, promotion and appointment as court president).

89. According to the LOJ, 20% of court vacancies are to be filled via so-called "initial appointment to the post of judge" or, in other words, external recruitment. Competitions are to be held at least once every year, depending on the exact percentage of vacancies determined per each court level. Some interlocutors explained that the carrying out of integrity checks in respect of external candidates⁵⁹ has been a process fraught with ambiguities. Even where previous employers' records are available their contents are generally inadequate for ascertaining a candidate's integrity since the standards of conduct expected of a judge are not applicable outside the judiciary. Moreover, the SJC's Ethics and Corruption Prevention Commission has insufficient powers to conduct quality checks. In respect of candidates who are officials, it may only rely on information available from agencies such as the National Audit Office (discrepancies in the assets declared) and the Commission for Prevention and Ascertainment of Conflicts of Interest, and in respect of other candidates – information from the prosecuting authorities and any open sources (i.e. registers and media items). Overall, the system is believed to be weak and to not yield satisfactory results. The situation is compounded by the absence of a requirement for such newly appointed judges to complete *ex ante* orientation training, undergo a court internship or work under the supervision of a senior peer, which are all compulsory for appointment as a junior judge and which mitigate the risks of integrity checks being superficial and of integrity testing being missing at the recruitment stage. The presence of a significant percentage of judges who are not properly vetted and who have literally to learn on the job is said to produce adverse effects particularly in the higher level courts. In this context, due consideration might be given to developing testing tools aiding to ascertain candidates' integrity specifically at the recruitment stage and allowing for more comprehensive checks being conducted by the SJC's Ethics and Corruption Prevention Commission, with due regard being had to respect for the candidates' human rights and, in particular, their right to privacy. In view of the foregoing, **GRECO recommends strengthening the integrity checks carried out in respect of candidates to the post of judge who are subject to initial appointment, with due regard being had to respect for their human rights and relevant European standards.** Some steps in the direction advocated by this

⁵⁹ The SJC's Commission on Ethics and Corruption Prevention are to ascertain the integrity of the first three candidates for a position and prepare an opinion on each candidate on the basis of information and documents available to it.

recommendation are already planned as part of the previously mentioned Strategic Guidelines and Priorities for the Prevention and Fight against Corruption. The issue of desirability of reinforced training is treated in more detail below.

90. All judges are subject to periodic attestation every four years until the age of 60 years. The general criteria stipulated by Article 198 LOJ are as follows: 1) legal knowledge and skills for its implementation; 2) skills for analysing legally relevant facts; 3) skills for optimal organisation of work; and 4) expediency and discipline. The indicators to be taken into account are: a) compliance with the timelines; b) the number of acts confirmed and repealed and the grounds therefor; c) the outcome of inspections carried out by the SJC's Inspectorate; and d) the overall workload of the respective judicial area and court as well as the workload of the respective judge compared to other judges in the same court. The criteria, which are *specific* to judges, are compliance with the schedule of court hearings and the skills for conducting court hearings and drawing up the proceedings' records.⁶⁰

91. Attestations are conducted by the SJC's Nomination and Attestation Commission and the attestation commissions established in courts. The latter consist of three regular and one substitute members (court presidents are excluded) elected at random for each specific appraisal. The SJC's Nomination and Attestation Commission evaluates: a) the judges of the two Supreme Courts, including deputy court presidents; and b) all court presidents bar the presidents of the two Supreme Courts. The attestation commissions established in courts conduct periodic evaluations of other judges and deputy court presidents. At the end of both processes an aggregate evaluation is drawn up for adoption by the SJC; it may be challenged before the Supreme Administrative Court.

92. Moral qualities "compliant with the Code of Ethical Behaviour for Bulgarian Magistrates" is one of the requirements for a judge's appointment and career progression. Recent amendments to the LOJ however have removed the adherence to professional ethics rules from the list of criteria prescribed for conducting periodic reviews of judges and attestations for acquiring life tenure. Although the authorities insist that the Methodology for attestation of magistrates, administrative heads and their deputies, adopted by the SJC in 2011 and last amended in March 2014, integrates in its Article 34 (3) "compliance with the rules of professional ethics" as one of the four indicators for assessing the general criteria of "efficiency and discipline"⁶¹, the GET was told on-site by representatives of the ethics commissions, whose opinion is to support each attestation, that such checks remain superficial as they mostly entail the gathering of factual information regarding, for example, complaints or disciplinary proceedings with respect to judges.⁶² GRECO is of the strong view that a judge's abidance by ethical standards is a criteria that needs to be evaluated on the basis of the law and separately from the criteria of expediency and discipline, for which already very specific indicators have been prescribed by Articles 198 and 199 LOJ and which exclude ethical conduct. The lack of *well-formulated criteria* for evaluating ethical qualities of a judge is a marked deficiency given that the Code of Ethics is binding on judges and any breaches thereof trigger disciplinary action (see further below). Therefore, for performance reviews to be qualified as credible and effective, it would be imperative for them to include an elaborated assessment of the ethical dimension of a judge's comportment, which is comprehensive and not confined to perfunctory checks of various databases (including those on disciplinary proceedings), and to follow on from the integrity checks carried out before appointment. This would not only allow for the objective ascertainment of a

⁶⁰ See Article 199 LOJ.

⁶¹ Alongside the results of the checks of the Inspectorate attached to the SJC, the results of other checks, and the incentives and sanctions during the period for which the appraisal is made.

⁶² The same applies to the procedure of election of court presidents, also governed by the SJC's rules. Thus, candidates' compliance with "high ethical qualities" is assessed on the basis of data from bodies, such as the Inspectorate under the SJC, the prosecuting authorities, public registers and relevant materials published in the media.

judge's performance and its evolution over time but also for the early detection of improprieties or of a propensity for unethical behaviour. Furthermore, regular assessment of respect for the ethical rules is likely to strengthen considerably the objectivity and transparency of the promotion procedure as it would help substantiate the relevant decisions and complement the only other legally-prescribed criteria, i.e. the length of the service record. Accordingly, **GRECO recommends that, in order to enhance the accountability, objectivity, transparency and uniformity of the recruitment and promotion procedures within the judiciary, objective and transparent criteria for evaluating a judge's compliance with the Code of Ethical Behaviour for Bulgarian Magistrates be introduced in law both for attestation for acquiring life tenure and periodic performance reviews.** Involving the SJC's Commission on Ethics and Corruption Prevention in the development of relevant criteria and of the National Institute of Justice (see further below) in the training of appraisers is likely to bring added value. It might also be prudent to give proper thought to diversifying the single evaluation criteria applied to court presidents and heads of prosecutor's offices so as to better reflect their distinct but not identical judicial functions. As concerns the necessity for judges to be evaluated by their peers, it is covered by the recommendation in paragraph 83 above.

93. A judge's mandate terminates on reaching 65 years of age, on resignation, if a prison sentence is imposed for an intentional crime, if there is a lasting *de facto* inability to discharge duties for more than a year, if dismissed as a result of a disciplinary sanction, if life tenure is refused by an SJC resolution, and in the event of incompatibility or reinstatement in office following illegal relief therefrom.

94. The basic monthly salary of presidents of the two Supreme Courts is equal to 90% of the salary of the Constitutional Court President which is linked to the remuneration of the Speaker of Parliament and of the President of the Republic and, ultimately, the average salary of employees and civil servants in the *public* sector. The minimum gross annual salary of a judge at either of the two Supreme Courts is BGN 46 411/EUR 23 205. The basic monthly salary of a junior judge is equal to twice the average monthly salary of a *budget* sector employee. The minimum gross annual salary of such judges is BGN 18 552/EUR 9 276. The salaries of other categories of judges are determined by the SJC in accordance with the LOJ. Supplementary monthly remuneration is provided for length of service (2% per year but not more than 40%) and professional experience. Extra work is remunerated only for the discharge of duties during holidays and days off. While in office, judges may use housing belonging to the internal housing fund of the judicial system bodies. On leaving office, judges with more than 10 years' service receive a one-off bonus equivalent to one gross monthly salary per year of service but not exceeding twenty – certain exceptions apply. Supervision of judges' salaries and benefits is exercised by the SJC and the National Audit Office.

95. At the time of the on-site visit, amendments to the LOJ were foreseen with a view to unifying the basis for determining the salaries of all categories of judges by linking them to the average salary of employees and civil servants in the *public* sector. Such an approach is fully supported by GRECO as it would be preferable for the sake of fairness and objectivity that the same scales be applied for calculating the salaries throughout the judicial branch, regardless of rank. A worrying practice is the awarding to judges of year-end bonuses determined in respect of each judge by the respective court president. The fact that the bonus allocation is entirely discretionary has led to allegations that it has been used to secure loyalties within courts. While motivating exceptional performance via a range of incentives, including pecuniary, is an established practice the value of which is acknowledged by GRECO, its exposure to undue influence remains significant as long as adequate safeguards, such as clear, objective and transparent criteria, are not put into place. Accordingly, **GRECO recommends that the application of supplementary remuneration within the judiciary be subject to clear, objective and transparent criteria.**

Lay judges

96. The composition of judicial panels examining a case at first instance may include lay judges who have the same rights and duties as a judge. The SJC determines the procedure for their nomination, remuneration and other organisational matters. A citizen of Bulgaria above 21 and below 65 years of age, with full civil rights, of good reputation, who has not been convicted of an intentional crime (no regard being had to rehabilitation) may act as a lay judge and be nominated either by: 1) the municipal council within a court's jurisdiction (at least 10 per cent of such nominees are to have a teaching background); or 2) the Sofia City Council – for those to be assigned to the specialised criminal court. Candidates to the post of lay judge are then confirmed by: a) the general assembly of judges of the respective regional court – for appointment to a district court; b) the general assembly of judges of the respective appellate court – for appointment to a regional court; and c) the general assembly of judges of the appellate specialised criminal court – for appointment to the specialised criminal court. The term of office of a lay judge is five years and, as a rule, the exercise of duties is only possible for up to 60 days per year. Core and substitute lay judges are designated by drawing lots for each court panel and, in case of failure to discharge duties, a fine of between BGN 50/EUR 25 and BGN 500/EUR 250 may be imposed by the court president.

