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Groupe d'États contre la corruption

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FOURTH EVALUATION ROUND

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FOURTH EVALUATION ROUND

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

EVALUATION REPORT

REPUBLIC OF MOLDOVA

Adopted by GRECO at its 72th Plenary Meeting
(Strasbourg, 27 June – 1 July 2016)

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Directorate General I
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EXECUTIVE SUMMARY

1. Corruption represents one of the major issues in the Republic of Moldova. Effective implementation of the legislative and policy framework for the fight against corruption remains problematic and the major institutions in charge of fighting corruption suffer from weak capacities and a lack of independence.

2. In terms of the focus of the Fourth Evaluation Round, positive measures have been taken to enhance access to information regarding parliamentary work, but they remain inconsistently applied. More steps could be taken in the future to ensure proper democratic debate and widen opportunities for public participation in the development, implementation and revision of legislation, as well as to provide transparency regarding the interaction of parliamentarians with third parties seeking to influence the parliamentary process. A code of conduct for parliamentarians needs to be adopted and adequate tools put in place to promote and enforce integrity principles in the legislature.

3. More importantly, the monitoring and enforcement regime for integrity and conflict of interest prevention, which is common to the three categories under review, needs to be strengthened significantly. The National Integrity Commission lacks the required powers and independence to carry out a meaningful control of the asset and interest statements submitted and the sanction regime suffers from crucial flaws. Finally, the immunity of Members of Parliament hampers criminal investigations in respect of those suspected of having committed corruption related offences.

4. The judiciary is affected by a negative public perception and determined action will be necessary to rebuild public trust. First and foremost, the Superior Council of Magistracy faces criticism as regards its composition and operation. This needs to be reviewed and the Council's decisions must offer sufficient guarantees of objectivity and transparency, especially as regards recruitment, promotion and disciplinary liability of judges. Awareness of ethics and integrity rules among judges needs to be heightened and rules on gifts and other advantages properly enforced. Furthermore, the legal and operational framework for disciplinary liability of judges needs to be reviewed, in order to reinforce their accountability.

5. A long-awaited new Law on the Prosecution Service will enter into force shortly after the adoption of this report. It aims notably at enhancing the professionalism and procedural autonomy of prosecutors, establishing a transparent and objective procedure for their recruitment and promotion and increasing the capacity of the Superior Council of Prosecutors. The new law contains welcome measures to this end, but it is ultimately the manner in which this law will be implemented that will determine whether these goals are achieved. Additional measures must be taken to this end, notably as regards instructions given to prosecutors and hierarchical intervention on cases, the composition and decisions of the Superior Council of Prosecutors and the framework for the disciplinary liability of prosecutors. As is the case for judges, awareness of ethics and integrity rules among prosecutors needs to be heightened. Lastly, the reform foresees positive changes regarding the procedure for the appointment of the Prosecutor General. Some of these changes are subject to a constitutional reform which seems highly unlikely in the current political context. Measures could be implemented under the current Constitution and it is important that they are, given the Prosecutor General's central role in the prosecution service.

I. INTRODUCTION AND METHODOLOGY

6. The Republic of Moldova joined GRECO in 2001. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in October 2002), Second (in April 2006) and Third (in April 2011) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

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

8. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

9. As regards Parliamentary assemblies, the evaluation focuses on members of national Parliaments, including all chambers of Parliament and regardless of whether the members of Parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

10. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV Rep (2015) 9E) by the Republic of Moldova, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Chisinau from 2 to 6 November 2015. The GET was composed of Ms Gabriele BAJONS, Head of the Department for Internal Audit and Court of Auditors, Ministry of Justice (Austria); Mr Catalin BOBOC, Chairman of the Legal Committee of the Senate (Romania); Mr András MÁZI, Head of the Department for Constitutional Law, Ministry of Justice (Hungary); and Mr Johannes J.I. VERBURG, Former President of the Court of Appeal of the Hague (Netherlands). The GET was supported by Ms. Sophie MEUDAL-LEENDERS from GRECO's Secretariat.

