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FOURTH EVALUATION ROUND

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FOURTH EVALUATION ROUND

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

EVALUATION REPORT

IRELAND

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EXECUTIVE SUMMARY

1. Despite substantial reforms in the past relating to public administration including, for example, the adoption of the Freedom of Information Act, the Ethics Acts and the establishment of connected accountability mechanisms, there is growing concern about corruption in Ireland. From rather low perceived corruption levels, Ireland's ranking according to Transparency International's perception index fell significantly in 2012. The drop could possibly be connected with the findings of a domestic enquiry, the "*Mahon Tribunal*", investigating corruption allegations in relation to planning permission and rezoning issues, involving the business sector as well as politicians.

2. Similar to the trends in several other countries, political parties and politicians have low levels of trust in Ireland, according to international surveys. The Irish authorities are well aware of this and reforms are underway. Having said that, the legislative process in the Irish Parliament is very transparent; a culture of openness has been developed, built on a solid legal framework, within which modern communication techniques are used to a large extent in order to provide for broad public access and participation. Furthermore, the conduct of parliamentarians is governed by a wide range of standards, including constitutional principles, norms in the Ethics Acts and several codes of conduct and guidelines. However, the complexity of this structure is striking and the various norms are not always fully compatible with each other. As a result, interpretation of the standards can be challenging and a consolidated values-based normative framework - for ethical principles and conduct of MPs in various situations of conflicting interests - would be beneficial. Members of parliament are obliged to provide asset declarations; however, these obligations also need to be broadened, for example, to cover liabilities as well as the interests of persons connected to members. Moreover, the monitoring of MPs' adherence to standards, codes of conduct and other obligations also need to be consolidated, made more uniform and preferably given a higher degree of independence vis-à-vis Parliament and its members.

3. The Judiciary and the Prosecution Service are among the most trusted public institutions in Ireland. The independence and professionalism of judges is undisputed. However, recent measures taken to reduce public salaries, following the financial crisis, have been of particular concern for judges as their constitutional safeguard for the protection of financial benefits has been amended. This has triggered a discussion within the judiciary on how to uphold the historically high ethical standards of an independent and professional judiciary in the future. In this connection, the establishment of a judicial council and reforms of the current system of appointing and promoting judges, are in the focus as necessary measures to maintain judicial integrity and independence. Furthermore, there is a need to establish a code of conduct/ethics connected to an accountability mechanism for judges and to institutionalise ongoing training. Such measures, which enjoy strong support from the judiciary itself, require substantial additional resources. The administrative situation in respect of prosecutors in Ireland is very different to the one concerning judges for one major reason: prosecutors are subject to well-developed legislation, codes of conduct, guidelines, appointment procedures etc. of the civil service, complemented by dedicated measures targeting the particularities of the profession of prosecutors. That said, it would appear that the Prosecution Service in Ireland needs to enhance the organisational structures for receiving and handling complaints concerning the integrity and ethical conduct of prosecutors and also to be more transparent vis-à-vis the general public in this respect.

I. INTRODUCTION AND METHODOLOGY

4. Ireland joined GRECO in 1999. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in December 2001), Second (in December 2005) and Third (in December 2009) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

5. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption prevention in respect of members of parliament, judges and prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round which examined, in particular, the executive branch of public administration, and the Third Evaluation Round, which focused on the incriminations of corruption (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political financing.

6. 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.

7. 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.

8. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2013) 13E) by Ireland, 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 Ireland from 10-14 March 2014. The GET was composed of Mr Antoine DALLI, Internal Audit and Investigations Department, Office of the Prime Minister (Malta), Mr Adrian GRYCUK, Senior Economic Policy Analyst, Lower Chamber of Parliament, Social, Economic & EU Policies Division (Poland), Mr Noel L. HILLMAN, Judge at the US District Court of New Jersey (USA) and Ms Kitty NOOY, Chief District Prosecutor, National Integrity Programme Manager, Public Prosecution Service (Netherlands). The GET was supported by Mr Björn JANSON, Deputy to the Executive Secretary of GRECO.

9. The GET interviewed members and other representatives of the Houses of the Oireachtas, the Committees on Members' Interests of the Dáil Éireann and the Seanad Éireann, the Standards in Public Office Commission, the Government Reform Unit and the Department of Public Expenditure and Reform. Furthermore, the GET met with the Chief Justice and other representatives of the judiciary, including the Supreme Court, the High Court, the Circuit Court and the District Court. The GET also interviewed officials of the Department of Justice and Equality and the Office of the Director of Public Prosecutions. The GET's meetings also included representatives of the Association of Judges, the Law Society, the Bar Council, Transparency International, as well as representatives of academia and the media.

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

II. CONTEXT

11. Ireland has over the years, despite not having been considered as particularly affected by corruption, according to various perception indices, undertaken substantial reforms including anti-corruption policies. As GRECO noted previously (in 2005[1]), the public administration has been considerably modernised and the introduction of the Freedom of Information Act in 1997 and the Ethics Acts 1995/2001, to which monitoring by the Standards in Public Commission is connected, represent major achievements in respect of transparency and accountability. The investigations into public affairs and maladministration brought by various public inquiries, known as tribunals, is another form of monitoring which deserves mention; governed by the *Tribunal of Inquiry Act of 1921* as amended, Parliament may establish independent inquiries into matters of urgent public importance. Additionally, the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 established a statutory framework for parliamentary inquiries into matters of significant public importance.

12. Furthermore, Ireland has developed a thorough system of regulation of political financing coupled with an important monitoring role given to the Standards Commission and has further strengthened the transparency of such funding, following recommendations issued by GRECO in 2009[2].

13. GRECO also concluded in 2009 that overall, the criminal justice regulations in Ireland comply with the requirements of the Council of Europe Criminal Law Convention on Corruption (ETS 173)[3], an instrument that was ratified by Ireland already in 2003. Ireland ratified the United Nations Convention against Corruption in 2011.

14. It is to be noted that until 2010/2011 citizens perceived corruption levels in Ireland as rather low and the country figured among the least corrupt 14 countries of Transparency International's yearly corruption perception index (CPI). In 2011 and 2012 the CPI ranking of Ireland decreased considerably - to place 25 in 2012. This drop followed years of financial and banking crises, starting in 2008 and coincided with the findings of a 15-year public inquiry - the "*Mahon Tribunal*"[4] - in respect of alleged corruption involving politicians and the business sector. The Tribunal mostly investigated planning permissions and land rezoning issues in the 1990s in the Dublin County Council area, and in its final report – a massive piece of 3 270 pages – which was published in March 2012, the Tribunal concluded that in respect of some councillors at county council level, "corruption had become a regular aspect of their public role", that corruption affected every level of Irish political life and that those with the power to stop it were often involved; corruption was at the time it occurred, "an open secret" and "an acknowledged way of doing business".

15. The "*Mahon Tribunal*" submitted a number of recommendations, the main ones dealing with issues, such as criminalising the breach of political ethics, strengthening the whistle blower legislation, *inter alia*, by accepting anonymous complaints, limiting political donations, regulating lobbyism, expanding disclosure requirements for public officials, including politicians, restricting the rules on gifts and restricting politicians convicted for bribery from holding public office etc. The Irish Government is currently in the process of implementing several of the recommendations issued by the "*Mahon Tribunal*".

16. In terms of the focus of GRECO's Fourth Evaluation Round as regards corruption prevention in respect of members of parliament, it is to be noted that similar to what is the case in a large number of European countries surveyed, parliaments and political

[1] GRECO's Second Evaluation Round Report on Ireland (Greco Eval II Rep (2005) 9E, paragraphs 78 and 116
[2] GRECO's Third Evaluation Round Report on Ireland, Theme II (Greco Eval III Rep (2009) 4E, paragraph 111
[3] GRECO's Third Evaluation Round Report on Ireland, Theme I (Greco Eval III Rep (2009) 4E, paragraph 75
[4] Named after its last Chairman

parties top the list of least trusted institutions in Ireland, according to the European Commission's Special Eurobarometer on corruption 2013; the study indicates that 57% of those surveyed in Ireland think that corruption is widespread among politicians which corresponds well to the current EU average of those surveyed. As far as the judiciary is concerned, the picture is much the opposite, judges in Ireland have for a long time been much respected for a high degree of independence and integrity and therefore enjoyed a very high degree of trust from the public; the Eurobarometer 2013 indicates that only 15% of those surveyed in Ireland think that corruption is widespread within the courts, which is well below the EU average of those surveyed. The perception in respect of the public prosecution service is similar to that of the judiciary according to the aforementioned Eurobarometer; 15% of those surveyed in Ireland believe that the corruption is widespread in this area, which is lower than the EU survey average.

17. It is the aim of the present report, with its analysis and recommendations, to assist the Irish authorities in their efforts not only to regain but also to raise the level of integrity of, and the public's trust in, some of its fundamental institutions and their individual members. The report is timely considering that the Government's current reform programmes – linked, *inter alia*, to the findings of the "*Mahon Tribunal*" as well as on-going discussions in respect of reforms of the judiciary – need to address shortcomings in several of the areas targeted by this report.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

18. The Republic of Ireland is a parliamentary democracy based on the Westminister model with a written constitution and a popularly elected president who has mostly formal powers. Parliament (the Oireachtas) consists of the House of Representatives, the lower house (Dáil Éireann, 166 members), and the Senate, the upper house (Seanad Éireann, 60 members). The government is headed by a prime minister (Taoiseach), who is appointed by the president of the republic on the nomination of Dáil Éireann. Members of the government are appointed by the president on the nomination of the prime minister with the approval of Dáil Éireann. With the exception of the prime minister and the minister for finance, who must be members of Dáil Éireann, members of the government may be chosen from both houses. These members of parliament are also "office holders"[5].

19. The legislature consists of the president and the two houses of parliament. The Speaker of Dáil Éireann is automatically returned (no need to stand for a new general election) but all other members of the lower house are directly elected from multi-seat constituencies. As regards Seanad Éireann, 11 members are nominated by the prime minister, three members are elected by graduates of the National University of Ireland, three members are elected by graduates of Trinity College Dublin; and 43 members nominated either by members of parliament or bodies registered for that purpose, are elected from five vocational panels of candidates by an electorate consisting of members of parliament and local authorities. For all seats filled by election, proportional representation using the single transferable vote system is used.

20. The balance to be struck between various interests, such as the national public interest and/or any other particular interest and dealing with the practical and political consequence of striking a particular balance is a matter for individual members. Party discipline and local interest considerations frequently appear to play a significant part in such decisions. All ministers are also MPs and, in addition to performing their functions as office holders, they are free to represent their constituencies. Paragraph 2.2.9 of the Code of Conduct for Office Holders provides: "*In their capacity as elected representatives, Ministers (including Ministers of State) are free to make representations on behalf of constituents, including to other Ministers, provided that the responses sought or expected to their representations or given to the representation of other office holders are in keeping with responses which would be given to Members of the Houses of the Oireachtas generally. Ministers are free to receive representations from other office holders on a similar basis.*"

21. Article 16.1.1 of the Constitution provides that "*every citizen without distinction of sex who has reached the age of twenty-one years, and who is not placed under disability or incapacity by this Constitution or by law, shall be eligible for Membership of Dáil Éireann." Article 18.2 of the Constitution provides that "A person to be eligible for Membership of Seanad Éireann must be eligible to become a Member of Dáil Éireann*".

22. Section 41 (Disqualification for Membership of the Dáil) of the Electoral Act 1992, as amended, provides that, subject to section 42(3), a person who – (a) is not a citizen of Ireland, or (b) will not reach the age of 21 years on polling day or, if there is no polling day in relation to the constituency concerned by reason of the operation of section 58(*b*),

[5] The following persons are deemed office holders: the prime minister, the deputy prime minister, ministers of the government or ministers of state, a member who holds the office of attorney general, chairman or deputy chairman of Dáil Éireann or Seanad Éireann, and the chairman of a committee of either house or joint committee of both houses being an office that stands designated for the time being by resolution of each house; the offices of chairman of a committee or joint committee are not currently designated as office holders by resolution of the houses.

the day which is polling day generally throughout the State in relation to the election concerned, or (c) is a member of the Commission of the European Communities, or (d) is a judge, advocate general or registrar of the Court of Justice of the European Communities, or (e) is a member of the Court of Auditors of the European Communities, or (f) is a member of the Garda Síochána (the police force), or (g) is a wholetime member of the Defence Forces, or (h) is a civil servant who is not by the terms of his employment expressly permitted to be a member of the Dáil, or (i) is a person of unsound mind, or (j) is undergoing a sentence of imprisonment for any term exceeding six months imposed by a court of competent jurisdiction in the State, or (k) is an undischarged bankrupt under an adjudication by a court of competent jurisdiction in the state or (*l*) is a directly elected Cathaoirleach of a local authority shall not be eligible for election as a member, or, subject to section 42 (3), for membership, of the Dáil [and], in the case of paragraph (*l*), a person shall be disqualified for nomination for election as a member and the disqualification shall extend for 12 months after ceasing for any reason to hold that office.

23. Article 15.14 of the constitution provides that no person may be at the same time a member of both houses of the Oireachtas, and, if any person who is already a member of either house becomes a member of the other house, s/he shall forthwith be deemed to have vacated his/her first seat.

Transparency of the legislative process

24. All additions or changes to the body of primary legislation are made by way of acts of the Oireachtas. To become law a bill must first be approved by the House of Representatives and in most circumstances also by the Senate (although the lower house can override a refusal by the Senate to pass a bill), and then signed into law by the president. Bills to amend the constitution must also be approved in a general referendum before being presented to the president. The president is effectively obliged to sign all laws approved by parliament, although s/he has the power to refer bills to the Supreme Court for a ruling on the constitutionality. Once signed by the president, the bill becomes an act of the Oireachtas.

25. Constitutional, legal and procedural provisions in relation to consideration of draft laws by parliament concern themselves primarily with setting out a formal framework for the consideration of legislation. The constitution defines the constitutional relationship between and respective roles of government, the president and each house of parliament, in relation to legislation as well as in other matters. Articles 20 to 27 of the constitution deal specifically with legislation. The procedure for the consideration of draft laws by parliament is set out in the procedural rules (Standing Orders) adopted by each house. In the case of Dáil Éireann, these procedures are principally set out in Standing Orders 124 to 153 of the Standing Orders relative to Public Business and amendments thereto. The Seanad Standing Orders contain similar provisions.

