

# FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in  
central governments (top executive functions) and  
law enforcement agencies

## EVALUATION REPORT

# ESTONIA

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Group of States against Corruption  
Groupe d'États contre la corruption

COUNCIL OF EUROPE



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## **I. EXECUTIVE SUMMARY**

1. This report evaluates the effectiveness of the framework in place in Estonia to prevent corruption amongst persons with top executive functions (ministers and senior government officials) and members of the law enforcement agency (the Police and Border Guard Board). Estonia has a good legislative arsenal in order to prevent corruption in respect of both categories examined in this evaluation round. Nevertheless, there are a number of areas where the authorities should go further to strengthen their prevention efforts towards, on the one hand, ministers and government officials and, on the other, law enforcement personnel.

2. Estonia has adopted the Anti-Corruption Act as a comprehensive legislative framework to prevent corruption amongst all officials, whether in government, the law enforcement or other areas of the public sector. Insofar as civil servants are concerned, this is complemented by the Civil Service Act, which also sets a number of standards on integrity and ethics. In addition, a well-developed online tool has been made available to all officials.

3. As regards government officials, the current legislative background provides a solid basis for prevention, but would need to be supported by a code of conduct for persons with top executive functions that sets out more targeted standards to respond to corruption risks more particularly faced by officials in government, whether they are ministers, civil servants or political advisers. Effective enforcement of the code should also be guaranteed. For this purpose, the report also finds that risk analyses should systematically cover persons with top executive functions in order to have a clear picture of corruption threats faced specifically by them. Furthermore, persons with top executive functions – in particular ministers and political advisers – should be systematically briefed upon taking up their positions on integrity matters and their expected conduct. Moreover, the report highlights that the employment conditions of political advisers hired by ministers to support them directly in leading government business, would also gain in including an integrity vetting process.

4. While the transparency of the legislative process is of a very commendable level in Estonia, there are currently no rules governing contacts of ministers, advisers or civil servants with a top executive role with lobbyists/third parties that seek to influence the decision-making process. According to the report, the very fact that, in a country of the size of Estonia, officials and lobbyists may otherwise be privately connected makes it all the more important that there would be practical guidance to determine which meetings ought to be reported and made public for the sake of transparency. In the same way, the report finds that some rules should be introduced to prevent any revolving doors phenomenon which may arise in certain cases when persons with top executive functions leave government to work in the private sector. Also to serve transparency, appropriately detailed declarations of interests are already made by ministers and certain senior officials, but this obligation should be made to cover all persons with top executive functions, including political advisers involved in government decision-making.

5. As regards law enforcement, the Police and Border Guard Board appears to have built up strong practice over the last years to prevent corruption within its own ranks. The Police and Border Guard Board combines risk and threat assessments with targeted awareness-raising and training activities, pro-active internal communication polices and various preventive tools with what appears to be a well-functioning internal oversight by the

Internal Control Bureau. A few weak spots nevertheless remain, which require action from the Estonian authorities to ensure that the encouraging efforts of the last few years are fully sustained over time.

6. When it comes to the applicable rules on conduct and guidance on integrity, various regulations are applicable, which appear to cover all relevant issues, with separate practical guidance given on gifts, conflicts of interest and ancillary activities. To ease familiarisation with these standards and allow the public to know what conduct they can expect of the police, the report calls for their consolidation in one document. In light of the growing trend of police officers having secondary employment, the supervision of such employment would need to be enhanced to ensure that due attention is paid to preventing conflicts of interest beyond the current focus on police contracts. Secondly, as it is currently not clear what type of employment is taken up by police officers after they leave the police or what the scale of potential conflicts of interest is, the report calls upon the Estonian authorities to have a study on this issue carried out and subsequently, if needed, to adopt further rules.

7. Regarding recruitment and career, the report welcomes that Estonia reportedly has the highest percentage of women in the police services in Europe. That said, more could be done to make the police more representative of society as a whole also at higher levels of management. The report furthermore recommends revising the procedure for selecting and appointing the Director General of the Police and Border Guard Board, in order to ensure that a formal, competitive and transparent process applies to all candidates. Additionally, the possibility of introducing the principle of rotation of police officers working in areas exposed to particular corruption risks could be explored, as a useful prevention measure.

8. Finally, in light of the fact that in case of complaints against the police it is the “police investigating police”, it is also recommended that the safeguards applicable to the mechanisms for oversight of police misconduct be reviewed, to ensure that they provide for sufficiently independent investigations into police complaints. Furthermore, the report notes the existing requirements on keeping the anonymity of persons reporting on misconduct in the police, but finds that more could be done to strengthen the protection of those coming forward to denounce wrong-doing of colleagues and to make it better known in the police what type of protection is being afforded to whistleblowers.

## II. INTRODUCTION AND METHODOLOGY

9. Estonia joined GRECO in 1999 and has been evaluated in the framework of GRECO's First (in April 2001), Second (in October 2003), Third (in November 2007) and Fourth (in June 2012) Evaluation Rounds. The resulting Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's website ([www.coe.int/greco](http://www.coe.int/greco)). This Fifth Evaluation Round was launched on 1 January 2017.<sup>1</sup>

10. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of Estonia to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of Estonia, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, Estonia shall report back on the action taken in response to GRECO's recommendations.

11. To prepare this report, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Estonia from 23 to 27 April 2018, and reference was made to the responses by Estonia to the Evaluation Questionnaire as well as other information received, including from civil society. The GET was composed of Ms Vicky CONWAY, Policing Authority, Authority Member appointed by Minister for Justice and Equality (Ireland), Mr Ernst GNAEGI, Deputy Head of the Criminal Law Division, Federal Office of Justice (Switzerland), Mr Oleksandr PYSARENKO, Head of the Department of the National Agency on Prevention of Corruption (Ukraine) and Ms Jolita VASILIAUSKAITE, Adviser, Office of the Seimas (Lithuania). The GET was supported by Mr Gerald DUNN and Ms Tania VAN DIJK of the GRECO Secretariat.

12. The GET met Mr Urmas REINSALU, Minister of Justice, and interviewed representatives of the Ministry of Justice, Ministry of the Interior, Ministry of Finance, Office of the President, State Chancellery (Prime Minister's Bureau and Government Secretariat), Police and Border Guard Board, Office of the Prosecutor General, Office of the Chancellor of Justice, Parliamentary Anti-Corruption Select Committee, National Audit Office, Data Protection Inspectorate, and Chamber of Commerce and Industry. The GET also met with representatives of non-governmental organisations (including Transparency International), trade unions, academia, and investigative journalists.

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<sup>1</sup> More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's [website](http://www.coe.int/greco).

### III. CONTEXT

13. Estonia has been a member of GRECO since 1999 and has undergone four evaluation rounds focusing on different topics related to the prevention and fight against corruption. Estonia has achieved a commendable level of implementation of GRECO's recommendations under each evaluation round. All procedures on compliance with recommendations of previous rounds have been terminated and, at their closure, 100% recommendations of the first evaluation round had been fully implemented, 80% of recommendations of the second evaluation round, 80% of recommendations of the third evaluation round and 75% of recommendations of the fourth evaluation round.

14. Estonia has adopted in 2012 a dedicated Anti-Corruption Act with a view to preventing corruption acts performed by officials in a broad sense, i.e. any person discharging public duties. It came into force in 2013 and has been revised several times since then – the last time in 2017.

15. According to the corruption perceptions index published by Transparency International, Estonia has steadily gone up from the 32nd rank in 2012, with a score of 64 out of 100, to the 21st rank in 2017 with a score of 71. Amongst member States of GRECO, this means that Estonia was ranked 15th in 2017. According to the Eurobarometer, the proportion of Estonians that consider that the problem of corruption was widespread went down from 76% in 2013 to 67% in 2017, bringing it just below European Union average on 68%. At the same time, the proportion of Estonian respondents saying that they had been directly affected by corruption was on 10%, well below EU average on 25%. In 2017, 23% of Estonian respondents were of the opinion that the level of corruption had increased over the last three years, the second lowest score of the EU and well under EU average on 43%. As to whether government efforts to combat corruption are effective, the score of those who agree is up 5% since 2013 to reach 35% in 2017 and the score of those who disagree is down 13% at 46%.

16. In spite of these relatively favourable perception results, there have been a number of high-profile corruption cases that have come to light in recent years. It is worth noting that, according to the Eurobarometer, 56% of respondents thought that the giving and taking of bribes and the abuse of power for personal gain are widespread amongst politicians. In 2015, a corruption scandal hit the state-owned Port of Tallinn, its Director and several other managers being accused of running a bribery scheme. This has led to the setting-up of an investigative parliamentary committee which concluded that part of the problem resulted from increased risks of cronyism linked to political appointments. As a result, the government pledged to stop direct appointments to state companies' boards and an appointments committee was set up. In November 2016 the Prosecutor General issued criminal charges of bribery and other offences against the mayor of Tallinn (who was suspended from office in September 2015 after the criminal investigations was started against him). He is suspected of accepting bribes with a value of hundreds of thousands of euros in 2014 and 2015 for his own benefit and that of his political party. He had previously been Prime Minister and Minister of the Interior in the 90s. Two former ministers were found guilty of accepting bribes when they were ministers in relation to the exchange of more favourable state land for land with environmental restrictions owned by private companies (see paragraph 132).

17. Trust in the police is high, with the Eurobarometer showing a significantly smaller proportion of Estonian citizens (21%) than the EU average (31%) being of the opinion that bribery and abuse of power in the police and border guard is widespread. In this regard, there has been a considerable shift over the last decade, with the regard for the police steadily increasing year by year (which – since the merger with the border guard services in 2010 – also extends to the border guard). One of the biggest cases to have come to light in the last few years in the Police and Border Guard Board relates to issuing of identity documents and resident permits on the basis of falsified information in return for bribes in 2015, for which four Police and Border Guard Board employees have been prosecuted.



#### IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)

##### System of government and top executive functions

18. Estonia is a parliamentary republic ([Constitution](#), Articles 1 and 56). The principle of separation and balance of powers is enshrined in Article 4 of the Constitution. The legislative power is vested in the [Estonian Parliament, Riigikogu](#), which is unicameral and composed of 101 members elected for four years (for more information see [4th Round Evaluation Report on Estonia](#), in particular paragraphs 21 to 24).

##### *The President*

19. The [President](#), who is the Head of State of Estonia, represents the country in international relations (Constitution, Chapter V, Articles 77-78). Pursuant to the Constitution, the executive power is not vested in the President but in the Estonian Government (Article 86). The President is elected by secret ballot by the *Riigikogu* for a term of five years, renewable once. The President must suspend his/her membership of any political party whilst in office.

20. The President formally signs instruments of ratification of treaties and promulgates laws. The President may refuse to promulgate a law but, if the *Riigikogu* passes it again without amendments, s/he has to either promulgate it or send it to the Supreme Court. If the Supreme Court declares the law to be constitutional, the President must promulgate it. The authorities underline that this seldom happens.<sup>2</sup> The President may also propose to Parliament revisions to the Constitution, but this is also a rare occurrence.<sup>3</sup>

21. The President formally appoints diplomatic agents on the advice of the government, judges on recommendation of the Supreme Court, and the president of the Bank of Estonia on recommendation of its Board. S/he can make recommendations on certain posts whose appointment is then made by the *Riigikogu* (Chief Justice of the Supreme Court, Chairperson of the Board of the Bank of Estonia, Auditor General and the Chancellor of Justice).

22. If the *Riigikogu* is unable to sit, the President may adopt decrees in matters of urgency; they need to be countersigned by the President of the *Riigikogu* and the Prime Minister (PM), and they will have to be examined by the *Riigikogu* with a view to being validated or rejected as soon as it reconvenes. Moreover, such decrees cannot concern, *inter alia*, the national budget, tax issues, electoral law, court procedures and national defence.

23. The President proposes to the *Riigikogu*, within 14 days from the resignation of the government in place, a candidate PM. The *Riigikogu* has then to confirm the candidate, failing which another one will be proposed. The President will in practice consult the different parliamentary groups and propose the leader from the largest group or coalition in parliament. The President also formally appoints the ministers proposed by the PM.

24. As agreed by GRECO, a Head of State would be covered in the 5<sup>th</sup> evaluation round under “central governments (top executive functions)” when s/he actively participates on a

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<sup>2</sup> Under the current president, it occurred once since 2016; under the previous President it happened twice from 2011 to 2016.

<sup>3</sup> This has only ever occurred twice.

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.

25. The GET notes that the functions of the President of Estonia are to a large extent of a formal, representative and ceremonial nature and s/he is not part of government and does not actively and regularly participate in day-to-day governmental functions. The Constitution defines the President as the country's Head of State (Article 77), but expressly states that the executive authority is vested in the government (Article 86). The appointments made by the President are always on advice, notably of the Government, limiting his/her role to a formal one. As to the President's ability to refuse to promulgate a law and submit it to the Supreme Court's review, this power is very seldom used. As regards the exceptional decrees that the President may pass when the *Riigikogu* cannot sit, this procedure is strictly regulated and was designed in the event of the country being at war. It has therefore never been used yet. In view of the above, the President of Estonia, as the country's Head of State, cannot be considered as exercising top executive functions and therefore does not fall within the framework of the current evaluation round.

#### *The government*

26. The Estonian Government consists of the PM and 14 ministers (Constitution, Article 88; [Government of the Republic Act](#) (GRA), section 3). The Prime Minister represents the government. The PM chairs the sessions of the government. The government exercises the executive power directly or through the government administration. It submits bills for adoption and international treaties for ratification to the *Riigikogu*. It can issue regulations of general application and orders of specific application on the basis of and for the implementation of laws. The PM signs off government regulations and orders.

27. Ministers decide on issues coming within their ministry's remit, as specified in sections 57 to 69 GRA. Ministers decide on the structure of state authorities coming under their ministry, if not provided for by law, and approve their own budgets on the basis of the state budget.

28. Executive regulations and orders as well as actions are decided by the government collectively as well as by ministers individually (sections 26 and 50 GRA). The GET was told that in practice the distinction between those decisions that need to be collective, generally dealing with cross-ministerial issues, and those within the sole remit of individual ministers was not always clear – apart from government bills put to parliament, which always need to be collective – and that a reflection process had been engaged to clarify the situation. The GET encourages the authorities to pursue their efforts in the matter as it is important that any minister, who may have a conflict of interest with respect to an issue discussed collectively, steps aside during any decision-making process. The authorities report that such has been the case in the past, but given that they themselves seek to clarify the distinction between collective and ministerial decisions, it is worth continuing their efforts in this area.

29. The government is accountable to parliament and, pursuant to the Constitution, any MP has the right to put questions to the government and its ministers. Every Wednesday,

there is a “question to the government” hour where the PM and two ministers (on a rotating basis) appear before parliament to answer questions put to them by MPs. In addition, MPs have the possibility of asking oral questions to the government during any parliamentary sitting concerning questions of general interest, and the minister concerned must go to parliament and provide an answer within 21 days. Finally, written questions on more specific subjects, which require detailed replies, can be addressed to the government or ministers who are then to answer within 10 days.

30. The *Riigikogu* may, by a resolution carried by a majority of its members, pass a motion of no confidence in the PM, the government as a whole or an individual minister (Constitution, Article 97, paragraph 1). A successful vote of no confidence against the PM or the government leads to the resignation of the government as whole, or, when the vote is directed at a specific minister, to this minister leaving government (section 8 GRA).

31. Furthermore, decisions and actions of ministers and the government are administrative acts that can be appealed, in first instance, before administrative courts, on appeal before circuit courts and, ultimately, before the Supreme Court.

32. As of September 2018, the government consisted of 11 male ministers (PM, justice, defence, environment, culture, rural affairs, finance, interior affairs, foreign affairs, entrepreneurship and IT, and public administration), i.e. 73.5% of all ministers, and 4 female ministers (health and labour, education and research, economic affairs and infrastructure, and social affairs), i.e. 26.5% of all ministers. In this respect, GRECO draws attention to the Committee of Ministers’ [Recommendation Rec\(2003\)3 on balanced participation of women and men in political and public decision](#), according to which making balanced participation of women and men is taken to mean that the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

33. The PM and ministers are supported in their work by “officials” and “employees” within the meaning of the [Civil Service Act](#) (CSA) (section 7). Those whose tasks involve the exercise of official authority – such as the substantive preparation or implementation of policy-making decisions at government level – are “officials” according to the Civil Service Act and constitute public-law service. This entails that they are appointed and that a number of restrictions apply to them, such as a ban on striking or exercising certain ancillary activities. For the purpose of this report “officials”, within the meaning of the Civil Service Act, will be referred to as civil servants. By contrast, “employees” are hired with private law work contracts for positions that are not meant to involve the exercise of an official authority but rather to provide support for the exercise of official authority.

34. The Government Office manages the operation of and provides support services to the government and the PM (Chapter 5 GRA). It also deals with relations between the government with the *Riigikogu*; reviews draft legislation of the government to ensure its conformity with the Constitution and existing laws; co-ordinates the elaboration of the positions of Estonia at EU level; and organises the career development of high-ranking officials.

