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Codes of conduct for public officials

GRECO findings & recommendations

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Executive Summary

At the request of the National Anti-Corruption Agency of Italy (Autorità Nazionale Anti-Corruzione), this study provides information on GRECO's findings and recommendations relating to the development of codes of conduct for public officials (including, in some cases, elected and/or appointed officials). Starting from the provisions of Committee of Ministers' Recommendation No. R (2000) 10 on codes of conduct for public officials, including a Model code of conduct for public officials and its Explanatory Memorandum, the study reflects GRECO's findings and recommendations during its evaluation rounds, with particular references to the codes of conduct for public officials (GRECO's Second Evaluation Round) and, to a lesser extent, elected and/or appointed officials (GRECO's Fourth Evaluation Round as regards Members of Parliament and Fifth Evaluation Round as regards central governments, including top executive functions). This study does not cover comprehensively codes of conduct for judges and prosecutors (GRECO's Fourth Evaluation Round) and law enforcement agencies (GRECO's Fifth Evaluation Round). However, when the author deems it relevant, for example, because a specific report marks a new positive development, appropriate references are made.¹

¹ The author is extremely thankful to Dr. Stefano Silingardi, PhD. (University Bocconi); Adjunct Professor, (University of Modena) for the excellent research activities carried out in preparation of the present report.

1. Introduction

To prevent and combat corruption, the Council of Europe adopted a number of multifaceted legal instruments, including:

- The Criminal Law Convention on Corruption (ETS 173)
- The Civil Law Convention on Corruption (ETS 174)
- The Additional Protocol to the Criminal Law Convention on Corruption (ETS 191)
- The Twenty Guiding Principles against Corruption (Resolution (97) 24)
- The Recommendation on Codes of Conduct for Public Officials (Recommendation No. R (2000) 10) and
- The Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (Recommendation Rec(2003)4)

The Council of Europe also created a monitoring body – the Group of States against Corruption (GRECO) – which monitors compliance with and effective implementation of the Organisation’s anti-corruption standards, through a process of mutual evaluation and peer pressure.

Applying even-handedly a consistent and structured methodology, GRECO adopted in-depth, evaluation, compliance, and ad hoc reports in respect of its 49 member States.

GRECO’s first evaluation round (2000-2002) dealt with the independence, specialisation and means of national bodies engaged in the prevention and fight against corruption. It also dealt with the extent and scope of immunities of public officials from arrest, prosecution, etc.

The second evaluation round (2003-2006) focused on the identification, seizure and confiscation of corruption proceeds, the prevention and detection of corruption in public administration and the prevention of legal persons (corporations, etc) from being used as shields for corruption.

The third evaluation round (launched in 2007) addresses the incriminations provided for in the Criminal Law Convention on Corruption and the transparency of party funding.

The fourth evaluation round (launched in 2012) concentrates on the prevention of corruption in respect of members of parliament, judges and prosecutors.

The fifth evaluation round (launched in 2017) aims at preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies.

At the request of the National Anti-Corruption Agency of Italy (Autorità Nazionale Anti-Corruzione), GRECO Secretariat agreed to provide it with information on the development of code of conducts for public officials. To this end, an independent study was commissioned in October 2018 to the author. This report represents the outcome of the author’s independent study of the findings and recommendations contained in GRECO’s evaluation

reports specifically on codes of conduct for public officials and related issues, against the background of Committee of Ministers' Recommendation No. R(2000)10 on codes of conduct for public officials and its explanatory memorandum. This study focuses specifically on codes of conduct for public officials (GRECO's Second Evaluation Round) and, to a lesser extent, elected and/or appointed officials (GRECO's Fourth Evaluation Round as regards Members of Parliament and Fifth Evaluation Round as regards top executive functions).

This study does not cover comprehensively codes of conduct for judges and prosecutors (GRECO's Fourth Evaluation Round) and/or law enforcement agencies (GRECO's Fifth Evaluation Round). However, when the author finds that specific reports mark a new positive development, references to the GRECO's Fourth and Fifth Evaluation Rounds are made.

The **structure** of the report's remaining parts follows the common framework of the evaluation and compliance reports published by GRECO. It therefore starts by examining GRECO's main findings on ethical principles and rules of conduct for public officials (Section 2). Section 3 addresses the issue of training of public officials at all levels on anti-corruption policies with a view to raising their awareness and knowledge of such policies. Section 4 offers a detailed summary of States' practices on the actions taken to comply with GRECO's recommendations on conflict of interest. The focus is on the existence of sound, precise and enforceable rules. Section 5 illustrates GRECO's assessment of what its members have done to comply with Article 14 of Recommendation No. R(2000) 10 on the issue of declaration of assets, income, liabilities and interests. Section 6 analyses GRECO's main findings on the existence and application of a consistent and robust framework on gifts which would *inter alia* protect the impartiality of the public office holder concerned as well as institutional reputation. Finally, Section 7 deals with GRECO evaluations on supervision (most frequently used to refer to the role played by regulators in monitoring the activities of public officials and persons entrusted with top executive functions) and enforcement to ensure the effectiveness of the different standards embodied in Recommendation No. R(2000) 10.

2. Ethical Principles and Rules of Conduct

According to GRECO, codes of conducts are not meant to replace existing legislation. The fact that ethical standards of conduct for public officials may be a patchwork composed of a range of different legal acts creates a requirement to assess which set of standards apply and/or which prevails over the other and often bears the risk of diverging definitions, confusion and lack of clarity as to which text applies. Thus, GRECO frequently recommended the development of standards of conduct in a single text. It also recommended that members further develop such provisions, and complement, clarify and provide guidance, including concrete examples, of situations which may give rise to controversies or conflicting interests.²

More specifically, GRECO recommended establishing model codes for the development of consistent standards of ethical behaviour throughout public administration.³ The concept of “public administration” covers public employees/officials, including civil servants, and reference has been made in specific cases also to managers and consultants of the public administration.⁴ Codes of conduct should be drafted with specific provisions and be applied both at state and local level. In one case, GRECO emphasized that local and regional authorities should also establish Codes of Ethics for all public officials of municipalities and higher territorial units as well as for elected public officials of local self-governments.⁵

A good practice has been identified with respect to the “Code of ethical behaviour of the members of Parliament”, which was adopted at the 47th plenary session of the Assembly of “the former Yugoslav Republic of Macedonia” (now North Macedonia), held on 11 June 2018. GRECO stressed that “the Code requires that all MPs [Members of Parliament] shall explicit commit themselves, by signature, to complying with the code. Such a “good practice” could inspire other GRECO members seeking to complement their own mechanisms.⁶

Ratione materiae, in order for them to be meaningful tools, it is key that Codes of Conduct provide clear guidance on the prevention of conflicts of interest and on related issues, such as the acceptance of gifts and other advantages, incompatibilities, secondary activities and financial interests, misuse of information and public resources, the obligation to disclose outside ties and contacts with third parties, and rules for reporting suspicions of corruption.⁷ With regard to Codes of Conduct applicable to persons entrusted with top executive functions (in particular, ministers, civil servants involved in decision-making and political advisers), they should describe the conduct expected of them during the government

² See for example: Second Round Evaluation Report in respect of the [Russian Federation](#) §292; Fourth Round Evaluation Report in respect of [Turkey](#) §57, [Cyprus](#) §52, [Armenia](#) §43, [Portugal](#) §47, [Slovenia](#) §44, [Ireland](#) §50, [Sweden](#) §46 and the [Czech Republic](#) §42.