26. As of 5 November 2013, the Standing Orders of Dáil Éireann require that ministers furnish preliminary texts of draft laws (proposals for legislation[6]) to the relevant parliamentary committee or provide the house with an explanation for not so doing. While their ready availability on the web and otherwise contributes to transparency of the process, they do not, in general, expressly address issues of transparency *within* process. The authorities stress that increasing transparency in the legislative process has been achieved in the main through cultural, administrative and technical changes that are not underpinned by any statutory or procedural imperative.

27. The text of draft laws and amendments proposed to such drafts are made available to the public. As soon as a draft law (a "bill") is initiated in either house, it is

[6] Also referred to as the general scheme or draft heads of a bill.

considered to be a public document and is published on parliament's website and also made available as a printed text. Typically, a bill is accompanied by an explanatory memorandum that provides information on the purpose of the bill and explanations in respect of its individual provisions in more accessible language. As the bill passes through each house, amendments tabled by members (and the government) are published before they are considered and when a bill is amended the revised text is similarly published.

28. A committee charged with considering a bill may be ordered (or may choose) to request and consider written and oral submissions on the bill from the public. Moreover, draft laws are considered in public; Article 15.8 of the Constitution provides that sittings of each house of parliament shall be in public unless, in case of special emergency, two-thirds of the members present assent to a private sitting. The pre-1937 (Free State) constitution contained the same provision. Such a private sitting last took place on 6 January 1922.

29. As well as publishing the debates of the houses and their committees, parliament provides a variety of live and recorded webcastings, IPTV and television services to the public and the media. Parliament also operates its own TV channel, *Oireachtas TV,* broadcast on UPC Ireland channel 207.

30. The authorities submit that consideration of preliminary texts of draft laws may take place; from time to time, before the text of a bill is finalised for initiation in parliament, a preliminary text or proposal for legislation is presented to parliament, published and referred to a parliamentary committee for mandatory consideration and/or forwarded directly by the member of the government concerned to the relevant committee with a request to review the proposal. Where this occurs, it generally involves consideration of written and oral submissions from interested parties. The GET was told that the intention is that this will increasingly become the norm. To this end, the Standing Order (rules of procedure) 123A was adopted on 5 November 2013: "*Prior to its presentation or introduction to the Dáil, the general scheme or draft heads of a bill shall, save in exceptional circumstances […], be given by a Member of the Government or Minister of State to the Committee empowered under Standing Order 82A to consider Bills published by the Member of the Government*"; together with Standing Order 125 which states: "*in the event the pre-legislative consideration under Standing Order 123A has not taken place, … the Member of the Government or Minister of State proposing [the motion for second reading of the bill] shall give the reason therefore during his or her opening remarks*".

31. Moreover, each draft law has its own webpage which gives access to all texts of the bill published, amendments tabled to the bill and all parliamentary debates on the bill as it passes through parliament. Also, it is common practice in relation to legislation for government departments to publish draft general schemes and draft bills on departmental websites. It is open to the public to make submissions on these documents which will then be taken into consideration in tandem with the pre-legislative scrutiny of the bill by the pertinent committee.

32. As indicated above, whether there should be public consultation (i.e. consultation *with* the public as opposed to consultation *in* public) on a particular draft law is a matter for the house itself or the committee with responsibility in that area of public administration to decide. In either case, such decisions may be made by consensus or by majority. A committee that has decided to consult in relation to a particular draft law (or legislative proposals) may publish a general request for views and/or may approach particular individuals or groups. Committees may also hear from or meet with individuals or groups.

33. In general, members of parliament are appointed to committees so that the party or group strength of the committee reflects relative strengths in the house in question. Members are nominated by their parties or groups for appointment to serve on committees on this basis. Appointments of members to serve on committees and discharge of members from committees require an order of the house. The order forms part of the official report of the debates of the house, published as previously described. Each committee also has a webpage on which the membership of the committee is listed. As a general rule (although this is not a requirement), the membership is also listed in each report made by a committee.

34. Attendance by members at individual meetings of the committee is published as part of the official report of debates for each meeting. As a general rule, relevant submissions received by a committee are published on the committee's webpages; the committee hears evidence and debates in public; the committee's deliberations in public are transmitted by a variety of live and recorded webcasting, IPTV and television services to the public and the media; and a written report of the minutes of evidence or debates is generally published, as is any report that the committee decides to make.

35. As indicated above, the general rule is that parliamentary debates take place in public, are broadcast and fully reported, both in print and on the web. Whether occurring in committees or in the plenary, votes are also considered to be an integral part of the proceedings and are published as part of those proceedings.

36. The GET did not come across any criticism from interlocutors met concerning the openness in respect of the legislative process in Ireland and commends the Irish authorities for having established a culture of far going transparency in the legislative process. It notes in particular that this has been possible on the basis of the constitutional requirement that sittings in parliament as a main rule are public alone without any major legislative measures. Not only the plenary debates are subject to far reaching transparency but this applies similarly to the pre-legislative process at committee level. It would appear that Ireland is well advanced in using modern communication techniques in this respect in order to connect the legislative processes with the wider public.

Remuneration and economic benefits

37. In 2012, the average gross annual salary in Ireland was €36 079.

38. The basic annual salary[7] of a deputy (a member of Dáil Éireann) is €87 258. The basic annual salary of a senator (a member of Seanad Éireann) is €65 000. In addition to the basic salary as a deputy or as a senator, there are annual rates for additional functions, for example, the speaker in the Dáil Éireann or a minister would get €70 282, the speaker in the Seanad Éireann €38 160, a chairperson of a committees in the Seanad €5 989 and in the Dáil €8 740. Other specified positions, such as party whips also attract allowances. A member who is eligible to receive more than one of the allowances, for example, as an MP and an office holder will only be paid the higher of those allowances during that period and a chairperson who chairs more than one parliamentary committee can only be paid one such extra allowance.

39. Other additional benefits include payment of a parliamentary standard allowance (PSA); entitlement to staff (secretarial allowance); free postal facilities (through the issuing of pre-paid envelopes up to a monthly limit); free telephone calls from the parliament building; periodic payments towards the cost of purchasing mobile telephones and accessories; a one-off grant for the establishment and equipping of a constituency office (only Dáil Éireann). Chairpersons of committees may receive an annual allowance

[7] The salaries have been reduced by the Financial Emergency Measures in the Public Interest Acts 2009-2013.

in respect of vouched entertainment expenses. The authorities have submitted details of each benefit.

40. Members of parliament are not exempt from the ordinary income taxes, pension related and the "universal social charge" deductions from their salaries. No special tax rate exists in respect of members.

41. While salary is paid until the election, in general, members' parliamentary benefits as referenced in paragraph 39 are no longer provided when a person ceases to be a member. This includes the period between the dissolution of parliament and a general election, whether or not the member is re-elected.

42. Members of parliament may supplement the budget for their offices from their own resources, including from donations they receive. Donations may be financial or in-kind. Donations may only be used for political purposes as defined under section 49 of the Electoral (Amendment) Act 2001. There is no requirement on members to disclose the use to which donations are put, except for such expenditures during election campaigns[8]. However, MPs (of both houses) are required to disclose to the Standards in Public Office Commission any donations they receive for political purposes where the value of a donation or donations received from the same donor in the same calendar year exceeds €600. Furthermore, they are not permitted to accept donations exceeding €1 000. Under the Electoral Acts, the Standards Commission furnishes reports to the Chairperson of the House of Representatives on the annual disclosure of donations received by members of the houses.

43. The GET notes that MPs' salaries and benefits appear to be generally well regulated. It notes with some concern that MPs may supplement their office benefits provided by the state with donations of constituency office premises received from elsewhere under a regime separate from other forms of donations. Such input could possibly amount to improper interference with the integrity of MPs. Importantly, there are limits to this kind of "office donations" and there are also disclosure rules connected to them. See also the GET's reasoning under "Gifts" below.

Ethical principles and rules of conduct

44. The ethical framework relating to the conduct of parliamentarians is governed by Article 15.10 of the Constitution which provides that *"Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its Members, and to protect itself and its Members against any person or persons interfering with, molesting or attempting to corrupt its Members in the exercise of their duties."* Legislation in this area must be consistent with the constitutional position.

45. In line with the constitutional provision, both houses of parliament have codes of conduct for members who are not office holders[9], both adopted in 2002, drawn up by the respective Committees on Members' Interest of each house of parliament in consultation with the Standards in Public Office Commission. Also, a Code of Conduct for Office

[8] There is a requirement to report expenditure for political purposes, including in respect of office facilities, in the period leading up to an election, as part of the regulatory regime for election spending and political donations.

[9] Code of Conduct for Members of Dáil Éireann other than Office Holders http://www.the Standards Commission.gov.ie/en/Codes-of-Conduct/TDs/
Code of Conduct for Members of Seanad Éireann other than Office Holders http://www.the Standards Commission.gov.ie/en/Codes-of-Conduct/Senators/Code of Conduct for Office Holders (including Guidelines) http://www.the Standards Commission.gov.ie/en/Codes-of-Conduct/Office-Holders/Code-of-Conduct-for-Office-Holders-.pdf

Holders has been drawn up by the government in consultation with the Standards Commission.

46. These codes of conduct, *inter alia,* state that members must in good faith strive to maintain public trust placed in them, that their conduct does not bring the integrity of their office into serious disrepute, have consideration for the public interest and for preventing conflicts of interest etc, not solicit or accept any financial profit in exchange for promoting or voting in parliament. The codes also include definitions of conflicts of interest etc.

47. The Ethics in Public Office Act 1995[10] and the Standards in Public Office Act 2001 ("Ethics Acts") as amended, are the main laws in place for regulating ethics in the public sector, in particular as regards the control of conflicts of interest. The Ethics Acts provide a statutory scheme for the disclosure of interests of members of parliament who are not office holders (Part II), and additional disclosure rules for members who are also office holders (Part III). Moreover, this legislation provides a framework within which each house of parliament is to deal with conduct and complaints against its respective members who are not office holders; principally through Committees on Members' Interests. Further, they establish and regulate the Standards in Public Office Commission, which main concern is related to the conduct of office holders.

48. Section 10 of the Standards in Public Office Act 2001 provides for the establishment of Codes of Conduct for MPs "from time to time" which set out the standards of conduct and integrity expected to be observed by the persons to whom they relate in the performance of their official duties.

49. In addition, there are separate guidelines for members of both the houses who are not office holders concerning the steps to be taken by them to ensure compliance with the provisions of the Ethics Acts[11].

50. The GET notes that the current regulatory structure for ethical standards and conduct of members of parliament is a rather complex patchwork consisting of a range of different provisions, including constitutional principles[12], legislative norms, soft law provisions and guidelines. This creates a requirement to assess which set of standards apply or which standards prevail over the other, which, in the view of the GET, appears unnecessarily cumbersome. Moreover, the definitions used are not always fully compatible with each other; for example, there are diverging definitions of conflicts of interest, further discussed below. The GET understood from various interlocutors met that there was a general perception that the existence of several provisions regulating the same or similar situations, sometimes differently, creates complexity to the interpretation and application of the current provisions. Interlocutors stated that there was a need to establish a new consolidated legal/ethical framework which would

[10] The Ethics in Public Office Act 1995 has been amended by the Standards in Public Office Act 2001 and collectively may be cited as the Ethics in Public Office Acts, 1995 and 2001, and shall be construed together as one. Both Acts have been published in a consolidated format by the Law Reform Commission.
Ethics in Public Office Act 1995
http://www.irishstatutebook.ie/1995/en/act/pub/0022/index.html
Standards in Public Office Act 2001
http://www.irishstatutebook.ie/2001/en/act/pub/0031/index.html

[11] Guidelines for Members of Dáil Éireann who are not Office Holders
http://www.oireachtas.ie/parliament/media/committees/Membersinterests/Final-Guidelines-2012-for-circulation.pdf
Guidelines for Members of Seanad Éireann who are not Office Holders
http://www.oireachtas.ie/parliament/media/committees/Membersinterests/1.-Final-version-Ethics-Guidelines-for-Seanad-Éireann-2013-(18.12.12).docx

[12] It should be noted that the Constitution of Ireland provides in Article 15.10 that *"Each House shall make its own rules and standing orders, with powers to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties".*

encompass regulation of the conduct of members of parliament. The GET shares these concerns and was therefore pleased to learn that the ethical framework and standards in respect of public officials, including parliamentarians, were in the process of being overhauled and reformed by the Government. An ethics legislative project is being pursued by the Department of Public Expenditure and Reform with the aim of developing an integrated ethics bill involving a comprehensive overhaul and modernisation of the current legislative framework for ethics, including anti-corruption measures[13]. These reform efforts - to a large extent responses to the findings and key recommendations of the "Mahon Tribunal" referred to above- merit support. In this context, the GET is of the opinion that the expected conduct of MPs cannot be completely separated from the expected conduct of their employees. While MPs in Ireland are considered, as a main rule, to be responsible for the conduct of their employees under general employment legislation, the normative ethical standards of MPs do not expressly apply to MPs' staff members. This situation may lead to discrepancies and different considerations depending on who is carrying out a particular task, the MP him/herself or the employee on behalf of the MP. The GET takes the view that staff working on behalf of MPs need to be governed by the same standards as the MP in that particular function. In view of the above, **GRECO recommends that the existing ethics framework be replaced with a uniform and consolidated values-based normative framework encompassing the ethical conduct of members of parliament - including their staff as appropriate - covering various situations of conflicts of interest (gifts and other advantages, third party contacts including lobbyists, accessory activities and post-employment situations etc.) with the aim of providing clear rules concerning their expected conduct.**

Conflicts of interest

51. The Ethics Acts 1995/2001 aim at preventing both potential and actual conflicts of interests through disclosure. Potential conflicts of interest are to be disclosed, according to Section 5 of the Ethics Act, which requires members to provide annual statements of their registrable interests, following a standard list of items, such as remunerations and various interests (shares, land etc, further detailed under "Declaration of Assets", below). In respect of MPs who are also office holders (Section 13), the prevention of potential conflicts of interest goes further also to cover their "additional interests", ie relating to spouse/civil partners and other relatives).

52. Prevention of actual conflicts of interests is provided for in Section 7 of the 1995 Ethics Act which regulates that a member who proposes to speak or vote in parliament and who has actual knowledge that s/he or a "connected person"[14] has a material interest in the matter and has not declared such interest under the statement of registrable interests furnished to the Commission and laid before the House, has to make a declaration to this end before or during the speech and, in relation to voting, before the vote, in writing. Section 14 of the same Act provides a similar obligation upon office holders to report to the Standards Commission.