35. The Government Office is headed by the State Secretary who is appointed by the PM (section 79 GRA). S/he is relieved of office by the PM on the basis of the Civil Service Act. However, the resignation of the government does not entail that the State Secretary be

relieved of office, and State Secretaries are appointed for a renewable five-year term. The GET notes that the current State Secretary has held the post since 2003 and has therefore been reappointed three times.

36. The State Secretary organises government sessions (such as preparing the agenda and the minutes). S/he monitors compliance with the law and the Constitution of draft legislation to be put forward by the government, and countersigns regulations and orders taken by government. If s/he considers regulations or orders contrary to existing law or the Constitution, s/he appends a written opinion to the text in question, which is sent to the Chancellor of Justice— an independent official whose functions are comparable to those of an ombudsperson.<sup>4</sup> Moreover, s/he makes proposals concerning administrative issues pertaining to government. The State Secretary is accountable to the government and PM. S/he participates in government sessions and has the right to speak. S/he appoints or hires the Government Office’s director, the manager of ancillary activities and the heads of structural units.

37. The Office of the PM, which is the government administration directly serving the PM, is currently composed of 11 political advisers (see paragraphs 40-43) and assistants hired by the PM for the term of his/her office.

38. For each ministry, a secretary general is appointed by government, at the suggestion of the minister concerned and in accordance with the procedure laid down in the Civil Service Act. Their term of office is five years but is linked to that of their minister in the sense that they can be relieved of their functions if co-operation is not working after a period of six months. They direct the work of the structural units of a ministry, co-ordinate the activities of the state authorities coming under the ministry and run the operations of the ministry (section 53 GRA). They appoint and relieve of their duties civil servants working for the ministry as well as hire and dismiss other employees on the basis of employment contracts, with the exception of those recruited directly by the minister, which include political advisers. A minister can also appoint deputy secretaries general; they are civil servants who are the policy managers of the ministries (e.g. criminal policy, legal policy, healthcare policy, etc.).

39. Secretaries general control the budget funds of the ministry and prepare the draft annual budget. They manage the use of state assets within the scope of the competence granted by the minister, in accordance with the State Assets Act. They countersign regulations of their respective ministers and, if they disagree, a written opinion is appended to the regulation and sent to the Chancellor of Justice.

40. The structure of a ministry also includes political advisers whose functions and subordination is determined by the minister (section 46(4) GRA). The number of advisers is not prescribed by law and it is not mandatory to fill in a vacant post. As a result, their number may vary from one ministry to another. Advisers are not civil servants but are given a private law work contract. They are considered as “employees” for the purposes of the Civil Service Act, which means that their work is not meant to involve the exercise of official

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<sup>4</sup> The Chancellor of Justice also reviews the constitutionality of regulatory acts of general application and can be petitioned by anyone. In case the Chancellor finds an act not fully compliant with the Constitution, the authority responsible for the regulatory act, including the government, has 20 days to bring it in compliance, failing which the Chancellor proposes to the Supreme Court to repeal the impugned act or provisions.

authority but rather to provide support in the exercise of the official authority. However, they are “officials” within the meaning of the Anti-Corruption Act and are therefore covered by its relevant provisions (see paragraph 56). Their positions come to an end when the PM or minister whom they serve leaves office.

41. In practice, however, the influence of political advisers should not be downplayed, even if technically they do not exercise official authority themselves, as they are closely associated to the day-to-day decision-making process at the highest level, being directly hired by the ministers themselves, usually from the ranks of their own political party, to provide political, strategic advice. As a general rule, it appears that they will at a minimum manage the ministers’ diaries, making them an important point of access to ministers, but often beyond, and their exact tasks can vary from ministry to ministry, or even from adviser to adviser within the same ministry, depending on each minister’s decision. For the purpose of the report, political advisers are considered as PTEFs.

42. There are no specific rules as to how political advisers are to be selected, and the GET was informed that there was no established vetting procedure for hiring them. In this respect the authorities are of the view that ministers engage their own reputation in choosing their advisers. Political advisers are not required by law to fill in a declaration of interests. Similarly to other PTEFs, there are no rules on their contacts with lobbyists and on post-employment restrictions in spite of their proximity to ministers and first-hand experience of government business. The salary of political advisers is fixed by the minister in their work contract.

43. The GET notes that considerable leeway is left to ministers, including the PM, as to the political advisers they wish to hire (in particular regarding their numbers, tasks and salary). The GET is of the view that, while it is perfectly understandable that flexibility should be preserved on the conditions of recruitment and work of political advisers, this should however be counterbalanced by a vetting procedure upon recruitment, including integrity criteria, and some awareness and training on integrity matters (this aspect as well as other aspects related to conflict of interest are dealt with later on in the report). Consequently, **GRECO recommends that political advisers undergo a vetting procedure based on integrity criteria as part of the recruitment process.**

#### *Status and remuneration of persons with top executive functions*

44. The PM, who is appointed by the *Riigikogu*, heads the government, chooses government ministers and decides on government reshuffles. Ministers are directly answerable to the PM. Government members are accountable to parliament as said above. They cannot simultaneously be in government and sit in parliament.

45. Civil servants with top executive functions and political advisers are selected by government members (see paragraphs 38-43). In practice, civil servants with top executive functions (such as the State Secretary, secretaries general and their deputies) can however stay in post from one government to the next for the sake of continuity. This remains dependent on the government members not removing them from their post. All civil servants in government, including those with top executive functions are bound by the Civil Service Act.

46. As to the level of remuneration in Estonia, the average monthly gross wage in second quarter of 2018 amounted to EUR 1 321. The salary of the PM is EUR 5 356, while that of ministers is EUR 4 552, the rate of their salaries being fixed in law. The salary of the State Secretary is EUR 4 836 while secretaries general earn EUR 4 097. As said above, the salaries of political advisers are accessible to the public and the average salary of political advisers in 2018 was approximately EUR 2 100.

47. Ministers are entitled to an official residence which they must vacate upon leaving office (section 33 GRA). Official travel expenses of ministers are reimbursed on the rates provided for in the Government of the Republic Act (section 31 GRA). Ministers are to be paid 20% of their salary on monthly basis for representation expenses. A minister who leaves office following the resignation of the government, the expression of no confidence or at the suggestion of the PM, has the right to receive compensation to the extent of six months' salary; the compensation prescribed is not paid to the minister against whom a judgment of conviction has entered into force (section 35 GRA).

### **Anticorruption and integrity policy, regulatory and institutional framework**

#### *Anticorruption and integrity policy*

48. Estonia currently has an [Anti-Corruption Strategy](#) for the period 2013-2020, which also covers PTEFs (more specifically ministers), although not explicitly but rather by referring in general terms to politicians involved in the decision-making process. The global objectives of the Anti-Corruption Strategy are: (1) promoting corruption awareness; (2) improving transparency of decisions and actions; and (3) developing the investigative capabilities of investigative bodies and preventing corruption posing a threat to national security.

49. The Ministry of Justice leads the government's anti-corruption policy and coordinates its implementation, with 3½ staff assigned to work on it. An [Implementation Plan of the Anti-Corruption Strategy for 2014-2017](#) has been released in early 2018 to take stock of progress achieved since the adoption of the Anti-Corruption Strategy on specific goals. This includes, *inter alia*, under the heading "shaping corruption-related attitudes and increasing awareness in the public sector", the organisation of ethics training for civil servants, and making training material available online.

50. Some of the activities related to integrity and awareness of PTEFs are the development of self-assessment methods for ethics management systems of state agencies (guidelines will be prepared by the end of 2018 and an e-questionnaire should be linked to an e-learning interface by 2019); an electronic [Handbook of Conflicts of Interest](#) (not specifically dedicated to PTEFs); training courses for ethics and conflict of interests; enhancing officials' skills of involving interest groups; and developing communication principles with legislative drafters.

51. The GET is mindful of the broader Anti-Corruption Strategy and the sector-specific corruption risk analysis in three priority areas (healthcare, education and environment); other areas will subsequently be subject to analysis in the same way. Currently, while overall responsibility for the anti-corruption dossier lies with the Ministry of Justice, each ministry, in effect, enjoys significant leeway in defining its own anti-corruption approach. The GET was informed of one ministry that had carried out a risk assessment, but ministries do not

appear to be required to do so. The GET was told that meetings bringing together the ministries' anti-corruption co-ordinators are organised usually once or twice a year, but do not aim at analysing risks faced by officials in government (see paragraphs 64-65).

52. The GET undoubtedly sees merit in encouraging each ministry to take ownership of the government anti-corruption policy as is currently the case – it contributes to a more nuanced way of tackling corruption risks depending on each sector, which is to be praised. At the same time, the GET is of the view that it would be helpful to use the experience of the different ministries with a view to identifying risks specifically faced by PTEFs in government work. Many of the factors affecting PTEFs (whether ministers, civil servants involved in decision-making or political advisers) will be the same irrespective of the ministries' remit. The GET is of the opinion that a risk assessment concerning PTEFs in the whole government<sup>5</sup> would not mean removing the flexibility left to ministries in deciding which aspects should be given priority within their remit, but would rather make use of each ministry's findings with regard to PTEFs in order to identify the risks they face.

53. The existing network of anti-corruption co-ordinators and their annual reports on their ministries (see paragraphs 64-65) are a positive feature of the current system, which could usefully serve the purpose of a cross-ministry risk assessment on PTEFs, with practical examples of risks identified in each ministry being brought together, compared and analysed. This approach would appear all the more important given the current absence of a code of conduct applicable specifically to PTEFs (see paragraphs 61-63).

54. For the above reasons, **GRECO recommends that risk analyses be broadened to cover more specifically persons with top executive functions.**

#### *Legal framework/ethical principles and rules of conduct*

55. The guarantee of integrity of PTEFs rests on two pillars: (1) the disclosure of information stipulated in the [Public Information Act](#), which lays a broad basis for the disclosure of public information; and (2) the [Anti-Corruption Act](#) (ACA), which stipulates rules on conflicts of interest and procedural restrictions, the prevention of undue influence of officials, including PTEFs. There is no definition of the notion of conflict of interest as such, but the authorities underline that all the prohibitions and restrictions set out in the ACA are aimed at preventing conflicts of interest.

56. All PTEFs are "officials" for the purposes of the ACA, which means that the Act applies to them, whether they are ministers, civil servants or political advisers. In the context of the ACA, holding an "official position" means having (1) the right to make a decision, including to participate in the decision-making process or conduct its substantive preparation, which aims at creating, altering or removing individual rights and obligations, including legislative and administrative acts; (2) the right to produce an act, including to participate in its preparation or conduct its substantive preparation, which causes legal and unavoidable factual consequences for other persons and which is not the making of a decision. An act may also mean producing any other procedural acts, making omissions or causing delays.

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<sup>5</sup> For the time being, risk factors are identified in the yearbook of the Estonian Internal Security Service, but this document is of a rather general nature and does not include any specific risk assessments linked to potential misconduct in government.



57. According to section 3 ACA, officials are prohibited from: (1) demanding, intermediating and receiving income derived from corrupt practices; (2) making corrupt use of their official position; (3) making corrupt use of public resources; (4) making corrupt use of their influence; and (5) making corrupt use of inside information in their possession. Under section 11 ACA, officials are forbidden from making a decision or undertaking an act, if: (1) the decision is made or the act undertaken in connection with themselves or a person connected to them; (2) they are aware of an economic or other interest that they or a person connected to them may have and which could have an impact on the said act or decision; or (3) they are aware of a risk of corruption.

58. A general [Code of Ethics for Officials](#), adopted in 2015, applies specifically to civil servants, including those working in government. This code lays down the fundamental values expected of all civil servants, including: impartiality in avoiding situations which may call their impartiality into doubt; openness and co-operation whereby officials must exercise public authority in a transparent and understandable manner. Each core value is accompanied by explanations illustrated with examples.

59. More generally, standards pertaining to integrity and ethics are enshrined in the ACA. Therefore, the ACA standards and the aforementioned e-Handbook on Conflicts of Interest<sup>6</sup> are the main reference points for PTEFs, and while there is the above-mentioned code for those PTEFs who are civil servants, there is no equivalent for PTEFs who are either ministers or political advisers.

60. The GET welcomes the fact that the authorities have developed a detailed website on corruption prevention, whose purpose is to raise the awareness of all individuals exercising public duties. This is a precious tool which provides a solid basis for sensitising all officials, although it does so without specific regard being given to where they may work, with the exception of municipalities, local councils and city managers for which something separate has been prepared. It also notes that civil servants are covered by the Code of Ethics for Officials, which mixes general principles and examples, but does not apply to ministers or political advisers.

61. The GET believes that the existing tools, although pertinent, would gain in being more targeted to best prevent corruption risks specific to central government and to provide guidance to PTEFs on situations they may be faced whilst carrying out government business. The fact that the ACA is applicable to all PTEFs offers a solid basis for a code of conduct, illustrated with concrete examples of corruption risks most prevalent at central government level. This would also benefit from risk analyses that will be carried out within government and the identification of potential threats during the government decision-making process (see paragraph 53).

62. According to the GET, the existing general information should be supplemented by a code of conduct for PTEFs, which would describe the conduct expected of them during the government decision-making process (in particular, ministers, civil servants involved in decision-making and political advisers). Such a document should deal with topical issues such as: conflicts of interest; gifts and contacts with third parties/lobbyists aimed at

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<sup>6</sup> Also available in English: [www.korruptsioon.ee/en/conflict-interests/cases-and-solutions-conflict-interests](http://www.korruptsioon.ee/en/conflict-interests/cases-and-solutions-conflict-interests)



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. Ministers and other persons entrusted with top executive functions must set the right tone for public administration, and more generally for public life, and should lead by example. It is particularly important that persons with top executive functions, as well as the general public, are clear as to the applicable standards. It is also important to ensure the effectiveness of these standards through adequate monitoring and enforcement.

63. In view of the above, **GRECO recommends (i) that a Code of Conduct for persons with top executive functions be adopted in order to provide clear guidance regarding conflicts of interest and other integrity related matters (such as gifts, contacts with third parties, ancillary activities, the handling of confidential information and post-employment restrictions), and (ii) to ensure proper monitoring and enforcement of the Code.**

#### *Institutional framework*

64. Each ministry has a corruption prevention co-ordinator who is meant to manage the implementation of the anti-corruption policy in the relevant ministry and its area of government. They present an annual report to the Ministry of Justice about implementation, which is made public.

65. The GET was told that meetings bringing together ministerial co-ordinators are few and far between (once or twice a year) and, in practice, seem to serve essentially to present the general activity reports on what their ministries have done in their respective fields of competence. The purpose of these meetings does not appear to be the identification of threats faced by PTEFs or ministerial staff themselves (such as conflicts of interest, contacts with third parties, etc.). As said before, the GET considers that pulling together experience from different ministries on potential corruption risks involving PTEFs with a view to analysing identified risks would undoubtedly allow to draw lessons from first-hand cases and improving prevention in government regarding specifically PTEFs (see also paragraphs 53).

66. The Riigikogu Select Anti-Corruption Committee exercises parliamentary supervision over the implementation of anti-corruption measures, discusses on its own initiative potential incidents of corruption involving officials within the meaning of the ACA, therefore involving all PTEFs in connection with their declarations of interests (see paragraphs 124-130).

67. Moreover, the Corruption Prevention Council, run by the Ministry of Justice, aims to analyse anti-corruption activities in Estonia and make proposals to the Minister of Justice to prevent corruption. Its seven members represent different fields of activity and society (National Audit Office, Prosecutor General, civil society, business sector) around the topic of corruption prevention. It is not a supervisory body but policy-making oriented. The authorities have indicated that, partly due to short term of its activity, issues pertaining to PTEFs have not been on its agenda yet. Moreover, during the visit, the GET was informed by some interlocutors that the Corruption Prevention Council only met twice a year and currently suffered from a lack of visibility.

68. The Government Office Top Civil Service Excellence Centre is responsible for the recruitment (including the development of selection and recruitment policies and methods)

and development of top executives in the civil service. The centre's activities therefore cover neither ministers nor political advisers. The competency framework for the recruitment procedure of civil servants is public and accessible on the internet.

### *Awareness*

69. The Ministry of Finance is responsible for providing training on ethics to all civil servants, and for supporting the operation of the Council of Ethics of Officials (CEO). The aim of the CEO is to give guidance and discuss ethically ambivalent cases involving civil servants. However, the authorities specified that the CEO does not discuss cases nor give opinions on cases involving PTEFs.

70. There is no special awareness mechanism for ministers, other than swearing an oath upon entering office, which includes the principles of legality, trust and impartiality.<sup>7</sup> There is no specific body either that would be responsible for providing them with advice on anti-corruption rules and the conduct expected of them, and they would normally turn to the ministry's internal control auditors or anti-corruption co-ordinators.

71. The central source of corruption prevention information is the dedicated website (the so-called e-handbook on conflict of interest, see paragraph 50), run by the Ministry of Justice, which contains information on the ongoing activities and includes various toolboxes, e.g. guidelines for preventing conflicts of interests, guidelines for declaring interests, surveys, statistics, strategies, etc.