³ Second Evaluation Report, Sweden §62

⁴ Ibid., [Italy](#) §150, recommendation xiv

⁵ Ibid., [Slovak Republic](#) §51, recommendation xi

⁶ Second Compliance Report related to the Fourth Round Evaluation Report in Respect of “[the former Yugoslav Republic of Macedonia](#)”, §10

⁷ See Fourth Round Evaluation Report in respect of “[the former Yugoslav Republic of Macedonia](#)” §35, [Moldova](#) §32, [Sweden](#) §46, [Georgia](#) good practice, §38, [Finland](#) §37 and [Denmark](#) §40.

decision-making process, and deal with topical issues such as: conflicts of interest; gifts and contacts with third parties/lobbyists aimed at influencing government policies or bills; post-employment restrictions with a view to avoiding that the prospect of future employment in the private sector taints the taking of decisions, etc.⁸

It is also important to ensure the effectiveness of these standards through adequate monitoring and enforcement.⁹ In one case, with regard to Members of Parliament, GRECO noted that, “while publicity of eventual breaches is a valuable measure, it can prove to be insufficient, in terms of not only its dissuasiveness vis-à-vis potential infringers, but also the perception given to the public as to the effectiveness of the enforcement regime of the integrity policy in- house, particularly, in relation to more serious cases of parliamentary misconduct (including regarding financial disclosure obligations)”.¹⁰ Against this background, it recommended that “an effective enforcement and accountability regime of the Code ... can only be accomplished through the formalisation of the Code of Conduct in the Rules of Procedures of the Chamber of Deputies”.¹¹

Finally, the necessity has also been emphasized to introduce appropriate practical training on public ethics on a permanent basis and based upon concrete examples,¹² as well as to advise the public, civil society and the media on the conduct expected.

3. Training and Awareness Raising

Effectiveness of anticorruption policies largely depends on the awareness of those to whom they are addressed and on their readiness/willingness to comply with their provisions, and on appropriate training of public officials at all levels, on an initial and continuous basis, if possible, using concrete examples. More specifically, training should be provided on public ethics and risks of corruption, including resolving practical cases (e.g. reactions to gifts, conflicts of interest, etc.). Since training in each different area covered by Recommendation No. R(2000) 10 is subject to specific analysis in the various sections of the report, in this section attention will be paid mainly to public awareness.

Publicity of anti-corruption policy has two aims: on the one hand, it makes the population aware of what behaviour they can and must expect from holders of public office and, on the other hand, it raises public’s awareness on the need for action, and can initiate involvement and commitment by society as a whole.¹³ Public awareness should be achieved through:

⁸ Fifth Evaluation Report, Estonia, §62

⁹ Ibid., §63

¹⁰ Fourth Evaluation Report, Compliance Report, Italy, §10

¹¹ Ibid.

¹² Second Evaluation Report, [Iceland](#) §59, recommendation ii; [Belgium](#) §43, recommendation ii; [Sweden](#) §62, recommendation ii; [Lithuania](#) §62, recommendation vi; [Armenia](#) §114, recommendation xviii; [Hungary](#) §58, recommendation v; [Cyprus](#) §88, recommendation v; [Portugal](#) §53, recommendation vi; [Andorra](#) §149, recommendation xiv; [Bosnia and Herzegovina](#) §75, recommendation viii; [Ukraine](#) §210, recommendation xxii; [Russian Federation](#) §292, recommendation xxiii; [Italy](#) §150, recommendation xiv

¹³ See, for example, Joint 1st & 2nd Round Evaluation Report on the Russian Federation, §57.

- a) publication of anticorruption policies on the internet;¹⁴
- b) yearly anti-corruption Conferences;¹⁵
- c) the issuing of press releases by the government on the adoption of anti-corruption strategies, as well as making anti-corruption strategies regular subject of radio and television features;¹⁶
- d) discussion of anti-corruption strategies in schools, universities or even other government buildings, such as libraries;
- e) advertising campaigns;
- f) Public report on the implementation of anti-corruption strategies, which is, in some countries, part of the anti-corruption legislation;¹⁷
- g) Surveying of anti-corruption initiatives and publication of survey results.¹⁸

With regard to anti-corruption policies concerning persons entrusted with top executive functions (such as MPs), good practices in the area of training/awareness have been envisaged, for instance:

- a) in the numerous measures taken on a regular basis in Ireland “in order to keep MPs 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, formally or informally. These measures are good examples on how to assist in this respect”;¹⁹
- b) and in the “valuable role that the clerks, in both the Congress and the Senate [of Spain], have been building up when advising individual MPs on incompatibility criteria and conflict of interests related matters. The valuable role of the clerks of the respective Chambers on the prevention of conflicts of interest, which was considered as a clear example of good practice”.²⁰

¹⁴ Cf. Armenia, www.gov.am/en/anticorruption/; Azerbaijan, www.antikorrupsiya.gov.az/;

Belarus, www.prokuratura.gov.by/sm.aspx?guid=10789; Georgia

www.justice.gov.ge/index.php?lang_id=ENG&sec_id=649;

Republic of Moldova, <http://en.cccec.md/Strtegiاناonalanticorupie>; Ukraine, <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1001%2F2011>

¹⁵ See, for instance, the Moldovan Strategy 2011-2015, the first draft strategy was discussed at the National Anticorruption Conference, held on 9 December 2010, with the participation of high-level officials, experts, central and local public administration, international organizations, civil society and media representatives. See Eastern Partnership-Council of Europe Facility Project on “Good Governance and Fight against Corruption”, *Designing and Implementing Anti-Corruption Policies. Handbook*, Council of Europe, March 2013.

¹⁶ See *Designing and Implementing*, cit., p. 71, As part of the Council of Europe “Support to the Anti-Corruption Strategy of Azerbaijan” Project, five awareness raising events were held in 2008 in order to raise awareness of the Government’s Anti-corruption Strategy and Action Plan. Several TV stations (AzTV, ANS, Space, Lider) covered the events.

¹⁷ According to Article 19 of the Law of Ukraine “On the principles of prevention and counteraction to corruption”, the special authorized anti-corruption policy agency “shall, by no later than 15 April, prepare and publish a report of the outcome of efforts taken to prevent and counter corruption. The report should contain [...] information on the status of implementation of the anticorruption strategy determined by the President of Ukraine.”