53. The Codes of Conduct for members of Dáil Éireann as well as members of Seanad Éireann provides, *inter alia*, that a conflict of interest exists where a member participates in or makes a decision in connection with the execution of his or her office knowing that it will improperly and dishonestly further his or her private financial interest or another person's private financial interest directly or indirectly; that a conflict of interest does not exist where the member or other person benefits only as a member of the general public or a broad class of persons; that members must base their conduct on a consideration of the public interest and are individually responsible for avoiding conflicts of interest; and that members must endeavour to arrange their private financial affairs to prevent such

[13] The GET was informed that a consolidated and modernised statutory legal framework governing ethical obligations for public officials was to be presented to the Government during the second half of 2014.
[14] Relative, trustee of a trust, partners etc.

conflicts of interest arising and must take all reasonable steps to resolve any such conflict quickly and in a manner which is in the best interests of the public.

54. The GET welcomes that the Irish system of regulating conflicts of interest is built on a complementary approach in that it covers both potential conflicts, which are to be declared following a standard format at regular intervals, and actual conflicts, which are subject to *ad hoc* reporting (before a speech, voting etc). That said, it notes that although the definitions of conflicts of interest are broader in the codes of conduct than in the Ethics Acts, both these regimes have in common a clear focus on financial/material interests. This scope needs to be broadened in a new common definition, also to include other forms of conflicting interests, such as non-pecuniary advantages, which is currently under consideration by the Irish authorities, as an objective of its ethics reforms. Furthermore, the GET sees no good reason only to focus on personal conflicts of interest in respect of MPs who are not office holders while those who are also office holders have to include such risks in respect of connected persons. The GET considers that the current regulations concerning office holders' obligations to include conflicts of interests involving not only themselves but also connected persons ought to apply in respect of all MPs. Consideration could also be given to expanding such rules to staff of members of parliament. These proposals need no separate recommendation but should be taken into account in conjunction with the recommendations in paragraphs 50 and 80 respectively.

Prohibition or restriction of certain activities

Gifts

55. The Codes of Conduct for Members of Dáil (Section 8) and Seanad Éireann (Section 8) who are not office holders each provide identical provisions in respect of gifts: that members must not accept a gift that may pose a conflict of interest or which might interfere with the honest and impartial exercise of their official duties; and that members may accept incidental gifts and customary hospitality.

56. The Ethics Act 1995/2001 does not prohibit or restrict the receipt of gifts by members who are not office holders. That said, Section 5 of that Act provides that members (including office holders) are required to disclose gifts received[15], with the value, or the aggregate value from the same person, exceeding €650 during the registration period.

57. With regard to gifts to office holders, section 15 of the 1995 Ethics Act provides for the surrendering of gifts given to them by virtue of office with a value in excess of €650 or an aggregate value of €650 for gifts given to an office holder by the same person in a single calendar year.

58. Furthermore, paragraph 2.2.8 of the Code of Conduct for Office Holders provides that office holders should not accept offers to meet the costs of travel facilities and/or commercial accommodation in connection with official activities (including of a spouse/partner if so accompanied), where such offers are made by private citizens or private enterprises. Discretion may be used where an office holder is the official guest of another government or official body, or of a not for profit representative organisation or the like.

59. The GET notes that Ireland has in place a number of provisions dealing with gifts. These provisions provide restrictions upon the receivers to accept gifts and in combination with public disclosure requirements in respect of gifts exceeding a certain value. The GET also notes that the current ethical norms and legislation taken together

[15] Gifts for purposes of registration exclude donations for election campaigns, gifts given for personal reasons and political allowances.

are unnecessarily complex and confusing. For example, the Codes of Conduct of the two houses of parliament prohibit gifts that may interfere with MPs' honest and impartial exercise of their official duties and at the same time the rules make exceptions for incidental gifts and customary hospitality, which, in the view of the GET, potentially opens the way for wide interpretation. Furthermore, MPs (including those who are office holders) have to disclose received gifts over a certain value, according to the Ethics Act, while only those MPs who are office holders, also have to surrender such gifts. As already mentioned in this report (paragraph 42), to this comes yet another provision concerning donations in respect of MPs' offices, where the disclosure requirements are slightly different. The GET does not really see why there needs to be such fragmented rules for various situations of gifts to members of parliament. The rules on gifts, as an integral part of potential conflicts of interest, clearly need to be consolidated and preferably aligned whether they concern ordinary MPs or those who are also office holders. Clear provisions in this respect for all MPs would be beneficial to MPs themselves, to gift providers and to the wider public. The GET refers in this respect to the recommendation in paragraph 50.

Incompatibilities and accessory activities, post-employment restrictions

60. With the exception of those occupations that would exclude a person from being eligible for parliament (Section 41 of the Electoral Act) (see paragraphs 19 and 20), the holding of another occupation or carrying out of accessory activities by a member of parliament is not prohibited as such. The authorities stressed that rather than prohibiting or restricting parliamentarians who are not office holders from carrying out external activities, the legislation focuses on requiring the members to declare such positions in order to prevent conflicts of interest.

61. That said, the GET notes that the Code of Conduct for Office Holders (paragraph 2.2.4) goes further and provides that office holders should not engage in any activities that could reasonably be regarded as interfering or being incompatible with the full and proper discharge by them of the duties of their office, such as company directorships carrying remuneration. Even if remuneration is not paid, it is regarded as undesirable for them to hold directorships. Moreover, an office holder should not carry on a professional practice while being an office holder but may make arrangements for the maintenance of a practice until such time as s/he ceases to be an officer holder and returns to the practice. Office holders should not take any part in the decision-making or management of the affairs of a company or practice and should dispose of, or otherwise set aside any financial interests which might conflict, or be seen to conflict, with their position as an office holder. The GET finds this more restrictive regime in respect of MPs who are also office holders as perfectly legitimate, considering the different roles of MPs and office holders.

62. There are no measures in the Ethics Acts which in any way affect MPs' employment or other non-paid activities after they leave parliament. The issue of post term employment is, however, regulated in respect of office holders in the relevant Code (at 2.2.4) as follows: *"Office holders, in taking up appointments on leaving office, should be careful to avoid any real or apparent conflict of interest with the office they formerly occupied. Particular care should be taken in the first few months following departure from office. Office holders should give careful consideration to the type of occupation chosen having left office. Although it is in the public interest that former office holders are able to move into business or other areas of public life, it is equally important that there should be no cause for any suspicion of impropriety when taking up a particular appointment. In this context, office holders should act in a way which ensures it could not be reasonably concluded that an office holder was influenced by the hope or expectation of future employment with the firm or organisation concerned or that an unfair advantage would be conferred in a new appointment by virtue of, for example, access to official information the office holder previously enjoyed."*

63. To sum up, in addition to the rules on eligibility to parliament, (Article 41 of the Electoral Act), according to which MPs cannot be elected if they hold certain other listed public positions, there are no general rules restricting MPs' accessory or post-employment positions. Instead, situations that may raise conflicts of interest while an MP is in office are to be declared publicly (see "Declaration of Interest", below). No such requirement applies in respect of MPs after they have left parliament. While this is true for MPs in general, the GET notes that in respect of those MPs who have additional functions as office holders, there are rules in place restricting their possibilities to have accessory activities. The GET also notes that for the same category of MPs, the Ethics Act provides clear guidance when taking up post-employment positions. The GET sees the logic of having a distinction between MPs who are office holders and those who are not. At the same time it notes that ordinary members of parliament could well engage in particular matters (including legislation) in parliament while having in mind interests that would come into play during their mandate or once s/he leaves parliament. In this context, the GET also refers to particular conflicts of interest that may arise in respect of former MPs performing lobby activities in parliament. Aware of GRECO's position in this respect, the GET encourages the authorities to reflect on the possibility of strengthening post-employment rules/guidelines for all members of parliament as appropriate. But again, the GET recognises the logic for differentiated approaches for ordinary MPs and officeholders in this respect, and that any restriction needs to be proportionate in order to balance the relevant competing interests at issue. The GET refers in this respect to the recommendation in paragraph 50.

Financial interests, contracts with State authorities, misuse of public resources, third party contacts (lobbying)

64. There is no prohibition or restriction on the holding of financial interests by MPs. However, they are subject to the obligation to declare such interests, which is described in detail, below ("Declaration of assets etc").

65. Likewise, there are no specific rules regarding MPs entering into contracts with state authorities other than the general rules to avoid conflicts of interest and to disclose such situations. Moreover, the general rules on public procurement apply.

66. The Codes of Conduct for Members of Dáil and Seanad deal with the use of public resources (Section 9 in both documents): *"In performing their official duties, Members must apply public resources prudently and only for the purposes for which they are intended."* Moreover, the Code of Conduct for Office Holders provides, *inter alia*, that official facilities should be used only for official purposes, that office holders should ensure that their use of officially provided facilities are designed to give the public value for money and to avoid any abuse of the privileges which are attached to office (2.2.3.). Moreover, MPs are – like anyone else – subject to general provisions of criminal law such as theft, misappropriation and deception offences. They also fall within the definition of "public official" for the purposes of corruption in office offences in section 8 of the Prevention of Corruption (Amendment) Act 2001 which provides that *"A public official who does any act in relation to his or her office or position for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person, shall be guilty of an offence…"*[16].

67. Members' contacts with third parties, are dealt with by the general provisions in the Code of Conduct of the Dáil on interaction between members and third parties to prevent conflicts of interest (paragraph 4) and not to solicit, accept or receive financial benefit in exchange for promoting, voting etc. in parliament (Section 6). Identical rules are contained in the Code of Conduct of the Seanad (paragraphs 5 and 6). The Code of Conduct for Office Holders (2.2.5.) goes slightly further while stating that contacts

[16] http://www.irishstatutebook.ie/2001/en/act/pub/0027/sec0008.html#sec8

between office holders and lobbyists should be conducted so that they do not give rise to a conflict between public duty and private interests. The GET is pleased that the Codes of Conduct of both houses deal with MPs' contacts with third parties, but again, the rules relating to office holders go further than those of ordinary MPs. In this context, the GET notes that the Department of Public Expenditure and Reform published the Registration of Lobbying Bill 2014 on 20 June 2014. The purpose of this Bill is to establish a web based register of lobbying activity and deliver appropriate transparency on "who is contacting whom about what". According to Section 6 of the Bill all members of Dáil Éireann and Seanad Éireann are to be classed as designated public officials or 'the lobbied'. The Bill makes provision for the Lobbying Registrar to produce a code of conduct for persons carrying out lobbying activities with a view to promoting high professional standards and good practice. The Standards in Public Office Commission will be the Lobbying Registrar. A review of the legislation – once adopted – one year after its commencement will provide an opportunity to ensure that the legislation is meeting its objectives. While general lobbying regulations are not central to the issues being evaluated in the current report, lobbying is an increasingly important phenomenon with clear links to corruption prevention in respect of members of parliament. The GET refers in this respect to the recommendation in paragraph 50.

Misuse of confidential information

68. There are provisions in the Codes of Conduct for members of the Dáil and Seanad which deals with the use of official information or information obtained in confidence (paragraph 10 of both documents): "*Members must not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.*

69. According to the 1995 Ethics Acts (Section 35 (1)) *"A person shall not disclose information obtained by him or her under this Act or by being present at a sitting of a Committee or Commission held in private".* A person who contravenes this provision shall be guilty of an offence. This provision applies to any member of parliament.

70. Certain provisions of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 (Section 111) are also relevant in this regard: For example, in case a private paper of a member or a confidential communication is knowingly or recklessly disclosed by a person other than the member and such disclosure is not authorised, the person is guilty of an offence and could be sanctioned with a fine and/or imprisonment up to six months.

71. There is also a range of provisions concerning confidentiality of and access to government information, which apply to MPs who are at the same time office holders.

72. The GET notes with some concern that the disclosure of confidential communication, according to Section 111 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 may lead to a sanction of 6 months of imprisonment, regardless of the reasons for the disclosure. The GET takes the view that such a provision carries the risk of discouraging whistle blowers from coming forward with suspicions or evidence of wrongdoing, including corruption and other similar misbehaviour. In this context, the Irish authorities refer to the Protected Disclosures Act 2014, which came into operation in July 2014; Section 15 of this Act provides that "*in a prosecution of any person for any offence prohibiting or restricting the disclosure of information it is a defence for the person to show that"…"the disclosure was or was reasonably believed by the person to be, a protected disclosure*". Furthermore, the Irish authorities stress that the Protected Disclosures Act was drafted to ensure that no obstacles were placed in the way of potential whistleblowers which would prove to be a disincentive to whistleblowing. They also point out that provisions of the 2013 Act would encourage rather than discourage whistleblowers in that: a) MPs themselves are exempt

from Section 111; b) Section 106 authorises a person making a confidential communication to disclose it without violating Section 111; c) an MP may authorise disclosure of a private paper to a third party pursuant to Section 105(1)(a); and d) upon application to the High Court a private paper may be disclosed pursuant to Section 105(1)(b) if relevant to an investigation of an MP or in cases of an "overriding public interest" arising in the context of court proceedings, tribunal, commission or parliamentary inquiry. The authorities also refer to Article 15.10 of the Constitution, which provides that each House shall have power to protect its official documents and the private papers of its members. The statutory definition of what constitutes a "private paper" and "confidential communication" is set out in the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013.

73. The GET wishes to stress that, on the one hand, the 2013 Act provides legitimate protection of confidential information, on the other hand the rather severe sanctions contained in its Section 111 for disclosing information may discourage persons who are not MPs or not the authors of confidential communications from "blowing the whistle", notwithstanding the protections under Section 15 of the Protected Disclosures Act 2014. For example, if a staff member or other third party not expressly exempted from the 2013 Act wishes to make a disclosure of potential corruption or other malfeasance, s/he should be able to do so without fear of prosecution under Section 111. In order to assuage this concern, **GRECO recommends that the authorities clarify the scope of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 so as to ensure that the protections and encouragement for whistleblowers contained in the Protected Disclosures Act 2014 are fully understood and implemented.**

Declaration of assets, income, liabilities and interests

74. In accordance with Section 5 of the Ethics in Public Office Act 1995, members of parliament, including office holders, are required to disclose their interests (but not the individual value of the interests) including any material factors which could influence members of parliament in performing their official duties according to the following list[17]:

- A remunerated profession (exceeding €2 600 per year);
- Shares or other investments (value exceeding €13 000);
- A directorship of any company;
- Interest in land (exceeding €13 000);
- Interest in any contract for the purchase of land;
- Certain gifts (excluding personal) (any gift over €650);
- Below cost supply of travel facilities and entertainment;
- Remunerated position as political lobbyist or consultant;
- Certain contracts in relation to supply of goods and services to a public body;
- Below cost supply of property or a service.