72. However, the GET was told that there is no systematic briefing of ministers on integrity issues upon their taking office, unless they expressed interest in it. No awareness appears to be directed at political advisers when they take their posts either, and they do not benefit from the same training opportunities on ethics as civil servants. The GET considers that at a minimum ministers and political advisers should be systematically briefed upon taking up their posts about integrity standards applying to them and the conduct expected of them in terms of conflicts of interest, declarations of interests,<sup>8</sup> contacts with third parties, gifts, etc. Additionally, ministers should be briefed on their role when it comes to ensuring effective integrity and implementation of anti-corruption policies within their ministries. The authorities should also consider opening to political advisers the existing training on integrity proposed to civil servants.

73. In addition, it would be advisable to designate someone at government level as confidential counsellor for PTEFs on integrity issues. For the moment, apart from civil servants, who in principle can turn to the Council of Ethics for Officials (although it does not appear to deal with PTEFs in general), there does not seem to be any formalised procedure and one turns to colleagues, corruption prevention co-ordinators or internal control auditors in a rather informal fashion; this is of course not in itself problematic and will be enough in

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<sup>7</sup> "In undertaking to perform the duties of a member of the Government of the Republic, I am aware that I shall bear responsibility in this office before the Republic of Estonia and my conscience. I solemnly swear to remain faithful to the constitutional order of the Republic of Estonia and to devote my strength to securing the welfare and future of the people of Estonia."

<sup>8</sup> Insofar as declarations of interests are concerned, the authorities indicate that they have a special telephone line and website to provide information. That being said, it would seem that an introductory briefing should cover all relevant topics, if only to point to existing sources of information in case of need.

most cases. However, it might not be well suited for certain more sensitive situations, which would require that confidentiality be imbedded in a counselling procedure. Such a role could be given for instance to an existing body dealing with integrity matters.

74. In view of the above, **GRECO recommends that systematic briefing on integrity issues be imparted to ministers and political advisers upon taking up their positions and confidential counselling on ethical issues be accessible to all persons with top executive functions.**

### **Transparency and oversight of executive activities of central government**

#### *Access to information*

75. The [Public Information Act](#) (PIA) provides for broad disclosure of public information. All documents relating to executive decision-making are public. Section 4 (1) PIA lays down the principle that persons holding public information are to ensure access to this information under the conditions and pursuant to the procedure provided by law. Information pertaining to the executive can be accessed either on a government webpage, by request or in a digital database.

76. Section 28 PIA lists the type of information to be disclosed, which includes draft acts and regulations prepared by government or ministries, together with explanatory memoranda; draft concept papers, development plans, programmes and other projects of general importance before such drafts are submitted to the competent bodies for approval, and the corresponding approved or adopted documents; information concerning public procurements which are being organised or have been organised by the government; information concerning the use of assets and budgetary funds that the government has transferred to private law legal persons founded by the government or with its participation. The agendas of the government sessions, together with comments on the issues discussed, can also be accessed [online](#). The minutes of government sessions are compiled and made public online.

77. According to the PIA the secretary general of a ministry may establish restrictions on access to information and classify it for internal use in exceptional cases. This must be the case, for example, when information contains sensitive personal data, information whose disclosure may violate a business secret or information collected in criminal or misdemeanour proceedings.

78. The supervision of implementation of the PIA is carried out by the [Data Protection Inspectorate](#). This supervision can either be proactive with a view to issuing guidelines to improve practice of certain agencies, or reactive, when complaints or suspicions have been communicated to the inspectorate. For government agencies, they can ask the head of the agency to start an internal audit or disciplinary proceedings. In case of misconduct of an official (e.g. an official document being withheld), a fine would be imposed (EUR 1 000 maximum).<sup>9</sup>

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<sup>9</sup> Half of the 146 complaints received in 2017 by the Data Protection Inspectorate concerned ministries and dependent agencies. The Data Protection Inspectorate reported some cases where ministries have failed to provide the requested information within a week as per section 28 PIA.

### *Transparency of the law-making process*

79. In 2011 the government officially approved the [Good Practice of Engagement](#) and [Rules for Good Legislative Practice and Legislative Drafting](#). These two documents set out the way the Executive is to involve interest groups and the wider public in policy making. Engagement has to start as early as possible. For example, if the draft affects the wider public, information and call for opinions is done via the media. In all cases, the draft act must be entered into the dedicated information system (Electronic Coordination System for Draft Legislation – EIS<sup>10</sup>). In any event, draft documents are to be sent directly to the different stakeholders in order to expose the reasons for the draft, the drafting process and expectations about their feedback. Public consultation will be organised through e-consultation.

80. According to the Rules of the Government of the Republic (section 5), impact assessments need to be drawn up for any draft act and strategic policy documents decided by a minister or submitted to government. If, from the impact assessment, it becomes apparent that the said draft has a significant impact on a particular area, the draft will also be submitted to public consultation through EIS in order to allow interested stakeholders to express their views through the dedicated official website. Thus, both the drafting of the proposals and the public consultation are carried out through the EIS, as well as the submission to the government later in the process. All opinions presented by all interested parties are documented and added as part of the explanatory memorandum to the draft act.

81. The name and contact details of the officials responsible for preparing draft legislation is public. Generally a drafting group is formed, in some cases following a call for interest on the government's website, consisting of representatives of various state agencies, stakeholders and experts. The authorities report that formal meetings, list of participants and discussions are documented and often published on the relevant webpage (usually EIS) or can be obtained upon request. As part of the legislative process, a footprint is kept for each bill that shows who contributed to it, within government but also beyond.

### *Third parties and lobbyists*

82. Regarding contacts with third parties, who may try to influence their decisions, under section 3 (1) ACA, an official – and that includes any PTEF – is prohibited from “corrupt use of influence”. According to section 5(1)ACA, this entails the corrupt use of an official position and, pursuant to section 5 (3) ACA, this means the use by an official of his/her actual or presumed influence in violation of his/her official duties with the objective of achieving the commission of an act by another person or omission thereof in the interests of the official or any third person, if this brings about unequal or unjustified advantages for the official or the third person from the point of view of public interest. According to section 17 ACA, this attracts a fine of up to 300 fine units (one unit equals EUR 4). No fine appears to have been imposed on PTEFs on this ground as yet.

83. General principles of disclosure of information prescribed in the PIA apply. That said, the GET was told that there is no established practice for ministries to publish the list of meetings held by the ministers or officials with executive functions. It appears that some

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<sup>10</sup> <http://eelnoud.valitsus.ee/main#CRf9IJJb>

ministers make information relating to institutional meetings available, and some do not. Overall, lobbying is currently not defined in legislation and there are no specific rules on lobbying when it comes to PTEFs.

84. The GET notes that the explanatory memorandums of government bills presented to parliament have to indicate parties who have formally contributed to the process, which is a positive practice. The GET is more concerned about informal influence exerted on PTEFs in such cases. Moreover, the GET points out that influence from third parties/lobbyists can also impact on policies and infra-legislative acts taken at government level.

85. Furthermore, the GET notes that there are no other rules regarding contacts of PTEFs with third parties and lobbyists. The GET is mindful that in a country the size of Estonia the likelihood that ministers or other officials with executive functions are in some way connected with persons involved in lobbying the government, such as corporate representatives or lobbying consultants, is undoubtedly higher than in larger countries. According to the GET, in no way does this situation justify that there would be no specific rules applying to PTEFs. If anything, the proximity between PTEFs and third parties/lobbyists, who could influence the decision-making process, calls for proper guidance to be provided to PTEFs so as to clearly differentiate what qualifies as strictly private exchanges from meetings that may influence, or may be seen as seeking to influence, the decision-making process. The latter should be duly reported and accessible to the public. The GET was told that such distinction was frequently not made in practice and that meetings between ministers and third parties mostly went unreported.

86. The GET is of the view that the very fact of elaborating such rules would be an opportunity to raise the awareness of PTEFs and call on them to be more scrupulous in reporting on contacts with third parties which previously they may have considered as purely private but that could be informing the decision-making process, whether at ministry level or where it concerns collective government decisions.

87. In this respect, inspiration could be drawn from the rules on contacts of MPs with third parties recently elaborated within the *Riigikogu* and could also build on the findings of risk analyses concerning PTEFs. The GET also draws attention to the [Recommendation of the Committee of Ministers](#) to member States on the legal regulation of lobbying activities in the context of public decision making (2017), which calls, *inter alia*, for appropriate measures tailored to national circumstances to be put in place in order to avoid risks to public sector integrity that might be created by lobbying activities and guidance to be provided to public officials on their relations with lobbyists.

88. For all the above reasons, **GRECO recommends that rules be laid down to govern (i) contacts between persons with top executive functions and lobbyists/third parties that seek to influence the public decision-making process and (ii) the disclosure of such contacts and the subject-matters discussed.**

#### *Control mechanisms*

89. Any authority of the executive must implement, in the organisation of its activities, an internal control system. The head of each ministry is responsible for implementing this internal control system, whose aim is to ensure compliance with legislation; proper use of

the ministry's property; adequate purpose of the ministry's activities and reliable records of its activities (section 92<sup>1</sup> GRA). The financial control system is part of internal control, and comprises the planning, use and monitoring of use of the budget funds of a state authority. Each ministry has a unit of internal auditors to carry out the internal control system.

90. The National Audit Office (NAO) operates as an independent state body exercising economic control to ensure that public sector funds are used in accordance with the law. In the course of an audit, the NAO may assess the internal control, financial management, financial accounting and financial statements; the legality of the economic activities undertaken, including economic transactions; the management performance, organisation and activities; the reliability of the information technology systems. The Auditor General submits to the *Riigikogu* an overview of the use and preservation of state assets. Every year the NAO audits the financial statements of the government, with a focus on specific areas such as internal control. Its reports are public documents.

91. The standing committees of the Riigikogu oversee the exercise of executive powers within their respective fields. MPs can address oral and written questions to the government (see paragraph 29). In addition, the *Riigikogu* may form ad hoc committees of investigations to look into the circumstances of events of public interest. Such a committee of investigation has the authority to summon persons to appear before it and to require the presentation of information and documents necessary for the performance of its functions. However, this procedure appears to be reactive rather than proactive. The latest was disbanded in June 2016 on Investigation to Identify Possible Corruption Risks in the Public Limited Company Port of Tallinn. The purpose of this committee of investigation was to scrutinise a corruption scandal linked to the Public Limited Company of the Port of Tallinn and its head that was at the time appointed by government.<sup>11</sup>

### **Conflicts of interest**

92. The ACA does not use a definition of conflict of interest per se, but officials are prohibited from taking decisions or acting in their official capacity serving their private interests or those of any third persons, bringing about unequal or unjustified advantages going against the public interest (sections 3 and 5 ACA).

93. Furthermore, the ACA lays down the definition of "connected persons" and prohibits transactions of officials, i.e. including PTEFs, with "connected persons". According to section 7 (1) ACA, "connected persons" are the following:

- an official's spouse, grandparents, parents, his/her spouse's parents and descendants, including the official's children and grandchildren;
- person who has a shared household with an official, and any other person whose position or activities have a significant and direct impact on the official outside his/her official position or whom the position or activities of an official outside his/her official position significantly;

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<sup>11</sup> Following this corruption scandal in the Public Limited Company Port of Tallinn, the appointment of the heads of the boards of state-owned enterprises has been transferred from government to the Appointments Committee (State Assets Act, section 80). The Appointments Committee is composed of four members who are proposed by an organisation representing the private sector and whose integrity is checked, and two secretaries general from the government.

- legal persons in which at least 1/10 of the holding or the right to acquire a holding belongs to an official or a person connected to him/her;
- legal persons in which the official or any relative or the above-mentioned persons is a members of the management or controlling bodies for the purposes of the Income Tax Act.

94. In addition to a declaration of interests, ministers, secretaries general and deputy secretaries general must submit annually a confirmation that they have carried out no transactions with connected persons. The Ministry of Justice has issued guidance for this purpose and other ministries have introduced it in their internal rules.

95. At the same time, other laws do refer to the term of “conflict of interest”, such as the [Public Procurement Act](#). Within the meaning of this Act, “conflict of interest” means a situation where the contractor (authority, official, representative, etc.) has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence.

96. Furthermore, in addition to legal definitions, the authorities’ official website on corruption ([www.korruptsioon.ee](http://www.korruptsioon.ee)), which is presented as one of the main sources for anti-corruption awareness, also uses the term of “[conflict of interest](#)”, using an OECD definition whereby “conflict of interest is the discrepancy between an official’s duties and personal interests where the personal interests may influence the performance of duties”. Furthermore, the Code of Ethics for Officials does explicitly refer to the need for civil servants to avoid conflicts of interest in the exercise of their duties (see paragraph 58). The GET reaffirms that it would appear important 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 PTEFs (see paragraphs 61-63).

97. In 2011 the information system *Riigiraha* (State money) run by the Ministry of Finance was set up, providing the public with information concerning financial transactions of state authorities. It contains financial data about government sectors of activity from 2004 onwards as open data. The authorities have signalled that, after further technical developments, it will allow tracking down conflicts of interest in transactions between state bodies and private enterprises.

98. Moreover, the NGO Transparency Estonia is developing an application “Opener” based on open data, which will allow for a good understanding of the financial connections between contractors and contractees ([www.opener.ee](http://www.opener.ee)). For example the application, once fully operational, will make it possible to track officials’ connections, including those of ministers, either through party affiliations or direct ownership in companies contracting partners to a given ministry. The Ministry of Justice expressed support for this initiative and agreed to provide free access to the Business Portal Data, and the GET considers it as a promising development to strengthen transparency.

## **Prohibition or restriction of certain activities**

### *Incompatibilities, outside activities and financial interests*

99. Insofar as restrictions on activities carried out by PTEFs are concerned, section 10 ACA sets out the general principle that officials (i.e. ministers, civil servants and employees alike) can engage in ancillary activities outside their official duties, if not prohibited by law and if procedural restrictions are complied with. Under section 11 ACA, procedural restrictions prohibit them performing an act or making a decision, if (i) the decision is made or the action is performed with respect to the official or a person connected to him/her; (ii) the official is aware of an economic or other interest linked to him/her or a person connected to him/her and which may have an impact on the act or decision; (iii) the official is aware of a risk of corruption.

100. Pursuant to the section 4 GRA, a minister cannot hold any elected or appointed office outside his/her official duties or act based on a service contract, except in the research or teaching fields. This follows from Article 99 of the Constitution which stipulates that government members may not hold any other government office, or belong to the management board or supervisory board of a commercial enterprise. A minister must immediately inform the government in writing if s/he acts or intends to act outside his/her official duties as an undertaking or a general partner in a general or limited partnership or as a member of the management or controlling body of a legal person. The government will forbid ministers from engaging in ancillary activities if the workload and/or their nature hinder the performance of their official duties or if the ancillary activity brings about a breach of their duties. Similar restrictions apply to the State Secretary, secretaries general of ministries and their deputies (respectively, sections 79(4)-(4<sup>1</sup>), 55(3)-(4) and 56(5)-(5<sup>1</sup>) GRA).

101. However, while the ACA applies to political advisers, there are no procedural rules concerning the declaration of such activities by them in the GRA. The GET considers that the authorities should explore the possibility of extending procedural restrictions applying to ministers and civil servants to political advisers while they serve in government; this could be done, for example, in the internal rules that already exist in ministries about declaring ancillary activities.

### *Contracts with state authorities*

102. The authorities have stated that there are no specific rules applying to PTEFs who enter, either directly or through business interests, into contracts with state authorities. They have however referred to above-mentioned section 11 ACA which states that officials are prohibited from performing an act or taking a decision, if: (1) the decision is made or the act is performed with respect to the official or a person connected to him/her; (2) the official is aware of an economic or other interest of that the official or a person connected to him/her and which may have an impact on the act or decision; (3) the official is aware of a risk of corruption. In addition, the Public Procurement Act defines what would constitute a conflict of interest in this area, therefore complementing the ACA (see paragraph 95).

103. The NAO has made procurement its focus and, since 2016, the situation has progressively been streamlined with the Ministry of Finance having oversight over all procurement processes. An agency (*Riigi Tugiteenuste Keskus*) has been set up under the



Ministry of Finance to provide advice to ministries in managing and carrying out procurement.

### *Gifts*

104. Public officials, including all PTEFs, are not allowed to accept any benefit which can be associated with their official duties, with the exception of gifts that are unambiguously understood as common courtesy and as such not deemed to be corruptive. According to section 4 (1) ACA, income derived from corrupt practices is property or benefits that are offered to/requested by officials or any third person owing to their official role.<sup>12</sup>

105. PTEFs must immediately notify to their ministry or the person/body appointing them that they have accepted benefits that can be associated with their official role. They must refuse a benefit defined as income derived from corrupt practices or, if this is impossible, hand over the benefit immediately to their ministry or the person/body appointing them. If handing over the benefit is impossible, the official concerned must pay the market value of the benefit. The benefit handed over or the value thereof in money will be transferred to the state or returned, if so provided by law.

106. While the GET was informed that guidance was provided on the website on corruption prevention as to how gifts should be reported, the available chart is not specific to PTEFs but applies to all officials regardless of their area of work.