¹⁸ See, for instance, Armenia, “Corruption Survey of Households 2010”, chapter 4, p. 38, “the percentage of people who were aware of the Anti-Corruption Strategy Monitoring Commission made up only 14% of respondents in 2010.” Cit. in *Designing and Implementing*, cit., p. 71.

¹⁹ Fourth Evaluation Report, Ireland §110

²⁰ Fourth Round Evaluation Report in respect of Spain, §46 and the Interim Compliance report, §12

4. Conflict of Interest

A conflict of interests exists whenever the public official (i.e. “all those who carry out or have carried out functions on behalf of the public”)²¹ has a private interest, which is such as to influence, or appear to influence, the impartial and objective performance of his or her duties (see Article 13 of the Committee of Ministers’ Recommendation)²². On the dichotomy between actual (“which is such as to influence”), and potential (“or appear to influence”) conflict of interests, a good practice comes from Ireland. In its Fourth Round Evaluation Report, GRECO welcomed that the Irish system of regulating conflict 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”.²³

Article 13 of Recommendation No. R(2000) 10 explains, first of all, that a private interest includes “any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations ... [and] also any liability, whether financial or civil, relating thereto”. Further, as any public official must be aware of the possibility of a conflict arising, Article 13 recommends that he or she take steps to avoid it, disclose it to his/her supervisor at the earliest opportunity and comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.

Recommendations issued by GRECO in its Second Evaluation Round devoted to public officials emphasize that, in a significant number of States practices, conflict of interests should be subject to stricter regulation, by limiting or, where appropriate, completely withdrawing the right to be engaged in an ancillary occupation²⁴. Legislative or other measures should also be introduced to ensure that all public officials are prohibited from acquiring inappropriate benefits for themselves or their relatives through holding a position as member of the board in State owned companies.²⁵

There should be clearer regulation of gifts to officials, whose statute should draw particular attention to the risks they incur in accepting gifts and the relevant criminal sanctions (see *infra*, section 6). The importance to have in force a clear and coordinated regulatory and legislative framework concerning conflict of interests is illustrated by the examples of some countries, such as Albania, that has adopted very detailed anti-corruption and conflicts of interest regulations applicable to MPs. “[N]evertheless, the legislative framework, which consists inter alia of the constitutional provisions and laws on the prevention of conflicts of

²¹ See Recommendations issued by GRECO in its Second Evaluation Round as regards codes of conduct, [Slovenia](#) §45, recommendation v.

²² Recommendation No. R(2000) 10 of the Committee of Ministers of Member states on codes of conduct for public officials, adopted by the Committee of Ministers at its 106th Session on 11 May 2000)

²³ Fourth Round Evaluation Report in respect of [Ireland](#), §54

²⁴ *Ibid.*, [Luxembourg](#) §47, recommendation vii; [Belgium](#) §45, recommendation iv; [Andorra](#) §154, recommendation xvi

²⁵ [Montenegro](#) §88, recommendation xvi

interest and asset declaration, is highly complex, and its stability and legal certainty have been undermined by numerous and frequent amendments which are, moreover, often subject to contradictory interpretation. The existing regulations mainly focus on restrictions and prohibitions, to the detriment of public disclosure and transparency, which curtails their effect”²⁶.

A positive development comes from Finland. In its Fourth Evaluation Report, GRECO recommended that written (public) clarification of the meaning of Article 32 of the Constitution (conflicts of interest) and guidance on the interpretation and application of that provision be provided to members of parliament. This recommendation was triggered by the fact that Article 32 of the Constitution is considered so general that it “does not serve as a sufficient reference for preventing and resolving conflicts of interests of MPs and that it needs to be complemented in order to prevent any confusion”²⁷. To remedy this situation, the Finnish authorities have commissioned a recognised constitutional expert to draw up clarifications/commentary in respect of that provision. In what has been deemed to “represent a reasonable response” to the recommendation, the commentary “deals with the relationship between Article 32 of the Constitution and the legal rules on conflicts of interest applicable to public officials and draws the conclusion that Article 32 of the Constitution is the only provision that is relevant in respect of members of parliament. Moreover, the commentary explains the meaning of different elements of the provision, e.g. what is meant with the requirement that a member of parliament is disqualified from consideration of and decision-making in any matter that “concerns him/her personally” and that s/he may, “participate in the debate on such matters in a plenary session”. In addition, it gives examples of situations where a member of parliament may be in a situation of conflicts of interest, by providing a few practical cases”.²⁸

A sensitive issue in the area of conflict of interests concerns the applicable rules on how MPs engage with lobbyists. In one recent case, GRECO welcomed the establishment of a post-employment ban regarding lobbying activities of former parliamentarians; however, it has also noticed that “this is only one of the aspects (or activities) that could be performed after the parliamentary mandate. The recommendation on the so-called “revolving doors” is broader and also covers situations, other than lobbying, which could bring about conflicts of interest in the performance of the parliamentary function. While it is clear that a parliamentary mandate will not, as a rule, span a whole career, and that parliamentarians should therefore be provided with fair opportunities to seek outside employment, a proportionate approach is needed in order to prevent instances where the parliamentary mandate, and thereby the legislative process, could potentially be misused by an individual member for personal interest purposes to secure outside employment (notably, in the private sector) once s/he leaves office”.²⁹

²⁶ See GRECO Group of States against Corruption, 15th General Activity Report (2014), Adopted by GRECO 67 (23-27 March 2015), Thematic article: Corruption in Sport – Manipulation of Sports Competitions, Council of Europe, 2015, p. 12.

²⁷ Fourth Evaluation Report, Finland, §41

²⁸ Fourth Evaluation Report, Compliance Report, Finland, §13

²⁹ Compliance Report, Italy, cit., §25

Further, the introduction of rules dealing with the establishment of a lobbyist register has been acknowledged to represent an example of “insightful action” in order to put in place “significant transparency requirements vis-à-vis one side of the lobbying equation, i.e. lobbyists themselves. It however says very little about the other side: deputies. In GRECO’s view, additional measures can be taken, including through the development of targeted guidance that gives deputies clear directions on how to engage with lobbyists and the expected conduct of behaviour”.³⁰

The necessity has been also emphasised in several cases of considering making wider use of rotation in sectors of public administration particularly exposed to a risk of corruption³¹. In countries where a system of rotation has been put in place for some positions of the public administration exposed to corruption, GRECO observes that national authorities should examine whether this approach could serve as a model for other sectors of public administration if deemed necessary.³²