75. The annual registration requirements and procedure can be summarised as follow. If serving as a member on 31 December in any year, members (including office holders) are required to submit to the Standards in Public Office Commission ("the Commission") by 31 January following, on a form provided by the Commission, a statement in writing of their registrable interests. The statement covers any period(s) when they were a member of either house of parliament between 1 January and 31 December. This registration period may be subject to modifications in case the Dáil and Seanad would be dissolved on the latter date.

[17] The authorities have submitted detailed information on the requirements of each type of interest.

76. Members' statements of registrable interests are entered into a register established by the clerk of each house and are laid before each house and published in Iris Oifigiúil and on the Oireachtas' website. Furthermore, a copy of the registers is furnished by the Clerks to the Standards in Public Offices Commission.

77. In addition, the Ethics Act provides that a member who proposes to speak or vote in parliament and who has actual knowledge that s/he or a "connected person"[18] has a material interest in the subject matter shall make a declaration about this interest before or during the speech and, in relation to voting, before the vote, in writing. Section 14 of the same Act provides a similar obligation upon office holders who propose to perform a function of their office and who have a material interest to report this to, in the case of the prime minister, the chair of the Standards Commission; in the case of any other minister of the Government or a minister of State to the prime minister and the Commission and, in the case of any other office holder, to the Commission Members may also submit voluntary statements at any time during the year if their interests change, if they receive advice that they must disclose an interest or if they have failed to comply with a requirement to disclose an interest (Section 30 of the Ethics Act 1995).

78. The GET is pleased that MPs' disclosed financial interests are to be registered and made public. However, it notes with concern that the Ethics Act does not require the disclosure of liabilities of these officials. Moreover, there is no obligation upon MPs to include certain potential interests, such as offers of remunerated/non-remunerated activities and agreements for future activities/interests. Members may on a voluntary basis disclose any kind of interest, but there is no evidence that MPs would disclose more than what is prescribed; it is therefore quite obvious that most often such voluntary possibilities would not suffice. Several interlocutors met were of the opinion that the disclosure rules would need to be amended in order to cover MPs' liabilities as well as other potential interests that may have a bearing on possible conflicts of interest. The GET strongly agrees with this position.

79. Furthermore, the GET observed that while ordinary members of parliament are required to disclose only their own personal interests in the annual statements of interests under Section 5 of the 1995 Act, the law obliges those who are also office holders to state in their annual forms any interests of which the office holder has actual knowledge concerning a spouse, a civil partner, his/her own children and those of the spouse/partner, which could materially influence the office holder in the performance of the functions of his/her office. The GET firmly believes that the regime concerning all MPs needs to be amended also to cover closely related persons, similar to what is already obligatory for office holders.

80. The GET was also concerned to learn that the law does not require that the actual value of the individual interests be disclosed. The only guidance as to the value of the interests are the stipulated thresholds given in the law. The GET takes the view that an indication of the real value of the assets, incomes or liabilities is of central importance when assessing such interests of MPs.

81. In view of the foregoing, and in order to ensure a proper level of transparency and thus facilitate the identification of possible conflicts of interest, **GRECO recommends that the existing regime on asset declarations be enhanced by i) extending the obligations upon all members of parliament to disclose their interests to include quantitative data on their significant financial and economic involvements as well as in respect of significant liabilities; and ii) that consideration be given to widening the scope of members' declarations to also include close or connected persons, in line with the existing rules for office holders**.

[18] Relative, trustee of a trust, partners etc.

Supervision and enforcement

82. The Ethics Act foresees two main avenues for challenging suspected breaches of its regulations by members of parliament: i) in respect of MPs who are not office holders, the Committee on Members' Interests of Dáil Éireann [19] and the Committee on Members' Interests of Seanad Éireann[20] may, in addition to their other functions[21], carry out investigations concerning their respective members and ii) complaints against MPs who are also office holders, are to be submitted to the Standards in Public Office Commission (Standards Commission) for investigation.

83. According to Section 8(2) and (4) of the 1995 Ethics Act, any person or member of parliament may make a complaint about a member (who is not an office holder) for not having complied with the codes of conduct or the Ethics Acts to the *Committees on Members' Interest* of each of the houses. The legislation stipulates that a complaint must be made in writing. Once a complaint from a person other than a member of the Oireachtas which contains a specific allegation against a named member (who is not an office holder) has been received by the Clerk of the Dáil/Seanad, the Clerk reviews the information and forms an opinion as to whether the complaint is frivolous, vexatious, or if there is insufficient evidence to establish a *prima facie* case. If the complaint passes these tests it is to be referred to the Committee, which has to consider whether the case merits an initial investigation (i.e. carries out an assessment as to whether there is, at the time of the consideration, or if there will be in the future, evidence sufficient to sustain a complaint). The Committee may decide not to carry out an investigation or to discontinue an ongoing investigation if at any time they form the view that sufficient evidence is not or will not be available in relation to the complaint. If the pertinent commission decides not to carry out or discontinue an investigation the respective committee must prepare and furnish a statement in writing of the reasons for the decision. Such statements are to be provided to the complainant and the member named in the complaint.

84. The GET was concerned to learn that the clerks of the Dáil or Seanad have the power to dismiss cases without involving the respective committee and furthermore that dismissals by the clerk or, following investigation by the respective committee, are not made public. Only decisions following an investigation where there is a finding against a member are made public. The GET strongly believes that the prevailing confidentiality around decisions to dismiss a complaint can be very negative for the public's confidence in the important work of these committees to ensure compliance with their own rules. It is also difficult to understand that the complainant is bound by such confidentiality. Consequently, the GET takes the view that all final decisions (including dismissal) by the pertinent supervisory bodies in charge of investigating complaints against the conduct of members of parliament must, as a main rule, be open to public scrutiny. Reference in this respect is also made to the reasoning and recommendation in paragraph 102.

85. Once the committee takes on board a complaint, it holds a sitting for the purpose of conducting an investigation and affords the member against whom the complaint has been made the opportunity to put his/her side forward. The committee observes its own rules of procedure, subject to the provisions determining the powers conferred upon the Committee within the framework of the Constitution and other legislation.

86. As a general rule, complaints can only be made against current members of either house. Neither committee can investigate members of the other house or former members of their, or the other, house (unless requested by the former member to continue an investigation). If the person who is the subject of the complaint ceases to be

[19] Consists of 5 Members of the Dáil, the quorum is 3.
[20] Consists of 7 Members of the Seanad, the quorum is 3.
[21] These committees are also in charge of drawing up guidelines and codes of conduct for MPs and for providing advice to members.

a member then, pursuant to Section 9(3) of the Ethics Act, the committee can take no further steps unless the former member requests, in writing, that the committee carry out or complete their investigation. In a similar vein, the committee may not carry out an investigation concerning a member who is or, at the relevant time, was an office holder.

87. The committees investigate, *inter alia*, complaints alleging contraventions of Section 5 and/or 7 of the Ethics Acts. These can relate to the obligation to provide statements of registrable interests; the obligation to declare an interest in proceedings in which a member proposes to speak or vote; the obligation on a member to comply with advice and/or guidelines given to him/her by the committee etc. The committees may also investigate a complaint that a member has done or omitted to do any other "specified act" (i.e. be inconsistent with the proper performance of the functions of office or position or be inconsistent with the maintenance of confidence in such performance by the general public and be of significant public importance). The GET was informed that the definition of what constitutes a "specified act" was subject to some controversy and that possible clarification of the law was underway[22].

88. When considering whether a matter is of significant public importance, members are advised that the guidance contained in Section 4(5)(b) of the 2001 Act serves to identify such a situation, i.e. that the benefit alleged to have been received by a specified person or a connected person is or might have been or expected to be not less than €12 697.00. However, members are also advised that this section should not be construed as meaning that matters, the value of which is below this threshold could not be deemed to be of significant public importance. The Committee must have regard to "all the circumstances" when considering whether a matter is of significant public importance and in this regard the monetary limit of €12 697.00 is only indicative.

89. If, during the course of a committee investigation in relation to a specified act, the committee forms the view that the member did not contravene the provision complained of but may have violated other rules, the committee is not hindered from also investigating the latter contravention.

90. In terms of investigative powers, it can be noted that the committee is permitted to determine its rules of procedure in relation to an investigation; it may receive submissions and such evidence as it thinks fit. Thus, it is open to the committee to receive only written evidence. The Chairperson of the committee may also direct the member or any other person to appear before the committee. However, the committee cannot direct the member (the subject of the investigation) to produce evidence to the committee, but any other person whose evidence is required may be ordered to produce or submit evidence or to witness before the committee, subject to sanctions.

91. The Committees on Members' Interests normally proceed on the basis of consensus. In the event that this is not possible in relation to a particular question before one or the other of the committees, the committee may vote on the matter. In these circumstances the matter is decided by a majority of the members present and voting, the Chairman having an ordinary vote only. In the event that there is an equality of votes, the question is decided in the negative.

92. Should the relevant Committee on Members' Interests of Dáil or Seanad Éireann decide, following an investigation, it may draw up a report that a member is in breach of the Ethics Act. According to Section 28.2 of this Act, breaches of its regulations may lead to the following sanctions against members of parliament: (a) taking note of the report,

[22] The Standards Commission stated in its annual report for 2006 that it had found it difficult in many cases to clearly determine whether a matter which comes before it is a 'specified act'. It has also noted that many complainants, potential or otherwise, found it difficult to grasp the meaning of the provisions. It has in one instance received legal advice in the course of which the provisions were described as 'rather nebulous'. The Commission has recommended to the Minister that this issue be addressed by amending the legislation.

(b) censuring of the member, and (c) the suspension of the member for a period not exceeding 30 days during which the house shall have been in session, or, in addition, until such time as the member takes the steps specified in the resolution to secure his/her compliance with the Act. This may involve the withholding of salary for the period in question, under section 28(2A)(a).

93. If the Committee on Members' Interests is of the opinion that the member may have committed an offence, it must (i.e. this is a mandatory requirement) prepare a report in writing and furnish it, together with any relevant document, to the Director of Public Prosecutions (DPP). Thereafter, the DPP is required to notify the Committee of any action taken, or the result thereof.

94. All final reports made by the Committees on Members' Interests to Dáil or Seanad Éireann are considered public and are available on the Oireachtas' website. Summary information in relation to complaints to the Committees on Members' Interests 2010-2013 is as follows:

Committee on Members' Interests of Dáil Éireann (from 1 August 2010)

Complaints made or considered	Reports published and/or other action taken[23]			Matter referred to SIPO	Investigation discontinued	Ongoing
	Sanctions recommended	Other action recommended	No action recommended			
6[24]	0	1	3	1	1	0

Committee on Members' Interests of Seanad Éireann (from 1 August 2010)

Complaints made or considered	Reports published and/or other action taken			Matter referred to SIPO	Investigation discontinued	Ongoing
	Sanctions recommended	Other action recommended	No action recommended			
9	0	0	4 [25 and 26]	2	2	1

95. *The Standards in Public Office Commission*, established under the Ethics Act 1995, is the supervisory body in respect of public employees and office holders. However, parliamentarians who are also office holders are covered under its exclusive jurisdiction. The Commission is an independent body, consisting of six members; a serving or retired High Court or Supreme Court judge, the Comptroller and Auditor General, the Ombudsman, the Clerk of the Dáil, the Clerk of the Senate, and an ordinary member (former member of parliament) who is not a serving MP. The Standards Commission is required to take its decisions by a majority of all its members. The Commission is served

[23] See http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/dailMembersinterests/ for reports made. Also includes one case in which the committee caused a motion to be moved in the Dáil noting a Standards Commission finding that a member had failed to furnish to the Standards Commission within nine months of the date of their election a Statutory Declaration and a Tax Clearance Certificate/Application Statement; that the member was now in compliance; and accordingly considering that no further action was required. The Dáil so resolved - see relevant entry in Dáil Debates for 3 May 2012.

[24] Includes 388 identical complaints counted as 1 composite complaint: matter was referred to the Standards Commission – cf. paragraph 100.

[25] Includes one case in which the committee caused a motion to be moved in the Seanad noting a Standards Commission finding that a member had failed to furnish to the Standards Commission within nine months of the date of their election a Statutory Declaration and a Tax Clearance Certificate/Application Statement; that the member was now in compliance; and accordingly considering that no further action was required. The Seanad so resolved - see relevant entry in Seanad Debates for 4 July 2012

[26] In the remaining three cases, the committee found that there were no reasonable grounds for the complaints in the manner contemplated in the Acts and consequently that no action was to be taken against the Senators concerned.

by a Secretariat comprising nine staff. One of the principal functions of the Commission is to provide advice and guidelines on compliance with the Ethics Acts to office holders.

96. Complaints may be made by anyone concerning a member of parliament who is also an office holder, concerning an alleged contravention of the disclosure provisions under the 1995 Ethics Act. Complaints must be made in writing and complainants cannot be anonymous.

97. The Standards Commission can appoint an Inquiry Officer to assist it in its consideration as to whether an investigation is warranted (section 6 of the 2001 Act). The Inquiry Officer conducts a preliminary investigation of the complaint. The Ethics Acts give the Inquiry Officer powers to procure the evidence; interview the complainant; confront and interview the person who is the subject of the complaint and to make a statement; request relevant documents and finally to report in writing to the Standards Commission. Such a report would not contain any determinations or findings, but would, if the Commission so requests, include an expression of the opinion of the Inquiry Officer as to whether there is *prima facie* evidence to sustain the complaint.

98. The Commission may also decide to investigate a possible contravention on its own initiative; however, it does not have any power to appoint an Inquiry Officer where it has not received a complaint. The GET was informed that this is considered a critical shortcoming, which *de facto* prevents the Commission from dealing with cases *ex officio* and the Commission, itself, recommended in 2004 that it be granted more powers in this respect. The GET shares the view of the Commission and would strongly suggest that the Irish authorities consider various measures in order to reinforce the investigative possibilities of the Commission. A broad recommendation to that effect has been made below (paragraph 102).