107. Moreover, the GET was told that while in the Ministry of Justice any gifts received by ministers and other officials that are not refused are to be recorded, there was no such practice in the Prime Minister's Office. The GET can but note the discrepancy between different ministries, which would gain in being harmonised so as to ensure better prevention across government. The GET is of the view that detailed guidance ought to be given to PTEFs in a future code of conduct, and they should be made aware of this upon taking office, as recommended earlier in the report (see paragraphs 63 and 74).

### *Misuse of public resources*

108. The corrupt use of public resources is prohibited (section 3 ACA). The corrupt use of public resources is defined as the use of material and other resources intended for the performance of public duties by such official in violation of his/her official duties in the interests of such official or any third persons, if this brings about unequal or unjustified advantages to the official or third person in relation to public interest. It is punishable by a fine of up to 300 fine units (one unit equals EUR 4). No such fine appears to have been imposed on PTEFs since the entry into force of the ACA.

### *Misuse of confidential information*

109. According to sections 3 and 5 ACA, the use by officials of undisclosed information, which became known to them in the course of exercise of public authority and which has or would probably have a significant impact on the rights of any third person, in the interests of such officials or third person, and if this brings about unequal or unjustified advantages for the officials or third person in relation to public interest, is prohibited. Under section 17 ACA,

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<sup>12</sup> In addition to the ACA, the Criminal Code criminalises the passive bribery (Article 294 of the Criminal Code). Sanctions for misdemeanours imposed pursuant to the ACA do not preclude criminal sanctions being imposed.

corrupt use of influence is punishable by a fine of up to 300 fine units (one unit equals EUR 4). No PTEF appears to have been imposed such a fine.<sup>13</sup>

### *Post-employment restrictions*

110. According to the Code of Ethics for Officials, civil servants should inform their former employer about starting work in a field where a conflict of interest may arise by reason of what they were working on as civil servants. Potential conflict of interest arising from leaving the civil service is also regulated by subsection 5 of section 60 CSA, which prohibits civil servants for a period of one year in taking a stake in a legal person or become a member of the management or board of that legal person if s/he has exercised direct or constant supervision over this legal person.

111. The GET notes that there are currently no post-employment restrictions applying to PTEFs. The only exception is a rather limited restriction applying only to civil servants, irrespective of whether they are in government or not, which is enshrined in section 60 (5) CSA, as described above. However, this restriction only imposes a one-year cooling off period on officials before taking stakes in a legal person or joining its managing board – but not on taking up employment in a private company. This means, on the one hand, that neither ministers nor political advisers are restricted in any way in their accepting employment in the private sector after leaving office and, on the other, that existing rules applying to civil servants with top executive functions do not in effect preclude them from accepting employment straight after leaving their post in government.

112. The GET is of the opinion that there is clearly a gap that needs bridging in order to avoid revolving doors. Rules should therefore be laid down so as to avert any undue influence on PTEFs (whether ministers, civil servants involved in decision-making or political advisers) whilst in government, for instance by reason of prospects of a future employment in the private sector. These rules should cover the particular situation where PTEFs would be offered employment involving their lobbying government straight after leaving it.<sup>14</sup> This can, for instance, be addressed through cooling-off periods (for instance in specific sectors impacted by decisions taken by the PTEFs when in government, e.g. allocation of state resources, privatisation funds, procurement, or any form of supervision), exit interviews, post-mandate extension of declaratory obligations, specific declaratory duties with regard to employment offers and increased supervision. Moreover, this should be read in conjunction with the lack of rules on contacts of PTEFs and third parties (see paragraph 88).

113. In view of the above, **GRECO recommends that rules be introduced concerning the employment of persons with top executive functions in the private sector after leaving government.**

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<sup>13</sup> Disclosure of information in the course of professional activities by a person who is required by law not to disclose such information may also give rise criminal liability, pursuant to Sections 156, 157 and 157-1 of the Criminal Code.

<sup>14</sup> See [Recommendation of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making](#), which cites as a possible measure “a “cooling-off” period, namely a period of time that has to elapse before either a public official may become a lobbyist after leaving public employment or office”.

## **Declaration of assets, income, liabilities and interests**

### *Declaration requirements*

114. According to section 13 ACA, ministers, the Government Office's State Secretary and ministries' secretaries general must submit declarations of interests every year. However, it is for each head of government entities (in ministries, it would be secretaries general for civil servants working under them) to decide whether other officials working there need to submit declarations of interests.

115. Declarations of interests must cover property and other circumstances with a view to identifying interests that may have an impact on the performance of official duties (section 12 ACA). Such a declaration has to be submitted within four months from taking office and thereafter annually by 31 May. In case of change of office, the person concerned does not have to submit more than one declaration during a calendar year.

116. According to section 14 ACA, 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.

117. The declaration must include the names and the personal identification number or date of birth of the declarant's spouse, parents, relatives in descending line as well as persons who shared the same household and the latter's relationship with the declarant; this information is not made public. However, no information on interests held by direct family members or dependents is required. Assets, rights and obligations in joint ownership must however be declared, setting out, if possible, the share of the official in the joint ownership. If an official has entered into a marital property contract, the information for the identification of the official's property has to be added to the declaration (section 14 ACA).

118. Declarations of interests are made to the register of declarations (partly pre-filled e-register with information detained by other public authorities being pulled together)

(section 13 ACA). The register contains information on the competent authorities and on the official concerned; the declaration itself; information on the review of the declaration and on accessing the declaration (Register of Declarations of Interest Statute, section 7). Declarations are disclosed for a term of three years. The information provided in the declaration is open for examination. Anyone can use the e-tax office free of charge as a public user to view the declaration and the public information provided by officials, provided they identify themselves (Register of Declarations of Interest Statute, section 16).

119. The GET considers that the system of declarations of interests appears to be adequate insofar as the breadth of items covered is concerned. In accordance with the ACA, only ministers, the Government Office's Secretary of State and ministries' secretaries general have by law to submit declarations of interests. Insofar as political advisers are concerned, even if it is not excluded in principle, it appears that they are usually not required to submit declarations of interests. One of the reasons highlighted by the authorities is that while some political advisers play an important role next to ministers, others are only assistants dealing with non-substantial matters. For this reason, it was felt that it should left to each ministry' secretary general to decide who should file declarations.

120. The GET nonetheless considers that it would be important that those political advisers, who work closely with ministers on substantial matters, be required to fill in declaration of interests upon taking up their functions in government and on a regular basis afterwards. The authorities might 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.

121. The GET notes that the ACA does not seem to provide for ad hoc declarations that would reflect any substantial change in PTEFs' personal situations as to their interests, which may occur between annual declarations and may lead to a conflict of interest during the decision-making process. Whilst acknowledging the transparency surrounding declarations of interests, the authorities might wish to examine whether there would not be a need for complementary ad hoc declarations.

122. Additionally, declarations of interests do not cover the interests of relatives and dependents of those required to fill them in, but only those interests held jointly with their spouses. In line with its well-established position on declarations of interests of officials, the authorities should consider including the requirement that spouses, partners and dependents report their interests, even if those are not made public in their entirety afterwards to preserve their privacy.

123. In view of the above, **GRECO recommends that the authorities (i) ensure that those political advisers who are associated with a minister's decision-making be required to fill in declarations of interests; (ii) consider widening the scope of declarations of interests to also include information on the spouses and dependent family members of ministers (it being understood that such information would not necessarily need to be made public).**

#### *Review mechanisms*

124. The *Riigikogu* [Anti-Corruption Select Committee](#), or an official authorised by this Committee, has an exclusive right to verify the declarations of interests of officials

(section 15 ACA). The Select Committee is composed of six MPs representing the whole political spectrum in parliament and is chaired by an MP from the opposition. The Select Committee's staff is composed of the equivalent of 1½ civil servant posts of whom one also serves as the adviser to the Committee.

125. The Select Committee has the right to request explanations from officials and any third persons concerning the contents of the declarations and the disregard of the submission date or failure to submit the declaration and to make inquiries to and receive information concerning declarants from credit institutions and the official databases to the extent necessary for verification of declarations (section 15 ACA). If an offence is suspected as a result of verification of the declaration of an official, the Select Committee forwards the declaration verification materials to the Prosecutor's Office or the body conducting extra-judicial proceedings (section 15 ACA).

126. The GET notes that the Anti-Corruption Select Committee's role of verifying declarations of interests is embedded in the ACA. During the site visit, the GET learnt that this task was in practice entrusted to its one full-time official, sometimes with the assistance of a temporary staff member. This represents a considerable task by all accounts as some 500 declarations of interests are filed every year (by, *inter alia*, MPs, ministers, judges and heads of state agency). This is all the more true that this is only one amongst several tasks incumbent on the Select Committee's official.

127. As a result, each year focus is placed on a specific category and declarations covering several years. As regards ministers, the declarations of interests for 2015, 2016 and 2017 were last examined in 2017 and a report was published in January 2018. The GET learnt that preliminary checks were carried out by the ministries' internal control units even if limited to formality (e.g. whether the declarations of interest are on time and exhaustively completed).

128. The authorities argue that the whole system is built first and foremost on the assumption that transparency provides an incentive for officials to play by the rules as well as a way to hold them accountable to the public. In this context the press is relied on considerably to bring to light any suspicious conduct, including by the Select Committee itself. The GET was given a couple of examples where the press had indeed been instrumental in spotting irregularities. Moreover, the Ministry of Justice has named and shamed those declarants who were very late in submitting their declarations after being reminded to do so several times. The GET acknowledges that this approach puts more emphasis on the transparency surrounding declarations of interests as such rather than on the control by an independent public body and sanctions other than reputational damage.

129. At the same time, the GET is of the view that the existence of a control mechanism, which is expressly provided for in the ACA (section 15), to assess declarations of interest of PTEFs is a complementary tool to serve transparency and accountability. In this respect, the GET considers that the Anti-Corruption Select Committee ought to be provided with sufficient resources, in terms of personnel, to carry out meaningfully its mandate as per the ACA.

130. The GET was also informed that the Anti-Corruption Select Committee considers that its monitoring mandate extends only to those categories explicitly mentioned in the ACA and does not cover the declarations of those additional persons asked by each ministry's

secretary general to furnish declarations of interest, such as political advisers. The declarations of these advisers would be examined by the ministries' internal control units, namely checking the accuracy of the information and asking supplementary information. In light of the above, the GET invites the authorities to explore the feasibility of extending the existing external control mechanism to political advisers involved in the ministers' decision-making.

### Accountability and enforcement mechanisms

#### *Criminal proceedings and immunities*

131. Criminal charges may be brought against ministers only at the suggestion of the Chancellor of Justice and with the consent of a majority of MPs (Constitution, Articles 85 and 101; Criminal Proceedings Act, section 376-1). However, immunity applies to prosecution only and investigations can be initiated before immunity is lifted. No other privileges or immunities are enjoyed by ministers and there are no privileges or immunities for other PTEFs. Exceptionally, if a government member has been caught in the act of committing a first-degree criminal offence, detention and preventive measures may be applied without the consent of the Chancellor of Justice, i.e. no form of immunity will apply to ministers in such cases (Criminal Procedure Act, section 377-3). There has been no criminal case brought against PTEFs in general, and ministers under investigation have always resigned before being formally indicted. In that respect, the authorities report that there have been at least four ministers who had to step down and later saw their immunity as MPs stripped in order to be prosecuted.

132. One case concerned corruption offences and involved the then ministers of the Environment and of Agriculture who had accepted bribes in return for favourable land swapping deals between government ministries owning land of interest and construction companies owning land considered unprofitable because of environmental restrictions. Companies with better information lobbied officials to benefit from the land swapping scheme. The then minister of the Environment accepted a bribe with a view to relocate his ministry to a building constructed by the company having offered the bribe. The then minister of Agriculture received a flat at discount price and hidden shareholding in a real estate company. Both were charged for accepting bribes under Article 294 of the Criminal Code and received conditional sentences of 3½ years for the former minister of the Environment and 3 months for the minister of Agriculture.<sup>15</sup>

133. The GET notes that the immunity ministers enjoy from criminal proceedings is very broad and the examples of ministers that were prosecuted were only prosecuted after resigning. However, investigations into the alleged wrongdoings could be initiated without their immunity having been lifted and the ministers concerned were compelled to step down before their immunity had even to be challenged. They were eventually prosecuted and sentenced for corruption offences. The GET invites nonetheless the authorities to reconsider the current system of immunities of ministers in order to avoid any possibility that this might hinder criminal proceedings regarding corruption offences.

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<sup>15</sup> The other two ministers who stepped down in relation to investigations were: a minister of Defence who was charged for negligent use of state secrets after losing his briefcase containing classified files; and a minister of the Environment who was prosecuted for a matter concerning the management of his party when secretary but he was found not guilty.

### *Non-criminal enforcement mechanisms*

134. The Anti-Corruption Act provides that for several misdemeanours<sup>16</sup> (corrupt use of an official position, public resources, influence or inside information; failure to notify the receipt of income derive from corrupt practices and its transfer; breaches of restrictions on ancillary activities) extra-judicial proceedings will be conducted by a police authority or the Estonian Internal Security Service. The misdemeanours of corrupt use of one's position or the failure to notify corrupt income are to be heard by a county court.

135. The Anti-Corruption Select Committee of the Riigikogu can, *inter alia*, exercise parliamentary supervision over the implementation of anti-corruption measures, discuss on its own initiative potential incidents of corruption and assess these suspicions, verify the declarations of interests, and inform the parliament and the public of the results of anti-corrupt activities in its competence (section 9 ACA).

136. When the Select Committee suspects a breach, the case is transferred to the Prosecutor General's Office, without the breach necessarily being criminal in character. For instance, proving knowingly false information in the declaration of interests is considered a breach of duty, which does not constitute a criminal offence.

137. In connection with the above, the GET has already signalled the need for a Code of Conduct for persons with top executive functions, with a proper enforcement of this Code (see recommendation in paragraph 63).

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<sup>16</sup> In Estonia, misdemeanours are treated as offences separate from and less serious than criminal offences.

## V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

### Organisation and accountability law enforcement/police authorities

#### *Overview of various law enforcement authorities*

138. In Estonia, there are seven agencies in which certain law enforcement powers have been vested: the Police and Border Guard Board ([PBGB](#)), the Estonian Internal Security Service (whose remit includes the investigation of corruption-related offences committed by senior officials)<sup>17</sup>, the Estonian Tax and Customs Board (which may investigate tax and customs-related offences), the Competition Board, the Military Police, the Environmental Inspectorate and the Prisons Department of the Ministry of Justice.

139. This report focuses on the PBGB<sup>18</sup>, which performs basic law and order functions on the entire territory of Estonia, including protection of public order, migration and border control.<sup>19</sup> Following the merger of the Police Board, Central Criminal Police, Public Order Police, Border Guard Board, and Citizen and Migration Board in 2010, the PBGB has become the largest law enforcement agency both in terms of staff and the number of offences investigated: it has around 5 000 staff and investigates more than 97% of registered offences.

#### *Staffing levels PBGB (November 2017)*

| Category <sup>20</sup> | Number of staff | Men          | Women        |
|------------------------|-----------------|--------------|--------------|
| Top management         | 8               | 87.5%        | 12.5%        |
| Mid-level management   | 165             | 78.2%        | 21.8%        |
| First-level managers   | 306             | 75.5%        | 24.5%        |
| Non-managerial staff   | 4 561           | 52.9%        | 47.1%        |
| <b>Total</b>           | <b>5 040</b>    | <b>55.2%</b> | <b>44.8%</b> |

140. The PBGB Act, the Statutes of the PBGB, the Law Enforcement Act, the Code of Criminal Procedure and the Code of Misdemeanours regulate the PBGB's activities. It is accountable to the Minister of the Interior, who approves its budget, coordinates its activities and ultimately exercises supervision over it. The PBGB is however independent from an operational point of view: the Minister of the Interior cannot give instructions of a political nature and does not have the right to initiate or interfere in investigations conducted by the PBGB.<sup>21</sup>

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<sup>17</sup> The Director General, three deputy directors general and four prefects of the PBGB are among the senior officials who could be investigated by the Estonian Internal Security Service.

<sup>18</sup> It should be noted that the Estonian authorities had also provided extensive information on the Estonian Tax and Customs Board. However, as tax and customs services are not covered by the Fifth Evaluation Round, this Report focuses solely on the PBGB, as the main law enforcement agency in Estonia.

<sup>19</sup> The PBGB also has responsibilities for search and rescue operations at sea, the detection and removal of marine pollution and the protection of domestic and foreign dignitaries.

<sup>20</sup> Top management includes the Director General, deputy directors general and prefects; mid-level management includes the heads of bureaus, head of police stations, heads of divisions, heads of border stations and border crossing points, commanders of ships, head of the aviation group, head of squadron, head of centre, manager of the police orchestra, head of the Central Criminal Police etc.; first-level managers are heads of groups, chiefs of service, field managers, senior specialists (etc.).

<sup>21</sup> The internal rules of procedure of the PBGB also prescribe in this context that in case a police officer receives an illegal order (or has doubt about the legality of this order), s/he is to immediately notify the immediate superior of the person giving the order.