Case management and court procedure

97. Cases are to be randomly assigned to judges in the order of their receipt via an electronic case management system. This principle is to be applied at the level of court colleges or divisions. The same judge is prohibited from examining the same case in different judicial instances. The practical application of random assignment and the lack of adequate supervision have been of an important concern for many courts. Although the principle is enshrined in law, it has been construed in too general terms and courts have therefore adopted their own rules in this area which gave rather substantial powers to court presidents. The flexible legal framework coupled with an administrative discretion and the lack of transparency, have led to diverse practices being formed: for example, some court presidents are said to exert direct influence on the case load of individual judges and the composition of court panels. Allegations of tampering with the software, of favouritism and overloading judges as a means of punishment have also been voiced. Given that the excessive workload has been haunting certain courts for years, an open letter of complaint was addressed by the Criminal College of the Sofia City Court to the SJC in 2009⁶³. Since then, a Working Group under the SJC has been looking into the development of a methodology for measuring the caseload of courts and individual judges but with no discernable results.⁶⁴ The situation is exacerbated by the coexistence of two random case assignment software packages and five integrated case management software packages that have been approved by the SJC but are incompatible. The case assignment and management system appears to be vulnerable to undue interference, and random, lawful, equitable and transparent case assignment is not guaranteed. Moreover, the nature and complexity of cases is disregarded and effective controls are missing meaning that the alleged transgressions have not been subject to rigorous and impartial investigation and remained unpunished. In view of the foregoing, **GRECO recommends to ensure that the principle of random case allocation be implemented in practice, with due regard being had to a fair and equitable workload for judges, and that the case assignment be protected from undue interference and subject to more stringent controls.**

⁶³ A new scandal broke out in November 2014, whereby calls for the resignation of the leadership of the Sofia City Court were made from within the judicial ranks.

⁶⁴ In December 2014, a draft methodology was published with the view to soliciting input from the judicial community.

98. The requirement to adjudicate cases within reasonable time is included in the Constitution and in the Criminal and Civil Procedure Codes.⁶⁵ Besides, time limits have been prescribed for specific procedural steps. Thus, a hearing of a criminal case is to be scheduled within two months of its receipt and, for factually or legally complex cases, this limit can be extended up to three months upon a court president's written order.⁶⁶ Administrative cases are to be instituted by court presidents, vice-presidents or heads of division and delivered to a reporting judge who is to schedule a hearing within a period not exceeding two months after the appeal is received in court. Systematic failure to respect procedural deadlines incurs disciplinary liability of a judge, as do acts or omissions unjustifiably delaying the proceedings. Carrying out periodic and *ad hoc* checks on the institution and progress of court cases is a specific objective of the Inspectorate attached to the SJC. The significant workload generated particularly in the capital city has resulted in procedural delays⁶⁷ and in many disciplinary proceedings being instituted in respect of the judges concerned. The SJC's Inspectorate is said to have played a prominent role in identifying and reacting to such cases.

99. Court hearings are public unless the law prescribes otherwise (the need to protect state secrets, the privacy of the parties, etc.). All judicial acts are to be reasoned and based on the law and the evidence gathered. Judgments are to be delivered in public and published on the respective court's website as soon as they are adopted, subject to compliance with the Personal Data Protection and Classified Information Protection Acts. All judgments are made available in the "Judgements' Register" which is accessible to the public. In civil cases, a reasoned judgment is to be published within a month after a hearing has been held which completes the examination of a case; and in criminal cases, the reasoning must be drawn up within 30 days after the sentence has been delivered.⁶⁸

Ethical principles and rules of conduct

100. Judges take and sign an oath of office which binds them to be guided by their conscience and inner convictions, to act in an impartial, objective and equitable manner and to contribute to strengthening the prestige of their office. In 2009, the Code of Ethical Behaviour for Bulgarian Magistrates was adopted by the SJC (available on its web site: www.vss.justice.bg/en/start.htm) following broad debates within the magistrates' community and public meetings held with the SJC. The Code is composed of the main principles, rules for ethical behaviour ensuing from the main principles, specific rules for ethical behaviour of administrative heads, rules for preventing conflicts of interest, guarantees for compliance with the ethical rules, and the criteria for the formation of ethics commissions in judicial bodies as well as their statutes. Any breach of the Code and any act or omission damaging the image of the judiciary gives rise to disciplinary liability.

101. The adoption of a binding Code of Ethics is widely regarded in the country as a positive manifestation of growing attention being paid to the integrity of judges. Yet, the fact that the Code is not only applicable to judges but also to prosecutors and investigating magistrates has made the issue prone to controversy and is said to have hampered its acceptance and internalisation by the judicial branch. Contradictory opinions expressed by judges on-site might suggest that integrity matters would benefit from being further prioritised through intensified training, guidance and counselling. Although compulsory initial training is provided by the National Institute of Justice (NIJ) and its efforts in designing and implementing a course for junior judges (see further below) are praiseworthy, the time allocated to training specifically for the purpose of acquainting soon-to-be or newly appointed judges with the integrity rules is insufficient:

⁶⁵ Articles 31(1) of the Constitution, 22(1) of the Criminal Procedure Code and 13 of the Civil Procedure Code

⁶⁶ Article 252 of the Criminal Procedure Code

⁶⁷ Since 2011, breaches of the right to a fair trial due to the excessively long judicial procedures were established in some 10 cases by the European Court of Human Rights.

⁶⁸ Article 308 of the Criminal Procedure Code

for junior judges, only two days over a nine-month full time course, and for judges who are recruited externally, the entire length of initial compulsory training is no less than 10 days in the year following appointment. As for in-service legal training, it is optional, is not taken into account for a judge's attestation and career development and has been guided mainly by judges' personal choices. Despite the NIJ's on-going attempts to diversify the content of in-house legal training programmes, their impact has been less noticeable than that of the comprehensive and rigorous training offered to junior judges. This is said to be explained by the scant funding available. Given that the Code of Ethics is binding on judges, receiving appropriate training, guidance and counselling prior to taking office as well as throughout tenure is essential for proper compliance and indispensable for the judges' ownership of the Code. Accordingly, **GRECO recommends that i) the integrity, conflicts of interest and corruption prevention component of the compulsory induction training provided to junior judges and judges subject to initial appointment be strengthened; and that ii) the professional in-service training on integrity, conflicts of interest and corruption prevention within the judiciary be prioritised and properly funded, and guidance and counselling on judicial ethics be made available to all judges.**

Conflicts of interest

102. Within the judicial process, conflicts of interest in respect of judges are governed by the Criminal, Civil and Administrative Procedure Codes. These require a judge to withdraw from specific proceedings if his/her impartiality may be put into doubt or where s/he may be perceived to have a personal interest in the outcome of a particular case (see further below). A judicial act adopted in breach of the requirement to withdraw in the case of a personal relationship is repealed within the review procedure or under relevant provisions of the Civil Procedure or Criminal Procedure Codes and a disciplinary measure may be imposed on a judge.

103. Outside the judicial process, judges are subject to the Law on Prevention and Detection of Conflicts of Interests (LCI). In pursuance thereof, judges, similarly to MPs⁶⁹, are to submit the following declarations to the SJC (as their appointing body): 1) on compliance with the incompatibility rules (upon entry to office, see further below); 2) on private interests (within one month upon entry to office and within seven days in case of changed circumstances); and 3) on *ad hoc* private interests. Declarations are kept in a register organised both by year and by alphabetical order of judges' names. The incoming reference number of the declaration, the legal basis for its submission, the forename, patronymic and surname of the declarant and the position held are registered. All declarations are publicly accessible on the SJC's web site.

Prohibition or restriction of certain activities

Incompatibilities, accessory activities, financial interests and post-employment restrictions

104. Articles 5 and 12 (1) LCI forbid public office holders holding any office or performing any activities incompatible with their status and obliging them to file a declaration of compatibility. These provisions are implemented in respect of judges by Article 195 LOJ. It stipulates, in particular, that a judge may not a) be a member of the National Assembly, a mayor or municipal councillor; b) be employed in a state or municipal body or an EU institution; c) be engaged in trade or be a partner, manager or sit on supervisory or management boards or boards of directors or control bodies of commercial companies, co-operatives or non-profit legal entities carrying out profitable business activities, other than judges' professional associations; d) be remunerated for business under a contract or as part of an official legal or other relationship with a state,

⁶⁹ See "Corruption prevention in respect of members of parliament".

municipal or public organisation, a commercial company, co-operative, non-profit legal entity, an individual or sole entrepreneur - except in relation to scientific or teaching activities - for membership of the Central Election Commission or election commissions in charge of electing members of parliament, of the European Parliament, the President and Vice-President of the Republic or of local authorities, or in relation to participation in the drawing up of draft normative acts on the assignment of the Assembly or the executive branch, or to the exercise of a copyright or to participation in international projects, including those funded by the EU; e) exercise a liberal profession or carry out other remunerated professional activities; g) be a member of a political party or their coalitions, of organisations with political goals, carry out political activity, be a member of organisations or carry out business interfering with a judge's independence; f) be a member of a trade union outside the judicial system. Administrative court judges may not be members of the Central Election Commission or of the election commissions mentioned above. Additionally, as per Article 213 LOJ, judges are banned from providing legal advice. There are no restrictions on the holding of financial interests, which are to be disclosed as part of a judge's assets (see further below).