99. Following its investigations, the Commission prepares a report with its findings and suggestions to the Committee on Members' Interests of the relevant house. The Commission itself has no power to decide on measures to be taken, but its report may lead to a motion for a resolution that certain action or actions be taken by that house in relation to the matter (section 28 of the 1995 Act). Section 28 also applies when the Commission has investigated a member who is not an office holder. The possible actions are the same as those described above in respect of members who are not office holders, with the addition that office holders may also risk the withholding of his/her salary.

100. In case the Standards Commission comes to the conclusion that the person subject to investigation may have committed an offence relating to the performance of his/her functions as an office holder, it must prepare and furnish a report in writing to the Director of Public Prosecutions (DPP) for consideration of this Office.

101. In November 2012, the Standards Commission received 388 individual complaints which concerned the alleged failure by one MP to disclose as a registrable interest land which he part-owned abroad. The Commission found that 70 of these complaints were invalid under the provisions of the Ethics Acts as the identity of the complainants was not known. In September 2013, the Commission decided that evidence sufficient to sustain the complaints referred to it was not and would not be available. Accordingly, it decided to discontinue its investigation. In addition, the Commission directly received two complaints on the same matter. As the MP was not an office holder at the time of the alleged contraventions, the complaints were invalid and the complainants were informed that if they wished to pursue the matter, they must complain to the Clerk of Dáil Éireann. No other complaints about MPs' contraventions of the Ethics Acts were received by the Commission in 2011-2013.

102. The GET notes that the main supervision over members' abidance with the parliamentary codes of conduct and the Ethics Acts rests with parliament itself.

Complaints made by members in respect of MPs who are not office holders are to be filed with the Committee on Members' Interests of the Dáil or the equivalent Committee of the Seanad, depending on to which house the MP concerned belongs. In respect of those MPs who are also office holders, the Standards in Public Office Commission is the mechanism for investigating alleged complaints. The GET was informed by the Irish authorities that this divided approach, reflects an interpretation of the constitutional position. Even so, the GET does not find the current division of the supervisory functions very convincing. It would appear that only very few complaints are filed in any of these systems and that one single body, for example, the Standards Commission, would appear well placed to carry out the supervision in respect of all members of both houses and regardless of whether the MPs are office holders or not, if sufficiently resourced. Such a consolidated approach would at least from the view of the wider public appear much clearer. Moreover, a consolidated approach would provide better oversight and have the potential to bring a coherent approach into the decision making. It would also be more convincing for the public that complaints against MPs are not being investigated by other MPs but by an independent body. Furthermore, the GET notes with concern that the current complaints mechanisms do not allow for anonymous complaints and that the Standards Commission is not allowed to appoint investigators without a formal complaint being filed, which *de facto* prevents it from investigating misconduct *ex officio*. Moreover, the GET takes the position that all complaints, whether they lead to decisions of early dismissal, dropped investigations or final decisions should, to the extent possible, be made available to the public. Public scrutiny is already a well-established component in the Irish system; however, that would be further reinforced if all decisions were made public. Finally, the GET believes that a consolidated independent monitoring mechanism needs to be vested with sufficient powers to carry out investigations (including *ex officio*) and possibly to use sanctions. For these reasons, **GRECO recommends that the establishment of a consolidated independent monitoring mechanism be considered in respect of members of parliament, that it be provided with necessary means to investigate complaints as well as to sanction findings of misconduct and that all its decisions, including on the dismissal of cases are given an appropriate level of publicity.**

Advice, training and awareness

103. On their election to Dáil Éireann or Seanad Éireann, members are provided with an introductory handbook on parliamentary practice and procedures. This aims, *inter alia*, at familiarising members of parliament with the Ethics in Public Office Acts 1995 and 2001. The handbook contains a short summary of the main provisions of the Ethics Acts, the Code of Conduct for members and the tax clearance and statutory declaration requirements for members of parliament.

104. Statutory guidelines are prepared by the Committees on Members' Interests for non-office holders and by the Standards Commission for office holders on compliance with the provisions of the Ethics in Public Office Acts 1995 and 2001.

105. Furthermore, the Standards Commission informs office holders in writing upon appointment of their obligations under the Ethics Acts and under the Code of Conduct for Office Holders. Moreover, office holders have a right to seek statutory binding advice as to those obligations in any particular circumstance. At the beginning of each year, the Standards Commission also informs all members of parliament (including the office holders) to provide copies of the forms for Statements of Registrable Interests and to remind them of the guidelines and their right to request advice.

106. In January each year the Minister for Public Expenditure and Reform submits written information to all ministers and the parliamentary office holders to remind them of their annual obligations under the Ethics Acts. In particular, the minister reminds the office holders of their obligation to furnish the (a) annual statement of registrable

interests to the Standards Commission and (b) the statement of additional interests to the Clerk and (c) to lay the annual statement of a special adviser's own interest before the Oireachtas.

107. Furthermore, all departments are required by section 7 of Department of Finance Circular 4/2002[27] to inform each newly appointed office holder of his or her obligations under the Ethics Acts by way of a minute from the head of the department to which the office holder has been appointed. Circular 4/2002 also provides for periodic reminders concerning office holders' ethics obligations.

108. Pursuant to Section 12 of the Ethics Acts, the Committee on Members' Interests of each house and the Standards Commission are to provide advice to individual members and to office holders, on a confidential basis, concerning the Ethics Acts. Members, including office holders are then required to act in accordance with the advice given. The Secretariat of each committee and of the Standards Commission also provide advice to members on an informal basis.

109. Members of Dáil and Seanad Éireann, may seek advice from the Committee on Members' Interests of Dáil or Seanad Éireann (as relevant) according to Section 12 of the Ethics Acts. This is intended to be used as a pre-emptive procedure that Members would use in case of any doubt about a provision of the Ethic Acts. While there is no obligation to seek advice, once such advice is given a member must comply with it. A similar provision exists for an office holder to request advice from the Standards Commission. The GET had some concern that requiring a member to follow advice might chill a member from candidly seeking ethics assistance. That said, the GET was assured that an informal process also exists to seek non-binding advice.

110. The GET notes the numerous measures taken on a regular basis in order to keep members of parliament and office holders aware of the rules and their obligations, such as how to declare interests etc. and the possibility for MPs to seek advice from either the parliamentary committees on members' interests or the Standards Commission, informally or formally. These measures are good examples on how to assist in this respect. It would appear, however, that no particular attention is given to training on the ethics and conduct requirements; how to prevent conflicts of interest and other such topics relating to corruption prevention. Such training appears all the more important considering the complexity of the current normative system and would also be necessary if a new legal framework were to be established. Consequently, **GRECO recommends that the parliamentary authorities provide dedicated regular training for members of parliament on issues such as ethics, conduct in situations of conflicts of interests and corruption prevention**.

[27] Circular 4/2002 -Standards in Public Office Act 2001 http://circulars.gov.ie/pdf/circular/finance/2002/04.pdf.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

111. The Constitution (Article 34.1) provides that "*Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.*" The Constitution also provides that the courts shall comprise of courts of first instance including a High Court and courts of local and limited jurisdiction and a Court of Final Appeal, to be known as the Supreme Court, the president of which is the Chief Justice.

112. Article 35.2 of the Constitution provides that "*All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law*". No individual or body may give any directive in individual cases to judges as to how they may determine a case. All holders of judicial office in Ireland are full-time professional judges: there are no lay judges.

113. As a main rule[28], the courts at each jurisdictional level are courts of general jurisdiction and, generally, judges at each jurisdictional level may be called upon to hear criminal and civil (including family) cases[29]. The High Court operates lists for various categories of litigation (e.g. Chancery, Judicial Review, Commercial, Asylum, Companies Bankruptcy), and judges may be assigned to those lists for particular periods. However, each judge of the High Court may be assigned to try any proceeding within that court's jurisdiction.

114. The Supreme Court currently consists of the Chief Justice and 9 ordinary judges, the President of the High Court being ex-officio a member of the court. The Supreme Court performs the functions of a court of final appeal and has appellate jurisdiction from all decisions of the high court (subject to such exceptions as may be provided for in legislation) and (to the extent provided by legislation) from decisions of other courts. The Court generally sits in rotating three judge panels assigned by the Chief Justice. The Supreme Court also has the function, where a bill passed by the legislature is referred to that court for the purpose, of adjudging whether the bill is or is not repugnant to the Constitution. The Constitution provides that legislation may not exclude from the Supreme Court's jurisdiction cases as to the constitutional validity of any law. When deciding on a question as to the constitutionality of a law, the Supreme Court is required to issue a single judgment, no other opinion being pronounced or disclosed. The Supreme Court, consisting of not less than five judges, determines any issue which may arise as to the permanent incapacity of the President of Ireland.

115. The Court of Criminal Appeal is not specifically mentioned in the Constitution but was created by Act of the Legislature (the Houses of the Oireachtas) and ordinarily consists of three judges, one being a judge of the Supreme Court (the Chief Justice or the latter's nominee) and the others being High Court judges nominated by the Chief Justice, though additional judges of the Supreme Court or High Court may attend where the Chief Justice requests. It has appellate jurisdiction in cases tried on indictment, i.e. from the High Court, the Circuit Court and the Special Criminal Court.

116. An amendment to the Constitution to enable the establishment of a new Court of Appeal as, provided for in the Thirty-third Amendment of the Constitution (Court of Appeal) Act 2013, was approved by the electorate in a referendum on 4 October 2013 and signed into law on 1 November 2013. The new Court of Appeal will be a permanent court which will sit in several divisions, to hear appeals in civil cases and to hear appeals

[28] With the exception of the Special Criminal Court and the Court of Criminal Appeal.
[29] With the exception of the specialist judges of the Circuit Court who are confined in their jurisdiction to adjudicating in certain types of collective personal insolvency proceedings.

in criminal cases, replacing the current Court of Criminal Appeal (see below). It will have capacity to hear all appeals from the High Court (with such exceptions and subject to such regulations as may be prescribed by law), thus hearing the majority of cases now dealt with by the Supreme Court. The establishment of the Court of Appeal will require the enactment of an "Implementation Bill" that will deal with many practical issues in regard to the new court, such as the formal establishment and membership of the Court of Appeal, the appointment of judges, the organisation of the court, and provision for the office of Registrar of the Court among other issues. It is planned that the Court of Appeal will be established during the second half of 2014 and that it will require ten judges (nine ordinary and a president).

117. The High Court consists of a president and 35 ordinary judges. The President of the Circuit Court is ex-officio a member of the court. The High Court has "full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal", and this extends to the question of the validity of any law having regard to the provisions of the constitution. The High Court has exclusive jurisdiction in respect of *habeas corpus* under the constitution, and also has exclusive jurisdiction in judicial review and various specialised areas of law, such as insolvency and Admiralty. The High Court when exercising criminal jurisdiction is known as the Central Criminal Court, may try all cases on indictment (i.e. requiring to be tried before a judge and jury), and has exclusive jurisdiction to try treason, certain subversive offences, murder, attempted murder, conspiracy to murder, rape, aggravated sexual assault and attempted aggravated sexual assault, certain offences against competition law and various offences arising under international conventions incorporated into Irish law. The High Court has appellate jurisdiction in civil cases from the circuit court, by way of a rehearing *de novo*.

118. The courts of local (i.e. territorial) and limited (i.e. limited as to value of claims or seriousness of offences triable) jurisdiction at first instance mandated by the constitution were established by Act of the Legislature, with a right of appeal as determined by law. Legislation has provided for two courts of local and limited jurisdiction, viz. the circuit court and the district court.

119. The Circuit Court is the intermediate first instance jurisdiction. It consists of a president, 37 ordinary judges and six specialist judges. The president of the circuit court is ex-officio a member of the court. The court operates in eight regional circuits, at least ten judges being assigned to the Dublin circuit, three to the Cork circuit, and one judge each to the remaining circuits. The Circuit Court, generally, has a civil jurisdiction in cases involving claims not exceeding €38 000 and a criminal jurisdiction in respect of all offences triable on indictment except those within the exclusive jurisdiction of the High Court, mentioned above. Legislation has been enacted, raising to €75 000 the monetary threshold of the Circuit Court's general civil jurisdiction and €60 000 the monetary threshold in personal injuries actions.

120. The District Court is the lowest first instance jurisdictional tier, being the equivalent of a magistrate's court. It consists of a president and 63 ordinary judges. The court operates locally in 24 districts, one judge being assigned to each district with the exception of the Dublin Metropolitan District (to which the president and 20 judges are assigned) and the Cork District (to which three judges are assigned). The District Court, generally, has a civil jurisdiction in cases involving claims not exceeding €6 300 and a criminal jurisdiction, exercised summarily (i.e. without a jury) in respect of all minor offences which by law are triable (a) only in summary manner, (b) in summary manner at the prosecution's discretion and (c) in summary manner at the accused's election. Legislation has been enacted, and at the time of writing is expected shortly to be commenced in operation, raising to €15 000 the general monetary threshold of the District Court's jurisdiction.

121. The constitution envisages the establishment by legislation of special courts for the trial of offences in cases where it is determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order. In accordance with that provision, a Special Criminal Court was established in 1972 dealing largely, though not exclusively, with offences related to subversive activity and offences associated with organised crime.

122. The constitution also provides for military tribunals (courts-martial) for the trial of offences against military law and to deal with a state of war or armed rebellion.

123. Contrary to the situation in several other member states, Ireland does not have a judicial council. Councils for the judiciary are, in accordance with Council of Europe standards, independent bodies that seek to safeguard the independence of the judiciary and of individual judges in order to promote the efficient functioning of the judiciary[30] in dealing with matters, such as appointments, disciplinary measures and education with the judiciary.