141. The PBGB is headed by a Director General, who is appointed by the Government Office, on the proposal of the Legal Committee of the Parliament, for a period of five years (renewable once), and is answerable to the Minister of the Interior. Furthermore, the management structure of the PBGB includes three deputy directors general, four prefects (who direct structural units responsible for different areas of the country) as well as the head of the Internal Audit Bureau<sup>22</sup> and the head of the Internal Control Bureau. The latter is the PBGB's internal body dealing with complaints and misconduct (see further in paragraphs 218 and 219 below).

142. All police officers and border guards of the PBGB are considered to be police officers with combined competences as border guards and trained accordingly, which in practice means that staff can move from one profession to the other and back throughout their career.<sup>23</sup>

### *Access to information*

143. Apart from accessing information on the PBGB through its website or press releases or by following the agency on Facebook, the public can retrieve documents of the PBGB (internal documents, regulations, protocols of meetings, contracts, incoming and outgoing letters, etc.) through the electronic documents register to which the agency is linked, if these documents are not protected under specific provisions of the Public Information Act, the Personal Data Protection Act or the State Secret and Classified Information of Foreign States Act.<sup>24</sup> Pursuant to the Personal Data Protection Act, everyone has a right to be acquainted with personal data collected on him/her and to be informed to which extent and for what purpose his/her personal data has been processed.<sup>25</sup> The PBGB does not provide personal data to third persons, unless such obligation is derived from the law or the data subject has given permission.

144. Requests for information can be submitted directly to the PBGB under the Public Information Act and should be answered without undue delay and no later than 30 calendar days from the date of registration of this request. Interlocutors met by the GET commented positively on the pro-active communication of the PBGB. At the same time, the GET was told that, in reaction to requests for information, the PBGB would often respond that the information was "classified" or "secret", thus requiring the intervention of the Data Protection Inspectorate in order to try and obtain the information concerned. The GET invites the authorities to explore whether, based on statistics, there is a developing pattern and, if needed, reflect on ways and means to improve the situation.

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<sup>22</sup> The Internal Audit Bureau of the PBGB is responsible for conducting internal audits and assessing the efficiency of the internal control system of the PBGB.

<sup>23</sup> The GET was informed that out of 5000 staff around 2180 worked in the border management field.

<sup>24</sup> The electronic public register of documents can be accessed at <https://adr.siseministerium.ee/sisemin/>

<sup>25</sup> Requests to examine personal data will be refused if complying with the request would harm another person's rights or freedoms, pose a threat to national security or hinder the prevention, detection or processing of an offence or obstruct the carrying out of a sentence. Everyone has the right to request correction of inaccurate personal data and the deletion of personal data, if the PBGB no longer has any use for this data.

### *Public trust in law enforcement authorities*

145. On a quarterly basis, a survey of trust in the PBGB is carried out on behalf of the Ministry. According to this survey, conducted by an independent private company, public trust in the police (PBGB) has steadily increased from 44% in the early 2000s to 86% in 2017. The 2017 [Eurobarometer on corruption](#) confirms this level of trust, with 62% of Estonian citizens (EU average: 60%) saying they would turn to the police (PBGB) to complain about a corruption case. The Eurobarometer also shows a significantly smaller proportion of Estonian citizens (21%) than the EU average (31%) being of the opinion that bribery and abuse of power in the police and border guard is widespread.

### *Trade unions and professional organisations*

146. Within the PBGB, there are three trade unions, namely the PBGB Trade Union (established in 1999, which currently has around 250 members), the Trade Union of the Estonian Border Guard (established in 2007, which currently has 84 members, including 37 women) and the Women's Network of Estonian Police (established in 2003, which currently has around 120 members).

147. The GET was told that the relatively low levels of membership could be explained by the fact that, before the restoration of independence in 1991, trade union membership was compulsory and, in reaction to this, people are now less inclined to join unions. Trade unions meet on a regular basis with the Ministry of the Interior, but are not actively involved in the process of developing (or advising on) integrity policies for the PBGB.<sup>26</sup> The GET considers that trade unions could provide a helpful perspective in this respect and encourages the Estonian authorities to look into broadening opportunities for consulting trade unions on its integrity policies before their adoption.

## **Anti-corruption and integrity policy**

### *Anti-corruption strategy*

148. The PBGB is guided by the [Anti-Corruption Strategy 2013-2020](#) and its [Implementation Plan](#), as already referred to in the first part of this report (see paragraphs 48-49 above). They contain several measures focusing specifically on law enforcement bodies (in view of the stated higher than average exposure of these bodies to possible corruption and/or improper influence). These measures include the development of the guidelines on the prevention of conflicts of interest, the sharing of best practices on corruption prevention between various law enforcement bodies, establishing a system for reporting attempts to influence or threaten law enforcement officials, organising training courses for law enforcement officials on professional ethics, conflicts of interest, rules concerning gifts and other measures as well as training courses for top and mid-level managers in law enforcement bodies on corruption as a management risk.

149. All above-mentioned measures have reportedly been implemented, *inter alia*, with the adoption in April 2018 of the Corruption Prevention Guidelines and the Order issued by the Director General of the PBGB in 2014 on the "Procedure for notification of corruption

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<sup>26</sup> For example, the latest Corruption Prevention Guidelines adopted in April 2018 only came to the attention of the trade unions after their adoption.

information and extraordinary incidents relating to public officials” to implement the aforementioned measure on establishing a system for reporting attempts to influence law enforcement officials. Various measures of the Anti-Corruption Strategy and its Implementation Plan are also integrated in the corresponding training, development and action plans of the PBGB and of its Internal Control Bureau (ICB), which is responsible for the anti-corruption and integrity matters within the PBGB (see further under paragraphs 218 and 219 below).

#### *Risk management measures for corruption prone areas*

150. The ICB evaluates corruption risks in the PBGB annually, by carrying out both a corruption threat analysis and a risk assessment. The risk assessment classifies every structural unit of the PBGB as low, medium or high risk, whereas the threat analysis is a future-oriented document based on intelligence gathered by the ICB as well as past incidents. Based on both documents, the ICB prepares an annual action plan, which includes the activities of the ICB for the prevention and detection of offences (including corruption offences) committed by officials and employees of the PBGB. The risk assessment, threat analysis and annual action plan are classified documents.

151. In order to assess of the effectiveness of the risk management tools of the PBGB, the ICB analyses the statistics on incidents (misconduct) involving PBGB staff, complaints by citizens and public trust in the police. The following categories of staff have been identified as “high risk”: staff responsible for decisions regarding procurement, contracts and payments to contractors; staff responsible for police equipment; staff with access to sensitive police information; staff working in service points of the prefectures and/or as border guards on the Eastern border.

152. Various measures are in place to manage the risk of corruption and misconduct. These include the application of the four-eyes principle in services where there is a higher risk of corruption (migration services, services dealing with residence cards and permits, etc.), as well as for police patrols (i.e. patrols by a single police officer are not permitted), cameras at certain workplaces (i.e. where officials have frequent contacts with the public), IT log checks (see further paragraph 208 below), the prohibition on cash transactions to pay fines (with the use of cash being only permitted in surveillance activities), and the responsibility of line managers and supervisors to ensure good behaviour of their subordinates. As of the beginning of 2018, all patrol officers are being equipped with body-worn cameras, to ensure appropriate behaviour in their contacts with the public.

153. The authorities consider that the reduction in the number of criminal proceedings conducted by the ICB against PBGB staff (or sent by the ICB to other units for investigation) demonstrates the effectiveness of the ICB’s anti-corruption measures.

154. The GET acknowledges the strength of the ICB’s approach, in that it combines risk and threat assessments with targeted awareness-raising and training activities, pro-active internal communication policies and enforcement of the rules, which can be welcomed as a good practice. At the same time, the GET is more reserved about the assertion that a reduction in the number of criminal proceedings demonstrates the absolute effectiveness of the measures taken. The GET trusts that the anti-corruption framework of the PBGB will be kept under review in order to ensure its continued effectiveness.

## *Ethical principles*

155. Upon entering the PBGB, police officers take an oath pledging, *inter alia*, to use the authority given to them in a just and impartial manner and perform their duties in an honest and conscientious manner.<sup>27</sup>

156. The provisions of the [Civil Service Act](#) (CSA) serve as general ethical guidance for all police officers and other civil servants working for the PBGB (but not employees), by prescribing, for example, that they are expected to act honestly, competently and diligently, perform their functions impartially and refrain from actions, which would discredit him/her or harm the image of the authority they are working for (section 51 CSA). This act makes explicit references to and is complemented by the provisions [Anti-Corruption Act](#) (ACA). As also described in the first part of this report (paragraph 55 and further above), the ACA contains more detailed regulations on prevention of corruption in public service, including as regards potential conflicts of interest, incompatibilities and gifts, and, unlike the CSA, is applicable to all PBGB staff, including employees.

157. As already described in detail in paragraph 58 above, ethical standards are furthermore laid down in the [Code of Ethics for Officials](#). Since 2015, the Code of Ethics applies to all public institutions, including the PBGB; public institutions are not required to adopt a separate internal code of ethics. The Code of Ethics for Officials is not a legal act: it contains a list of fundamental values, not obligations and prohibitions, and therefore does not serve as the basis for disciplinary liability of officials. Unlike the ACA, the Code of Ethics is in principle only applicable to civil servants, not employees of public institutions hired on the basis of private-law work contracts.

158. The Council of Ethics of Officials has stated that the requirement to follow the Code should be set out in the internal rules of the institution. The internal rules of procedures of the PBGB however do not contain any reference to it. The rules – which are applicable to all staff of the PBGB (civil servants and employees alike) – include such issues as discipline and health and safety considerations, but contain only very minimal guidance on integrity issues.<sup>28</sup> The GET was told that integrity issues had instead been addressed in the “Corruption Prevention Guidelines”, which were adopted during the GET’s on-site visit in April 2018. The guidelines apply to all PBGB staff and outline the applicable legal provisions on gifts, conflicts of interest and ancillary activities, together with further explanations and concrete scenarios of permitted and non-permitted actions. The ICB informs every new staff member upon taking up their position of the applicable rules, which every staff member must be acquainted with.

159. In addition, the GET was presented during the on-site visit with the core values of the PBGB – being open-minded, humane and judicious –, which had recently been elaborated in a highly participatory process and now form part of the mission statement of the organisation. The fluency with which the values were explained to the GET in a meeting with

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<sup>27</sup> In addition, the police officers pledge loyalty to the constitutional order and pledge to comply with legislation unwaveringly.

<sup>28</sup> Section 67 of the internal rules of procedure of the PBGB *inter alia* provide that using one’s official position for personal interests, violating a restriction on activity or procedure arising from law and forwarding restricted information to unauthorised persons are considered violations of the duties of employment and contract of employment.

police officers demonstrated that the values had been well internalised, highlighting the effectiveness of the bottom-up approach taken in their elaboration.

160. In discussing the various rules on integrity, ethics and/or conduct applicable to the different categories of staff of the PBGB, the GET was informed that a separate code of ethics for the PBGB had been considered, but the aforementioned Code of Ethics for Officials, as complemented by internal guidelines, was considered to be sufficient. The training school for the PBGB, the Estonian Academy of Security Sciences, is nevertheless adopting its own code.

161. In general, as also outlined in the [explanatory memorandum](#) to Recommendation Rec(2001)10 on the [European Code of Police Ethics](#), the GET believes that, for a police body, it can certainly be useful to have its own tailor-made code (other than the Code of Ethics for Officials, which is not tailored to the work of the PBGB, does not form the basis for disciplinary liability and is also not applicable to all PBGB staff), given the specificities of the work of the police and the higher standards of conduct expected by the public. Such a code not only provides a valuable tool in guiding staff in their behaviour, but would also inform the general public of the conduct they can expect from police officers and other staff working for the police.

162. However, the GET notes that, in addition to the backbone of the system that is the ACA (whose provisions are applicable to all staff and can give rise to misdemeanour proceedings), there are other regulations applicable to all PBGB staff such as the internal rules of procedure (e.g. as regards information systems and misuse of restricted information) and the orders of the Director General of the PBGB (e.g. as regards reporting obligations for staff). The GET also considers positive that practical guidance is given on gifts, conflicts of interest and ancillary activities in the recently adopted Corruption Prevention Guidelines. As a result, a separate code of conduct for the PBGB may not be needed as all relevant issues are covered one way or the other. The GET is nevertheless of the opinion it would be worth gathering these rules and guidance on the expected conduct of PBGB staff in one document to ease familiarisation with the applicable integrity regulations and contribute to their visibility for the public. In view of the foregoing, **GRECO recommends that the standards on corruption prevention in the Police and Border Guard Board, which currently exist across various documents, be consolidated in one document.**

#### *Handling undercover operations and contacts with informants and witnesses*

163. Undercover operations and the use of informants are subject to authorisation by the Director General of the PBGB and, in certain cases, written permission of the prosecutor's office or the county court judge who presides over the preliminary investigations, in accordance with section 126.4 of the Code of Criminal Procedure. The Director General or a person authorised by him/her is responsible for the supervision over such operations, in accordance with chapter 2 of the PBGB Act. The conditions under which undercover operations can take place, the gathering information and contacts with third persons, as well as the procedures for reporting and supervision thereof, are further regulated by the Order of the Director General of the PBGB on "[Guidance on PBGB surveillance activities](#)". This is a classified document.

### *Advice, training and awareness*

164. Both the ICB of the PBGB and the police academy (the Estonian Academy of Security Sciences) provide training on integrity and anti-corruption to police cadets. Police cadets are provided by a one-off three hours of anti-corruption training by the ICB and six lectures and six inter-active seminars on police ethics by the police academy before being employed by the PBGB. In addition, the ICB provides two to three hours of anti-corruption training to assistant police officers.<sup>29</sup>

165. General induction training is furthermore mandatory for all new staff of the PBGB, in which an hour to an hour and a half will be spent on anti-corruption topics. The content varies according to the target group, but usually includes the role of the ICB, corruption risks in police work, the requirements of the CSA (including as regards ancillary activities) and ACA (conflicts of interest, gifts, misuse of confidential information etc.), use of databases and data protection and use of social media.

166. In addition to initial training for cadets and new staff, in-service training on integrity is regularly provided, including specifically for mid-level managers, and tailored training is organised on an ad-hoc basis targeting high-risk work areas.<sup>30</sup> In total, in 2017, the ICB of the PBGB trained 987 persons in 51 training seminars on integrity and anti-corruption.

167. The GET was provided with a detailed list of training sessions provided and topics covered in the last few years. In discussing this on-site, the GET came away with a positive impression of the training provided. Seminars are short but to the point (usually around an hour and half), using real-life examples, including videos of real scenarios. Coupled with an effective communication strategy on the conduct expected of police officers (including the extensive use of the PBGB intranet), training sessions appear to be a meaningful preventive and awareness-raising tool. Currently, the anti-corruption sessions are provided as a stand-alone training. Consideration could be given to embedding this more holistically in all other trainings, so that integrity and anti-corruption are mainstreamed in other aspects of the work of PBGB staff (rather than seen as a separate issue), but overall the GET is satisfied with the ICB's approach to integrity training of PBGB staff.

168. PBGB staff may obtain advice on integrity matters from the ICB, and seek further information on integrity matters (such as guidance on conflicts of interest) on the dedicated [anti-corruption website](#) of the Ministry of Justice, as well as the PBGB intranet site. Despite the ICB being the body that is also responsible for disciplinary proceedings, the GET found in meeting ordinary police officers that inquiries to the ICB on possible ethical dilemmas were being made with ease. In addition, as also described in the first part of this report, the Council of Ethics of Officials may also provide advice to civil servants on integrity issues. The GET was told that the Council would at times also publish the confidential advice (without information that would identify the person having sought the advice) to provide guidance to other civil servants on similar matters.

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<sup>29</sup> Assistant police officers are civilians who on a voluntary basis participate in their spare time in police activities, after having been appointed for this purpose by the Director General of the PBGB.

<sup>30</sup> For example, as recent corruption cases in the PBGB have been in relation to officials working at the service desks and in the area of migration, in 2017 the ICB organised a series of 12 anti-corruption seminars specifically tailored to service desk officials with a special focus on accepting gifts. This training was also filmed and made available on the PBGB intranet.

## **Recruitment, career and conditions of service**

### *Appointment procedure*

169. Staff of the PBGB can be divided in two employment categories: civil servants (whose employment is governed by the CSA) and employees (whose employment is regulated by the Employment Contracts Act). In accordance with the CSA, civil servants “exercise official authority”; Employees on the other hand “support the exercise of official authority” and do not exercise public functions, but are for example interpreters, maintenance workers, secretaries, drivers, press officers. All police officers (including border guards) are civil servants, and additionally the PBGB comprises a number of civil servants who are not police officers (e.g. human resources, staff delivering official documents and IT services). There are 3 818 police officers, 775 civil servants who are not police officers and 447 employees in the PBGB.