105. Judges are to affirm their compliance with the aforementioned rules by filing declarations pursuant to the LOJ and the LCI as follows. With the SJC: 1) when applying for the post of junior judge (Article 186(8) LOJ); 2) when applying for an initial appointment as judge (Article 186a (3) LOJ); and 3) when assuming the post of judge (within a month from taking up duties). Non-compliance is one of the grounds for dismissal. A sample declaration is published on the SJC's website⁷⁰ however the actual declarations submitted under Article 195 LOJ are not made public. They are added to judges' personal files. Additionally, upon assuming post and in line with the LCI requirements, judges are to file a parallel declaration with the SJC on a standard form approved by the Commission for Prevention and Ascertainment of Conflicts of Interest, which is available on its and the SJC's websites. These declarations filed by judges are published on the SJC's web site. There are no post-public employment restrictions applicable to judges and, having regard to the other contentious issues within the judiciary, are seen as being of lesser concern.

Recusal and routine withdrawal

106. According to Article 29 of the Criminal Procedure Code, a judge is to be disqualified if: 1) s/he was included in the composition of the court which issued a sentence/judgment at any instance or upon reopening of the criminal case, a ruling endorsing the agreement to dispose of the case, a ruling whereby criminal proceedings are terminated, a ruling whereby a remand in custody was applied, confirmed, amended or repealed in pre-trial proceedings; 2) s/he has been involved in the investigation of the case; 3) s/he acted as a prosecutor in the case, 4) s/he had the capacity of an accused party, custodian, guardian of the accused party, of defence counsel or counsel in the case; 5) s/he has been involved or may join criminal proceedings in the capacity of a private prosecutor, private complainant, a civil claimant or civil respondent; 6) s/he had acted in the capacity of a witness, certifying witness, expert witness, translator, sign-language interpreter, or technical expert in the case; 7) s/he is a spouse or a close relative of the individuals under items 1-6; 8) s/he is the spouse or close family member of another member of the judicial panel. Other circumstances might give rise to disqualification if on account of them a judge might be considered biased or having a direct or indirect interest in the outcome of a case. In such instances, a judge is to recuse him/herself from proceedings or is disqualified following a motion by a party. Similar rules also apply in civil law and administrative cases.⁷¹

⁷⁰ These declarations are to be filled in by persons who have won competitions for junior judges or for initial appointment to the post of judge.

⁷¹ See Article 22 of the Code of Civil Procedure and Article 144 of the Administrative Procedure Code.

Gifts

107. Prohibitions on the acceptance of gifts and favours are included in the Code of Ethical Behaviour for Bulgarian Magistrates. Section I on "Main principles" describes as an honest magistrate the one who outside the law does not accept tangible or intangible favours which might cast doubt on his/her independence and impartiality, while Section II on "Rules for ethical behaviour ensuing from the main principles" specifies that judges may not receive favours from third parties which could reasonably be perceived as having resulted in them compromising their honesty and fairness when exercising their professional duties. The authorities stress that the above restriction is related to any advantages which are not provided by the law. As stated earlier, breaches of the Code of Ethics, including the acceptance of gifts or favours, give rise to disciplinary measures. As persons "holding a responsible official position", judges are furthermore prohibited from accepting bribes by virtue of Articles 302-303 (passive bribery) and 304-304a (active bribery) of the Criminal Code. Such offences carry a sentence of up to ten years and a pecuniary fine. Charges of bribery were brought by the prosecuting authorities against five judges in 2010 and one judge in 2011.

Third party contacts and confidential information

108. Judges are bound to maintain the secrecy of deliberations and forbidden to share their views on cases in advance of a judgment. Outside court hearings, they may not discuss proceedings with other parties, lawyers or third parties, except when allowed by law. Judges are to guard as an official secret the information they became aware of while in service or that affects the interests of citizens, legal entities and the state. Rules relevant to third party contacts and handling of confidential information are also included in the Code of Ethical Behaviour for Bulgarian Magistrates. The handling of information classified as state secret or official secret is regulated by the Protection of Classified Information Act and the regulations adopted in pursuance thereof.

Declaration of assets, income, liabilities and interests

109. Pursuant to Article 228 LOJ, judges are to declare their income and assets to the National Audit Office (NAO) subject to the terms and procedure of the 2000 Law on Transparency of Assets of Officials Holding High State and Other Positions, as are members of parliament.⁷² The information on the remuneration of persons occupying the post of judge and any changes in their status is communicated by the SJC to the NAO. All declarations are made public and placed in a register accessible on the NAO's web site, except for protected personal data. As in the case of MPs, the names of judges who fail to submit a declaration are made public and sent to the National Revenue Agency for checks and audits, and to the National State Security Agency for information. Besides, by virtue of the SJC-adopted rules, candidate court presidents are to declare their property and its origin as part of an application process. Their spouses and lineal relatives (parents and children) are also covered by the disclosure obligations. The declarations are made accessible on the SJC's web site until one month after the appointment.

Supervision and enforcement

Ethical principles and rules of conduct

110. At the level of courts, the enforcement of the Code of Ethics for Behaviour of Bulgarian Magistrates is in the hands of ethics commissions operating on the basis of rules set out by the SJC and established starting from the regional level. The commissions consist of three regular and one substitute members who are elected by general court assemblies for a four-year term with no right to immediate re-election.

⁷² See "Corruption prevention in respect of members of parliament".

Court presidents may not be elected as members. The commissions act as auxiliary bodies to the SJC's Commission on Ethics and Corruption Prevention (CEPC) and facilitate the on-going gathering and analysis of information alleging unethical behaviour or corrupt acts by judges. The commissions may examine any complaints, including those published in the media, or act on the CEPC's or court presidents' orders. The commissions also prepare opinions on the ethical conduct of candidates for promotion or transfer and of those judges who are subject to periodic performance reviews. The results of checks, including those where a breach of the Code of Ethics is found, are to be presented to the respective court presidents and the CEPC. As for the CEPC, it may either conduct checks itself or delegate them to the ethics commissions. In the fulfilment of their duties, the CEPC and the ethics commissions are to interact with competent bodies and institutions, and the CEPC is to submit the results of its inspections to the SJC.

111. As mentioned earlier, any violation of the Code of Ethics qualifies as a disciplinary offence (i.e. failure to fulfil official duties) and the following sanctions apply: 1) reprimand; 2) censure; 3) reduction of the basic salary from 10 to 25 % for a period ranging from 6 months to two years; 4) demotion for a period of one to three years; 5) relief from office as court deputy/president; and 6) dismissal. Apart from ethical breaches, disciplinary offences comprise: the systematic failure to observe the time limits provided for in procedural laws, any act/omission slowing down proceedings without justification, any act/omission undermining the reputation of the office, and failure to discharge other official duties. Disciplinary liability is incurred irrespective of civil, criminal or administrative liability. An elected SJC member who has systematically failed to perform official duties or has committed a severe offence or actions impairing the image of the judiciary is to be discharged from duty.

112. Disciplinary proceedings are to be launched within six months of the discovery but not later than three years of the commission of the offence. Their duration may not exceed three months, and the expiry of this term is not a valid ground for liability to cease. In respect of judges who are subject to reprimand or censure, the proceedings are carried out and sanctions imposed by a reasoned order of the relevant court president. The SJC is notified immediately and may uphold, repeal or modify the sanction within a month. Between January 2009 and October 2014, the SJC had examined 121 court presidents' orders imposing the disciplinary sanctions of reprimand and censure; 36 of the SJC's decisions are appealed before the Supreme Administrative Court.

113. As for judges who are subject to other types of sanctions, proceedings in their regard are to be carried out by the SJC's Disciplinary Panel and sanctions imposed by the SJC. The same applies to elected SJC members and court presidents or deputy presidents. Moreover, in case of pending proceedings entailing disciplinary relief from office of an elected SJC member, a judge or court president or deputy president may be removed from office for up to six months by the SJC on the proposal of its disciplinary panel. For each proceeding, a three-member panel is drawn by lot from among the SJC's members. Hearings are held *in camera*, and the defendant is entitled to be represented by an attorney-at-law. Decisions are adopted by a majority vote and transmitted to the SJC. The SJC may reject or accept a disciplinary sanction by a reasoned resolution approved by a majority of more than half of its members. The resolution may be challenged before the Supreme Administrative Court in a two-tier procedure (appeal and cassation) by the defendant or the motion's author.⁷³ All resolutions that have entered into force are posted on the SJC's web site as are also the annual analyses of the disciplinary practice. In the last five years, the SJC has initiated 80 disciplinary proceedings specifically for the violations of the Code of Ethical Behaviour for Bulgarian Magistrates by judges.

⁷³ Proposals for the imposition of disciplinary sanctions may be made by court presidents, any superior court president, the SJC's Inspectorate, not less than one-fifth of the SJC's members and the Minister of Justice.