A good practice comes from the Moldovan “Law on Conflicts of Interest No. 16-XVI” of 15 February 2008. GRECO positively assessed the comprehensiveness of the law, which contains “a number of important elements, such as a definition of conflicts of interest and an obligation for officials concerned – including MPs [Members of Parliament] – to abstain from action and decision-making when they suspect they may be in a situation of conflict of interest. The law also foresees a disclosure regime”.³³ However, GRECO also noted that despite this comprehensiveness, a culture of prevention and avoidance of conflicts of interest has yet to take root among MPs. The interviews conducted by the GET confirmed that MPs tend to view their obligations in this framework from a formal point of view, as implying mostly the filing of a statement with the National Integrity Commission. The provisions on abstention in decision-making seem under-used in practice and MPs are largely unaware of the rationale behind the LCI, of the notion of conflicts of interest itself and how it needs to inform their choices and decisions both in the course of their parliamentary work and as regards their private interests and those of their relatives.³⁴

In several cases, the GRECO has also reiterated the necessity of introducing clear rules/guidelines for situation where civil servant move to the private sector (“*panouflage*”) in order to avoid conflict of interests.³⁵

A positive development in that area comes from Italy, the Law No. 190, on 6 November 2012 (Anticorruption Law) establishes a “cooling-off period” of 3 years in which public officials,

³⁰ Ibid., §31

³¹ Ibid., [Armenia](#) §111, recommendation xv; [Slovak](#) Republic §52, recommendation xii; [Luxembourg](#) §47, recommendation vii; [Norway](#) §39, recommendation ii; Belgium §45, recommendation iv; [Lithuania](#) §60, recommendation iv; [Bulgaria](#) §61, recommendation vii

³² Ibid., [Albania](#) §50; [Malta](#) §34; [Greece](#) §56; [Bosnia and Herzegovina](#) §79

³³ Fourth Round Evaluation Report [Moldova](#), §39

³⁴ Ibid.

³⁵ On “*panouflage*”, see, *Ibid.*, [Norway](#) §40, recommendation iii; [Denmark](#) §43, recommendation i; [Romania](#) §50, recommendation viii; [Greece](#) §55, recommendation v; [Portugal](#) §49, recommendation v; [Czech](#) Republic §58, recommendation vi; [Azerbaijan](#) §115, recommendation xviii; [Moldova](#) §64, recommendation ix; [Switzerland](#) §150, recommendation ix; [Austria](#) §129, recommendation xix; [San Marino](#) §159, recommendation ix; [Germany](#) §45, recommendation ii; [Malta](#) §35, recommendation ii; [Hungary](#) §60, recommendation vii; [Cyprus](#) §92, recommendation vii; [Montenegro](#) §89, recommendation xvii; [USA](#) §141.

who have exercised authoritative or negotiation powers on behalf of public administration, must refrain from working for private entities who are the recipients of the activity of public administration by virtue of those same powers. Any contract or work assignment agreed in violation of the aforementioned provisions is null and void, and the private entities which have signed or agreed to such contract/work assignment will not be awarded any contract with public administration in the following three years. Further the Commission for the Evaluation, Transparency and Integrity of Public Administration (CIVIT) has been specifically entrusted with an advisory/preventive and monitoring role in connection with conflicts of interest arising from the movement in and out of public service by individuals who carry out executive functions (see also *infra*). According to GRECO, in case the applicable rules will be enforced in practice, this calls for effective supervision and for the development of guidance to public officials on practical cases involving the ethical dilemma which may appear in situations where they move into a similar, linked or even competing private entity, after leaving public service.³⁶

One of the points that has been most frequently emphasised by GRECO concerns the necessity to developing within the government an organisational strategy and practices to improve, both with regard to public officials and persons entrusted with top executives functions, the management of conflicts of interest, “including through responsive advisory, monitoring and compliance mechanisms”.³⁷ Amongst the most specific recommendations, reference should be made to enforcement mechanisms “that intentionally false statements made on the reports [should] be actionable under the criminal code, that information required to be reported is related to restrictions of office including any new conflict of interest standard, and if reports are required, that they provide a basis for counselling in ways to avoid potential conflicts of interest”.³⁸ In one case, GRECO observed that the information provided by the official “should also be used by the Commission for the Resolution of Conflicts of Interest *in a preventive manner* by helping to identify potential conflicts of interest and then *counsel the official on the steps that must be taken to avoid the conflicts*. Such steps could include recusal or resignation from a conflicting but not prohibited outside position” (italics added).³⁹

³⁶ Joint First and Second Evaluation Rounds, Addendum of Compliance Report on Italy §51

³⁷ Fifth Evaluation Round, Preventing corruption and promoting integrity in central governments (top executive functions” and law enforcement agencies, Evaluation Report, Slovenia, Adopted by GRECO, Plenary Meeting (Strasbourg, 4-8 December 2017), §95. See also *Recommendations issued by GRECO in its Second Evaluation Round as regards codes of conduct*, [Greece](#) §55, recommendation v; [Romania](#) §52, recommendation ix; [Armenia](#) §112, recommendation xvi; [Azerbaijan](#) §115, recommendation xviii; [Moldova](#) §64, recommendation ix; [Andorra](#) §154, recommendation xvi; [Monaco](#) §115, recommendation xxi; [Russian Federation](#) §288, recommendation xx; [Slovenia](#) §46, recommendation vi.

³⁸ [Slovenia](#) §46, recommendation vi

³⁹ [Croatia](#) §58

A positive development with regard to monitoring comes from Italy. Legislative Decree No. 39/2013 of 7 May 2013 establishes: (i) additional non-assignability/incompatibility rules for managerial positions in the public sector (e.g. persons who have been convicted for an offence against public administration – even if the judgment is not final – cannot hold a managerial post in the public sector; incompatibilities between managerial posts in public administration and posts in private entities controlled, regulated or financed by public administration; incompatibilities between managerial public administration posts and political appointments); (ii) sanctions for failure to comply with the aforementioned rules; and (iii) a monitoring and advisory role for the Commission for the Evaluation, Transparency and Integrity of Public Administration (CIVIT) concerning conflicts of interest. More particularly, CIVIT is assigned responsibility for ensuring publication requirements and for monitoring any irregularity that may occur in this area, with a view to undertaking any additional measure necessary (be it of a regulatory or any other nature, e.g. development of guidance and counselling).⁴⁰

Finally, with respect to top executive functions, recommendations have been made by GRECO to clearly define and illustrate what shapes and forms conflicts of interest may take specifically in the government context in a code of conduct intended for these functions.⁴¹ In addition, a formal system or systems for review of declarations of ministers and disclosures of other persons entrusted with top executive functions should be established or enhanced, and the reports filed be used by trained reviewers as a basis for individual counselling regarding the application of rules dealing with disqualification, outside activities and positions, and gifts.⁴²

5. Declarations of Interest and Assets

Article 14 of Recommendation No. R(2000)10 provides that the public official “who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties” may be lawfully required periodically to declare “the nature and extent of those interests”. This is considered to be an obligation of a preventive character.⁴³

According to GRECO evaluations’ results, assets and property should also be subject to specific declarations, as well as interests in respect of the access to data necessary for the control of such declarations,⁴⁴ or in case of MPs, assets in which they have only a nominal ownership interest.⁴⁵ Attention should be given to the risk that transparency regulations

⁴⁰ Joint First and Second Evaluation Rounds, Addendum of Compliance Report on Italy §44

⁴¹ Fifth Evaluation Report, cit., Estonia §95

⁴² Ibid., Finland §65

⁴³ See Second Evaluation Report, [Bosnia and Herzegovina](#) §77, recommendation ix: “To introduce an effective system for reviewing financial declarations (including random verifications) by the respective Civil Service Agency at each level of government and the Election Commission, and to allow that such declarations be used in a preventive manner by providing individual counselling on the prevention of conflicts of interest”.