170. The conditions for the appointment of police officers are provided for in the Police and Border Guard Act.<sup>31</sup> Police cadets are appointed to vacant positions of junior police officers by the Director General upon their graduation at the police academy, Estonian Academy of Security Sciences (which takes a year and a half). Entry into the academy is subject to successfully passing various intelligence and physical tests, an interview and a security clearance (up to 6% of applicants fail security clearance).

171. Vacancies in the PBGB are filled by external or internal competition. Vacant positions are published on the special Police Intranet Portal and other employment websites, and shared with partner organisations and public institutions. Applicants will be asked to submit a personal data form (including data on partners and relatives), which will be checked by the ICB. In this context, the GET was told that a criminal record would automatically exclude a person from being hired by the PBGB (section 40, PBGB Act). Possible connections with criminals will be reviewed on a case-by-case basis: the applicant will either be excluded or be given less points in assessing their suitability for the job and flagged for follow-up checks throughout their career.

172. In order to carry out the vetting of applicants, the ICB is authorised to address any authority, legal or natural person to inquire about personal data, talk to relevant persons connected to them (employers, educational institutions and other persons) to determine their moral character and other personal characteristics, verify their criminal record, and check personal data in any database of the state, local governments or public or private legal person. Such inquiries by the ICB must be responded to within 10 days. In addition, following the applicant’s signature of a special form giving consent, the ICB may carry out surveillance activities and tap electronic communication; the applicant will be informed subsequently

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<sup>31</sup> Estonian citizens of at least 19 years’ of age, with at least secondary education, having full legal capacity and proficiency in Estonian and who meet the health and professional qualification requirements of a police officer may be employed by the PBGB as a police officer. Persons with a criminal record, who are a suspect or accused in criminal proceedings, have been released from public service less than one year earlier due to a disciplinary offence, receive a pension, remuneration or other regular compensation from a state that is not Switzerland or a member of the European Economic Area or NATO, have been punished for an offence pursuant to the Anti-Corruption Act, have restricted legal capacity, do not meet the health requirements of police service or knowingly presented false information in the personal data form or withheld significant information cannot be a police officer.

whether such activities have been carried out.<sup>32</sup> The provisions on vetting also apply to persons who apply to the police school and will be repeated upon graduation, before being appointed as a junior police officer.

173. When a police officer applies to another position in the PBGB or is a candidate for promotion, the ICB will carry out additional integrity checks, which in practice means that police officers are regularly vetted throughout their career. Should a police officer's role within the PBGB entail access to state secrets, the Estonian Internal Security Service will undertake comprehensive security vetting. Access to state secrets is only provided for a limited period of time, after which the security clearance will have to be renewed.

174. The Director General of the PBGB is appointed by the government on the proposal of the Minister of the Interior after having heard the opinion of the parliamentary Legal Affairs Committee, for a period of five years.<sup>33</sup> The deputy directors general and prefects are appointed by the Minister of the Interior, on the proposal of the Director General, also for a period of five years.

175. As regards the post of Director General, the GET was informed that the Minister of the Interior would usually ask a person to apply, after which the government would endorse the nomination. That this process is not without flaws became apparent five years ago when the Minister of the Interior reportedly overrode the results of an open competition and proposed a candidate of his own (who ultimately withdrew his candidacy after public protests). The GET takes the view that the appointment at such a crucial position as Director General of the PBGB should be transparent, based on merit and suitability for the position, removing any impression appointments are not made on such grounds. Therefore, **GRECO recommends that the procedure for selecting and appointing the Director General of the Police and Border Guard Board be revised in order to ensure that the formal, competitive and transparent process applies to all candidates.**

#### *Performance evaluation and promotion to a higher rank*

176. Annual development and assessment interviews of police officers are conducted by the immediate supervisor of the police officer concerned, in line with section 30 CSA. The PBGB has developed a guide for conducting development and assessment interviews, outlining, *inter alia*, that the interviews are to be based on the core values of the PBGB (open-minded, humane and judicious, see paragraph 159 above). Assessment reports are taken into account for promotions, transfers and dismissals of law enforcement officers (as well as for the planning of training, improvement of working conditions, etc.) and can be challenged (first to the direct supervisor, followed by the Director General).

177. Career advancement in the PBGB is possible for candidates reaching the required professional education standard, have the required number of years of service and have a

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<sup>32</sup> Additionally, the Internal Control Bureau will check, *inter alia*, whether any enforcement procedure has been initiated regarding the applicant, whether s/he is a member of a political party (as in accordance with Section 68 of the PBGB Act, a police officer may not be a member of a political party), owns a company or has a seat in the management board of one, has been mentioned in police reports, has been released from public service due to the commission of a disciplinary offence less than a year earlier, etc.

<sup>33</sup> S/he is required to have long-term experience in heading a large organisation or in a the Ministry of the Interior, Ministry of Justice, Ministry of Defence, PBGB, the Estonian Internal Security Service, the Information Board, the Rescue Board, the Tax and Customs Board, the Prosecutor's Office, the prison service or a court.



good track record. Advancing one's career is fixed by military style ranks: in accordance with sections 53 and 54 of the PBGB Act, a police officer goes up in rank after three years of perfect service or four years above the rank of major, if the position allows it, if s/he has obtained the education corresponding to the necessary level and if the officer in question passes the annual performance review (with an interview, physical, shooting and tactical tests and every second year a health test). A decision on whether someone advances in rank or not can be challenged to the Director General. Demotions only take place as disciplinary punishment, and a person will be restored in the previous rank after the passing of one year.

178. The GET welcomes that according to the 2012 [Gencat research](#) "Women in Police Services in EU", Estonia had the highest percentage of women in the police services in Europe, noting also that currently 35.4% of police officers in the PBGB are women (figures of 2017) and 50% of the cadets at the police school are women. However, it also notes that in higher posts within the PBGB there is a less balanced gender representation with only 20% (1 in 5) mid-level managers and 12,5% (1 in 8) of the top managers at the PBGB being a woman. Reportedly, all heads of police stations, border crossing points and border guard stations are currently men.

179. In discussing diversity in the PBGB during the on-site visit, it did not seem to be regarded as an issue that should warrant much further attention (perhaps due to aforementioned positive representation of women in lower and mid-level posts compared to other European states). The GET heard that there have been no formal complaints of discrimination in the PBGB and notes that the promotion process, as outlined above, appears merit-based. However, it also heard on-site that women struggle to advance to higher posts due to their deployment to "softer" policing roles, which often means that ultimately they do not have the range of experience required for promotion. The GET considers that greater efforts could be made to enhance more diversity at all levels of the PBGB (for example by making diversity a criterion in deployment decisions, by applying a gender equality or diversity strategy to the PBGB). The GET considers diversity a key mechanism in the prevention of group-think and in turn corruption, while it has the potential of having positive effects on the overall working environment within the police, making the PBGB more representative of the Estonian population as a whole. Therefore, **GRECO recommends that further efforts be made to increase the representation of women at higher levels and ensure their integration at all levels in the Police and Border Guard Board.**

180. In this context, attention of the GET was also drawn to a 2016 report of the National Audit's Office (NAO) on the 2010 merger of the different police and border guard services (which the NAO concluded had been a success). In this report, the NAO warns that, given the number of staff retiring, without further measures the PBGB would have 30% fewer staff in 2025, which would obviously severely hamper the PBGB's operations. More specifically, the GET heard on-site 800 police officers are already set to retire within the next five years and that the PBGB has had difficulties in hiring staff and motivating staff to stay.<sup>34</sup> The GET noted that the budget negotiations for 2019 (which were on-going at the time of the on-site visit) may result in a substantial increase in salaries of PBGB staff as of 2019, thereby increasing

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<sup>34</sup> To off-set the outflow of staff (due to retirement) the rehiring of retired police officers (with preservation of their pension) and discarding the fixed retirement age are two of the measures currently considered.

the attractiveness of the PBGB as an employer.<sup>35</sup> In view of the GET making the PBGB more representative of different sections of Estonian society may contribute to this aim as well.

### *Rotation*

181. At the PBGB, there is no system of regular rotation. It can be decided within the unit as a risk-based approach (for example, police security for certain high level officials are rotated so that they do not become friends), but the ICB is not involved. Other than the maximum tenure of five years (renewable once) for the Director General, deputy directors general and prefects, as well as the head of the Financial Intelligence Unit, there are no minimum or maximum tenures for respectively specialist or sensitive posts. Staff movements mostly take place voluntarily as a result of development and assessment interviews. In 2017, 551 persons moved to a different position.

182. The GET considers that rotation can be a useful instrument in preventing corruption, in particular for staff most exposed to risks of corruption (even if it can present certain challenges such as when relocation of staff is needed). It can prevent certain insidious long-term relationships forming over time and can reduce the temptation to engage in unethical conduct. In the view of the GET, decisions on rotation should therefore not be left solely to the manager of the unit in question, but should involve the ICB (e.g. following a risk assessment). Consequently, **GRECO recommends that the possibility of introducing the principle of rotation of staff of the Police and Border Guard Board be further explored, specifically for police officers in areas exposed to particular risks of corruption.**

### *Termination of service and dismissal from office*

183. The Director General, deputy directors general and prefects may release from service civil servants working in the PBGB for the reasons outlined in Chapter 11 of the CSA, including as a result of a disciplinary offence.<sup>36</sup> Dismissal from office due to a disciplinary offence is the prerogative of the Director General of the PBGB and is, in accordance with section 75 CSA, restricted to severe misconduct, which would have a bearing on the way the civil servant would perform his/her duties in future.<sup>37</sup> Similarly in accordance with section 88 of the Employment Contracts Act, the employment contracts with employees of the PBGB may extraordinarily be cancelled, if a continuance of the employment relationship cannot be expected (for example due to breach of duties despite a warning or violation of the obligation of maintaining confidentiality).

184. Civil servants are entitled to appeal the decision to dismiss them to the Administrative Court, within 30 days, and/or to appeal to the Labour Dispute Committee. The GET was however informed that if it was ruled that a police officer had been unfairly dismissed, s/he would be compensated, but the PBGB would only be required to re-employ this person if the court would expressly order the PBGB to do so.

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<sup>35</sup> In the discussions on the budget, an increase of the 10% part on labour costs of the budget of the PBGB was envisaged.

<sup>36</sup> Grounds for termination are: at the person's own request, abolishment of the post, not meeting the requirements in the probation period, a change in circumstances or new information revealing insufficient knowledge and skills which should have precluded recruitment had this been known upon their recruitment.

<sup>37</sup> The severity of the misconduct is also related to the intent, previous misconduct/disciplinary sanctions imposed on the official for similar misconduct, the damage done to the authority, the damage done to the image of the authority and material damage done to other officials or to interests of third parties or the public.

## *Salaries and benefits*

185. At the PBGB, gross annual salaries start from EUR 11 700 (for police officers at the beginning of their career), with the average salary being EUR 17 088 per year (as compared to the average of EUR 14 652 in Estonia). The GET was told that in order to recruit people in the east of the country, higher salaries (of up to EUR 300 extra) were being offered. Additional allowances can be provided for night shifts, over-time, etc. In addition, the CSA outlines certain compensatory measures in case of secondment.<sup>38</sup>

186. The Director General of the PBGB (or the Minister of the Interior for high-level officials of the PBGB) can award certain rewards (in the form of a letter of appreciation, monetary award, certificate of honour, gift, inscribed weapon or honorary decoration) for long-time service and/or outstanding performance of a police officer, pursuant to section 85 PBGB.

187. The GET was told that in practice the left-over amount from salaries not distributed to staff on sick or maternity leave (as the social security plan would pay the salary) would be distributed equally across the different units in the PBGB, whereby the heads of unit would propose to the Personnel Bureau who should get the monetary reward (in a range of EUR 500 – 1 500), with also a check being carried out by the ICB if it would be appropriate for the person in question to receive the reward. The Director General of PBGB signs the order on giving the rewards, with the heads of unit communicating to their staff why the staff member in question was given the award. There is a possibility to appeal/complain to the Director General. The GET has concerns about the potential for abuse in the way these rewards are being handed out, in that there is too much discretion for the head of unit in deciding who will be rewarded. It does not consider the possibility of a complaint or appeal being lodged with the Director General a realistic safeguard and therefore encourages the PBGB to review this procedure.

## **Conflicts of interest**

188. All PBGB staff has a duty to avoid conflicts of interest. While the applicable legislation does not contain a definition of a conflict of interest as such, various provisions of both the ACA and the CSA are aimed at preventing situations in which a civil servant or public official's personal interest may affect the impartiality and objectivity of the performance of his/her tasks or may otherwise cast doubt as to his/her impartiality/objectivity. To this end, the CSA (for police officers and other civil servants of the PBGB) contains prohibitions on exercising direct supervision at the work place over connected persons,<sup>39</sup> as well as regulations on outside activities (including certain business interests/positions in legal persons).

189. These regulations are complemented by section 11 ACA, which is, as indicated before, also applicable to employees. It provides, *inter alia*, that an official is prohibited from performing an act or making a decision, if the "decision is made or the act is performed with

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<sup>38</sup> This includes reimbursement of travel expenses, allowances for long-term employment abroad and allowances for a non-working spouse accompanying the official abroad.

<sup>39</sup> According to section 7 ACA, "connected persons" include partners and spouses, parents and parents-in-law, grandparents, children, grandchildren and siblings, as well as certain legal persons and persons with whom the official shares a household and/or otherwise have a significant and direct impact on the official outside his official position.

respect to the official or a persons connected to him/her” or if the official is aware of “an economic or other interest of that official or a person connected to him/her and which may have an impact on the act or decision. In these situations, an official is also prohibited from delegating the task to his/her subordinates and is to inform his/her superior immediately. Further guidance and information on conflicts of interest for officials (and other interested persons) can be found on the dedicated [anti-corruption website](#) of the Ministry of Justice.

190. In addition, the new Corruption Prevention Guidelines, which were adopted during the on-site visit, contain further guidance on conflicts of interest: with reference to the standards in the ACA and the anti-corruption website of the Ministry of Justice, the guidelines present 18 real-life scenarios, which PBGB staff may come across in their work, with a clarification on whether this is permitted/not-permitted and who can be contacted for further explanations or guidance on this.

191. The ICB carries out regular checks on potential conflicts of interest, for example by checking whether staff responsible for payments, public procurements and contracts in the PBGB are in some way related to the companies participating in procurement processes and contracts with the PBGB or delivering services or merchandise to the PBGB. At least once a year, the ICB conducts an analysis of all the procurement and payments of the PBGB in order to verify whether any of these payments have been made to companies being related to staff of the PBGB or persons connected to him/her.

### **Prohibition or restriction of certain activities**

#### *Incompatibilities and outside activities*

192. Pursuant to section 10 ACA (which applies to all PBGB staff) and section 60 CSA (which applies to police officers and other civil servants), ancillary activities (described as secondary employment, an elected or appointed post, and an undertaking or partnership in a general or limited partnership or as a member of the management board of a legal person) are allowed as long as their nature and volume do not interfere with the regular performance of an official’s duties and would not lead to a breach of service. If the official in question is engaged or intends to be engaged in an ancillary activity, s/he is to immediately notify the authority for which s/he works in writing. The official is not allowed to obtain any income from the ancillary activity if the type of activity is something s/he would normally engage in as part of his/her function (with the exception of research and other educational activities). In addition, section 68 of the PBGB Act contains a specific incompatibility rule, prescribing that a police officer may not be a member of a political party. They however may stand as independent candidates in local council elections.

193. Order 1.111/213 (of 22 April 2013) issued by the Director General of the PBGB outlines the procedure for reporting ancillary activities both for civil servants and employees: a written notice of the ancillary activity is to be submitted to the Director General through the ICB, providing a description of the activity (including the name of the legal person, where appropriate), the amount of work involved and the likely remuneration. This notice will subsequently be registered in the electronic document register of the PBGB.

194. The aforementioned newly adopted Corruption Prevention Guidelines at PBGB also provide further guidance. Reflecting the text of section 60 CSA, the guidelines provide four

examples of situations in which an ancillary activity is either not permitted or not advisable, pointing to the possibility of asking further questions / advice on this.

195. The authorities have indicated that usually – before presenting the notification of ancillary activities – staff of the PBGB would ask the ICB for advice and, if necessary, upon advice of the ICB abandon the ancillary activity. Because of this advice (and the information available on the intranet of the PBGB) in the past five years the Director General of the PBGB has not needed to prohibit any ancillary activity.

196. The ICB furthermore checks on a regular basis available databases (business register, employment and/or income tax and other registers of the Estonian Tax and Customs Board, etc.) to verify the accuracy of the submitted notifications or identify cases in which a staff member has not made the required notification. There have been two disciplinary proceedings for failing to notify ancillary activities: In 2015, the ICB found out that a police officer had not reported his ancillary activities in a hospital in 2013. He subsequently made the notification and was not disciplined. In 2017, a patrol officer did not report his ancillary activities for 2016. The disciplinary proceedings in this case are currently on-going.

| Year                       | Number of notifications |
|----------------------------|-------------------------|
| 2014                       | 318                     |
| 2015                       | 350                     |
| 2016                       | 382                     |
| 2017 (until November 2017) | 565                     |

197. Up until five years ago ancillary activities were prohibited. The reasons for the sharp rise in the volume ancillary activities since then could not be explained to the GET. According to some of the GET’s interlocutors it was a necessity for a number of lower-ranking police officers to have an income on the side because of the relatively low remuneration, something that was contradicted by others who pointed to the average salary in the PBGB being much higher than the average in Estonia. The most common side activity (689 notifications) is being a member of the management board or owner of a private company, followed by membership of the management of a not-for-profit organisation (561 notifications, which however mostly concern the management of the home-owners’ association of the officer’s apartment: 303 notifications) and working for an education institution (294 notifications).