114. On site, the most commonly expressed criticism of the ethics commissions concerned the general lack of motivation to promote the integrity and robust spirit of the profession which is exacerbated by the need to take time away from court work when judges also sit on ethics commissions. Moreover, the absence of elaborated criteria for ascertaining the ethical conduct of a judge (cf. paragraph 92) and the impossibility to form a personal impression on him/her – as the assessment can only be made by a commission at a superior court – have meant that the commissions’ decisions have mostly evaluated judges’ technical skills. The susceptibility of the CEPC, as the SJC’s auxiliary structure, to undue political influence is already mentioned above (cf. paragraph 83) and it was not possible to establish on-site that the CEPC has undertaken - in pursuit of its mandate - any thorough analysis, apart from regular checks of media reports, to identify any systemic gaps or corruption vulnerabilities within the judiciary or that it has taken any proactive steps to respond to the legitimate public concerns about the allegedly high prevalence of corruption among judges, besides reacting to individual cases exposed by the press. Furthermore, the ethics commissions have not been granted the right to initiate disciplinary proceedings in respect of judges. Thus, proposals can only be made by the respective court president or superior court president, the SJC’s Inspectorate, no less than one fifth of the SJC’s members or the Minister of Justice. Such a state of affairs undermines the role of the ethics commissions as guardians of the binding Code of Ethical Behaviour for Bulgarian Magistrates. Additionally, the frequent contradictions and inconsistencies in the SJC’s case law on disciplinary matters, allegedly attributed to undue influence that frustrate a coherent approach, also deserve a special mention here, but, given that the issue of undue interference is dealt with by the recommendation in paragraph 83, and considering that all SJC decisions can be appealed before the Supreme Administrative Court⁷⁴ in a two-tier procedure, they do not warrant a separate recommendation. Accordingly, **GRECO recommends i) carrying out an evaluation of the effectiveness of the system for supervision and enforcement of the integrity standards within the judiciary and of its impact on the prevention and detection of judicial misconduct and taking appropriate corrective action (e.g. revising the mandates of responsible oversight bodies, carrying out regular risks assessments, streamlining the case law of the Supreme Judicial Council in disciplinary matters, etc.); and ii) vesting the ethics commissions established in courts with the right to initiate disciplinary proceedings against judges.**

Conflicts of interest and auxiliary employment and activities

115. Judges’ respect for the incompatibility rules is monitored by the SJC. As concerns the identification and registration of judges’ private interests and the handling of case by case conflicts of interest, within the judicial process these are managed by court panels that decide on disqualification or recusal (the judge concerned sits on the panel) or a higher court. Outside that process, overall supervision is vested in the Commission for Prevention and Ascertainment of Conflicts of Interest. Proceedings may be triggered by an external complaint, a request from a judge or *ex officio*. As the body entrusted with the collection and holding of the declarations which are compulsory for judges under the LCI (i.e. declarations of private interests and of compatibility with the office), the SJC is also to report to the Commission cases of late or non-submission thereof. In the last three years and a half years, 21 proceedings have been initiated by the Commission for the late submission of declarations and for failure to disclose changes in their private interests; this led to the adoption of decisions in 20 cases. Thirty-five administrative violations consisting in failure to submit a declaration under the LCI have been found and penalties have been imposed in twelve cases.

⁷⁴ While on-site most judges met by the GET were of the opinion that it would be more appropriate for the Supreme Cassation Court, not the Supreme Administrative Court to serve as an appeal instance.

116. Other than cases of self-recusal or disqualification following a motion by a party, the supervision of compliance by judges with the rules on conflicts of interest is not performed, and the situation is identical to the one described in respect of MPs.⁷⁵ Thus, neither the LCI nor the LOJ specify that the SJC or the Commission for the Prevention and Ascertainment of Conflicts of Interests are responsible for analysing in a systematic and in-depth manner the specific circumstances disclosed in the declarations of the judges' private interests. As mentioned earlier, the SJC only ensures their timely filing and is to report any irregularities to the Commission, whereas the latter only has jurisdiction to establish the existence of a conflict in a specific case referred to it. As the GET was informed, the carrying out of permissible activities, such as lecturing at a private university, does not require the express consent of the respective court president or a judge's appointing authority (i.e. the SJC). Still, certain judges disclose such activities or make *ad hoc* disclosures or withdraw in case of a relationship which may raise doubts about the existence of a conflict. That being so, substantive controls are missing and a comprehensive view of a judge's private interests and assets, which are subject to separate declarations (see further below), cannot be formed. Moreover, discussions have been on-going as to whether it would be permissible, from a constitutional standpoint, to endow the Commission for Prevention and Ascertainment of Conflicts of Interest with oversight powers in respect of judges. The value of carrying out an independent assessment of the effectiveness of the system for disclosure and ascertainment of conflicts of interest and of the impact that it has on the prevention and detection of corruption amongst officials prone to it and of taking the necessary corrective action has been already articulated in the recommendation under paragraph 62. Yet, in order to address the concerns specific to judges, **GRECO recommends ensuring that judges' private interests – irrespective of whether they are declared regularly or *ad hoc* – are subject to substantive and regular checks and that efficient co-operation is established between the authorities supervising judges' compliance with the rules on conflicts of interest and on asset disclosure, with due regard being had to the independence of judges.**

Declarations of assets, income, liabilities and interests

117. Oversight of judges' asset disclosure is vested in the National Audit Office (NAO) – the same applies to MPs⁷⁶. The NAO keeps a register of all declarations (initial, annual and final) which are open for public scrutiny. Personal data is not divulged. The telephone helplines established within the NAO are meant to assist those with a reporting obligation, including judges, in completing the relevant forms. Administrative fines for failure to file a declaration or its late submission were imposed by the NAO on one judge in 2011, 4 judges in 2012, 2 judges in 2013 and one judge in 2014. Having established the lack of correspondence between the facts declared and those registered with appropriate state and municipal bodies, referrals to the National Revenue Agency (NRA) were made in respect of 26 judges in 2010, 26 judges in 2011, 22 judges in 2012, and 16 judges in 2013. Based on information received from the NAO, in 2010, the NRA initiated and completed tax examinations in respect of 44 judges and launched tax audits in respect of 3 judges; one of them identified additional tax obligations of a small amount. Tax examinations were initiated and completed in respect of 32 judges in 2011 and 31 judges in 2012. The NRA's conclusions were shared with the NAO and made available on its web site. In 2013 and 2014, tax examinations were initiated and completed with regard to 8 and 19 judges, respectively.

118. The regular scrutiny of the judges' assets throughout their tenure is an attainment which merits acknowledgement. Its positive effects however are offset by the many weaknesses of the verification system highlighted earlier with respect to MPs which are also valid for judges. The recommendation included in paragraph 67 is meant to

⁷⁵ See "Corruption prevention in respect of members of parliament".

⁷⁶ See "Corruption prevention in respect of members of parliament".

attenuate the existing flaws and to put in place robust and effective oversight also with regard to judges' assets. GRECO recognises that since most judges enjoy life tenure, the high frequency of substantive checks is of lesser importance, compared to MPs, and does not need to be dealt with via a recommendation.

Immunity

119. Judges may not incur criminal or civil liability for their official acts, except where they constitute intentional prosecutable offences, including corruption. If a judge is indicted or other publicly actionable criminal proceedings are instituted, s/he will be temporarily removed from office by the SJC until those proceedings are terminated. The request for removal is made by the Prosecutor General or at least one fifth of the SJC's members (in case of other publicly actionable criminal proceedings). If remanded in custody, a judge is deemed as having been temporarily removed from office. In the last two years, charges of embezzlement were pressed against two court presidents.

Advice, training and awareness

120. The initial and in-service training for all magistrates, including judges, is implemented by the National Institute of Justice (NIJ). It *inter alia* provides: 1) a compulsory nine-month full time inception course for junior judges; 2) a compulsory course aimed at furthering the qualification of judges who are appointed for the first time to judicial bodies⁷⁷; and 3) a variety of optional training programmes to improve serving judges' qualifications. The SJC can decide that a particular training programme is compulsory for a judge in the event of promotion, specialisation or appointment as court president. Since the adoption of the Code of Ethical Behaviour for Bulgarian Magistrates in 2009, training on judicial ethics has been prioritised through a series of training events which were held jointly by the NIJ and the SJC's CEPC in five appellate regions and attended by some 250 judges. Since 2011, more than a dozen optional and compulsory training sessions have been organised on topics such as "Independence of judges and prosecutors: prospects and challenges", "Magistrates' Ethics", "Judicial ethics. Corruption prevention. Conflicts of interest", "Judicial Ethics and Anti-Corruption in the EU", "Magistrates' image. The judiciary and the media", and "Combatting corruption within the judiciary". As concerns courses on ethics and conflicts of interest, these were mostly based on the case law of the Supreme Administrative Court which is to review the SJC's disciplinary decisions in respect of judges. Additionally, since 2010, the NIJ has initiated distance-learning courses on e.g. "Disclosure and prevention of conflicts of interests", "Ethical challenges to magistrates' work", "Malfeasance offences. Bribery" and "Offences committed by officials. Document offences". Despite the commendable efforts of the NIJ in the provision of training, particularly to junior judges, which is mentioned earlier, several shortcomings persist and indispensable measures to be taken to reinforce initial and in-service training for judges are emphasised in the recommendation under paragraph 101. Training needs to be centred on ensuring full and consistent implementation of the Code of Ethical Behaviour for Bulgarian Magistrates and ownership by the different branches of the judiciary.

121. In order to raise public awareness of the administration of justice and the functioning of the judiciary, press officers have been appointed in each of the country's courts. Any act of judicial corruption or unethical comportment can be reported by means of an online complaint directly to the SJC's CEPC. A sample of a duly completed form is available on the CEPC's web site to provide guidance to the public.