124. The GET was informed that the need for such a structure – a permanent judicial council – has long been recognised in Ireland. Despite a general consensus on the need for a judicial council and strong historical support from major political parties and that it has been described as a legislative priority of the current government, it has not yet materialised. The GET was made aware of the content of the "Judicial Council Bill", indicating that a future council would deal with matters, such as education and training, preparations of guidelines and codes of conduct as well as carrying out disciplinary inquiries. The GET was also informed that pending the introduction of such legislation, in conformity with a decision made at a national conference of the judiciary in November 2011 an interim judicial council was established on a non-statutory basis, consisting of all judges of the courts, tasked with preparing for the establishment of a judicial council on a statutory basis. The board of the interim judicial council was formed by the Chief Justice and presidents of the high court, circuit court and district courts, and a judge from each of those jurisdictions elected by his or her colleagues from the jurisdiction concerned. In light of recent history adverse to the judiciary (see below concerning constitutional safeguards etc.) and reforms suggested in this report, the need for an independent council of the judiciary is manifest; however, when defining precise structures and tasks of such a body the authorities would need broad support from the judiciary itself and the establishment of such a statutory body needs to be accompanied by funding and resources adequate to its functions. **GRECO recommends that, with due expedition, an independent statutory council be established for the judiciary, provided with adequate resources and funding for its organisation and operations.**

Recruitment, career and conditions of service

125. All holders of judicial office in Ireland are full-time professional judges. No judicial office in the superior courts may be held other than on a permanent basis. The Courts of Justice Act 1936 allows for the possibility of temporary appointment of judges to the Circuit and District Courts by the government in situations of temporary absence of a judge of such a court, or an unusual and temporary increase in the workload etc. These provisions for temporary appointment have been held to be constitutionally valid, on the premise that for the duration of any fixed short-term appointment the independence of the appointee would be guaranteed by the constitution. No temporary appointments to the circuit or district courts have been made in recent years.

[30] Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities.

126. All judges of the ordinary courts are appointed by the president of the republic on the advice of the government. The Judicial Appointments Advisory Board (JAAB) was established by statute in 1995, charged with "identifying persons and informing the Government of the suitability of those persons for appointment to judicial office." The JAAB acts on the request of the Minister for Justice and Equality where a judicial office stands vacant or before a vacancy in a judicial office arises. The JAAB consists of the Chief Justice (Chairperson); the presidents of the High Court, Circuit Court and District Court; the Attorney General; a practising barrister nominated by the Chairman of the Bar Council; a practising solicitor nominated by the President of the Law Society of Ireland; and not more than three persons appointed by the Minister for Justice and Equality engaged in or having knowledge or experience of commerce, finance, administration, or persons who have experience as consumers of the service provided by the courts. Non *ex-officio* members are appointed for a period not exceeding three years and are eligible for re-appointment.

127. There are no statutory provisions specifically providing for assessment of integrity of the JAAB as a body. An individual member of the JAAB may be subject to statutory disclosure requirements under the Ethics Acts by virtue of the office they hold, as in the case of the Attorney General. Holders of judicial office are not subject to the Ethics Acts. The secretary to the JAAB – the Chief Executive Officer of the Courts Service – is also subject to the Ethics Acts regime.

128. The JAAB is required to check whether a candidate satisfies the eligibility requirements for the particular judicial office concerned (stipulated years of professional legal practice – 12 years for the supreme court and high court, ten years for circuit and district courts) and may not recommend a person unless those requirements are met. The JAAB may for the purpose of considering candidates for judicial office consult persons (e.g. the legal professional body to which a legal practitioner belongs) concerning the suitability of applicants for judicial office and interview applicants. Furthermore, applicants must complete a standardised detailed application form which includes questions on their practice, qualifications, education, character, etc., outline why they are suitable for judicial office and commit to undertake training or education courses as required by the Chief Justice or the president of the court concerned. Also, Section 22 of the Standards in Public Office Act, 2001, as amended, precludes the JAAB from recommending a person to the Minister for Justice and Equality for appointment to judicial office unless the person has furnished to the JAAB a tax clearance certificate and a declaration that all taxes, interest or penalties have been paid.

129. The JAAB must submit the names of at least seven persons for each position it recommends for appointment (unless less than seven apply) together with particulars of their education, professional qualifications, experience and character. In advising the president on the appointment of a person to judicial office, the government is required firstly to consider persons recommended by the JAAB to the Minister for Justice and Equality for that purpose.

130. The judges of the Special Criminal Court are appointed, and are removable at will, by the government. Persons appointed to the Special Criminal Court under the Offences against the State Act, 1939 are, in practice, drawn from serving judges of the district, circuit or high court. The general approach has been to appoint a replacement to the court from the same court jurisdiction as the outgoing judge. Where a judge is no longer required to serve as a member of the Special Criminal Court, for example, on appointment to the Supreme Court or by resignation from the Special Criminal Court, then the judge can continue to serve as a judge in the appropriate court jurisdiction.

131. The procedure in respect of promotion of judges is less developed than that of selection and recruitment of new judges. It should be noted that judges in Ireland are independent office holders under statute and do not hold office under a contract of

employment – they are not classed as public or civil servants and are not subject to the management and reporting structures, nor do they enjoy incremental salary scales, as applies to public or civil servants. Appointments of serving judges to other judicial offices are made by the President of the Republic on the advice of the government and are not subject to the process conducted by the JAAB. Where the government proposes to advise the President on an appointment to the office of Chief Justice, President of the High Court, President of the Circuit Court or President of the District Court it is to have regard first to the qualifications and suitability of persons who are serving at that time as judges.

132. The GET discussed the current structure for recruitment of judges with various interlocutors, including the judiciary itself, representatives of the executive branch, the Bar, the Law Society, the Prosecution Service, representatives of civil society and media. On the one hand, they all seemed to agree that judges in Ireland ("once on the bench") enjoy much respect for being highly qualified professionals with a high degree of integrity in their work and performance. On the other hand, the current system for recruiting judges is widely perceived as being politicised. In particular, the process under the JAAB has been criticised for being limited to a written procedure and also for the JAAB having to produce too long a list of suitable candidates instead of shortlisting only the best candidates in order of priority. As a result, the current appointments are susceptible to political lobbying and favouritism once the lengthy lists of candidates of at least seven names, but often more (sometimes up to 20 names and in extreme cases more than that) without any order of priority has been submitted to the government. It would appear that the interlocutors of the legal branches agreed that the current selection system under the JAAB needs to be reformed focusing on two major components: i) more rigorous and merit based selection, including interviews leading to ii) a targeted brief shortlist of only the very best candidates in order of priority. Furthermore, the GET noted that the promotion of judges is even more susceptible to political interference as there is no pre-selection at all outside the executive branch in this respect. The GET sees no need to treat such procedures principally different from those concerning new recruitments. It takes the view that reforms of the procedures for recruiting and promoting judges along the lines described above, would serve the purpose of limiting undue influence over these processes. Consequently, **GRECO recommends that the current system for selection, recruitment, promotion and transfers of judges be reviewed with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without improper influence from the executive/political powers**. The GET notes that the composition of the JAAB would appear suitable for a more profound selection procedure; however, such a task could also come under the auspices of a judicial council should such a body be established (as recommended in paragraph 124). Whatever option the Irish authorities will choose eventually, the GET wishes to stress that new procedures for the recruitment and promotion of judges need to be provided with appropriate resources.

133. The mobility (transfers and rotation) of judges within the court to which they are assigned is in the hands of the president of the particular court. In respect of transfers between circuit and district courts, judges - who consent - may be transferred by the government to another circuit or district.

134. The tenure of judges of the Supreme Court and the high court is guaranteed by the constitution. While Supreme Court, high court and circuit court judges retire at the age of 70, district court judges retire at 65. However, a district court judge may be continued in office for successive periods of one year until the age of 70, if allowed by a special warrant. The GET heard criticism in respect of these differences which were described by some as an historical anomaly, heard no justifiable reasons for the discrepancy, and suggests that all judges be subject to the same retirement regime.

135. The constitution provides that a judge of the Supreme Court or the High Court cannot be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by each house of parliament calling for the judge's removal. "Stated misbehaviour" would appear to extend beyond behaviour in the course of one's duties as a judge. In arriving at such a resolution, members of the houses of parliament would be required to act in accordance with the rules of procedural fairness guaranteed by the constitution. Judges of the lower courts have been given by statute tenure equivalent to that of their counterparts in the superior courts.

136. The gross annual salary of judges ranges from €127 234 in respect of a judge at a district court to €202 622 for a judge at the Supreme Court. However, for judges appointed as of 1 January 2012 the equivalent remuneration rates are €114 711 in the District court and €182 895 in the Supreme Court. The annual salaries of the presidents of the respective courts are some €20 000-30 000 higher than the salaries of ordinary judges. Besides coverage for travel and subsistence expenses and a judicial allowance for costs incurred in the carrying-out of their judicial functions, judges do not receive additional benefits.

137. Net judicial remuneration in Ireland has been cut significantly as a result of the recent financial crisis. Previously protected by a constitutional provision that their salaries could not be reduced, judges were initially exempt from a pay reduction which applied to other public officials, and when the judiciary as a whole did not agree to a voluntary cut, a political backlash ensued; the constitutional protection was revoked and amended[31] by public referendum and a series of pay and pension cuts were implemented. The cumulative effect of these measures has been to reduce overall judicial compensation, in some cases by as much as 40-50%, according to judicial representatives. It was explained to the GET that the most immediate impact has been on judges currently serving, many are said to be demoralised following the government's campaign for the referendum, some are under financial stress and they have no longer the same constitutional guarantee against further pay cuts at the same time as the far-going constitutional restraints from receiving any other incomes prevail. Moreover, the new system has introduced salary differences between judges, depending on their entry into the service. These circumstances are bound to have a negative impact on the possibility to recruit top quality judges in the future, according to most interlocutors met by the GET, at the same time as the need to recruit is likely to increase as many serving judges are contemplating leaving the service on early retirement, because of the changed conditions. The GET takes note of the upcoming situation which is particularly difficult in a common law country, such as Ireland, where judges are recruited from the practicing bar, having proven their qualities following decades of successful work and thus entering into the service at a late stage with a rather limited pension vesting period.

138. To sum up, while the GET is fully aware that all public officials in Ireland have experienced pay cuts as a result of the financial crisis, it would appear that the judges have been particularly affected not only in financial terms, but also in respect of their future constitutional guarantees. These measures go beyond the mere financial aspects as they have a principal impact on judicial independence. The GET understood that the lack of a judicial council or other forms of associations on behalf of judges[32], made them particularly fragile during the government campaign for the need to reduce judicial salaries and benefits. This further highlights the need to establish a judicial council as an important link between the judiciary and the executive branch, as recommended in paragraph 124. However, the upcoming situation would also merit further measures aiming at returning to a situation of long-term stability within the judiciary and to

[31] Following the amendment, the judiciary retains the general constitutional protection for their individual protection, but may as a group have their remuneration proportionally reduced when similar groups of public servants have their remuneration reduced in the public interest.

[32] The Association of Judges in Ireland was established in late 2011 to further the profession of judges and to give a collective voice to judges.

reinforcing the respect for, and integrity of, an independent judiciary justifiably proud of its history and similarly able for the future. **GRECO recommends that an appropriate structure be established within the framework of which questions concerning constitutional safeguards of the judiciary in connection with employment conditions are to be examined - in close dialogue with judicial representatives - with a view to maintaining the high levels of judicial integrity and professional quality in the future**.

Case management and procedure

139. The presidents of all courts, or in their absence senior ordinary judges, are empowered to distribute and allocate the various cases having reached the particular court. New cases are listed by date and distributed to judges randomly. Once a case has been allocated to a particular judge and that judge has commenced hearing the case, the judge may not be removed from the case save in the circumstances mentioned below arising on a judicial review or appeal. That said, it is established practice for judges to recuse themselves in a case where they have an interest, see also below (conflict of interests).

140. According to established case law, Irish courts are vested with jurisdiction to (a) ensure that litigation is conducted in a timely and efficient manner so as to secure effective access to the courts (see, e.g. *O'Connor v Nurendale Ltd t/a Panda Waste Services* [2010] IEHC 387 and *Donnellan v Westport Textiles Limited (In Voluntary Liquidation) and Others* [2011] IEHC 11) and (b) dismiss proceedings on grounds of inordinate and inexcusable delay (see. e.g. *Byrne v. The Minister for Defence and Others* [[2005] IEHC 147).

141. Where a case requires priority listing for hearing, an application may be made by any of the parties, in the case of the high court to the judge in charge of the list for the category of litigation concerned or where that judge may not be in a position to accommodate early listing of the case, to the president of the high court, and in the case of the circuit or district court, the judge of the circuit or district concerned.

142. Under section 46 of the Courts and Court Officers Act 2002, as amended by section 55 (a) of the Civil Liability and Courts Act 2004, if a judgment in court proceedings has been reserved and is not delivered before the expiration of two months from the date on which it is reserved, the president of the court concerned shall, as soon as may be after expiration of that two-month period, and the expiration of each subsequent period of two months (if judgment is not delivered first), list the proceedings or cause them to be listed before the judge who reserved judgment therein and give notice in writing to the parties to the proceedings of each date on which the proceedings are listed.

143. The constitution requires that court proceedings be conducted in public save for limited exceptions to be prescribed by law, applications of an urgent nature for relief by way of habeas corpus, bail, prohibition or injunction; matrimonial causes and matters; lunacy and minor matters; proceedings involving the disclosure of a secret manufacturing process etc. (Section 45 of the Courts (Supplemental Provisions) Act 1961). Proceedings concerning family law and child care sexual offences may also be held *in camera*.

Ethical principles, rules of conduct and conflicts of interest

144. Some basic ethical principles are provided for in the constitution: Article 35.2 provides that all judges are independent in the exercise of their judicial functions and subject only to this constitution and the law. Article 34.5. 1 of the constitution provides for an oath to be made by a person appointed as a judge: "*In the presence of Almighty God I, NN, do solemnly and sincerely promise and declare that I will duly and faithfully*

and to the best of my knowledge and power execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me."

145. Standards of conduct for judges are not currently reflected in any formal document. As referred to above (paragraph 124), an interim judicial council was informally established by judges with the aim of paving the way for such a council on a statutory basis. Within this informal framework, a committee on judicial ethics, chaired by a justice of the Supreme Court, has considered the matter of the content of guidelines on judicial conduct and ethics and produced a draft preliminary text to this end.