11. The GET held interviews with representatives of Parliament (including its Standing Bureau, the Standing Legal Committee for Appointments and Immunities and the Standing Committee for National Security and Public Order) and of parliamentary factions (the Socialist Party, Liberal Democratic Party and Liberal Party), the National Integrity Commission. Moreover, the GET held interviews with representatives of the judiciary and the prosecution service: judges and prosecutors from different levels of jurisdiction and prosecutors' offices, the Superior Council of Magistracy and its attached boards, the Judicial Inspection, the Superior Council of Prosecutors and its attached boards, as well as the National Institute of Justice. The GET also spoke with representatives of the international community, including the United Nations Development Programme and the

Norwegian Mission of Rule of Law Advisers in Moldova. Finally, the GET met with NGOs (Transparency International, Centre for Analysis and Prevention of Corruption, Anticorruption Alliance, Legal Resources Centre Moldova), the media (Association of Independent Press, Centre for Investigative Journalism, RISE Moldova, Organised Crime and Corruption Reporting Project, Ziarul de Gardă newspaper) and the Bar Association.

12. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of the Republic of Moldova in order to prevent corruption in respect of members of Parliament, judges and prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of the Republic of Moldova, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, the Republic of Moldova shall report back on the action taken in response to the recommendations contained herein.

II. CONTEXT

13. The Republic of Moldova has developed a sizeable anti-corruption normative and institutional framework over the years, but effective implementation remains problematic. The country's track record in the implementation of GRECO recommendations issued in former rounds is positive overall, with a compliance rate to date of about 83% (38 out of 46 of the recommendations issued by GRECO in its First, Second and Third Evaluation Rounds have been implemented satisfactorily or dealt with in a satisfactory manner).

14. In spite of these efforts, the perception of corruption in the Republic of Moldova remains high. Transparency International's Corruption Perception Index 2015[1] ranked the Republic of Moldova as 103rd among 168 countries, down from rank 94 in 2012, with a slight decrease in points granted (33 and 36 out of 100, respectively). The Republic of Moldova also has a high level of people reporting payment of bribes, with nearly 30% of respondents admitting doing so in Transparency International's 2013 Global Corruption Barometer[2] (down 7% from the previous 2011 Barometer). Of these, 34% reported paying a bribe to the judiciary. According to the same Barometer, the population's view on the effectiveness of the government's efforts to curb corruption remains consistently low: 69% of respondents believe that the level of corruption in the country has increased and 23% that it has stayed the same in the period 2011-2013.

15. Despite the high number of corruption-related scandals reported in the media, sanctions are low and impunity is frequent. The major institutions in charge of preventing and fighting corruption – the Prosecutor General, the National Anti-Corruption Centre, the National Integrity Commission – suffer from weak capacities and a lack of independence. Top positions are distributed along political allegiance lines following deals between political parties. In the absence of public funding, parties themselves are weak and under the influence of a narrow circle of private individuals.

16. In terms of the focus of the current Evaluation Round, the judiciary is perceived as the branch most affected by corruption (80% of respondents), closely followed by the Parliament (75% of respondents) in Transparency International's Global Corruption Barometer. The European Commission confirms this picture in its latest report[3], stating that the Republic of Moldova's political and economic development continues to be hampered by systemic and high level corruption, the judiciary being among the most vulnerable sectors.

17. Against this background, the disappearance of 1 billion USD – 15% of the country's GDP – from three of the country's main banks just before the November 2014 parliamentary elections sparked demonstrations that have been going on for more than a year, with people still camping out before the Parliament's building at the time of the on-site visit, asking for the resignation of the government, the Prosecutor General and the Head of the National Anti-Corruption Centre. Shortly before the visit, the mayor of the city of Orhei (a well-known businessman and the former head of the administration board of the Banca de Economii SA) confessed giving a Member of Parliament (MP), former Prime Minister and leader of the Liberal Democrats, one of the parties in the governmental coalition – a bribe of about 250 million USD as part of the bank fraud. On 15 October 2015, the Prosecutor General asked Parliament to lift this MP's immunity and the vote took place on the same day. The MP was apprehended, taken into custody and charged with passive corruption and abuse of power. On 27 June 2016, a court of first instance found him guilty and sentenced him to nine years' imprisonment and a fine. It was the first time the Parliament had voted to lift an MP's immunity since 2006. On 29 October 2015, the Parliament passed a no-confidence vote against the government. A new coalition government was formed in January 2016, but protests have been going on, asking for early elections.

[1] http://www.transparency.org/cpi2015#results-table
[2] http://www.transparency.org/gcb2013/country/?country=moldova
[3] Progress Report on the implementation of the European Neighbourhood Policy in 2014

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the Parliamentary system

18. The Parliament of the Republic of Moldova is unicameral, composed of 101 members (hereafter MPs), of whom approximately 1/5 are women. They are elected for four years in a single nationwide constituency under a proportional party-list system, with four minimum representation thresholds of 6% for political parties, 9% for an electoral bloc of two or more parties, 11% for a bloc of three or more parties and 2% for independent candidates. The latest parliamentary elections were held in November 2014.