198. The control of the notification, besides checking whether a notification has been made, seems to focus largely on a post-facto check on whether private companies in ownership or managed by police officers do not benefit from contracts with the PBGB, whereby the direct manager of the police officer is supposed to keep an eye on the volume of the ancillary activities and on the possible impact of the ancillary activity on the ability of the police officer to carry out his/her day-to-day functions (e.g. tiredness).

199. The GET considers the growing trend of police officers having ancillary activities a worrying development. In this context, the centralised notification system for ancillary activities and what appears to be an effective control by the ICB of possible links between companies owned or managed by police officers and the PBGB, as well as the guidance given by the ICB and the GET examples on this issue in the Corruption Prevention Guidelines, are to be welcomed. While the GET is not advocating a return to a complete prohibition on ancillary activities for police officers (although the proposed increase in salaries as of 2019 may off-

set some of the reported need for secondary employment), it does consider that this issue requires further attention, as the checks carried out do not seem to consider other conflicts of interest than those related to police contracts. Similarly, the fact that police officers could be elected as independent candidates in local councils, without being suspended from active duties as a police officer (whereas – perhaps rather surprisingly – they are not allowed to be members of political parties) may require closer scrutiny, for example by additional vetting of police officers who are local councillors. Therefore, **GRECO recommends that the supervision of ancillary activities of police officers be enhanced to ensure that the prevention of conflicts of interest, beyond access to police contracts, is adequately addressed.**

### *Gifts*

200. As described in paragraph 104 above, pursuant to section 4 ACA, officials are not to accept any benefit, which can be associated with their official duties (with the exception of gifts unambiguously understood as common courtesy). If it is impossible to refuse the benefit, s/he is required to immediately notify and hand this over without delay to his/her agency or whomever has the right to appoint him/her. If it is impossible to hand the benefit over, the official shall pay the market value of the benefit. Failing to abide to these provisions is subject to 200 fine units (one unit equals EUR 4).

201. In addition, more specifically for police officers and other civil servants, the Code of Ethics for Officials provides the following guidance: “Officials must not demand or accept gifts, incentives or offers that even seemingly affect their impartiality upon performing their duties. In the case of gifts and incentives relating to work, the purpose and exclusiveness of the gift as well as whether the donor may expect a favour in return must be taken into account.” In addition, the Council of Ethics for Offices has adopted guidelines on good practices for office-related gifts and favours.

202. The internal work procedure rules of the PBGB do not contain any references to gifts but the new Corruption Prevention Guidelines outline the relevant regulations of the ACA, providing further explanations of what gifts/benefits are, what is to be understood under permissible “common courtesy gifts” and provide a list of scenarios in which gifts may be offered and what the response must be in those situations. For situations in which the gift cannot be refused, the guidelines refer to the notification procedure prescribed by Order No. 164 of 2014 “The procedure for notification of corruption information or an extraordinary incident relating to officials” (which is applicable to both civil servants and employees). This order outlines that if a public official accepts property or other benefits in connection with his/her official duties, s/he must immediately notify his/her immediate supervisor, by entering this information in a special form in the electronic management system “Delta” and forwarding this to his/her supervisor (with the Corruption Prevention Guidelines additionally explaining what a supervisor is to do with the gift in question). Failure to comply with the requirements of Order No. 164 would entail a violation of the CSA for civil servants and Employment Contracts Act for employees.

203. The GET heard that the ICB provides advice on gifts on a regular basis to PBGB officials, in particular in the period around Christmas.<sup>40</sup> Furthermore, the rules on gifts are covered in all anti-corruption and integrity training seminars organised by the ICB. According to the risk assessment of the ICB the highest risk in relation to gifts is related to employees of the document service desks. Two of the most recent investigations by the ICB into corruption were related to employees of the document service desks, which is why the ICB organised 12 special training seminars for service desk employees in 2017, which, *inter alia*, addressed the issue of gifts in detail.

#### *Misuse of public resources*

204. The ACA provides that an official is prohibited from “corrupt use of public resources”, which is defined as “the use of material and other resources intended for the performance of public duties by an official in violation of his or her official duties in the interests of such official or any third persons, if this brings about unequal or unjustified advantages for the official or the third person from the point of view of public interest” (sections 3 and 5 ACA). A fine of up to 300 fine units (one unit equals EUR 4) can be imposed for violation of these provisions. Supervision over the use of public resources is the responsibility of the direct supervisors of officials and employees of the PBGB, the heads of units and the ICB.

#### *Third party contacts, confidential information*

205. Contacts with third parties outside the regular procedures are regarded as corruption risks. As stipulated by section 55 CSA, civil servants “shall not disclose state or business secrets, classified information of foreign states, information concerning the family and private life of others and other information for internal use which becomes known to him/her due to his/her service during the period of the service relationship and after the release from service (...)”. Violation of this provision is considered to be a serious violation of duties leading to disciplinary proceedings.

206. In addition, sections 3 and 5 ACA (which is more widely applicable to also employees of the PBGB) prohibit the “corrupt use of insider information”, which is defined as “the use by an official, in violation of his or her official duties, of undisclosed information which became known to the official in the course of exercise of public authority, which has or would probably have a significant effect on the rights any third person, in the interests of such official or the third person, if this brings about unequal or unjustified advantages for the official or the third person from the point of view of public interest”. Violation of this provision is subject to a fine of up to 300 fine units (one unit equals EUR 4).

207. Disclosure of information in the course of professional activities by a person who is required by law not to disclose such information may also give rise criminal liability, pursuant to Articles 156, 157 and 157-1 of the Criminal Code. If the information discloses involves state secrecy, the proceedings fall under the competence of the Estonian Internal Security Service.

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<sup>40</sup> For example, in 2016, a company with a contract with the PBGB sent a pre-paid gift card to one official for Christmas. The official consulted the ICB, which advised the official to return the gift, given the inherent risk of corruption due to the on-going contract of the company with the PBGB and the monetary value of the gift.

208. In addition to the abovementioned general provisions on misuse of confidential information, several internal regulations regulate data security in the PBGB, such as the Data Security Policy, the internal rules of procedure, rules for the use of the PBGB’s information systems and rules setting out the procedure for addressing data security incidents (including the obligation for officials to report such incidents). Use of the PBGB information system is monitored by the ICB on the basis of IT logs. As the capacity of the ICB to audit such logs has increased in recent years, more cases of misuse of the PBGB databases have been identified. According to statistics on disciplinary sanctions, misuse of confidential information is also the most frequent disciplinary offence (see the tables below). While this is mostly the result of negligence (e.g. wrong e-mail recipient, no encryption), intentional transfer of confidential information to a third party is considered to be a severe violation of the internal rules of procedure of the PBGB, which the GET was told would usually lead to dismissal from service.

*Misuse of databases at the PBGB*

| Year | Number of violations | Disciplinary sanction |            |           |
|------|----------------------|-----------------------|------------|-----------|
|      |                      | Reprimand             | Salary cut | Dismissal |
| 2014 | 18                   | 4                     | 3          | 4         |
| 2015 | 26                   | 7                     | 5          | 9         |
| 2016 | 5                    | 3                     | -          | -         |

*Transfer of restricted PBGB information to a third party*

| Year | Number of violations | Disciplinary sanction |            |           |
|------|----------------------|-----------------------|------------|-----------|
|      |                      | Reprimand             | Salary cut | Dismissal |
| 2014 | 2                    | 1                     | -          | -         |
| 2015 | 1                    | -                     | -          | -         |
| 2016 | 3                    | 1                     | -          | 1         |

209. To raise awareness of PBGB staff about the treatment of confidential information and to prevent the misuse of databases, the ICB has increased training on data protection and information security.

*Post-employment restrictions*

210. Staff of the PBGB may be employed in other posts after they have left the PBGB. The only restriction is defined in section 60 CSA, which sets a cooling-off period of one year for civil servants in taking a stake in a legal person or become a member of the management or board of that legal person if s/he has exercised direct or constant supervision over this legal person in their employment with the PBGB.

211. The GET considers this restriction to be too limited, but when discussing this issue on-site it was told that a ruling of the Supreme Court, which reportedly prescribed the payment of compensation for a post-employment restriction, could present an obstacle in regulating this issue further. Not having been in a position to analyse this ruling, the GET nevertheless underlines the risks the opportunity of certain employment outside the PBGB can entail (offers of jobs as rewards, use of communication channels with former colleagues or specialised knowledge on police procedures for the benefit of new employers, etc.). Specifically for certain PBGB functions, it would be advisable to put stricter post-employment regulations in place (for example, when certain persons in the financial intelligence unit would move to a financial institution to work as a compliance officer); even



if in certain cases this may mean that a form of compensation would need to be paid. As the scale of the problem is not clear, **GRECO recommends that a study be conducted concerning the activities of police officers after they leave the police and that, if necessary in light of the findings of this study, rules be adopted to ensure transparency and limit the risks of conflicts of interest.**

### **Declaration of assets, income, liabilities and interests**

#### *Declaration requirements*

212. The Director General, the three deputy directors general and the four prefects of the PBGB are required to file a declaration of assets and interests with the register of declarations (an electronic register, which is partly pre-filled on the basis of information contained in state registers) within four months of taking up their office and on an annual basis thereafter, in accordance with the Anti-Corruption Act. This declaration does not contain information on the assets or interests of family members/relatives of the officials concerned.

213. As described in more detail in the first part of this report (see paragraphs 114-122 above), the declarations the officials concerned are to include information on immovable property, vehicles, stocks and shares, loans/claims and debts (if the value exceeds four times the minimum monthly wage, in total around EUR 1 900 in 2017), benefits in a value exceeding the salaries of high-ranking state public officials (EUR 5 700 in 2017) received in the previous calendar year if this could have an impact on the performance of official duties, income, ancillary activities in the year previously if these activities generated income, as well as any other information concerning circumstances which could potentially bring about a breach of official duties, preclude the declarant's impartiality and objectivity or bring about the risk of corruption (section 14 ACA).

214. The information contained in the declaration (with the exception of personal identification codes and residence of the person making the declaration and the names, personal identification codes and residence of spouses, relatives or persons sharing a household with the person making the declaration) is accessible to the public (by accessing the register through the electronic tax office) for a period of three years.

#### *Review mechanisms*

215. As indicated above, part of the information included in the declarations of the Director General, the three deputy directors general and the four prefects of the PBGB is pre-filled in on the basis of information contained in state registers and the person declaring the information is only required to complete the missing parts in the electronic register.

216. As described in the first part of this report, the right to verify the information contained in the declarations is provided to the Select Anti-Corruption Committee of the parliament (or an official authorised by it), as referred to in section 9 ACA (see paragraphs 124-130) and may in case of the PBGB also be checked by the Minister of the Interior (or an official authorised by him/her). If the requirements for submitting a declaration have not been met, disciplinary proceedings may be initiated by – in this case – the Minister of the Interior.

217. The GET was told that in the last five years no irregularities detected as regards the declarations of the Director General, the three deputy directors general, the four prefects of the PBGB. It however also heard that the Minister of the Interior only checks the completeness and timeliness of the declarations and that in the last five years the Select Anti-Corruption Committee had not looked at any of the declarations by the eight top-managers of the PBGB. The GET would have considered such a period of time without the declarations of interest being checked more than cursorily to be excessive, but is reassured by the fact that financial and other interests of the top eight managers of the PBGB are checked as part of the regular vetting carried out by the Estonian Internal Security Service.

## **Oversight and enforcement**

### *Internal oversight and control*

218. Internal oversight is first of all the responsibility of the line manager of the civil servant or employee of the PBGB concerned. In case of (suspected) violations of laws, regulations and other requirements deriving from the job description of the official or employee, the line managers are to report to the ICB of the PBGB. The ICB reports directly to the Director General of the PBGB.

219. The main functions of the ICB are the performance of background checks on staff of the PBGB (see paragraph 172 above), preventing and combating offences (disciplinary and other) by officials and employees of the PBGB, and conducting pre-trial proceedings in respect of these offences. The ICB employs 47 civil servants (of which 19 are women), including 36 police officers, in six different structural units divisions divided over Tallinn and the East, West and South of the country. Civil servants working for the ICB receive a higher salary than ordinary police officers, are reported to have better working conditions and receive more training.<sup>41</sup> Civil servants of the ICB are required to have university education and previous working experience in a similar position or speciality for at least three years. A comprehensive background check is conducted regarding every candidate for a position in the ICB. Most civil servants of the ICB have access to state secrets, which means they are subject to additional vetting by the Internal Security Service on a regular basis (assessing the credibility, loyalty and integrity of the official concerned, as well as possible circumstances that make him/her vulnerable to misuse of confidential information).

220. Guided by the annual action plan (as based on the corruption risks and threat assessments, see paragraph 150), the ICB verifies compliance of PBGB staff with the applicable anti-corruption and integrity provisions. In addition, all PBGB staff can file complaints or submit information on professional misconduct to the ICB by e-mail, phone or by directly addressing a staff member of the ICB. The ICB must provide anonymity to the complainants and/or informers (see also on whistleblowers in paragraph 234 and further). Complaints and information is stored in the ICB database, which is only accessible to ICB police officers.

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<sup>41</sup> The salaries are comparable with the salaries of officials from the central investigative units, like the Central Police. The average monthly salary of an official working for the ICB is 1947 EUR, compared to 1424 EUR for an ordinary police officer.

### *External oversight and control*

221. The primary oversight body for the PBGB, although not strictly speaking to be considered as external oversight, is the [Ministry of the Interior](#). The Director General of the PBGB reports to the Minister of the Interior on the results and activities of the PBGB three times per year (5, 9 and 12 months' period). In addition, the Ministry acts as a review mechanism in case a citizen is not satisfied with the reply it received from the PBGB on its complaint (see in paragraph 226 further below).

222. In addition to the Ministry of the Interior, the [Security Authorities Surveillance Select Committee](#) of the *Riigikogu* oversees the activities of the security authorities. Although primarily directed at activities of the Internal Security Service and the Foreign Intelligence Service, this parliamentary select committee also looks at compliance of the activities of the PBGB with the Code of Criminal Procedure. The PM submits an overview of the activities of the PBGB and security authorities at least once every six months, which is discussed by the committee in a closed session.<sup>42</sup>

223. Furthermore, the [Chancellor of Justice](#) has the authority to supervise part of the work of the PBGB in its capacity to monitor whether state authorities comply with people's fundamental rights and freedoms (see further under "complaints" in paragraph 227 below).

224. In addition, the [Data Protection Inspectorate](#) has the authority to supervise the way the personal data gathered by the PBGB is processed, and can conduct inspections in this area. The [Prosecutor's Office](#) exercises supervision over surveillance activities (which in criminal matters can only be carried out with the consent of the Prosecutor's Office) and investigations conducted by the PBGB. The [Internal Security Service](#) supervises compliance of the PBGB with regulations on state secrets and is also responsible for the investigation of corruption-related offences committed by high-ranking officials (including the Director General of the PBGB, the three deputy directors general and the four prefects). Finally, the [NAO](#) can assess whether the PBGB has been using public funds economically, efficiently, effectively and lawfully.

### *Complaints system*

225. Public complaints may be made directly to the PBGB by e-mail, phone, and letter or directly to a police officer at the police station. The GET was told that around 200-300 complaints against the PBGB on a wide variety of topics were made per year. The majority of complaints are made to the general police [e-mail address](#). Complaints involving suspicions of corruption may also be transmitted through the corruption [hotline](#) (by e-mail or phone) in which case the Corruption Crime Bureau of the Central Criminal Police of the PBGB receives the complaint.

226. Should any of the complaints be related to PBGB staff, the information is transferred immediately to the ICB for further investigations. The person making the complaint will receive information (usually within 30 days) about the progress of their complaint and the outcome of proceedings, if any, unless the complaint has been made anonymously, and can

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<sup>42</sup> In order to exercise its external oversight function, Security Authorities Surveillance Select Committee can summon officials in person and demand documents for examination. If it comes across any offence having been committed it must forward the relevant materials to an investigative body or the Chancellor of Justice.

challenge the answer received before the prefect, deputy director general or Director General and subsequently the Minister of the Interior or Chancellor of Justice. Decisions not to initiate criminal proceedings may be challenged before the Prosecutor's Office.