⁴⁴ Second Evaluation Report, [Estonia](#) §54, recommendation ix; [Armenia](#) §112, recommendation xvi; [Czech Republic](#) §58, recommendation vi; [Moldova](#) §64, recommendation ix; [Andorra](#) §152.

⁴⁵ Fourth Round Evaluation Report in respect of the [Slovak Republic](#), §46

may be circumvented by transferring property to spouses or dependent children.⁴⁶ In a number of cases, it has been recommended to strengthen the control of already existing declarations of assets and interests.⁴⁷ The nature and extent of the interests which are likely to be affected by public officials' duties shall be declared periodically: not only upon appointment but also at regular intervals thereafter. Further, any change in the situation affecting public officials' interests will imply the obligation for him or her to submit a new declaration.

In the specific case of MPs, in one case, GRECO observed that the declaration form "is insufficient for the effective identification of possible lobbying interests and the disclosure of outside relationships and financial interests that do not fit squarely into the "lobbying" context; nor do they include disclosure of other outside relationships and financial interests that may also create a potential conflict of interests".⁴⁸ A good practice in that area comes from the Netherlands: the working group, which was assigned by both Houses of Parliament with the task to review the current regulations and legislation and to assess where improvements, as proposed in the Evaluation Report, would be desirable, recommended that the term "interest" be interpreted "in the widest possible sense and that it should not be limited to accessory activities and positions or to financial interests. Examples of interests that could be relevant are previous positions occupied by the MP, for instance as a lobbyist, a reinstatement guarantee or other special arrangements concerning work after the end of their term of office, or a controlling interest in a company ... specific circumstances concerning his/her spouse or other direct family members could also be seen by third parties as relevant interests".⁴⁹

The Romanian mechanism for the declaration of assets and interests for public officials, which also applies to MPs (as well as judges and prosecutors) should be considered, according to GRECO, an "ambitious" example of declaration of interests. The information system has indeed "positively evolved from the submission of a single confidential form a few years ago, to a fully-fledged declaration system. Measures have been taken to ensure that declarants comply with the deadlines for submission and as a result a wealth of information is available nowadays on-line, which largely meets the expectations of GRECO. The information includes the income in an accurate format as well as debts/loans, and it applies to the spouse and first degree relatives (children). The next step will probably be to have the data submitted in an electronic format instead of paper versions which are subsequently scanned, but the GET is overall pleased by the above system. It could inspire other countries".⁵⁰ The system has been further applauded with respect to the specific area of contracts. Within the template for the declaration on interests, appended to the relevant law ("Law 176/2010 regarding the integrity in exercising public offices and dignities"), a heading is indeed included, which requires to disclose (including for the declarant's spouse and 1st degree relatives) all the contracts, comprising "those on legal consultancy and civil assistance, obtained or running while exercising the functions, which involve a funding from the public budget at State or local level (or from external funds), as well as contracts

⁴⁶ Ibid., Finland, §56

⁴⁷ [Austria](#) §129, recommendation xix

⁴⁸ Fourth Round Evaluation Report in respect of the [Slovak Republic](#), §46

⁴⁹ Fourth Evaluation Round, Compliance Report for the Netherlands, §6

⁵⁰ Fourth Evaluation Report, Romania §49

concluded with commercial companies with State capital, whether the State holds a majority or minority of shares. The same goes for any business entity or non-profit organisation which is in such a contractual relationship where the declarant or the related persons are shareholders or hold a position in the entity in question”.⁵¹ This system is deemed by GRECO to have “the potential to be a powerful tool against the abuse of powers for personal business-related benefits, in particular, once adequate rules are introduced also on the management of occasional conflicts of interest, as recommended earlier”.

Another example of good practice is the Georgia’s Asset Declaration System, according to which officials including MPs are to submit rather detailed asset declarations to the Civil Service Bureau through an electronic programme within two months of their appointment/election, during their term of office, once every year, and within one year after their term of office. Moreover, candidates for MP are to submit an asset declaration within one week of registration as candidates. The Civil Service Bureau is tasked to ensure the receipt of asset declarations, the public availability of information on property held by relevant officials and the submission of declarations according to law. It prepares instructions on the proper completion of asset declarations, ensures unhindered access by officials to the Unified Declaration Electronic System, receives and keeps the officials’ asset declarations, monitors their compliance with the law, and ensures public availability of the content of declarations.⁵²

Positive developments in that area have been identified also in the case of Finland, with the adoption of the amended Rules of Procedure by Parliament on 21 February 2015, MPs are “now obliged to disclose outside ties covering responsibilities, such as business activities, shares in enterprises and other considerable assets that could be of significance when assessing the activities of a member of parliament. Furthermore, the current thresholds in respect of assets or shares are set at €50 000 or 20% (earlier 30%) of the votes of a company”.⁵³

Insofar as the breadth of the items covered is concerned, GRECO evaluation team has considered that the Estonian system of declaration represent an adequate mechanism.⁵⁴ However, GRECO noted the importance that also “political advisers, who work closely with ministers on substantial matters, be required to fill in declaration of interests upon taking up

⁵¹ Ibid., §40

⁵² Fourth Evaluation Report in respect of Georgia, §58 ff

⁵³ Fourth Evaluation Round, Compliance Report, Finland §21

⁵⁴ Fifth Round Evaluation Report, Estonia, §119. According to section 14 of the Anti-Corruption Act, passed 06.06.2012, and entered into force 01.04.2013, the declaration contains information about the following: - immovable property ownership and limited rights over immovable property, if in possession of the official for at least six months during the previous year (including abroad); - vehicles entered in the state register, if in possession of the official for at least six months during the previous year (including abroad); - shareholdings in companies and securities; - propriety claims against other persons, whose value exceeds four times the minimum monthly wage (in 2017, the minimum monthly wage was at EUR 470); - propriety obligations owed to other persons, including credit institutions, whose value exceeds four times the minimum monthly wage; - dividends received in Estonia and abroad; - benefits received by the official which may potentially have an impact on the performance of his/her official duties and whose value exceeds the salaries of high- ranking civil servants applicable during the preceding year by a factor of 1.0 (in 2017, EUR 5 200); - annual income; - information on any ancillary activities which the official has engaged in during the calendar year preceding the submission of the declaration.