122. Many judges interviewed by the GET referred to the courts being the focus of indiscriminate media campaigns, often instigated by the populist rhetoric of leading

⁷⁷ The course must be completed in the first year following appointment and its length must be at least 10 days.

political figures who lay the blame for the failures of law enforcement in particular cases on judges. Examples were provided of cases where ministers had pre-empted court verdicts in declarations to the press, and when the expected convictions did not materialise, the public had directed its anger against the courts. This is corroborated by other sources, which pinpoint the effects that such a hostile environment has on judges and their ability to administer justice impartially and free from fear of public denunciation.⁷⁸ It appears that few meaningful steps have been taken so far to protect judges from such politicised pressure.⁷⁹ GRECO believes that it would be valuable for the SJC and for the entire community of judges to invest in promoting a better understanding of the law amongst citizens so as to enhance the perception of the fairness of justice. Systematic work with the media to dispel unjustified allegations of corruption and undue influence would also be an asset.

⁷⁸ www.bili-bg.org/cdir/bili-bg.org/files/INDEX_FINAL_ENGLISH.pdf, page96-97.

⁷⁹ In their written submission presented after the on-site visit, the authorities referred to the following steps being taken to overcome the existing problems: 1) in May 2014, the SJC adopted rules on public response to cases of interference with judicial independence (and in many cases, the SJC had responded publicly in defence of individual magistrates who were subject to public attacks for their judgements and orders); 2) the SJC initiated large-scale information campaigns (i.e. open-door days in the courts, prosecution offices and the SJC) and internships within its administration for law students, which are announced on the SJC's web site; 3) a pilot educational programme was initiated for the 2014/2015 school year jointly with the Ministry of Education targeting 10th grade pupils from 27 regional cities who will improve their legal culture thanks to lectures given by judges and prosecutors; 4) implementation of a project financed by the EU to develop a communication strategy for the judiciary to be completed in autumn 2015, which will result in the production of leaflets and videos to promote the activities of the judiciary.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the Prosecution Service

123. The Prosecution Service enjoys an autonomous status within the judiciary and has a separate budget. Its overarching goal is to ensure legality and its specific objectives are to lead and supervise investigations, bring criminal charges and support them in indictable cases, oversee the enforcement of penal sanctions and other coercive measures, participate in civil and administrative cases as required by law and to revoke unlawful acts. The Service is accountable to the Supreme Judicial Council.

124. According to the 2007 Law on the Judiciary (LOJ), the Prosecution Service is indivisible and centralised, and its internal structure corresponds to that of the courts. The Service consists of the Prosecutor General, who is the guardian of legality and gives methodological guidance to other prosecutors, of the Supreme Cassation Prosecutor's Office, of the Supreme Administrative Prosecutor's Office, the National Investigation Service, five appellate prosecution offices, one specialised appellate prosecution office, one military appellate prosecution office, 27 regional prosecution offices, the Sofia City Prosecutor's Office (with the status of a regional office), one Specialised Prosecutor's Office, three regional military prosecution offices and 113 district prosecution offices. It is at the level of the regional offices that prosecutors participate in administrative cases. At 1 January 2015, there was a total of 1 948 prosecutors of which 1 044 were men and 904 women. Of the 143 heads of offices, 92 were men and 51 women. Of the 143 deputy heads of office, 86 were men and 57 women.

125. While performing their duties, prosecutors shall only abide by law. The influence of any state or public entity, official or citizen on the Prosecution Service is prohibited. All prosecutors are subordinate to the Prosecutor General, and each prosecutor is, moreover, subordinate to his/her superior and a head of office. A superior prosecutor may perform the actions of his/her subordinates and amend, suspend or repeal in writing their instructions. Written instructions of a superior prosecutor are binding on his/her subordinates, and a proposal is being examined for such instructions to be also motivated. In case of disagreement, a subordinate prosecutor whose act has been reversed by a senior prosecutor may complain to the prosecutor above his/her superior. Unless they are subject to juridical review, all prosecutorial acts may be challenged before a superior prosecutor's office.

126. As part of the judicial branch, the Prosecution Service enjoys such autonomy as is necessary for the exercise of its functions. The nature and scope of its powers are clearly established by law, and it accounts periodically and publicly for its activities through annual reports submitted to the Supreme Judicial Council (and ultimately, the National Assembly). However, civil society and the media have concerns about partisan decisions in cases involving top-ranking officials accused of criminal acts while in office that have not been prosecuted within the proper time or not at all, which are seen as a sign of interference with the independence of prosecutors.⁸⁰ GRECO notes that an independent examination of the effectiveness of the Prosecution Service and, specifically, of factors of political, hierarchical and other undue influence within it, including those that might restrain prosecutors' professional independence, effectiveness, responsibility and motivation, form part of the previously mentioned "Updated strategy to continue the reform of the judicial system".⁸¹ GRECO fully supports such endeavours and counts not only on their expedient implementation but also on the carrying out of proper follow-up steps.⁸² It also observes that, under the legality principle, prosecutors are to pursue

⁸⁰ Corruption and anti-corruption in Bulgaria (2012-2013), Policy Brief No. 43, November 2013

⁸¹ In November 2014, the Prosecutor General made new proposals for the decentralisation of the prosecution service and for providing additional guarantees of non-interference in the work of prosecutors.

⁸² Also in view of a recent study "Attitudes of prosecutors towards the reforms in the Prosecution Service and the criminal procedure" carried out by Global Metrics on assignment by the Bulgarian Institute for Legal

action on all registered files and that all alerts and complaints are to be registered. According to the prosecutors the GET met on-site, about two-thirds of complaints alleging corruption involving high level officials, including prosecutors and judges, could not be completed due to poor evidence.

Prosecutorial self-governing bodies

127. The Supreme Judicial Council (SJC) is the key self-governing body for prosecutors and judges. The legal status, composition and mandate of the SJC and of its auxiliary structures are described in paragraphs 79-81 above and the recommendation in paragraph 83 aspires not only to mitigate the risks of undue political interference being exerted on the judiciary by other branches of power but also to ensure that the different functions of courts and of the prosecution are better taken into account, in particular, by eliminating possibilities of undue pressure by one arm of the judicial branch on the other within the SJC in matters such as selection, appointment, attestation and discipline of judges and prosecutors. Acknowledging that the SJC is a single body covering the three branches of the judiciary (judges, prosecutors and investigating magistrates) and that broadly similar rules apply to judges and prosecutors, **GRECO recommends that, in order to help the Supreme Judicial Council to fully assert its legitimacy and credibility and to strengthen its role as guarantor of the independence and autonomy of prosecutors, decisions on prosecutors' appointment, career, attestation and discipline should be taken by a composition of the Council that is made up of a majority of prosecutors.**⁸³

Recruitment, career and conditions of service

128. As in the case of judges, prosecutors are appointed, promoted, demoted, transferred and relieved from office by the SJC's resolution. The recruitment requirements for prosecutors are identical to the ones established for judges.⁸⁴ Except for the Prosecutor General who is appointed by the President of the Republic on a motion by the SJC for a single seven-year term (the President is only able to refuse the proposed candidature once), all other appointments (initial, promotion, transfer, appointment as head of office) are made by the SJC on the basis of national competitions which are conducted in a manner analogous to the one prescribed for judges.⁸⁵ The procedure for assessing the integrity of candidates to various prosecutorial posts and for carrying out attestation for acquiring tenure and regular performance reviews is also similar. Between January 2013 and June 2014, 230 opinions were issued by the SJC's Ethics and Corruption Prevention Commission on the candidates to prosecutorial posts (i.e. concerning initial appointment, appointment as a junior prosecutor, promotion and appointment as head of office).

129. By virtue of their belonging to the judicial branch, prosecutors, like judges, are expected to exercise their duties honestly and impeccably and to act fairly and impartially in deciding whether to prosecute and for what charges. Therefore, it is indispensable to ascertain before recruitment and throughout tenure that a candidate to a prosecutorial post not only has the appropriate legal qualifications but is also of high moral character. Possessing moral qualities compliant with the Code of Ethical Behaviour for Bulgarian Magistrates (see further below) is one of the criteria for appointment and career progression, but it has not proven feasible to conduct quality integrity checks in respect of those candidates who apply via the so-called "initial appointment" (or external

Initiatives Foundation, which refers *inter alia* to succumbing to hierarchical pressure, abuse of power by court and prosecution leadership and yielding to pressure from influential political and economic factors as the most common forms of unethical and corrupt behaviour within the Prosecution Service.

⁸³ Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors:

[wcd.coe.int/ViewDoc.jsp?Ref=CM\(2015\)29&Language=lanEnglish&Ver=add&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](http://wcd.coe.int/ViewDoc.jsp?Ref=CM(2015)29&Language=lanEnglish&Ver=add&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)

⁸⁴ See "Corruption prevention in respect of judges".