Parliament composition (2014 elections, as updated by June 2016)

-	Party of Socialists (PSRM)	- 24 seats
-	Liberal Democratic Party	- 12 seats
-	Party of Communists (PCRM)	- 7 seats
-	Democratic Party of Moldova	- 20 seats
-	Liberal Party	- 13 seats
-	Independent deputies	- 25 seats

19. The statute of MPs is governed by the Constitution, the Rules of Procedure of the Parliament (Law No. 797/1996) and Law No. 39/1994 on the Statute of Members of Parliament. The powers of an MP cease if s/he resigns, if his/her mandate is suspended, in cases of incompatibility of activities or functions with a parliamentary mandate and in the event of death (Article 69.2 of the Constitution).

Transparency of the legislative process

20. The information held by Parliament falls under Law No. 982/2000 on Access to Information and Law No. 239/2008 on Transparency in the Decision-making Process and is regulated by the Parliament's Rules of Procedure. Plenary sittings of Parliament are open to the public and accredited media representatives, except by decision of a majority of MPs, upon request of the Speaker, a parliamentary group or a group of at least five MPs. Committee meetings are public in principle, but the committee concerned may decide to hold them in camera if citizens' protection or national security are at stake. Information on bills proposed and orders of the day are published on the Parliament's website within deadlines foreseen by the Rules of Procedure. Parliament's sittings are streamed live and archived on a dedicated website (www.privesc.eu) and may be broadcast live on public TV and radio stations by decision of a majority of MPs. Minutes of the meetings, including vote records, are published on the Parliament's website (www.parlament.md). The timely publication of all these documents is supervised by the Standing Bureau of Parliament.

21. According to Article 49[1] of the Rules of Procedure, the lead standing committees ensure public consultations on legislative bills and proposals with the stakeholders, by means of debates and public hearings. The decision as to whether or not to organise public consultation on a given bill is left to the relevant committee's discretion. Following consultations, the standing committees have to publish on the Parliament's website the synthesis of the recommendations received. When it occurs, public consultation has to be organised within the 60-working day period normally foreseen for debating bills within committees. Another deadline may, however, be established by the Standing Bureau of Parliament.

22. The Law on Transparency in the Decision-making Process, which aims at ensuring public participation in the decision-making process by central and local authorities,

provides an obligation for any public authority – including the Parliament – to publish notice of the initiation of a decision on its website, to send it to relevant stakeholders, display or publish it in newspapers as appropriate. Public consultation on such decisions has to be ensured by public debates, hearings, opinion polls, referendums, experts' opinion, working groups with the participation of civil society representatives, etc.

23. A list of stakeholders interested in the legislative process, organised by sphere of activity of the Parliament's standing committees, is published on the Parliament's website. It was drawn up in 2011 with the assistance of the UNDP's Support for Parliamentary Development Project and remains open to interested institutions. The Parliament's website also provides the list of advisers in standing committees who are responsible for recording civil society contributions, as well as information about collaboration events between the Parliament and civil society.

24. Although it is apparent from the description above that there is a robust legal framework regarding transparency of the legislative process, information gathered by the GET suggests that it is inconsistently applied. The Parliament's website contains information about draft laws, but keeping it up to date with latest amendments is sometimes challenging, partly because of an out-dated IT system – which is to be upgraded in the future thanks to international support. According to the Parliament's 2014 activity report, collaboration with civil society occurred on a number of draft laws and subjects, including around 50 working meetings, round tables or conferences, four public debates, nine public hearings and consultation summaries published on the Parliament's website in respect of 37 draft laws. Civil society representatives, however, informed the GET that there are many cases in which the requirements of the legislative procedure are not complied with: issues ranging from compulsory documents – such as information notes or anti-corruption analysis on draft laws – missing and information not being published on the Parliament's website[4], to lack of public consultation and sometimes problems of access of civil society representatives to committee meetings. It appears to the GET that the basics for civil society consultation exist, but that co-operation is not always smooth and that confidence needs to be built or reinforced between both parties.

25. Another recurrent problem the GET came across is the frequent use of the emergency procedure (Article 106/1 of the Constitution: "Assumption of responsibility by the government") in recent years, allegedly in order to ensure the adoption of laws on which the government doubted obtaining a sufficient majority[5]. This procedure was even used to adopt the 2015 state budget. The GET is concerned about the repeated and seemingly arbitrary use of this procedure, which is detrimental to transparency and undermines the rule of law principles. Therefore, the GET suggests limiting the possibility of assuming responsibility by the government both qualitatively and quantitatively.