146. The GET welcomes the moves taken by the judiciary to introduce a code on judicial ethics; work that apparently started already in 2011. The GET also supports the idea to connect the guidelines contained in the draft text to disciplinary measures, all within the framework of a future judicial council. Unfortunately, these measures have been delayed, as it appears, by the slow process for the establishment of a judicial council. In this connection, the GET takes the view that a code of ethics of the judiciary could well be established, if agreed by the judiciary, even in the absence of a judicial council, should that process be further delayed. **GRECO recommends i) that a code of conduct for judges be formally established, including guidance and confidential counselling in respect of conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and ii) connect such an instrument to an accountability mechanism.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

147. The constitution sets forth that judges may not be members of the legislature, or hold any other office or position of emolument. This does not preclude a judge from receiving royalties from books (no paid appointment being involved) or holding honorary offices (an example being an adjunct professorship) or membership of commissions or tribunals not exercising executive or legislative functions provided this does not impose undue strain on the work of his or her court and has the approval of its president. The GET notes that the Irish constitution is strict in terms of accessory activities and remuneration. These issues could well be further developed in a code of conduct as referred to in the previous paragraph.

148. There are no specific rules regulating judges' employment or engagement in other activities after having exercised judicial functions and the GET sees no need, nor legal basis for such measures.

Recusal and routine withdrawal

149. The principles concerning and the circumstances in which a judge should recuse himself/herself are set out in case law[33]. Moreover, it is established practice for judges to recuse themselves in a case where they have an interest, or where there are grounds on which a reasonable person might fear that in respect of the issues involved s/he would not get an independent hearing. Any party to proceedings may apply to a judge to recuse himself/herself where there is an apprehension of objective or subjective bias in the case. Failure by a judge to accede to such an application, where justified, would be grounds for the setting-aside - on an application for judicial review on appeal. The GET acknowledges that there is clear case law for situations of conflicting interests or potential conflicts, which it would be useful to include in a future code of conduct of the judiciary (see

[33] The leading judgment (of the Supreme Court) in *Dublin Wellwoman Centre Ltd & Ors. v Ireland v & Ors.* [[1995] 1 I.L.R.M. 408]

paragraph 146). Guidelines in this respect would bring clarity to the wider public in such matters.

Gifts

150. The GET also notes that there are no specific rules on the acceptance of gifts by judges. The authorities stress that acceptance of a gift as an inducement in relation to the functions of a judge would constitute a criminal offence as well as grounds for proceedings for impeachment. Moreover, the GET did not come across any indication that gifts to judges represented a particular problem in Ireland; however, a clear reference to the prohibition of gifts should be included in the future code of conduct (see recommendation in paragraph 146).

Third party contacts, confidential information

151. There are no specific statutes regulating this area with respect to judges. However, it is well established practice that a judge would not communicate with a third party concerning a case in which s/he is exercising a function. The GET takes note of this important practice and suggests that such practice as well as the handling of confidential information be included in a future code of conduct (see recommendation in paragraph 146).

Declaration of assets, income, liabilities and interests

152. There are no specific requirements, duties or regulations in place for judges and their relatives to submit asset declarations. That said, the authorities underline that where a judge has an interest in a dispute the subject of proceedings which have been listed before him or her, the judge would have an obligation to recuse himself or herself from hearing the proceedings in accordance with the principles enunciated in case law, see above.

153. The GET discussed the advisability of introducing mandatory asset declarations with representatives of the judiciary. While it received no opposition in principle to such a measure, it also notes that the judiciary is strictly regulated in respect of accessory activities and the like under the Constitution and also one of the most trusted state institutions in Ireland, the GET sees no immediate need to introduce mandatory asset declarations. Having said that, such a measure could well be considered when constitutional safeguards of the judiciary and employment conditions are being dealt with, see paragraph 138.

Supervision and enforcement

154. There is no special regime to supervise judges in their performance. As mentioned above, any party to proceedings may apply to a judge to recuse himself/herself where there is an apprehension of objective or subjective bias in the case. Moreover, accusations against judges may be dealt with by the presidents of the courts.

155. Judges are, like any other person, criminally liable. There are no immunities or special procedures for judges under Irish law in relation to prosecution for criminal offences. As regards the applicability of corruption offences, judges are included in the definition of "public official" for the purposes of the corruption in office offence in section 8 of the Prevention of Corruption (Amendment) Act 2001 in addition to being liable for prosecution for the general active and passive corruption offences under section 1 of the Prevention of Corruption Act, 1906 (as amended by section 2 of the Prevention of Corruption (Amendment) Act, 2001 and section 2 of the Prevention of Corruption (Amendment) Act 2010.

156. The GET's interviews with judges at all four court levels confirm the judiciary's mindfulness of the need to establish a judicial council as a necessary link between the judiciary and other powers of the state. Such a body which, according to information provided to the GET, should not only be tasked to develop guidelines and codes of conduct but also to act in order to enforce such rules. The GET has already expressed its view in this report as to the need for establishing such a council; it wishes to add that the current situation with no form of disciplinary body of the judiciary may lead to a perception that judges are incapable of investigating and policing themselves for misconduct short of an impeachable offence, wary of a uniform code of conduct. However, the GET found the opposite to be true. Judges in Ireland want clear guidelines to govern their conduct to be accompanied by a transparent process to investigate and adjudicate allegations of misconduct. The GET agrees with such a need and has already made a recommendation for the establishment of a judicial council, tasked with such functions, see paragraph 124.

Advice, training and awareness

157. No individual or body may give any directive in individual cases to judges as to how they may determine a case. A procedure known as the case stated procedure enables a judge from a lower court in certain circumstances to seek advice - a ruling from a higher court – at a formal hearing conducted *inter partes* - on a discrete point of law relevant to the case being dealt with at first instance.

158. Currently, judicial education is overseen by a Committee on Judicial Studies chaired by the Chief Justice and consisting of the presidents of the various jurisdictions and other members of the judiciary nominated for the purpose. Judicial education encompasses induction as well as continuing education.

159. As regards *induction training, e*ach new appointee to judicial office is provided with briefing material which includes a copy of the Bangalore Principles of Judicial Conduct and United Nations-authored material on judicial ethics and standards of conduct. Under the auspices of the Committee on Judicial Induction and Mentoring (CJIM), chaired by the Chief Justice, each new appointee is assigned a judicial colleague as mentor who is tasked to provide guidance and advice to the new judge on matters including judicial ethics and standards in the first three months after the new judge's appointment, and to be available to give advice when needed during the course of the first 12 months after appointment. The judicial mentors have themselves received training for the purpose, including on the subject of ethics and standards.

160. The GET understood that there is no formalised *in-service training*. Judges are sporadically invited to education/training sessions at various conferences. Interlocutors mentioned that one such event was organised in 2013 by a high court judge at the district court judges' conference in 2013.

161. While the induction training appears to be based on a good mix of education and mentorship, the GET notes that in-service training of judges has no formal structure at all. It learned during discussions with representatives of the judiciary that the more recent attempts to institutionalise training have not been accompanied by any dedicated funding and the current Committee on Judicial Studies, directly led by the Chief Justice, was only assisted by one temporary staff member. The GET understood that these attempts were no more than first initiatives to be developed within the framework of a judicial council, should that be established. The GET welcomes the efforts made in respect of induction training but wishes to stress that further measures are required to institutionalise training and, above all, to provide adequate resources and funding. **GRECO recommends that dedicated induction and in-service training for judges be institutionalised and adequately resourced, while respecting the independence of the judiciary.**

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

162. The prosecution system in Ireland is grounded in the constitution and in statutory law, most notably the Prosecution of Offences Act, 1974. All crimes and offences prosecuted in any court, other than a court of summary jurisdiction, shall be prosecuted in the name of the people and at the suit of the Attorney General or some other person authorised in accordance with law to act for that purpose. The Act of 1974 established the Director of Public Prosecutions (DPP) as the officer so authorised. A member of the Garda Síochána (national police) may institute and conduct prosecutions in a court of summary jurisdiction, but only in the name of and in compliance with any directions issued by the DPP.

163. The Director of Public Prosecutions independently enforces the criminal law in the courts. To this end the DPP directs and supervises public prosecutions on indictment in the courts and gives general direction and advice to the Garda Síochána in relation to summary cases and specific direction in such cases where requested. The DPP decides whether to charge people with criminal offences, and what the charges should be. The Office has defined its mission as *"To provide on behalf of the People of Ireland a prosecution service that is independent, fair and effective".*

164. In 2001, following a report of an independent study group, a division headed by the Chief Prosecution Solicitor was established within the Office and under the Director's control, to provide solicitor services. Prosecutors in Ireland, attached to the Office of the DPP, are members of the civil service and as such, they are subject to the terms and conditions, legislation, codes of conduct and disciplinary code as apply to all civil servants. The vast majority of the prosecutors in the DPP are solicitors and are also subject to the code of conduct of and are regulated by the Law Society. All cases on indictment are prosecuted by independent barristers who are subject to the code of conduct and regulated by the Bar Council. In addition, the DPP has issued a number of publications, including Guidelines for Prosecutors[34], a Code of Ethics for Prosecutors[35], Strategy Statements[36] and Annual reports[37].

165. The Director of Public Prosecutions has no investigative function, the investigation of criminal offences in Ireland being, primarily, the function of the Garda Síochána. Other specialist agencies such as the Office of the Director of Corporate Enforcement and the Competition Authority have both investigative and summary prosecution roles in relation to offences within their areas of competence.

166. The Office of the Director of Public Prosecutions is not part of the judicial branch. The Director is, by virtue of statute, independent in the performance of the functions of the DPP. Section 6 of the Act of 1974 underscores that independence by making it unlawful for persons other than defendants or complainants in criminal proceedings, or persons likely to be defendants, or their legal or medical advisers, members of their family or social workers, to communicate with the DPP officers for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.

167. The sole power to prosecute on indictment rests with the DPP (apart from cases still dealt with by the Attorney General[38]). The Office of the Director of Public

[34] http://www.dppireland.ie/filestore/documents/GUIDELINES_-_Revised_NOV_2010_eng.pdf
[35] http://www.dppireland.ie/filestore/documents/Code_of_Ethics_ENG.pdf
[36] http://www.dppireland.ie/filestore/documents/Strategy_Statement_2013-2015_[Eng].pdf
[37] http://www.dppireland.ie/filestore/documents/AR_2012_[eng].pdf
[38] Note sections 3 (5) and 5 of the POA 1974, - the Attorney General now prosecutes only sea pollution and dumping at sea cases.

Prosecutions consists of two legal divisions, the directing division and the solicitors' division. There is also an administration division that provides the organisational, infrastructural, administrative and information services required by the office. Currently, there are some 185 permanent staff in the office of the DPP.

168. The Directing Division comprises a small number of professional officers, both barristers and solicitors, whose principal function is to make submissions to the director, to take decisions in relation to the initiation or continuation of criminal prosecutions and to give ongoing instructions and directions to the Solicitors' Division, local State Solicitors and counsel regarding the conduct of criminal proceedings. These professional officers are divided into three units, each led by a unit head. A unit head, the head of the directing division, the Deputy Director or the Director are entitled to validate or invalidate decisions of professional officers. Members of the Garda Síochána or victims of a crime may seek, and will usually receive, a review on any decision not to prosecute a professional officer.

169. The work of appearing for the director in court is carried out either by the full-time legal staff in the Solicitors' Division in Dublin, or by the local State Solicitors in courts outside Dublin. The Solicitors' Division is headed by the Chief Prosecution Solicitor, who acts as solicitor to the -Director, and is staffed by solicitors and legal executives. The conduct of trials on indictment is handled by barristers who are nominated by the director on a case by case basis and prosecute in accordance with the director's instructions.

170. Most summary prosecutions brought in the district court are brought in the name of the director. In practice the great majority are presented by officers of the Garda Síochána without specific reference to the director's office, except in cases where Gardai seek or are required by general direction to seek, a direction. The institution and carriage of such prosecutions are monitored generally by senior members of the Garda Síochána. The director may assume the conduct of a prosecution instituted by a member of the Garda Síochána at any time.

171. In addition there are specialised investigating authorities in relation to certain particular categories of crime, including the Competition Authority, the investigation branch of the Revenue Commissioners, the Health and Safety Authority and the Office of Director of Corporate Enforcement, who retain power to prosecute summary offences within their functional area.

172. The GET met with the representatives of the DPP in the headquarters of this constitutionally independent state institution and was generally impressed with its clear organisational structure and dedicated staff.

Recruitment, career and conditions of service

173. The Director of Public Prosecutions (DPP) is a civil servant in the civil service of the State who is appointed by the government from a selection of candidates recommended to the government by a statutory committee, consisting of the Chief Justice, the Chairman of the General Council of the Bar of Ireland, the President of the Law Society, the Secretary to the Government and the Director General of the Office of the Attorney General.[39] Tenure is a matter to be determined by the government on appointment, the current office holder being on a 10-year non-renewable term. All other prosecutors, although not civil servants, are appointed to the office under the rules applying to civil servants on permanent contract subject to an upper retirement age. State solicitors are currently appointed by the director, on the basis of a ten-year, renewable, contract for services.

[39] Section 2 of the Prosecution of all offences act, 1974.

174. The Director is responsible for the appointment and promotion of prosecutors, however, the office is assisted by the Public Appointments Service to ensure independence and probity in the recruitment process. Recruitment is carried out in accordance with the Codes of Practice established by the Commission for Public Service Appointments. The director is responsible for the dismissal of prosecutors at the grade of principal officer and above, while the deputy director is responsible for dismissal of prosecutors of a lower grade.

175. Once it has been determined that a candidate be considered for appointment to the prosecution service, a comprehensive background check into such issues as integrity/propriety is conducted by the Garda Síochána. Officers appointed to interview boards are selected both from the Office, who themselves will have gone through a similar selection process, and independent experts recommended by the Public Appointments Service.

176. The general conditions of service of civil servants apply equally to prosecutors within the office and salary scales equate with similar ranks across the civil service. Currently, prosecution solicitors' salaries range from €31 928 to €76 224. Senior prosecutors, who are the managers in the solicitors' division, are on a salary range from €81 080 to €103 976. Officers assigned to the directing division, whose function is to take decisions in relation to the initiation or continuation of criminal prosecutions and to give ongoing instructions and directions regarding their conduct, includes some prosecutors holding higher rank. Their pay scales range from €65 000 to €143 535. Salaries increase annually at an incremental rate and identifying a particular prosecutor's point on either scale will depend on many variables, including experience, years of service, level of qualification etc. The gross annual salary of the Director of Public Prosecutions equates with that of a secretary general of a department of state, grade 3, and is currently €176 350. There are no additional benefits that accrue to prosecutors except a pension scheme, which applies equally to all officers in the civil service.