⁸⁵ See "Corruption prevention in respect of judges".

recruitment) procedure and who can constitute up to 20% of prosecutors. Moreover, successful candidates only undergo very cursory induction training on appointment. In promotion procedures (except for promotion to head of office), periodic performance reviews or attestation for acquiring life tenure, account is taken of compliance with the rules of ethical conduct only in a very perfunctory manner and there is little incentive for prosecutors to attend courses on integrity, conflicts of interest and corruption prevention as in-service training is not compulsory and under-funded. Furthermore, attestation for acquiring life tenure is said to be formalistic and not fulfilling the requisite filtering role,⁸⁶ while promotions are believed to be based on rather superficial regular performance reviews that fail to generate trust in career advancement being grounded in prosecutors' personal and professional qualities. In effect, the state of affairs is very similar to the one described above in respect of judges (cf. paragraphs 86, 89 and 92). Considering that the Code of Ethical Behaviour is binding on prosecutors and any breaches trigger disciplinary action and also bearing in mind the need to maintain coherent recruitment and promotion procedures within the judiciary, **GRECO recommends i) strengthening the integrity checks carried out in respect of candidates to the post of prosecutor who are subject to initial appointment, with due regard being had to respect for their human rights and relevant European standards; and ii) ensuring that periodic performance reviews and attestation for acquiring life tenure within the Prosecution Service are based on objective and transparent criteria for evaluating compliance with the Code of Ethical Behaviour for Bulgarian Magistrates established by law, and that a methodology for rigorous and in-depth evaluation of qualifications, integrity, ability and efficiency is put in place for the purposes of attesting that a prosecutor can be granted life tenure.** GRECO accepts that the duration of the probationary period for prosecutors as opposed to judges, is an issue of minor concern, having regard to the specific functions of the prosecution and of courts, and does not necessitate a recommendation. The need to intensify professional integrity training of prosecutors is addressed in more detail below.

130. Prosecutors' work is subject to control and audits by the Prosecutor General or his/her deputies, as well as by prosecutors of the appellate and regional offices – in respect of prosecutors assigned to offices lower than their own. Additionally, planned and *ad hoc* inspections of prosecution offices or prosecutors may be carried out by the Inspectorate attached to the SJC.

131. The beginning of career basic monthly salary of a prosecutor is equal to double the average monthly salary of a public sector employee, as calculated by the National Statistics Institute (currently, a minimum gross annual salary is BGN 18 552/EUR 9 276). The salary of the Prosecutor General is equivalent to 90% of the salary of the Constitutional Court President. Remuneration for other positions within the Service is determined by the SJC. As in the case of judges, prosecutorial salaries vary depending on the supplementary monthly remuneration for length of service and professional experience. The terms for receiving additional remuneration and benefits (for extra work, housing, etc.) are also identical.⁸⁷ Earlier on, GRECO has already expressed its view on the desirability of the same scales being applied for calculating salaries throughout the judiciary, regardless of rank (cf. paragraph 95), and this comment applies not only to judges but also to prosecutors. Furthermore, the recommendation included in the same paragraph asks that the supplementary remuneration scheme within the judiciary be made subject to clear, objective and transparent criteria. This recommendation is meant to address the discretionary and non-transparent nature of year-end bonuses for judges and prosecutors.

⁸⁶ The evidence collected on-site is supported by the figures from the previously mentioned study "Attitudes of prosecutors towards the reforms in the Prosecution Service and the criminal procedure" (e.g. 83% of respondents are of the opinion that the performance reviews fail to give an accurate and fair assessment of prosecutors' work; the negative impact on individual prosecutors' motivation is also emphasised).

⁸⁷ See "Corruption prevention in respect of judges".

Case management and procedure

132. Pursuant to Article 9 LOJ and the Prosecutor General's instructions, cases are to be randomly assigned to prosecutors in the order of their receipt via an electronic case management system designed by the SJC. This principle is to be applied at the level of departments, except for the Supreme Cassation and the Supreme Administrative Prosecution Offices where the assignment takes place among departments, depending on their specialisation. The many hindrances to the practical application of the principle of random case assignment in courts, which notably include the administrative discretion of court presidents, allegedly widespread tampering with the software, the lack of transparency, a disregard for the complexity of cases and the workload of individual judges and the absence of due supervision, are already highlighted in paragraph 97 above. Most of these features are also inherent to the Prosecution Service where, as the GET was told, between 30% and 50% of cases are allocated by heads of offices or their deputies.⁸⁸ As in the case of courts, since 2014, the SJC has been developing a methodology and a set of rules for the random assignment of cases within the Prosecution Service through the use of the so-called Unified Information System (UIS) and its "random case assignment module". GRECO fully supports such endeavours and would welcome the introduction of a uniform methodology within the Prosecution Service on the condition that it would not only safeguard random, lawful, and transparent case assignment, free from undue interference, but also guarantee fair and equitable case distribution amongst prosecutors. Consequently, **GRECO recommends to ensure that the principle of random case allocation be implemented in practice, with due regard being had to a fair and equitable workload for prosecutors, and that the case assignment be protected from undue interference and subject to more stringent controls.**

133. Time lines within which procedural steps are to be performed are stipulated in procedural laws. Article 22 (2) of the Criminal Procedure Code (CPC) provides that prosecutors are bound to conduct pre-trial proceedings within the time limits established therein (two months, on average). Investigations conducted beyond the prescribed time lines have no legal effect and the evidence gathered may not be used in court. Also, if pre-trial proceedings are carried out over an unjustifiably long period of time there are grounds for triggering the liability of the State under the Law on Liability of the State and Municipalities for Damage, and the aggrieved party has the possibility to lodge a complaint before the European Court of Human Rights. The duration of an investigation is also relevant considering Chapter Twenty Six of the CPC (Examination of a case in court at the request of the accused) which provides for the right of the accused to petition to court for terminating pre-trial proceedings after the lapse of the time established by law.

134. Heads of prosecution offices or their deputies exercise control over compliance of their subordinates with the deadlines prescribed for the carrying out of investigations and the application of coercive measures under the CPC. To ensure timely investigations and disposal of cases as well as to facilitate the exercise of supervisory duties by senior prosecutors and heads of office, Registers for Investigation Deadlines and for Deadlines under the CPC have been made available on the Prosecution Service's intranet site.

135. As in the case of judges, systematic failure to respect procedural deadlines incurs disciplinary liability of a prosecutor as do acts or omissions unjustifiably delaying the proceedings. Summarised information on the commencement, progress and termination of cases is provided every six months to the SJC, its Inspectorate and the Ministry of Justice by the Prosecutor General. The carrying out of periodic and *ad hoc* checks on the arrangements made for the timely institution, progress and disposal of cases is also listed

⁸⁸ In comparison with the courts, such non-compliance with the law is said to have more often incurred disciplinary liability. These figures are also largely congruent with the findings of the previously mentioned study "Attitudes of prosecutors towards the reforms in the Prosecution Service and the criminal procedure": 41% of respondents confirm that the principle of random assignment is not observed in their office.

as a specific objective of the Inspectorate attached to the SJC. The shortage of staff and the uneven distribution of workload among individual prosecutors and prosecution offices remains a recurrent problem, while the offices covering the city of Sofia appear to have been disproportionately affected.

Ethical principles and rules of conduct

136. Similarly to judges, prosecutors take and sign an oath of office and are bound by the 2009 Code of Ethics for Behaviour of Bulgarian Magistrates. Any breach of the Code and any act or omission damaging the image of the judiciary gives rise to prosecutors' disciplinary liability. The challenges associated with the proper internalisation of the binding Code of Ethics by the three arms of the judicial branch to which it applies (i.e. prosecutors, judges and investigating magistrates), the scarcity of initial and in-service training on integrity, conflicts of interest and corruption prevention as well as the lack of counselling and guidance on professional ethics were highlighted earlier in the section concerning judges,⁸⁹ and all of these shortcomings are also immanent in the Prosecution Service. For the sake of greater coherence and in order to ensure the proper ownership of and compliance with the Code of Ethics not only by judges but also by prosecutors, **GRECO recommends that the integrity, conflicts of interest and corruption prevention component of the compulsory induction training provided to junior prosecutors and prosecutors subject to initial appointment be strengthened and that guidance and counselling on judicial ethics be made available to all prosecutors.** As concerns professional in-service training, the recommendation in paragraph 101 already requires that it be prioritised within the judiciary as a whole and be subject to adequate funding.

Conflicts of interest

137. Within the judicial process, conflicts of interest in respect of prosecutors are regulated by the Criminal Procedure Code (CPC). It requires a prosecutor to withdraw from proceedings if his/her impartiality might be questioned or where s/he may be perceived to have a personal interest in the outcome of a case (see further below). A prosecutorial act adopted in breach of the requirement to withdraw in the case of a personal relationship is repealed within the review procedure or under relevant CPC provisions and a disciplinary measure may be imposed on the prosecutor concerned.

138. Outside the judicial process, prosecutors are subject to the rules and procedures laid down in the Law on Prevention and Detection of Conflicts of Interests (LCI). In pursuance thereof, similarly to judges, they are to submit the following declarations to the SJC: 1) on compliance with the incompatibility rules (upon entry to office, see further below); 2) on private interests (within one month upon entry to office and within seven days in case of changed circumstances); and 3) on *ad hoc* private interests.⁹⁰ All declarations are publicly accessible on the SJC's web site.

Prohibition or restriction of certain activities

Incompatibilities, accessory activities, financial interest and post-employment restrictions

139. Limitations on the exercise of auxiliary activities by prosecutors are set out in Articles 195 and 213 LOJ and are analogous to the ones prescribed for judges.⁹¹ Limitations applicable to the administrative court judges apply *mutatis mutandis* to prosecutors assigned to administrative departments of regional prosecution offices and to the Supreme Administrative Prosecutor's Office. Similarly to judges, prosecutors are to

⁸⁹ See above under "Corruption prevention in respect of judges".

⁹⁰ See above under "Corruption prevention in respect of judges".