26. Even when the emergency procedure is not used, a number of draft laws are adopted at record speed. The GET learned about several examples of draft laws registered in Parliament and promulgated by the President of the Republic within a few days or even of laws being registered and passed on the same day. As an example, a law of 2013 amending the Election Code and the Law on the Statute of MPs was registered in

[4] According to Transparency International's National Integrity System 2014 Assessment of Moldova, a complete set of additional documents was posted on the Parliament's website only in respect of five draft laws out of 102 passed in the period between 27 September 2012 and 31 December 2012 and only in respect of 11 draft laws out of 119 passed in the period between 1 January 2013 and 30 June 2013. The report attributes this situation to the speed by which the Parliament goes over the draft bills without complying with the timeframe allocated to public consultation.

[5] The 2015 Nations in Transit Report on Moldova by Freedom House points out that 18 laws were adopted in emergency procedure in July and September 2014, including the law lifting the immunity of judges and the law on disciplinary responsibility of judges. According to the government, this was due to a stalemate in the Parliamentary Commission on Economy, Budget and Finance, but the opposition and even some members of the ruling coalition denied a resistance of Parliament to adopting these laws.

Parliament on 16 April 2013 and promulgated on 20 April 2013. Such accelerated procedures not only entail risks for the quality of legislation and affect the overall transparency of the legislative process, they also reduce the time available for consultation and discussion and thereby disregard proper public debate. GRECO therefore recommends ensuring (i) that draft legislation, all amendments and all supporting documents as required by law are published in a timely manner and (ii) that adequate timeframes are followed to allow for meaningful public consultation and parliamentary debate, including by ensuring that the emergency procedure is applied only in exceptional and duly justified circumstances.

Remuneration and economic benefits

27. The average monthly salary forecast in 2015 in the Republic of Moldova is 4 500 Moldovan Lei (MDL) (200 EUR).

28. The basic monthly salary of MPs is as follows:

President of the Republic of Moldova	13 000 MDL (584 EUR)
Speaker of Parliament	11 900 MDL (534 EUR)
Deputy speaker of Parliament	11 000 MDL (494 EUR)
Chairperson of standing committee or member of standing bureau	10 400 MDL (467 EUR)
Deputy chairperson of standing committee	9 900 MDL (445 EUR)
Secretary of standing committee	9 700 MDL (435 EUR)
Member of Parliament	9 600 MDL (431 EUR)

29. Increments of up to 20% of the basic monthly salary are foreseen for non-disclosure of state secret, scientific degrees of doctor habilitatus or doctor of science and honorific titles. MPs also have the right to receive compensation for expenditure in connection with their duties, including (i) a tax-free per diem of 50 MDL (2 EUR) for each day of participation in the plenary sittings (with higher coefficient for MPs holding special responsibilities within Parliament); (ii) official state transport or a monthly tax-free transport allowance of 500 MDL (22 EUR); (iii) for MPs living outside of Chisinau, an official state flat or a monthly tax-free allowance for lodging, calculated according to the number of persons in the MPs' household; (iv) annual tax-free compensation for treatment expenses, amounting to one monthly salary. Upon expiry of their mandate or in case of resignation, MPs are entitled to a single allowance amounting to two basic monthly salaries if they are not suspended nor exercising their right to pension, plus one basic monthly salary if they have not been employed during two months since the expiry of their mandate. Information regarding MP's salaries and allowances is available on their income and property statements, published on the website of the National Integrity Commission.

30. The budget for the functioning of a parliamentary office is covered through the public funds allocated to the Parliament's budget.

Ethical principles and rules of conduct

31. There is no code of conduct for MPs. The Rules of Procedure (Articles 131 and 132) contain some provisions relating to the conduct of MPs during plenary and committee sittings, dealing mostly with unexplained absence and behaviour requirements. Disregard for these rules may entail penalties ranging from warning to interdiction on taking part in plenary sittings for up to ten sittings (Article 133, Rules of Procedure). However, enforcement of these penalties is to be carried out by a special service of the Parliament, according to a set of rules which have not yet been adopted.