their functions in government and on a regular basis afterwards”. Further, the authorities might also “wish to examine the possibility of creating a category separate from that of “political adviser” to cover the personnel hired only to carry out the functions of assistant to a minister, in order to clarify the difference between the two roles”.⁵⁵

If it is normally true that the obligation concerning declaration of interests and other assets is generally imposed upon officials holding high level posts, the Explanatory Memorandum to Recommendation No. R(2000)10 specifies that “the main criterion should be the nature of the functions performed and the responsibilities relating thereto. This may lead states to impose such obligations upon certain officials even if they hold posts of a modest hierarchical level”.⁵⁶ In the latter’s case, GRECO welcomed “members of parliament being obliged to declare their assets in accordance with a rather detailed and standardized format and also that the asset declarations are to cover the assets of spouses and dependent family members”.⁵⁷

As regards publicity of these declarations, notably as far as MPs are concerned, GRECO position is clear. They should be easily accessible to the public at large and include information on assets of spouses, dependent family members and, as appropriate, other close relatives (it being understood that such information would not necessarily need to be made public).

Finally, recommendations have been also issued by GRECO concerning the necessity to introduce an effective system for supervising declarations of assets and interests.⁵⁸ In the case of one country, GRECO has, for instance, criticized that “the content of the assets declarations is not checked by any authority ex officio, unless a substantiated complaint has been initiated; public scrutiny of the forms is difficult as these are often handwritten and/or scanned documents; declarations concerning relatives are not public at all and the authorities’ scrutiny of these is only done in relation to a complaint against an MP”.⁵⁹

6. Regulatory Framework on Gifts to Public Officials

According to Article 18 of Recommendation No. R(2000) 10, public officials should not demand or accept any gift or benefit for himself/herself or anyone else that could influence, or appear to influence, the impartiality with which he or she carries out his or her duties or may be, or appear to be, a reward relating to his or her duties. The underlying idea is that any gift or benefit may weaken the citizens’ trust in the impartiality of public administration, as citizens may perceive that the public official receives compensation from private individuals in exchange for the performance of his or her duties. From this perspective, GRECO has recently reiterated its position “on the importance of having in place a consistent and robust framework on gifts which would not only prevent certain situations from

⁵⁵ Fifth Evaluation Report, Estonia, §120

⁵⁶ Explanatory memorandum, cit., p. 7

⁵⁷ Fourth Round Evaluation Report in respect of [Turkey](#), §76

⁵⁸ [Romania](#) §52, recommendation ix; [Azerbaijan](#) §116, recommendation xix

⁵⁹ Fourth Round Evaluation Report in respect of [Hungary](#), §74

evolving into corrupt relationships, but also *protect the impartiality of the public office holder concerned as well as institutional reputation*" (italics added)⁶⁰. In this connection, the Evaluation teams highlighted what they considered best practices of many member States,⁶¹ that "have opted for a prohibition in principle often associated with a duty to return unacceptable benefits, with exceptions concerning courtesy gifts, and a system of declarations for those few categories of benefits which are permissible (invitations, hospitality, protocol-related and other goods which become the property of Parliament)".⁶²

Some exceptions to the general prohibition are allowed by Article 18, such as in case of conventional hospitality or minor gifts (i.e. modest invitations to food and drinks, calendars, low price pens, advertising materials, small stationary, etc.). The Explanatory Memorandum makes it clear that "it is for each country to establish the criteria to differentiate between what is acceptable and the gifts which fall within the general prohibition rule"⁶³. As the value of the gift or invitation is often used as a criterion (i.e. whenever the value is lower than the threshold, the gift or invitation could be acceptable), the necessity arises to define in clear terms such value. Moreover, taking into account that not only "tangible objects but also other types of advantages – such as hospitality, reimbursement of travel and accommodation expenses by third parties or invitations to cultural or sports events – need to be addressed",⁶⁴ the necessity has been identified to have clear rules also with respect to these gifts as "vague concepts create grey zones and risks of abuse".⁶⁵ With regard to persons entrusted with top executive functions, GRECO recommended to establish a more robust set of rules which would provide clear reporting lines and the publicity of information, and appropriate guidance to ensure all forms of benefits are adequately dealt with.⁶⁶

Among many others that have positively reacted to GRECO recommendations in this area, the examples of Croatia and Luxembourg should be mentioned. According to Article 17 of the new Croatian Law on Civil Servants, civil servants are prohibited from "accepting gifts for their personal gain, or for the gain of their family or an organisation, or for favourable settlement of an administrative or other proceeding, The Law on Preventing Conflicts of Interests in Public Office, as amended in December 2006, allows high ranking official to accept gifts of a symbolic value, i.e. gifts valued under HRK 500 (70 EUR) received from the same donor in a given year".⁶⁷

Moreover, Article 6 of the "Code of Conduct for Members of Parliament relating to financial interests and conflicts of interest", adopted by the Chamber of Deputies of Luxembourg, on

⁶⁰ Italy Compliance Report, cit., §21

⁶¹ See, for example, Second Evaluation Report, **Spain**, §37, referring to Article 426 of the Criminal Code, which states that any authority or public official is prohibited from accepting gifts or donations in associations with their positions, Violation of this provision shall be sanctioned with a fine ranging from three to six months. The minimum and maximum daily fine is established in the CC and this fine is fixed on a case by case basis by the judge taking into account different criteria.

⁶² Ibid.

⁶³ Explanatory memorandum, cit., p. 8

⁶⁴ Fourth Round Evaluation Report in respect of [Sweden](#), §55

⁶⁵ Fourth Round Evaluation Report in respect of [Armenia](#), §225

⁶⁶ Fifth Evaluation Report, cit., Finland §85

⁶⁷ See Second Evaluation Round, Compliance Report on **Croatia**, §37

16 July 2014, establishes a prohibition in principle concerning the acceptance of gifts and similar benefits. This prohibition is valid only for gifts or other benefits offered to an MP in the exercise of his/her functions. Gifts having an approximate value of less than EUR 150 may be accepted on condition that they are made as a matter of courtesy by a third party or when an MP is representing the Chamber in an official capacity. Official gifts are to be reported to the President or to the Bureau if the recipient is the President. Gifts with an approximate value equal to or greater than EUR 150 must be refused, unless they are made by a foreign national institution or an international institution or the MPs concerned are representing the Chamber in an official capacity. All such gifts are to be transferred to the Chamber, which becomes their owner. Payment by a third party of an MP's travel, accommodation or subsistence expenses is assimilated to a gift. Pursuant to the general principle of prohibition, the acceptance of such a benefit, if directly related to the MP's functions, is proscribed. An exception is made in cases where the expenses are borne by a public-interest organisation, a foreign national institution or an international institution. The latter cases must nonetheless be reported to the Bureau and published on the Chamber's web-site. In cases of doubt, MPs may consult the Advisory Committee on Members' Conduct.⁶⁸