227. In addition, the Chancellor of Justice has the right to act on petitions of citizens, who feel that their fundamental rights and freedoms have been violated. If it finds that a state authority has violated a person's rights, it can make a recommendation or proposal to the state authority in question on how to address this violation.<sup>43</sup> For the Chancellor of Justice to review a petition or complaint the issue cannot be the subject of judicial proceedings and no court ruling can have been made in relation to the issue in question.<sup>44</sup> Following the on-site visit, the GET was informed that in 2017 the Chancellor's office received approximately 83 communications regarding the PBGB, covering a wide range of issues (e.g. conditions in places of detention, processing of personal data, residence permits, misdemeanour or law enforcement proceedings, service of the PBGB) and had in fact made several recommendations to the PGBG (involving, *inter alia*, the supervision of processing of personal data, legal ground for the detention of an asylum seeker, conditions in places of detention, etc.).

228. While the GET heard of no criticism on-site of the current set-up of the oversight and complaints system, it considers that greater efforts should be made to improve external oversight over the police. External oversight of the police is a crucial tool to ensure full accountability of the police to the public. Not only should it be independent but appear to be so for the public, and this is best achieved through a truly external body. In this context, the GET does not consider the Ministry of the Interior to be an external oversight mechanism, as the PBGB is a governmental agency of that Ministry. The oversight exercised by the Ministry, which appears to be reliant on the reports of the Director General, is in view of the GET not sufficiently independent and pro-active to qualify as external scrutiny. Other bodies, such as the Chancellor of Justice, which is an external oversight mechanism similar to an Ombudsman, could technically play a role in this respect and from the information provided after the on-site visit it does indeed seem to be able to act on complaints related to the PBGB, but seems to focus largely on human rights violations.

229. In discussing the need for improvements, the GET was told that the current set-up, which is heavily reliant on the ICB's internal oversight, was considered to be more effective. Interlocutors argued that only if the PBGB had a low level of trust, would it make sense to strengthen external oversight. In this context, the authorities also considered that the independence of investigations by the PBGB was currently sufficiently guaranteed, in that in criminal cases the prosecutor's office exercised oversight and in disciplinary cases there was a right to appeal to the administrative court. Indeed the GET was encouraged by accounts of

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<sup>43</sup> If the Chancellor of Justice finds that an activity of an authority performing public duties is unlawful, s/he shall issue a statement, which includes a description of how the authority in question has violated a person's rights and, if necessary, makes a recommendation to the authority or a proposal how to address the violation. If his recommendation or proposal is not taken up, s/he may submit a report to the supervisory authority of the agency in question (i.e. the Minister of the Interior in case of the PBGB), the government and parliament.

<sup>44</sup> In addition, the Chancellor of Justice may refuse to review a petition if the petition is not in conformity with the requirements of the Chancellor of Justice Act, is clearly unfounded, is filed more than one year after a person became aware or should have become aware of the violation of his or her rights, or is the subject of pre-trial proceedings or if the person has the possibility to file a challenge or resort to other legal remedies but failed to do so.

interlocutors met during the visit about what appears to be well-functioning internal oversight by the ICB and the high public trust in the PBGB.

230. Nevertheless, the GET considers that this current set-up is relatively recent and not well established, in that it may arguably be dependent on a small number of committed staff members, something that could easily change over time. The GET's main contention is the lack of an independent investigation into complaints (other than those relating to violations of fundamental rights currently handled by the Chancellor of Justice) against the police.<sup>45</sup> The current "police investigating the police" situation raises doubts as to the independence and impartiality of such investigations, in however high regard the PBGB and by extension the ICB might be held. Therefore, in order to fully embed the endeavours in preventing and fighting corruption in the PBGB, **GRECO recommends that the safeguards applicable to the mechanisms for oversight of police misconduct be reviewed and to ensure that they provide for sufficiently independent investigations into police complaints and a sufficient level of transparency to the public.**

### **Reporting obligations and whistleblower protection**

#### *Reporting obligations*

231. Staff of the PBGB (both civil servants and employees) must report suspected corruption and misconduct (listed as "corrupt use" of an official position, as well as "corrupt use" of public resources, influence or inside information) by colleagues, in accordance with section 6 ACA.<sup>46</sup>

232. The provisions of the ACA are complemented by Order 164 of the Director General of the PBGB "The procedure for notification of corruption information or an extraordinary incident relating to public officials" (of 2014, most recently amended in May 2018), which applies to all PBGB staff, as well as police cadets and trainees.<sup>47</sup> If a staff member is in possession of such information, s/he must notify his/her immediate supervisor immediately (or if this is not possible, his/her supervisor's supervisor) using the fastest and most practical means of notification, to be followed with a written report at the earliest available opportunity thereafter. The supervisor who receives this notification is to submit it promptly to the ICB. While the ACA does not provide for disciplinary liability for non-reporting, failure to comply with the requirements of Order 164 would entail a violation of the CSA for civil servants and Employment Contracts Act for employees.<sup>48</sup> All new staff of the PBGB are required to familiarise themselves with the Order in question (and more particularly the

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<sup>45</sup> See in this respect also principle 61 of Recommendation Rec(2001)10 on the [European Code of Police Ethics](#), which reads "public authorities shall ensure effective and impartial procedures for complaints against the police".

<sup>46</sup> In addition, the Code of Ethics for Officials stipulates specifically for civil servants that they need to draw attention to actions damaging the credibility of public service, such as a colleague's unethical or illegal activity. However, as indicated before, the Code of Ethics is not a legally binding act.

<sup>47</sup> "Corruption information" in this context means "the corrupt use of an official position, public resources, influence or insider information, within the meaning of the Anti-Corruption Act, (...) or granting, accepting or arranging receipt of 'gratuities' or bribes or trading in influence within the meaning of the Penal Code"; "Extraordinary incidents relating to public officials" refer to "possible misdemeanours, criminal or administrative offences conducted by a public official or acts or omissions by a public official which have resulted in the occurrence of an incident which may get public or media attention and may discredit the PBGB".

<sup>48</sup> Violation of the requirements of Order 164 would be considered a wrongful breach of duties entailing disciplinary liability pursuant to section 69 of the CSA.

reporting obligation). Attention is furthermore drawn to these issues in the trainings of the ICB. In discussing this with police officers, the GET was satisfied that staff of the PBGB was sufficiently familiar with this obligation and the procedure.

233. The authorities estimate that around 30% of all internal investigations (misdemeanour and disciplinary proceedings) by the ICB are based on information or notifications received from PBGB staff. However, no statistical information is kept on the number of notifications made to the ICB by PBGB staff. In order to be able to keep the effectiveness of internal reporting obligations under review, also in view of protection offered to whistleblowers (see further below), the GET encourages to collect statistical information on internal reports being made.

#### *Whistleblower protection*

234. The ACA provides that reports/notifications made in good faith by staff of public institutions of suspected corruption or other misconduct by colleagues shall remain confidential and can be disclosed only with the written consent of the official having made the notification. The PBGB guarantees anonymity to staff reporting on internal misconduct in good faith, with information on such reports only being accessible by the ICB (whereby access to this information within the ICB may also depend on the authorised access level of the ICB official concerned), with the supervisor to whom this information is first reported (pursuant to aforementioned Order 164 on the “Procedure for notification of corruption information and extraordinary incidents relating to public officials”) also being able to withhold information on the identity of the staff member providing the information.

235. The GET was told that keeping the anonymity of a person reporting misconduct was a challenge, but that if there was a risk that the source would be revealed, the ICB would not proceed with the investigation and would try to gather the information revealed by the person concerned through other means. Furthermore, section 6 paragraph 4, ACA provides that if a person alleges in court to have faced negative consequences (defined as “unequal treatment” in the ACA) as a result of reporting in good faith suspected corruption or other wrongdoing under the ACA, the burden falls on the person against whom the application was made to prove otherwise.

236. The GET welcomes the granting of anonymity and the reversal of the burden of proof (approaches which are endorsed by Recommendation CM/Rec (2014)7 of the Committee of Ministers of the Council of Europe on the protection of whistleblowers). However, it is difficult to see how section 6 ACA will work in practice, in particular when the retaliation is of a more general nature, in that the whistleblower suffers loss of promotion opportunities, is bullied or otherwise harassed for breaking a code of silence in the organisation. No use seems to have been made of the provision on reversing the burden of proof in court proceedings to date and no mention of its existence was made during the on-site visit. Therefore, **GRECO recommends that the protection of whistleblowers be strengthened and the awareness of staff of the Police and Border Guard Board of the protection afforded to whistleblowers be raised.**

## **Enforcement procedure and sanctions**

### *Disciplinary proceedings*

237. For police officers and other civil servants of the PGBG, disciplinary offences are defined as a “wrongful breach of duties” (section 69 CSA), for which they can be reprimanded, have their basic salary reduced by up to 30% for up to six months or dismissed. Any intentional violation of internal rules of procedure of the PBGB or order of the Director General is considered to be a wrongful breach of duties under the CSA.

238. As indicated before, employees of the PBGB are not covered by the CSA and the aforementioned disciplinary proceedings/sanctions do not apply to them. However, under sections 72-73 and 88 of the Employment Contracts Act, if an employee wilfully breaches an obligation arising from his/her employment contract, his/her wages can be reduced (for wilfully disregarding instructions) and ultimately his/her employment contract can be terminated, *inter alia*, for disregarding instructions in spite of a warning, breach of duties, violation of confidentiality provisions and fraud.

*Number of disciplinary offences by type*

| <b>Type of disciplinary offence</b>                          | <b>2013</b> | <b>2014</b> | <b>2015</b> | <b>2016</b> |
|--|-------------|-------------|-------------|-------------|
| Violations of the rules in places of detention <sup>49</sup> | 5           | 7           | 5           | 4           |
| Drunk in office  | 1           | 4           | 1           | 0           |
| Traffic accident   | 0           | 1           | 0           | 0           |
| Traffic accident with a police vehicle                       | 1           | 1           | 3           | 1           |
| Violation of the norms of procedure                          | 7           | 2           | 2           | 2           |
| Use of weapon  | 4           | 3           | 0           | 0           |
| Dishonourable behaviour <sup>50</sup>                        | 13          | 13          | 46          | 14          |
| Fail in service duties <sup>51</sup>                         | 60          | 57          | 93          | 23          |
| Violation of deadline  | 2           | 2           | 0           | 0           |
| Misuse of databases  | 6           | 16          | 26          | 5           |
| Drunk driving  | 0           | 0           | 1           | 0           |
| Dishonesty   | 0           | 0           | 0           | 4           |
| Theft  | 0           | 0           | 0           | 1           |
| Corrupt use of official position for personal gain           | 0           | 0           | 0           | 0           |

239. Disciplinary proceedings are conducted by the ICB on the basis of the Administrative Procedure Act and the Order of the Director General of the PBGB, but disciplinary sanctions can only be imposed by the Director General of the PBGB. If an official of the PBGB finds that his/her freedoms are restricted by an administrative act (e.g. a disciplinary sanction) or in the course of administrative proceedings (e.g. disciplinary proceedings), s/he may challenge this with the Director General of the PBGB and subsequently appeal to the Administrative Court.

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<sup>49</sup> This includes incidents involving physical harm and death.

<sup>50</sup> This refers to acts damaging the reputation of individual police officers / other civil servants or the PBGB as a whole (e.g. disrespectful behaviour to citizens or colleagues, offences which have affected the PBGB’s reputation etc.).

<sup>51</sup> This refers to underperformance, violation of working discipline, not meeting deadlines etc.

*Disciplinary sanctions imposed on civil servants of the PBGB*

|  | 2013      | 2014      | 2015      | 2016      | 2017      |
|--|-----------|-----------|-----------|-----------|-----------|
| <b>Disciplinary sanctions in total</b> | <b>26</b> | <b>50</b> | <b>54</b> | <b>19</b> | <b>14</b> |
| • Reprimand                            | 22        | 35        | 27        | 14        | 9         |
| • Fine                                 | 0         | 1         | 0         | 0         | 0         |
| • Reduction of salary                  | 2         | 8         | 8         | 2         | 2         |
| • Release from duties                  | 2         | 6         | 18        | 3         | 3         |
| <b>No sanctions imposed</b>            | <b>75</b> | <b>34</b> | <b>69</b> | <b>15</b> | <b>23</b> |

*Misdemeanours, criminal proceedings and immunities*

240. For violations of the ACA, sanctions in an amount of 200 to 300 fine units (one unit equals EUR 4) can be imposed. Violations of the ACA are considered to be misdemeanours. The proceedings into these and other misdemeanours committed by staff of the PBGB (whether civil servants or employees) are conducted by the ICB. Sanctions are imposed by a country court, pursuant to section 21 of the ACA.

241. Most misdemeanours concern violation of traffic violations, followed by small thefts. The GET was informed that in 2017, 79 sanctions were imposed in 27 misdemeanour cases (compared to 82 sanctions in 36 cases in 2016, 42 sanctions in 14 cases in 2015 and 61 in 16 cases in 2014).<sup>52</sup> Out of the aforementioned cases, in 2014 there was one case concerning violation of the ACA by PBGB staff, none in 2015, six in 2016 and none in 2017. Sanctions for misdemeanours or criminal offences imposed upon PBGB staff do not preclude the imposition of disciplinary sanctions for the same act.

242. PBGB staff, whether police officers or not, do not enjoy immunities or other procedural privileges. They are subject to ordinary criminal proceedings, which are – as indicated before – investigated by the ICB and overseen by a public prosecutor. In 2017, the ICB raised the following indictments concerning members of staff of the PBGB: two proceedings for passive bribery, two for abuse of authority, three for aggravated breach of public order, one for use of counterfeit documents, one for the unlawful handling of large quantities of narcotic drugs or psychotropic substances, one for knowingly making an unlawful decision in misdemeanour proceedings and one for physical abuse. The GET was informed that in 2017 the ICB initiated criminal proceedings in 28 cases (which was the same in 2016, compared to 30 in 2015 and 45 in 2014) and that additionally it got sent nine cases by other units (compared to 10 in 2016, seven in 2015 and 22 in 2014). Eleven cases were handed over for prosecution in 2017 (compared to seven in 2016, 10 in 2015 and 22 in 2014).

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<sup>52</sup> One case can involve multiple persons and thus multiple sanctions.



## **VI. RECOMMENDATIONS AND FOLLOW-UP**

243. In view of the findings of the present report, GRECO addresses the following recommendations to Estonia:

### *Regarding central governments (top executive functions)*

- i. that political advisers undergo a vetting procedure based on integrity criteria as part of the recruitment process (paragraph 43);**
- ii. that risk analyses be broadened to cover more specifically persons with top executive functions (paragraph 54);**
- iii. (i) that a Code of Conduct for persons with top executive functions be adopted in order to provide clear guidance regarding conflicts of interest and other integrity related matters (such as gifts, contacts with third parties, ancillary activities, the handling of confidential information and post-employment restrictions), and (ii) to ensure proper monitoring and enforcement of the Code (paragraph 63);**
- iv. that systematic briefing on integrity issues be imparted to ministers and political advisers upon taking up their positions and confidential counselling on ethical issues be accessible to all persons with top executive functions (paragraph 74);**
- v. that rules be laid down to govern (i) contacts between persons with top executive functions and lobbyists/third parties that seek to influence the public decision-making process and (ii) the disclosure of such contacts and the subject-matters discussed (paragraph 88);**
- vi. that rules be introduced concerning the employment of persons with top executive functions in the private sector after leaving government (paragraph 113);**
- vii. that the authorities (i) ensure that those political advisers who are associated with a minister's decision-making be required to fill in declarations of interests; (ii) consider widening the scope of declarations of interests to also include information on the spouses and dependent family members of ministers (it being understood that such information would not necessarily need to be made public) (paragraph 123);**

### *Regarding law enforcement agencies*

- viii. that the standards on corruption prevention in the Police and Border Guard Board, which currently exist across various documents, be consolidated in one document (paragraph 162);**
- ix. that the procedure for selecting and appointing the Director General of the Police and Border Guard Board be revised in order to ensure that the formal, competitive and transparent process applies to all candidates (paragraph 175);**

- x. **that further efforts be made to increase the representation of women at higher levels and ensure their integration at all levels in the Police and Border Guard Board** (paragraph 179);
- xi. **that the possibility of introducing the principle of rotation of staff of the Police and Border Guard Board be further explored, specifically for police officers in areas exposed to particular risks of corruption** (paragraph 182);
- xii. **that the supervision of ancillary activities of police officers be enhanced to ensure that the prevention of conflicts of interest, beyond access to police contracts, is adequately addressed** (paragraph 199);
- xiii. **that a study be conducted concerning the activities of police officers after they leave the police and that, if necessary in light of the findings of this study, rules be adopted to ensure transparency and limit the risks of conflicts of interest** (paragraph 211);
- xiv. **that the safeguards applicable to the mechanisms for oversight of police misconduct be reviewed and to ensure that they provide for sufficiently independent investigations into police complaints and a sufficient level of transparency to the public** (paragraph 230);
- xv. **that the protection of whistleblowers be strengthened and the awareness of staff of the Police and Border Guard Board of the protection afforded to whistleblowers be raised** (paragraph 236).

244. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Estonia to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2020. The measures will be assessed by GRECO through its specific compliance procedure.

245. GRECO invites the authorities of Estonia to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.



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## 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](http://www.coe.int/greco).