

8 December 2017

GrecoEval5(2016)2-fin

## Fifth Evaluation Round

### Guidelines for GRECO Evaluators<sup>1</sup>

Adopted by GRECO 78 (4-8 December 2017)

#### A. EVALUATION PROCESS

##### 1) Preparatory stage

1. Prepare yourself well before the on-site visit<sup>2</sup>:
  - Read the reference texts for the Fifth Evaluation Round, in particular the relevant Council of Europe legal instruments/standards;
  - Examine the replies to the questionnaire and the draft descriptive part of the report (DDP), legislation/regulations and other relevant texts that have been provided;
  - Do not hesitate to inform the Secretariat if additional material is necessary (do not contact the country to be evaluated directly!);
  - Mark issues that need to be clarified and formulate preliminary questions;
  - Read up on the political context of the country to be evaluated and, where possible, gather further information in addition to the information provided by the Secretariat;
  - Read through GRECO's First, Second, Third and Fourth Round Evaluation and Compliance Reports on the country to be evaluated, to get some background information and a general understanding of GRECO's proceedings;
  - Reveal any potential conflict of interest that may hamper your role as an evaluator;

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<sup>1</sup> This document takes into account the presentations and discussions held at the training workshop for 5<sup>th</sup> round evaluators (Strasbourg, 3-5 May 2017) and preliminary lessons from the first two on-site evaluations

<sup>2</sup> It should be borne in mind that a GRECO evaluation requires a considerable amount of preparation, in particular when examining the written material provided to prepare for the visit. Investment of time at this stage of the proceedings is crucial and allows efforts to be concentrated on what is essential during the on-site visit, which is short and very intensive (working days are long!). Such preparation also facilitates the drafting of the final report.

2. You will be asked to submit your opinion on the draft programme of the visit: check that the programme is well-balanced and that it includes meetings with all relevant institutions/actors at the level most appropriate to reply to your questions;
3. You are expected to respect the confidential nature of the evaluation, documents and information provided;
4. The Secretariat will make all practical arrangements, travel tickets, accommodation, etc., in consultation with you.

## 2) On-site visit

1. At the start of the visit, a preparatory meeting will be organised (GRECO Evaluation Team/GET and Secretariat), during which you should be ready to discuss the DDP, replies to the questionnaire and issues that need further clarification and divide tasks/issues among members of the GET according to respective fields of competence and interests;
2. Please keep the following in mind during the meetings:
  - Respect the collective approach of the GET (act as a team)
  - Act with courtesy and diplomacy, but do not hesitate to insist on obtaining the necessary information;
  - Stay neutral (avoid issuing personal opinions during official meetings) and demonstrate a certain level of empathy (not concession-making);
  - Participate actively in discussions, focusing on asking questions and gathering information, while respecting the time available for each meeting and making sure that there is enough time for all team members to ask questions;
  - Questions should, generally, be complementary to the DDP and reply to the questionnaire and cover both theory and practice;
  - Take notes during all meetings, including on topics which are not your primary responsibility;
  - Be flexible: people might not turn up for meetings – be ready to adapt to possible changes in the programme;
  - Keep in mind the confidentiality of the information provided, in particular, during meetings with civil society representatives;
  - Do not provide information concerning the evaluation to journalists. If necessary, the Secretariat will respond to questions from the media concerning the purpose of the visit, the work of GRECO etc., but no statements on the substance of the evaluation can be made.
3. Internal debriefing sessions will be organised by the Secretariat at the end of each working day and/or at the end of the visit, where you will have an opportunity to provide your preliminary opinion and suggestions for recommendations.

## 3) Follow-up to the on-site visit

1. You are expected to provide your analysis in writing to the Secretariat within two weeks after the visit: take care not to repeat information already available in the DDP, be concise and factual and provide solid reasoning for your conclusions;
2. On the basis of your contribution, the Secretariat will prepare a draft report, the so-called P1-version of the report;
3. You are invited to comment on the P1-version, (preferably) within 1 week from receiving it;

4. The Secretariat will prepare an amended version of the report (P2-version), reflecting your comments on the P1-version, which will be sent to the country in question;
5. Following comments provided by the country on the P2-version, the Secretariat will make suggestions for further amendments to the report (P3-version).
6. You are invited to comment on the P3-version without delay, after which the report will be sent – for information - to the country in question and to GRECO in view of its adoption by the plenary.