During the Fifth Evaluation Round, the Slovenian "Integrity and Prevention of Corruption Act (ICPA)" was deemed to have rules on gifts, applying to persons entrusted with top executive functions, that appear relatively clear, well-known and generally complied with.⁶⁹

Taking into account that even a generally permitted advantage could give rise to a conflict of interest in particular circumstances, during discussions that led to the adoption of Recommendation No. R(2000)10, the drafting group "considered the possibility of introducing a general obligation of declaring all gifts, even those of low value ... [to] the hierarchical superior or other competent authority [that] would decide which gifts the public official was authorised to accept"⁷⁰. However, such a general system was not included and each country is free to adopt more restrictive provisions than those contained in the code; even if in a significant number of cases the necessity was advanced to lower the value and frequency of any gifts that may be accepted by public officials in general, so that they clearly do not raise concerns regarding bribes and other forms of undue advantage and to include appropriate sanctions for violations of the (amended) provision on gifts.⁷¹

The necessity has been also observed to provide proper training to all public officials regarding the existing rules on gifts by using, in particular, practical examples of potential conflict situations,⁷² and to establish arrangements to monitor compliance with and

⁶⁸ See Fourth Round, First Compliance Report, **Luxembourg**, §19 ff

⁶⁹ Fifth Evaluation Round, Slovenia, cit., §105-107

⁷⁰ Explanatory memorandum, cit., p. 8

⁷¹ Recommendations issued by GRECO in its Second Evaluation Round as regards codes of conduct, see, for instance, [Croatia](#) §55, recommendation vi; [Armenia](#) §113, recommendation xvii; [Republic of Serbia](#) §96, recommendation xix; [Azerbaijan](#) §114, recommendation xvii; [Montenegro](#) §91, recommendation xix.

⁷² Ibid., see [Belgium](#) §45, recommendation iv; [Albania](#) §52, recommendation vi; [Greece](#) §54, recommendation iv; [Liechtenstein](#) §109, recommendation xii, which specifies that proper training should include "the conduct to be adopted vis-a-vis the offering of gift and other gratuities.

enforcement of these obligations.⁷³ An example of positive development comes from Georgia: according to the amendments to the Law on Conflicts of Interest and Corruption in Public Service, entered into force on 1 June 2009, chapter V of the law contains provisions for its enforcement, including procedural rules in the case of failure by a public servant to submit a declaration of property (section 20 of the Law on Conflicts of Interest and Corruption in Public Service), as complemented by pertinent provisions of the Criminal Code which penalise the acceptance of illegal gifts (section 340 CC) as well as failure to submit a – correct – declaration of property (section 355 CC).⁷⁴

7. Supervision and Enforcement

Supervision and enforcement represent one of the most sensible area targeted by GRECO's recommendations, in particular in respect of MPs: one in every five recommendations of the Fourth Evaluation Round refers to failures of supervision and enforcement (23% of all recommendations issued falls in this category).⁷⁵ The intensity of supervision (most frequently used to refer to the role played by regulators in monitoring the activities of public officials and persons entrusted with top executive functions) and enforcement plays an undeniable role to ensure the effectiveness of these standards.

GRECO recommendations relating to supervision and enforcement include the necessity to strengthen independence, including operational, of oversight bodies; clarity of their mandates, as well powers and adequate resources to carry out substantive checks, investigate irregularities and initiate proceedings; introduction of effective, proportionate and dissuasive sanctions; and inter-institutional co-operation to be stepped up. Effectiveness, in particular, represents a rather delicate issue, as it depends on a number of factors that impact on the possibility that misconduct comes to light and is subject to appropriate sanctions.

Even in countries where mechanisms for the supervision and enforcement of the rules applicable to MPs have been judged to be adequate on paper, GRECO evaluation teams have, on occasions, registered the lack of effectiveness of these measures. This may be due, for instance, to the low number of staff of the administrative control mechanism and the lack of investigative powers;⁷⁶ or to the fact that sanctions appear to be very strict and hence not sufficiently used in practice.⁷⁷ Consequently, GRECO recommended that the range of criminal-law measures “be supplemented by internal disciplinary measures in the

⁷³ Ibid., [Georgia](#) §63, recommendation viii; [Monaco](#) §115, recommendation xxi; [Czech Republic](#) §58, recommendation vi

⁷⁴ Second Evaluation Round, Compliance Report Georgia §37

⁷⁵ See Eighteenth General Activity Report (2017) of the Group of States against Corruption (GRECO), Anti-corruption trends, challenges and good practices in Europe & the United States of America, Adopted by GRECO 79 (Strasbourg, 19-23 March 2018), Council of Europe, April 2018, p. 8. The second most targeted area is “prohibition and restriction of certain activities” (15%), then “Ethical principles and rules of conducts” (13%) and “Declaration of assets” (13%).

⁷⁶ See Fourth Evaluation Report, Germany §96. See also Fourth Round Evaluation Report in respect of [Armenia](#), para. 78, where the Ethical Committee has only two permanent officials.

⁷⁷ See Fourth Evaluation Report, Greece §64.

assemblies, in relation to possible breaches of the rules on the integrity of the members of the National Assembly and Senators”.⁷⁸

An example of partial good practice comes from Moldova, whose National Integrity Commission has some positive aspects, “such as the fact that controls can be initiated on the basis of a range of different elements, including media reports, and that verifications appear to take place in a timely manner”. On a less positive note, however, GRECO noted that the Commission’s legal and operational framework constrains its activity and may be detrimental to its efficiency. A first problem is that the commission’s composition reflects the parliamentary majority and that decisions on violations of the declaration regime are taken by majority. It cannot be excluded, therefore, that decisions of the commission may be politically motivated, for instance when a verification procedure concerns an MP. Another problem lies with the limited mandate and powers of the commission: its task is merely to compare the information indicated in the declarations of assets and of personal interests with the information contained in the relevant databases. It cannot take action in respect of non-declared assets, for instance in order to uncover hidden assets or assets transferred to relatives to avoid declaring them. Moreover, the commission can only verify declarations of the previous year and cannot perform cross-checks between successive declarations by the same declarant.⁷⁹

Another question raised by GRECO is whether it would be more appropriate to entrust an independent commission with supervisory functions instead of bodies within the administration of the Parliament. On the one hand, GRECO is well aware that no unnecessary bureaucracy should be created, and that it is up to the each national authority to decide how the supervision and enforcement could best be strengthened and organised; on the other hand, it would also be more convincing for the public if complaints against MPs were investigated by an independent body.⁸⁰

More generally, supervision also includes the notion that “every person in a supervisory position should be responsible and accountable for the conduct of those he or she supervises [...]”.⁸¹ This is covered by Article 25 of the Committee of Ministers’ Recommendation, which gives a dual responsibility on the public official who supervises or manages other public officials. He or she should do so in accordance with the policies and purposes of the public service, be answerable for the failings of his/her staff if he or she has not taken reasonable steps to prevent them. The article goes on to give specific guidance. The supervisor or manager should take steps to prevent corruption by enforcing the rules, providing education or training, being alert to signs of financial or other difficulties and providing by his or her personal conduct an example of propriety and integrity. More generally, Article 12 of the Committee of Ministers’ Recommendation requires public officials to report to the competent authorities, in accordance with the law, any breach of the code by another public official of which he or she becomes aware.