Case management and procedure

177. All new cases, except certain categories of minor cases which are subject to delegated authority, are initially assigned to the directing division. A senior officer in that division assigns each case to an individual professional officer on the basis of experience, specialist expertise and current caseload. Where a prosecution is to be taken, the case will be transferred to the Solicitors Division, which is divided into six separate sections on the basis of functionality and expertise. Each section has a head, who will assign cases to an officer within his/her section on the basis of experience, specialist expertise and current caseload. No officer will be assigned a case where there is potential for a conflict of interest.

178. The director, or a senior member of staff, would be entitled to remove a prosecutor from a case in circumstances such as the identification of potential conflicts of interest, incompetence, in compliance with the office mobility strategy, or in the interests of a fair division of work load.

179. There is a computer management model in place, which tracks all files received in the office, designed to alert management to potential undue delay. There is also a secondary structure calculated to identify potential delays in replies to requests for information from external agencies, which includes an escalation procedure.

Ethical principles, rules of conduct and conflicts of interest

180. All prosecutors are to meet the obligations under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001. Requirements include the provision of an annual disclosure of any interests which could influence them in the performance of

their official duties. Their terms and conditions of employment also require that they avoid conflicts of interest which might be inconsistent with their official positions or interfere with the performance of their work.

181. Furthermore, the Civil Service Code of Standards and Behaviour[40], issued by the Minister for Finance pursuant to section 10 (3) of the Act of 2001, details the standards of integrity required, addressing issues such as improper influence, conflict of interest, rules regarding the acceptance of gifts etc. Non-adherence to the code is subject to disciplinary action in accordance with the Civil Service Disciplinary Code[41]

182. Chapter 3 of the Guidelines for Prosecutors contains the Code of Ethics and includes particular sections on independence, responsibility, integrity and competence.

183. The GET was pleased to note that the prosecutors in Ireland are guided by detailed legislation and codes of conduct which apply throughout the civil service. In addition, they are guided by complementary guidelines specifically targeting their functions in the prosecution service. The GET found this framework to be exemplarily clear and precise (further details described below).

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

184. In addition to the provisions of the Code of Ethics for Prosecutors, the Civil Service Code of Standards and Behaviour provides at Para 14.1 that *"Civil servants may not at any time engage in, or be connected with, any outside business or activity which would in any way conflict with the interests of their Departments/Offices, or be inconsistent with their official positions, or tend to impair their ability to carry out their duties as civil servants. For this reason, civil servants intending to be engaged in or connected with any outside business or employment should inform their Personnel/Human Resources Management Section of such an intention. Whole-time civil servants whose duties are of a professional character (e.g. doctors, engineers, architects, veterinary surgeons, solicitors, etc.) must not engage in private practice in their professions. Any case in which the propriety of undertaking a particular business or occupation could reasonably be open to question must be referred by the civil servant concerned to the Secretary General or Head of Office".*

185. Paragraph 20 of the Civil Service Code of Standards and Behaviour, outlines restrictions on post-employment activities in respect of all civil servants, outside appointments as well as concerning post-employment engagements. There are no regulations that would prohibit prosecutors from being employed in certain posts/functions, or engaging in other paid or unpaid activities after exercising a prosecutorial function; however, the GET did not come across any practical concerns in this respect.

Recusal and routine withdrawal

186. Paragraph 1.7 (n) of the Code of Ethics requires that prosecutors disqualify themselves from participating in any prosecution in which they are unable to act impartially or in which it may appear to a reasonable observer that such is the case. It is stated in the code that such proceedings include, but are not limited to, instances where the prosecutor has actual bias or prejudice concerning an accused, complainant or witness; has previously served as a lawyer for another party, or was a material witness, in the prosecution; where a member of the prosecutor's family has an interest in the

[40] http://hr.per.gov.ie/files/2011/06/Civil-Service-Code-of-Standards-and-Behaviour.pdf
[41] http://hr.per.gov.ie/files/2011/04/Disciplinary-Code.pdf

outcome of a prosecution; or where a person, who is connected with the prosecutor, has an interest in the outcome of the prosecution of which the prosecutor has actual knowledge.

187. According to the same code a prosecutor is obliged to bring to the attention of the director any circumstances which might reasonably lead a member of the public or party having an interest in a case to perceive any conflict of interest or lack of impartiality on the part of the prosecutor.

Gifts

188. Paragraph 1.7 of the Code of Ethics for Prosecutors requires, *inter alia*, that prosecutors "*must not accept any gift, prize, loan, favour, inducement, hospitality or other benefit in relation to anything done or to be done or omitted to be done in connection with the performance of their duties or which may be seen to compromise their integrity, fairness or independence. A prosecutor may, subject to law and to any legal requirements of public disclosure, receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit could not reasonably be perceived as intended to influence the prosecutor in the performance of his or her duties or otherwise give rise to an appearance of partiality".*

189. In addition, the acceptance of a gift as an inducement in relation to a case in which a prosecutor was exercising a function would constitute a criminal offence.

Third party contacts, confidential information

190. Paragraph 1.7 of the Code of Ethics for Prosecutors requires, *inter alia*, that prosecutors have to avoid impropriety and the appearance of impropriety and avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality (d); that not allow the prosecutor's family, social or other relationships improperly to influence the prosecutor's conduct as a prosecutor (g); not use or lend the prestige of their position as prosecutors to advance their private interests or those of a member of their family or of anyone else, nor shall prosecutors convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of their duties (h); not knowingly permit any person subject to the prosecutor's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions; and carry out their functions honestly, fairly, consistently impartially and objectively and without fear, favour, bias or prejudice (k).

191. Paragraph 1.7 (j) of the Code of Ethics stipulates that prosecutors shall not use or disclose confidential information acquired in their capacity as a prosecutor for any purpose unconnected with the performance of their duty or the needs of justice. Moreover, a breach of the Official Secrets Act 1963 constitutes a criminal offence.

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

192. All prosecutors, attached to the Office of the DDP, by being subject to the same obligations as civil servants must meet the requirements under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001. This includes submitting statements of interests for the purpose of Section 18 of this law. To this end, prosecutors are obliged to state any interest (but not the value) held by him/her as well as by his/her spouse, children who could materially influence the performance of his/her functions. There is a special form to be filled in, which covers the following items: occupational income, shares, directorships, land, travel, accommodation, meals etc, public service

contracts, gifts, property and service and other interests. The form is accompanied by explanatory notes.

193. The GET notes in this respect that the rules on asset declarations are weak in the following respects; there is no requirement to disclose quantitative data about the various interests, liabilities and potential interests such as offers of remunerated/non-remunerated activities and agreements for future activities/interests are not to be declared. The rules could well be strengthened in these respects; however, as these rules on asset declarations are not particularly designed for prosecutors but to the civil service in general, this matter ought to be addressed in a such a context. Consequently, the GET sees no need to single out prosecutors in this respect.

Supervision and enforcement

194. As a starting point, in Ireland, prosecutors are, like any other person, criminally liable for their actions. There are no immunities or special procedures for prosecutors under Irish law in relation to prosecution for criminal offences. Prosecutors are included in the definition of "public official" for the purpose of corruption offences.

195. The supervision of the implementation of the Ethics Acts or the Civil Service Code, as far as the prosecution service is concerned, applies in respect of all prosecutors holding a delegated ability to direct the initiation or course of a prosecution ("designated positions"). Non-compliance with these instruments would be considered a matter to be dealt with under the Civil Service Disciplinary Code; the Standards in Public Office Commission is to investigate such matters and draw up a report of its investigation that will be furnished to the relevant public body. If the commission determines that there was a contravention and that the contravention was a serious matter, the report will be laid before parliament. A public body in receipt of such a report may take appropriate disciplinary action.

196. All other disciplinary proceedings against prosecutors are under the responsibility of the Director of Public Prosecutions, or where appropriate the Deputy Director of Public Prosecutions, following the procedures as set out by the Civil Service Disciplinary Code.

197. The Civil Service Disciplinary Code provides for a range of disciplinary actions as follows:

- formal written notes
- deferral of an increment
- debarment from competitions or promotion for a specified period of time
- transfer to another office or division
- withdrawal of concessions or allowances
- reduction in remuneration, withholding of an increment
- downgrading
- suspension without pay
- dismissal.

198. Complaints against prosecutors' conduct are to be addressed to the DPP. To this end, the DPP has included in its website clear instructions aimed at the general public on how to file complaints against the Prosecution Service in case it does not meet expectations. Furthermore, descriptions aimed at the general public concerning the procedures within the DPP are also available on-line.

199. There is no dedicated internal department of the DPP to deal with complaints against prosecutors. In the current system, such complaints are, as a main rule, to be addressed by the prosecutor who delivered the service complained of and, subsequently, within his/her hierarchy. In October 2012, the DPP issued an internal policy document on a pilot basis concerning the handling of such complaints. This policy was reviewed in

May 2013 and is currently in operation. It follows, *inter alia*, from the policy document that complaints are to be registered and dealt with by the division concerned (where the alleged problem occurred) and that the Private Office of the DPP and the Communication and Development Unit (CDU) of the Administration Division are to be kept informed of incoming complaints. Moreover, the CDU is to co-ordinate the handling of the complaints, monitoring its logging etc. The GET welcomes the guidelines issued as a means of consolidating this somewhat scattered structure. That said, the GET also notes with some concern that the current mechanism implies that the actual dealing with complaints most often are under the responsibility of the prosecutor (in consultation with the line manager) involved in the matter complained of.

200. Statistics about complaints filed with the DPP are available as of 2013 (i.e. from the date of the application of the complaints policy referred to above). It follows from a document, submitted to the GET after the visit, that in 2013 the DPP received six complaints, that these were dealt with by six lawyers, that acknowledgements were issued in respect of two complaints, that all complainants have received final responses within a time period of 5-12 working days. The GET believes that these statistics could well be more developed, in particular, to include brief descriptions of the substance of the complaints and the reasons for the decisions of the DPP.

201. To sum up, the GET has already commended Ireland for having put in place detailed legislation, codes of conduct for the civil service, also applicable to prosecutors, and particular guidelines for prosecutors. In the light of this well-developed body of provisions, the monitoring mechanism within the DPP for their implementation needs to be considerably enhanced. The GET takes the view that it would be preferable if a more independent structure within the DPP or, ultimately, an external mechanism for dealing with complaints against prosecutors were to be established in order to avoid that the processing of complaints are handled by the same person who was involved in the matter complained of.

202. In view of the above, **GRECO recommends that the policy for handling complaints against the Prosecution Service be enhanced with a view to i) establishing more independent processing of matters concerning the integrity and ethical conduct of prosecutors and ii) further developing the statistics concerning such complaints.**

Advice, training and awareness

203. Prosecutors can request advice on ethical conduct, including in situations concerning conflicts of interests and related issues from the office of the DPP.

204. The Office of the DPP has a dedicated training unit, led by a training officer of the DPP, which organises induction training for new staff as well as in-service training on a regular basis.

205. As part of induction training, all new staff receive training in relation to the Civil Service Code of Standards and Behaviour, Civil Service Regulations Acts, Official Secrets Act, Standards in Public Office Act, Ethics in Public Office Act, Freedom of Information Act, Data Protection. New staff are also informed about confidential information held by the office and accountability. This training is provided on an annual basis.

206. In addition, in-service training has been regularly organised and over recent years has dealt with special topics such as various forms of economic crime, fraud and corruption. It has also covered topics such as good governance and public procurement as well as international instruments and domestic legislation relating to prosecutors and prosecution of crime as well as the induction topics on ethics referred to above.

207. The authorities also refer to the issuing of notices and directives by the director, concerning sensitive matters, such as information sharing and access to personal information as a complement to the in-service training.

208. The GET welcomes the fact that the DPP has developed dedicated and structured training on a regular basis covering pertinent issues of the Prosecution Service, including measures aiming at fostering ethical conduct and prevention of corruption.

VI. RECOMMENDATIONS AND FOLLOW-UP

209. In view of the findings of the present report, GRECO addresses the following recommendations to Ireland:

Regarding members of parliament

i) **that the existing ethics framework be replaced with a uniform and consolidated values-based normative framework encompassing the ethical conduct of members of parliament - including their staff as appropriate - covering various situations of conflicts of interest (gifts and other advantages, third party contacts including lobbyists, accessory activities and post-employment situations etc.) with the aim of providing clear rules concerning their expected conduct** (paragraph 50);

ii) **that the authorities clarify the scope of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 so as to ensure that the protections and encouragement for whistleblowers contained in the Protected Disclosures Act 2014 are fully understood and implemented** (paragraph 73);

iii) **that the existing regime on asset declarations be enhanced by i) extending the obligations upon all members of parliament to disclose their interests to include quantitative data on their significant financial and economic involvements as well as in respect of significant liabilities; and ii) that consideration be given to widening the scope of members' declarations to also include close or connected persons, in line with the existing rules for office holders** (paragraph 81);

iv) **that the establishment of a consolidated independent monitoring mechanism be considered in respect of members of parliament, that it be provided with necessary means to investigate complaints as well as to sanction findings of misconduct and that all its decisions, including on the dismissal of cases are given an appropriate level of publicity** (paragraph 102);

v) **that the parliamentary authorities provide dedicated regular training for members of parliament on issues such as ethics, conduct in situations of conflicts of interests and corruption prevention** (paragraph 110);

Regarding judges

vi) **that, with due expedition, an independent statutory council be established for the judiciary, provided with adequate resources and funding for its organisation and operations** (paragraph 124);

vii) **that the current system for selection, recruitment, promotion and transfers of judges be reviewed with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without improper influence from the executive/political powers** (paragraph 132);

viii) **that an appropriate structure be established within the framework of which questions concerning constitutional safeguards of the judiciary in connection with employment conditions are to be examined - in close dialogue with judicial representatives - with a view to maintaining the high levels of judicial integrity and professional quality in the future** (paragraph 138);

ix) **i) that a code of conduct for judges be formally established, including guidance and confidential counselling in respect of conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and ii) connect such an instrument to an accountability mechanism** (paragraph 146);

x) **that dedicated induction and in-service training for judges be institutionalised and adequately resourced, while respecting the independence of the judiciary** (paragraph 161);

Regarding prosecutors

xi) **that the policy for handling complaints against the Prosecution Service be enhanced with a view to i) establishing more independent processing of matters concerning the integrity and ethical conduct of prosecutors and ii) further developing the statistics concerning such complaints** (paragraph 202).

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

211. GRECO invites the authorities of Ireland to authorise, at their earliest convenience, the publication of this report and to make it 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.