#### 4) Adoption process

1. You are expected to assist in the adoption process of the report during a GRECO plenary meeting (1-2 days) in Strasbourg;
2. During the plenary you are expected to briefly introduce your part of the report and to be able to explain your findings, conclusions and recommendations, whenever necessary;
3. Your presence may also be requested during preliminary meetings before<sup>3</sup> and drafting meetings after the discussion of the P3-version of the report in the plenary.
4. In all meetings, you are expected to uphold the opinion of the GET, whenever this appears to be justified.
5. You should bear in mind that the entire evaluation procedure is confidential: the adopted report remains confidential until the country decides to make it public.

## B. CONTENT OF EVALUATIONS

### 1) “Persons performing top executive functions” (PTEFs) and “law enforcement officers” (LEOs)

1. The 5<sup>th</sup> Evaluation Round shall focus on the two above categories of persons (see also the Introduction of the questionnaire):
  - “PTEFs” refers to members of government and similar persons who are political appointees as well as the Head of State. The questionnaire was designed to determine prior to the on-site visit which categories of persons are equivalent to members of government and to what extent, if any, the Head of State determines government policy or holds other clear executive functions as opposed to holding mere residual powers;
  - specifically as regards Heads of State, GRECO has decided (78<sup>th</sup> Plenary Meeting, December 2017) on the following definition for the 5<sup>th</sup> Round:

*A Head of State would be covered by the 5th evaluation round under “central governments (top executive functions)” when s/he actively participates on a regular basis in the development and/or the execution of governmental functions, or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure, taking decisions on the appointment of individuals to top executive functions.*

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<sup>3</sup> Information which may require changes to the report – and to the recommendations – will often be made available only at a very late stage of the proceedings.

- “LEOs” is to be understood as referring to the police, border guard / immigration services; in case of multiple national agencies, the GET shall determine with the country which ones to meet / evaluate during the visit. The report shall present the underlying reasons for the decision.
2. Depending on the constitutional practice, the existence of public controversies and other factors, and while respecting the previous GRECO jurisprudence, the GET makes a decision on the extent to which the function of Head of State is to be taken into account in the evaluation. The report shall present the underlying reasoning for the decision and list the functions of the Head of State.

## 2) The acquis from previous evaluation rounds

1. The 5<sup>th</sup> Round questionnaire is largely based on experience gathered in previous rounds (4<sup>th</sup> Round especially, but also the 1<sup>st</sup> Round as a whole and the 2<sup>nd</sup> Round as regards transparency and control of public administration). As regards integrity measures, it is largely inspired by the questionnaire used in Round 4.
2. GRECO’s practice in Round 4 shows that specific integrity requirements need to be in place concerning:
  - ethical standards and the general conduct expected (usually in the form of a code of conduct)
  - the management of conflicts of interest (including when they arise on an ad hoc basis)
  - how to deal with gifts and other benefits / offers
  - relations with lobbyists and other third parties who seek to influence the work (especially for elected officials)
  - the declaration of interests, income, assets and liabilities, with an appropriate level of detail and possibly addressing the situation of spouses and dependent relatives (especially for holders of a political mandate)
  - mechanisms to supervise compliance with the above rules and the content of declarations,
  - appropriate sanctions in case of non-compliance
  - advice (incl. confidential counselling), training and awareness
3. Measures also need to be in place to prevent conflicts of interest and inappropriate influence in respect of the legislative process / policy-making: the 4<sup>th</sup> Round has confirmed as a “standard” the requirement for transparency and an adequate level of public consultation.
4. Specifically for civil servants / LEOs, evaluators need to ensure that
  - safeguards are in place against interference with the work of law enforcement agencies and their staff (NB: the developments concerning independence and case management discussed in round 4 were specific to judges and prosecutors)
  - the concern for integrity is reflected in the recruitment and conditions of service : background checks and clean criminal record, career system based on merit and involving periodic appraisals, management quality, etc.
5. GETs also need to ensure that there are no unresolved issues concerning:
  - Incompatibilities, prohibitions or restrictions of certain (accessory) activities
  - immunities and special procedures relating to the categories of officials considered

- (mis)use of public resources related to income and other benefits, administrative facilities and personnel; as regards PTEFs this can be a crucial point in electoral periods<sup>4</sup> or where the phenomenon of “grand corruption” and “state capture” has been observed
- The (in)ability to enter into business and other contracts with State authorities
- (mis)use of confidential information
- Revolving doors / post-employment restrictions; the focus of integrity policies also on the exit stage appears to be increasingly relevant in relation to mandate-holders becoming lobbyists, consultants or PR representatives; systematic interviews of officers leaving the police can reveal pertinent structural problems as well.