⁹¹ See above under "Corruption prevention in respect of judges".

affirm their compliance with the rules by filing declarations pursuant to the LOJ and the LCI as follows. With the SJC: 1) when applying for the post of junior prosecutor (Article 186(8) LOJ); 2) when applying for an initial appointment as prosecutor (Article 186a (3) LOJ); and 3) when taking up the post of prosecutor (within a month from taking up duties). Non-compliance is one of the grounds for dismissal. A sample declaration can be found on the SJC's website however the actual declarations submitted under Article 195 LOJ are not made public. They are added to prosecutors' personal files. Additionally, on taking up a post and in line with the LCI requirements, prosecutors are to file a parallel declaration with the SJC on a standard form approved by the Commission for the Prevention and Ascertainment of Conflicts of Interest, which is available on its and the SJC's websites. These declarations submitted by prosecutors are published on the SJC's web site. There are no restrictions on the holding of financial interests, which are to be disclosed as part of a prosecutor's assets (see further below) and no post-public employment restrictions, which are not regarded as raising specific concerns considering that very few prosecutors resign from office in order to move to the private sector.

140. The grounds and procedure for removal of a prosecutor from a case are set out in Article 47 of the Criminal Procedure Code. The grounds for disqualification or recusal are identical to the ones established for judges by Article 29 of the Code and must be reasoned.⁹² A prosecutor may recuse him/herself or is disqualified following a motion by a party. In pre-trial proceedings decisions on the disqualification or recusal are made by a prosecutor's superior and in court proceedings – by court. Similar rules apply in civil law and administrative cases.⁹³

Gifts

141. Prohibitions on the acceptance of gifts and favours contained in the Code of Ethical Behaviour for Bulgarian Magistrates apply to judges as well as to prosecutors. These stipulate, in particular, that an honest magistrate is the one who outside the law does not accept tangible or intangible favours which might cast doubt on his/her independence and impartiality. Furthermore, magistrates may not receive favours from third parties which could reasonably be perceived as having resulted in them compromising their honesty and fairness when exercising their professional duties. The above restriction is related to any advantage not provided by the law. As stated earlier, breaches of the Code of Ethics give rise to disciplinary measures. Moreover, qualified as "persons holding a responsible official position", prosecutors are prohibited from accepting bribes by virtue of Articles 302-303 (passive bribery) and 304-304a (active bribery) of the Criminal Code; these carry a sentence of up to ten years and a pecuniary fine.

Third party contacts and confidential information

142. Prosecutors, alongside judges, may not express a preliminary opinion on a case, regardless of whether or not it is assigned to them. Outside court hearings, they may not discuss proceedings with other parties to the case, lawyers or third parties, except when explicitly allowed for by law. Prosecutors are to maintain as an official secret the information they become aware of while in office or that affects the interests of citizens, legal entities and the state. Rules relevant to third party contacts and handling of confidential information are also included in the Code of Ethical Behaviour for Bulgarian Magistrates. Furthermore, the treatment of information classified as state or official secret is regulated by the Protection of Classified Information Act and regulations adopted in pursuance of it.

⁹² See above under "Corruption prevention in respect of judges".

⁹³ See Article 22 of the Code of Civil Procedure and Article 144 of the Administrative Procedure Code.

Declaration of assets, income, liabilities and interests

143. By virtue of Article 228 LOJ, prosecutors (and judges and MPs) are to declare their income and assets to the National Audit Office (NAO) subject to the terms and procedure of the 2000 Law on Transparency of Assets of Officials Holding High State and Other Positions.⁹⁴ The declarations, which are to cover the assets of a prosecutor, his/her spouse and under age children, have the status of public documents and are placed in a public register accessible on the NAO's website, except for protected personal data. At the end of the reporting period, the names of prosecutors who fail to submit a declaration are made public on the website and sent to the National Revenue Agency for checks and audits and to the National State Security Agency for information. Additionally, candidates to the position of head of a prosecution office are to declare their property and its origin to the SJC as part of an application package on a standard form. In such a case, in addition to the candidate, the reporting obligation also applies to the candidate's spouse and lineal relatives (i.e. parents and under age children) and the declarations are kept on the SJC's website until one month after appointment.

Supervision and enforcement

Ethical principles and rules of conduct

144. For the prosecution offices, enforcement of the Code of Ethical Behaviour for Bulgarian Magistrates is in the hands of ethics commissions operating on the basis of rules set out by the SJC. The commissions consist of three regular and one substitute members who are elected by general assemblies of the relevant prosecution offices for a four-year term with no right to immediate re-election. The commissions assist the SJC's Commission on Ethics and Corruption Prevention (CEPC) in the exercise of its duties and, in particular, in the on-going gathering and analysis of information alleging unethical behaviour or corrupt acts on the part of prosecutors. They examine any complaints, including those published in the media. The CEPC may conduct checks itself or delegate them to the ethics commissions. In the fulfilment of its duties, the CEPC interacts with other competent bodies and institutions and is to present its findings to the SJC. As mentioned earlier, any violation of the Code of Ethical Behaviour qualifies as a disciplinary offence. Disciplinary proceedings in respect of prosecutors are carried out in a manner similar to the one prescribed for judges and the same range of disciplinary sanctions applies.

145. Since the ethical standards of conduct within the judiciary are enforced through mechanisms which are broadly identical for judges and prosecutors, these mechanisms also share common weaknesses, such as a general lack of motivation and proactive approach to uncovering prosecutors' misconduct on the part of the ethics commissions, the absence of specific criteria for ascertaining unethical behaviour, the drawing of conclusions on a prosecutor's integrity based predominantly on an assessment of his/her technical skills, the susceptibility of the SJC and its CEPC to undue political influence and inconsistent SJC case law on disciplinary matters⁹⁵ (cf. paragraph 114). Also, as in the case of judges, the prosecutors' ethics commissions have not been granted the right to initiate disciplinary proceedings in respect of prosecutors. Thus, proposals can only be made by the respective heads of prosecution offices, the SJC's Inspectorate, no less than one fifth of the SJC's members or the Minister of Justice. Such a state of affairs diminishes the role of the ethics commissions as custodians of the binding Code of Ethical

⁹⁴ See "Corruption prevention in respect of members of parliament" and "Corruption prevention in respect of judges".

⁹⁵ Two-thirds of respondents interviewed in the frame of the previously mentioned study "Attitudes of prosecutors towards the reforms in the Prosecution Service and the criminal procedure" are of the opinion that disciplinary sanctions have been imposed discriminately in the sense that the same actions within broadly similar cases have not incurred similar liability. 16% of respondents think that disciplinary measures are used as the means of biased sanctioning of individual prosecutors.

Behaviour for Bulgarian Magistrates and might explain the allegedly minimal number of disciplinary proceedings instituted against prosecutors in recent years.⁹⁶ In view of the foregoing, **GRECO recommends vesting the ethics commissions established in prosecution offices with the right to initiate disciplinary proceedings against prosecutors.** As for the need to evaluate the effectiveness of the system for supervision and enforcement of the integrity standards within the judiciary and its impact on the prevention and detection of prosecutorial misconduct and taking appropriate remedial measures and to eliminate any undue influence on relevant supervisory bodies, these issues have already been dealt with by the recommendations under paragraphs 114 and 83, respectively.

Conflicts of interest and additional employment and activities

146. The SJC monitors the compliance of prosecutors with the incompatibility rules. The identification and registration of prosecutors' private interests and the handling of case by case conflicts of interest in pre-trial proceedings are managed by their superiors, while in the framework of court proceedings the decisions are taken by the court. Outside that process, compliance is supervised by the Commission for Prevention and Ascertainment of Conflicts of Interest, in a manner equivalent to the one established for judges.⁹⁷ In the last three and a half years, 16 proceedings have been initiated by the Commission for violation of the conflicts of interest rules by prosecutors, leading to the adoption of decisions in 16 cases. Twenty-four administrative violations consisting in failure to submit a declaration under the LCI have been found and penalties have been imposed in four cases.

147. Similarly to judges, compliance of prosecutors with the rules on conflicts of interest is only monitored in cases of disqualification following a motion by a party or self-recusal.⁹⁸ Neither the LCI nor the LOJ specify that the SJC or the Commission for the Prevention and Ascertainment of Conflicts of Interests are responsible for analysing in a thorough and systematic manner the veracity of circumstances disclosed in a prosecutor's declarations of private interests. As stated earlier, the SJC only ensures the timely filing of such declarations and is to report any irregularities to the Commission, and the latter only has jurisdiction to establish the existence of a conflict in a specific case referred to it. The value of carrying out an independent evaluation of the effectiveness of the system for disclosure and ascertainment of conflicts of interest and of the impact that it has on the prevention and detection of corruption amongst officials vulnerable to it and of taking the necessary corrective measures is already underlined and recommended for implementation in the section of this report dealing with MPs (cf. paragraph 62). Furthermore, in the section on judges, specific weaknesses such as the lack of a requirement for a judge to seek the consent of the court president to exercise a permissible auxiliary activity, occasional failure to disclose private interests and the absence of a comprehensive overview of a judge's private interests and assets, have been highlighted and concrete remedial steps have been recommended (cf. paragraph 116). Considering that both judges and prosecutors must follow broadly identical rules in the sphere of conflicts of interest and that the same supervisory regime has been established in their regard and also bearing in mind the similarity of the reported implementation gaps, there is a need to apply a coherent approach in regard to both professional categories of the judicial branch. Consequently, **GRECO recommends ensuring that prosecutors' private interests – irrespective of whether they are declared regularly or *ad hoc* - are subject to substantive and regular checks and that efficient co-operation is established between the authorities supervising prosecutors' compliance with the rules on conflicts of interest and on asset disclosure.**

⁹⁶ Only two disciplinary cases in 2013-2014

⁹⁷ See "Corruption prevention in respect of judges".

⁹⁷ See "Corruption prevention in respect of judges".

⁹⁸ See "Corruption prevention in respect of judges".