⁷⁸ Ibid.

⁷⁹ Fourth Evaluation Report, Moldova §44

⁸⁰ See Fourth Evaluation Report, Germany §96. See also Fourth Round Evaluation Report in respect of [Armenia](#), para. 78.

⁸¹ Explanatory Memorandum, cit., p. 9

A significant number of GRECO recommendations deal with this issue, notably:

- a) to introduce clear rules/guidelines and training for civil servants to report suspicions of corruption (whistle-blowers) in State administration and to enhance the system of protection for those who report such misconduct;⁸²
- b) that public officials, in addition to the existing system of reporting suspicions of corruption in public administration to the hierarchical superior or to the “contact persons for corruption prevention”, have also the possibility to report suspicions of corruption directly to the competent law enforcement authorities;⁸³
- c) to abolish the requirement that the initial reporting of corruption must be done in written form;⁸⁴
- d) to ensure that methods of dealing with allegations of corruption within the public service be re-examined, to ensure that appropriate procedures are followed as rapidly as possible;⁸⁵
- e) to supplement administrative protection with measures applicable to witnesses in judicial proceedings concerning corruption offences;⁸⁶
- f) to provide for adequate possibilities to appeal a decision where a public official is not allowed by his supervisors to serve as a witness;⁸⁷
- g) to facilitate the reporting of corruption suspicions to law enforcement authorities by establishing a hotline.⁸⁸

Among the positive developments, the following could be noted:

- a) the creation of a hotline by San Marino for reporting suspicions of corruption which can be used by the public: the hotline was set up by Government Decision N°6 of 3 June 2014, under the responsibility of the Gendarmerie’s Operations Centre and it became operational the same week;⁸⁹
- b) the adoption of new laws in a number of countries on public service and conflicts of interest, incorporating a general requirement for a code of conduct for public officials, providing for an obligation to report suspicions of corruption and other

⁸² Second Evaluation Report, [Estonia](#) §55, recommendation x; [Iceland](#) §61, recommendation iv; [Latvia](#) §43, recommendation ix; *Ibid.* [Finland](#) §65, recommendation ii; [Albania](#) §53, recommendation vii; [Sweden](#) §63, recommendation iii; [Malta](#) §36, recommendation iii; [Bulgaria](#) §62, recommendation viii; [Hungary](#) §61, recommendation viii; [the “former Yugoslav Republic of Macedonia”](#) §81, recommendation ix; [Ireland](#) §82, recommendation ii; [Republic of Serbia](#) §98, recommendation xxi; [Azerbaijan](#) §117, recommendation xx; [Moldova](#) §65, recommendation x; [Montenegro](#) §92, recommendation xx; [Andorra](#) §150, recommendation xv; [Bosnia and Herzegovina](#) §80, recommendation xi; [Georgia](#) §66, recommendation x; [Ukraine](#) §209, recommendation xxi; [Switzerland](#) §156, recommendation xi; [Austria](#) §123, recommendation xvi; [Russian Federation](#) §291, recommendation xxii; [Italy](#) §156, recommendation xviii; [San Marino](#) §160, recommendation x

⁸³ *Ibid.*, [Germany](#) §49, recommendation iii; [Denmark](#) §47, recommendation iii; [Armenia](#) §115, recommendation xix; [Turkey](#) §204, recommendation xvi; [Czech Republic](#) §63, recommendation ix.

⁸⁴ *Ibid.*, [Cyprus](#) §90, recommendation vi

⁸⁵ *Ibid.*, [Portugal](#) §54, recommendation vii

⁸⁶ *Ibid.*, [Monaco](#) §118, recommendation xxiv

⁸⁷ *Ibid.*, [Liechtenstein](#) §55, recommendation vi

⁸⁸ *Ibid.*, [San Marino](#) §69, recommendation iv

⁸⁹ Second Evaluation Round, Compliance Report San Marino §23

- illegal activities to superiors or law enforcement bodies, and setting up whistleblowers' protection mechanisms;⁹⁰
- c) legislation has been enacted in a number of countries which gives civil servants the possibility to report suspicions of corruption directly to the competent law enforcement authorities,⁹¹ or to external parties, such as the police, the Parliamentary Ombudsman and the media,⁹² in addition to their obligation to report such suspicions within the public sector hierarchy;
 - d) investigations of bribery and corruption offences are given "special priority" which will naturally also apply to reports submitted by whistleblowers;⁹³
 - e) the possibility to appeal before the administrative court a decision where a public official is not allowed by his/her supervisors to serve as a witness.⁹⁴

⁹⁰ Second Evaluation Report, Second Compliance Report Georgia, §25. On protections to whistle-blowers, see also Second Evaluation Round **Portugal**, Second Compliance Report, §47, referring to section 8 of Act 19/2008 of 21 April on new measures to combat corruption introduced the following protection for whistle-blowers: 1. those concerned must not suffer negative consequences, including unwanted transfer to another department, for reporting offences of which they have become aware in the course of or because of their official duties; 2. in the absence of evidence to the contrary, applying disciplinary sanctions to those concerned during the year following the corruption report shall be deemed unjustified; 3. those concerned shall be entitled to (a) anonymity, until the person suspected of corruption has been formally charged, and (b) if they so wish, transfer to another department without the right of refusal by the hierarchy, once the person suspected of corruption has been formally charged. See also Joint First and Second Evaluation Rounds, Addendum of Compliance Report on **Italy** §44, according to which the new Anticorruption Law (No. 190, on 6 November 2012,) provides for a specific provision on whistleblowing. The law enshrines the principle that whistle-blowers are to be protected from any retaliatory action. Reports can be made internally (to direct superior), externally (to the judicial authorities or to the Court of Audit) and in an anonymous manner. The Department of Public Service (Dipartimento della Funzione Pubblica) is to take all necessary measures to provide for restorative action when adverse consequences have occurred with respect to the whistle-blower.

⁹¹ Second Evaluation Round Germany, Second Compliance Report, §12 f. At both the federal level - section 67, paragraph 2, No. 3 BBG, in force since 1 April 2009 - and the level of the Länder - section 37, paragraph 2, No. 3 BeamtStG, in force since 12 February 2009.

⁹² Second Evaluation Round Denmark, Second Compliance Report, §16 f

⁹³ Second Evaluation Round Portugal, Second Compliance Report, §48

⁹⁴ Joint First and Second Evaluation Report, Addendum to the Compliance Report Lichtenstein §25