### 3) Contextual factors

1. The 5<sup>th</sup> Round questionnaire also seeks information from the country undergoing evaluation on the contextual situation and the existence of factors which can lead to increased or decreased exposure of PTEFs and LEOs to risks of corruption:
  - general information on anti-corruption and integrity policy,
  - general information on transparency and oversight of executive activities of central government,
  - general information on the organisation and accountability of law enforcement / police authorities
  - general informal information on actual cases.
2. Obviously, the purpose of Round 5 is not to do a full assessment of the entire executive function / governmental action / police work, but to ascertain whether the integrity mechanisms in place are, overall, commensurate with the level of risks and the context of the country.
3. Every country is different and the questionnaire cannot anticipate / address all the specificities of each country. As it was the case with the 4<sup>th</sup> Round, the 5<sup>th</sup> Round is likely to break new ground in certain areas which have been little studied or monitored internationally up until now. Where the GET considers it crucial to make specific recommendations to improve general checks and balances (as opposed to integrity-specific measures) these should be clearly and directly linked to the integrity framework that is the subject of the evaluation round.
4. Evaluators will also need to pay special attention to the overarching logic of integrity policies; for instance,
  - an employment regime for PTEFs and LEOs characterised by its permissiveness with regard to accessory activities will need to be counter-balanced with robust declaratory and other requirements for the management of conflicts of interest; certain top executive functions may call for specific arrangements to manage such possible conflicts, e.g. use of blind trusts during the mandate;
  - a country confronted with recurring controversies about nepotism and cronyism of members of government (which can be indicative of certain forms of corruption), or with a low level of citizens’ trust in the police (this supposes that adequate measuring tools are in place), would normally call for supervisory mechanisms (government) and complaints bodies (police) independent from the institution.

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<sup>4</sup> Several country evaluations in the 3<sup>rd</sup> Round (theme II – transparency of party funding) have pointed to the misuse of public resources in relation to political financing; see also the ODIHR - Venice Commission [Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes](#)

#### 4) Effectiveness of rules and supervisory mechanisms

1. The effectiveness of mechanisms in place for the preservation of integrity will require careful consideration:
  - LEOs are among the essential categories of public officials (just as members of the judiciary and prosecution in round 4) for certain core functions of State and for anti-corruption policies to be properly enforced / implemented;
  - as regards PTEFs, the evaluators will sometimes have to reassess situations which have been addressed by earlier GRECO recommendations, especially as regards declaratory regimes for elected officials. Under these circumstances the GET may wish to consider whether the framework for elected officials remains appropriate for PTEFs, and (where regulatory improvements have been made as a result of previous GRECO recommendations) consider the effectiveness of such mechanisms.
2. GETs will have to use the interviews and various pertinent sources of information (quantitative and qualitative data, activity reports, media / NGOs/academics / unions etc.) to assess the effectiveness of preventive measures and of supervision / enforcement mechanisms. Evaluators shall expect that the results of supervision are documented and used for further policy-making.

#### 5) Drafting

1. In the absence of a checklist of specific benchmarks and standards, “case-law” plays an important role in GRECO’s work. GETs need to become familiar with earlier reports on other countries.
2. The language used in evaluation reports is diverse when referring to strengths and weaknesses. GETs can point to areas which would deserve further attention or consideration, or which may need clarification or further review, without addressing a formal recommendation.
3. GETs will often need to establish a list of priorities at the end of the on-site visit. Where good practices are identified, the report should recognise them and indicate that GRECO welcomes... [in respect of particularly good practices and systems discovered]. The report may also include observations on findings in a particular situation that does not require a recommendation. Where a reform is expected, the report shall issue a recommendation (which calls for improvements and subsequent follow-up by GRECO in the compliance procedure). A recommendation must be supported by appropriate reasoning (to assist the country in devising the appropriate reforms) and pass a quality test (e.g. is it clear enough, is it consistent with other recommendations etc.). As a rule, “consider” recommendations (GRECO recommends to consider....) shall be avoided<sup>5</sup>.
4. Where improvements are desirable, this should be clearly reflected in the wording of recommendations (GRECO recommends that [measure to be taken]....) and where emphasis is added on developing effectiveness, the drafting shall allow GRECO to assess the measures taken in the compliance procedure; for instance GRECO recommends that [measures be taken] to increase the effectiveness of [the integrity rules / supervision / other mechanism] and that the resulting improvements are adequately documented.

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<sup>5</sup> Monitoring the implementation of such recommendations can lead to unnecessary difficulties and GRECO has had to develop criteria in the form of test questions: a) have appropriate consultations taken place? b) were these pertinent (and not related to something else)? c) was the final decision to proceed or not with reforms taken at the appropriate (political) level? d) is the consultation process documented and publicly available ?