Declarations of assets, income, liabilities and interests

148. As in the case of judges (and MPs), asset disclosure by prosecutors is subject to monitoring by the National Audit Office (NAO).⁹⁹ The NAO keeps a register of all declarations (initial, annual and final) which are open for public scrutiny on a designated website. Personal data is not divulged. Administrative fines for failure to file a declaration or late submission were imposed by the NAO on 3 prosecutors in 2012 and one prosecutor in 2011, 2013 and 2014, respectively. Having established the lack of correspondence between the facts declared and those registered with appropriate state and municipal bodies, referrals to the National Revenue Agency (NRA) were made in respect of 23 prosecutors in 2010, 18 prosecutors in 2011, 15 prosecutors in 2012, and 17 prosecutors in 2013. Tax examinations were initiated and completed by the NRA in respect of 25 prosecutors in 2010, 26 prosecutors in 2011 and 18 prosecutors in 2012. In 2013 and 2014, tax examinations were initiated with regard to one and 18 prosecutors, respectively. All conclusions were shared with the NAO and made available on its web site.

149. As in the case of judges, GRECO acknowledges the benefits of carrying out regular reviews of prosecutors' asset declarations. Nonetheless, the superficiality of checks performed by the NAO and the lack of public trust in the asset disclosure and verification system suggest that the effectiveness of oversight in this area needs to be re-examined and more systematic and in-depth checks introduced, as is recommended in paragraph 67. Considering that most prosecutors, like judges, enjoy life tenure, the frequency of such checks in their regard can be lower than those on MPs, and a separate recommendation is not called for.

Immunity

150. Prosecutors, like judges, may not incur criminal or civil liability for their official acts, except where they constitute intentional prosecutable offences, including corruption. If a prosecutor is indicted or other publicly actionable criminal proceedings are instituted, s/he will be temporarily removed from office by the SJC until those proceedings are terminated. The request for removal is made by the Prosecutor General or by at least one fifth of the SJC's members (in case of other publicly actionable criminal proceedings). If remanded in custody, a prosecutor is deemed temporarily removed from office. In the last two years, two prosecutors were convicted for bribery.

Advice, training and awareness

151. The previously mentioned National Institute of Justice (NIJ) is also responsible for the initial and in-service training of prosecutors. It provides mandatory nine-month full time induction courses for junior prosecutors, compulsory courses for prosecutors who are subject to external recruitment (for them, the duration of training should be no less than 10 days in the year following appointment) as well as a wide range of optional training programmes, including distance learning, for serving prosecutors. The SJC can decide that a particular training programme is compulsory for a prosecutor in the event of promotion, specialisation or appointment as head of a prosecution office. Since 2011, the Institute has held more than a dozen training events on topics relevant to this evaluation round.¹⁰⁰ Since GRECO has already presented its views on the insufficiency of the training on integrity, conflicts of interest and corruption prevention in paragraph 101 and 136 above, it refrains from making any additional comments here.

152. Any corrupt acts or unethical behaviour involving prosecutors can be reported by means of an online complaint directly to the SJC's CEPC. A sample of a duly completed form is available on the CEPC's web site to provide guidance to the public.

⁹⁹ See "Corruption prevention in respect of judges" and "Corruption prevention in respect of members of parliament".

¹⁰⁰ See "Corruption prevention in respect of judges".

VI. RECOMMENDATIONS AND FOLLOW-UP

153. In view of the findings of the present report, GRECO addresses the following recommendations to Bulgaria:

Regarding members of parliament

- i. **i) ensuring the effective enforcement in practice of the provisions of the Rules of Procedure regulating the Assembly's interaction with civil society, commercial and non-commercial entities and citizens and their participation in the law-making process; and ii) putting in place more adequate timelines for considering bills within the Assembly as the means of securing meaningful and effective engagement by all interested parties** (paragraph 34);
- ii. **that i) consistent enforcement of Section II of the Rules of Procedure on "Ethical rules of conduct" be ensured and the specific sanctions triggered by each infringement of ethical principles clarified; and that (ii) awareness of the ethical standards of conduct be promoted and deepened via designated guidance, training and counselling (including confidential) for MPs on issues such as conflicts of interest, the limits on contacts with third parties, gifts, etc.** (paragraph 43);
- iii. **i) carrying out an independent evaluation of the effectiveness of the system for disclosure and ascertainment of conflicts of interest and of its impact on the prevention and detection of corruption amongst officials most exposed to it, including MPs, and taking appropriate corrective action (e.g. eliminating any contradictions in the regulatory framework, revising the mandates of responsible oversight bodies, supplying them with commensurate resources, etc.); and ii) ensuring that MPs' private interests – irrespective of whether they are declared regularly or *ad hoc* - are subject to substantive and regular checks by an independent oversight body within a reasonable timeframe and that an efficient co-operation is established between the authorities supervising MPs' compliance with the rules on conflicts of interest and on asset disclosure** (paragraph 62);
- iv. **i) carrying out an independent evaluation of the impact of the asset disclosure and verification system on the prevention and detection of corruption amongst officials most exposed to it, including MPs, and taking appropriate corrective action (e.g. revising the mandate of the oversight body, supplying it with commensurate resources or designating, as the need may be, another institution equipped with adequate means for this purpose); and ii) ensuring that MPs' declared assets are subject to substantive regular checks by an independent oversight body within a reasonable timeframe** (paragraph 67);

Regarding judges

- v. **that, in order to help the Supreme Judicial Council to fully assert its legitimacy and credibility and to strengthen its role as guarantor of the independence of judges, decisions on judges' appointment, career, attestation and discipline should be taken by a composition of the Council that is made up of a majority of judges elected by their peers** (paragraph 83);

- vi. **that the judicial independence be further strengthened by i) substantially reducing the five-year term established for judges acquiring life tenure; and ii) introducing a distinct methodology for a rigorous and in-depth evaluation of qualifications, integrity, ability and efficiency of a judge for the purpose of acquiring life tenure (paragraph 86);**
- vii. **strengthening the integrity checks carried out in respect of candidates to the post of judge who are subject to initial appointment, with due regard being had to respect for their human rights and relevant European standards (paragraph 89);**
- viii. **that, in order to enhance the accountability, objectivity, transparency and uniformity of the recruitment and promotion procedures within the judiciary, objective and transparent criteria for evaluating a judge's compliance with the Code of Ethical Behaviour for Bulgarian Magistrates be introduced in law both for attestation for acquiring life tenure and periodic performance reviews (paragraph 92);**
- ix. **that the application of supplementary remuneration within the judiciary be subject to clear, objective and transparent criteria (paragraph 95);**
- x. **to ensure that the principle of random case allocation be implemented in practice, with due regard being had to a fair and equitable workload for judges, and that the case assignment be protected from undue interference and subject to more stringent controls (paragraph 97);**
- xi. **that i) the integrity, conflicts of interest and corruption prevention component of the compulsory induction training provided to junior judges and judges subject to initial appointment be strengthened; and that ii) the professional in-service training on integrity, conflicts of interest and corruption prevention within the judiciary be prioritised and properly funded, and guidance and counselling on judicial ethics be made available to all judges (paragraph 101);**
- xii. **i) carrying out an evaluation of the effectiveness of the system for supervision and enforcement of the integrity standards within the judiciary and of its impact on the prevention and detection of judicial misconduct and taking appropriate corrective action (e.g. revising the mandates of responsible oversight bodies, carrying out regular risks assessments, streamlining the case law of the Supreme Judicial Council in disciplinary matters, etc.); and ii) vesting the ethics commissions established in courts with the right to initiate disciplinary proceedings against judges (paragraph 114);**
- xiii. **ensuring that judges' private interests – irrespective of whether they are declared regularly or *ad hoc* - are subject to substantive and regular checks and that efficient co-operation is established between the authorities supervising judges' compliance with the rules on conflicts of interest and on asset disclosure, with due regard being had to the independence of judges (paragraph 116);**

Regarding prosecutors

- xiv. **that, in order to help the Supreme Judicial Council to fully assert its legitimacy and credibility and to strengthen its role as guarantor of the independence and autonomy of prosecutors, decisions on prosecutors' appointment, career, attestation and discipline should be taken by a composition of the Council that is made up of a majority of prosecutors (paragraph 127);**
- xv. **i) strengthening the integrity checks carried out in respect of candidates to the post of prosecutor who are subject to initial appointment, with due regard being had to respect for their human rights and relevant European standards; and ii) ensuring that periodic performance reviews and attestation for acquiring life tenure within the Prosecution Service are based on objective and transparent criteria for evaluating compliance with the Code of Ethical Behaviour for Bulgarian Magistrates established by law, and that a methodology for rigorous and in-depth evaluation of qualifications, integrity, ability and efficiency is put in place for the purposes of attesting that a prosecutor can be granted life tenure (paragraph 129);**
- xvi. **to ensure that the principle of random case allocation be implemented in practice, with due regard being had to a fair and equitable workload for prosecutors, and that the case assignment be protected from undue interference and subject to more stringent controls (paragraph 132);**
- xvii. **that the integrity, conflicts of interest and corruption prevention component of the compulsory induction training provided to junior prosecutors and prosecutors subject to initial appointment be strengthened and that guidance and counselling on judicial ethics be made available to all prosecutors (paragraph 136);**
- xviii. **vesting the ethics commissions established in prosecution offices with the right to initiate disciplinary proceedings against prosecutors (paragraph 145);**
- xix. **ensuring that prosecutors' private interests – irrespective of whether they are declared regularly or *ad hoc* - are subject to substantive and regular checks and that efficient co-operation is established between the authorities supervising prosecutors' compliance with the rules on conflicts of interest and on asset disclosure (paragraph 147).**

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

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

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe’s 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.