32. A draft Code of Conduct for MPs (bill No. 135 of 4 April 2016) was prepared by a group of MPs, with the assistance of representatives of civil society and international organisations, and it was submitted to the Standing Bureau of the Parliament. It proposes a set of rules and sanctions and the establishment of a Commissioner for Ethics, in charge of offering advisory opinions and overseeing compliance with the code. The GET supports this initiative, as GRECO has consistently underlined throughout its reports on this theme that the process of preparation and adoption of a code of conduct can be greatly beneficial to the work and public image of MPs and Parliament. As regards the content of such a code, at the very least it will have to mirror, explain and make more accessible the basic standards concerning the fundamental duties of MPs and restrictions on their activity. In order for it to be a meaningful tool in the hands of MPs, it is crucial that this code provides clear guidance on the prevention of conflicts of interest and on related issues, such as the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and public resources and contacts with third parties such as lobbyists (including elaborated examples). In order to embed the future code in the working culture of the Parliament, complementary measures such as the provision of specific training or confidential counselling on the above issues would be a further asset. Finally, the enforcement of the provisions contained in a code of conduct is an essential part of any integrity system. The effectiveness of a set of standards depends on the awareness of those at whom it is directed, on their willingness to comply with its provisions but also on appropriate tools to secure its implementation, i.e. ensuring that misconduct comes to light and attracts appropriate sanctions. GRECO recommends (i) adopting a code of conduct for members of Parliament and ensuring that the future code is made easily accessible to the public; (ii) establishing a suitable mechanism within Parliament, both to promote the code and raise awareness among its members on the standards expected of them, but also to enforce such standards where necessary.

Conflicts of interest

33. The Law on Conflicts of Interest No. 16-XVI of 15 February 2008 (hereinafter LCI) governs the incompatibilities and restrictions imposed on holders of public offices – including MPs, judges and prosecutors – as well as the manner in which conflicts of interest should be disclosed.

34. A conflict of interest is defined as a conflict between the exercise of functional duties and the personal interests of office holders as private individuals, capable of affecting negatively the objective and impartial performance of the obligations and responsibilities provided by law. A personal interest is any interest, material or immaterial, resulting from an official's personal needs or intentions […] including the ones resulting from his/her preferences or engagements (Article 2, LCI). The LCI requires office holders to exclude personal interests in taking or implementing official decisions and to abstain from participation in decision-making and implementation of decisions if their impartiality and objectivity may be compromised by personal interests or membership in certain organisations. It also explicitly bans a series of actions, namely: (a) using or allowing the use of inside information in any other way than specified by law; (b) using public office for obtaining undue income; (c) directly or indirectly using public property for personal interest; (d) making use of advantages of his/her office and previous office (Article 5, LCI).

35. The LCI also foresees an obligation for MPs to submit regular declarations of personal interests (see below) and to immediately report the occurrence of a conflict of interest to the National Integrity Commission, which is responsible for the oversight and enforcement of the conflicts of interest regime. Conflicts of interest to be reported may pertain to participation in a decision-making process, performance of duties or links to a

legal entity receiving public money, goods, loans guaranteed by the state or a public procurement order. MPs are also banned from entering into work relationships with former colleagues or staff from the Parliament subject to a one-year cooling-off period (Article 9).

36. According to the Rules of Procedure of Parliament (Article 35), MPs appointed to participate in inquiry committees also have to submit a declaration of interests and to make a statement in plenary sitting about the absence of a conflict between their private interests and the exercise of their responsibilities in the inquiry committee. In case a conflict of interest arises or appears to arise after the MP's appointment, his/her membership in the committee terminates by right. This provision, however, does not apply to other Parliamentary committees.

37. The LCI gives certain duties to the "leaders of public organisations" – who, in the case of the Parliament, is the Speaker – namely to resolve conflicts of interest of the persons under their authority by recusal, limiting access to certain information, transfer, redistributing tasks and responsibilities or asking for their resignation (Article 10, LCI). They also have to notify the National Integrity Commission of violations of the law (Article 11, LCI).

38. The legal or administrative acts issued in a situation of conflicts of interest are void and the National Integrity Commission has to refer the matter to the court for the annulment of such acts and decisions. However, this does not apply to legislative acts or other normative and judicial acts (Article 12, LCI).

39. The GET positively assesses the comprehensiveness of the LCI. It contains a number of important elements, such as a definition of conflicts of interest and an obligation for officials concerned – including MPs – to abstain from action and decision-making when they suspect they may be in a situation of conflict of interest. The law also foresees a disclosure regime, which will be presented below (see paragraphs 55-65). However, despite this comprehensiveness, a culture of prevention and avoidance of conflicts of interest has yet to take root among MPs. The interviews conducted by the GET confirmed that MPs tend to view their obligations in this framework from a formal point of view, as implying mostly the filing of a statement with the National Integrity Commission. The provisions on abstention in decision-making seem under-used in practice and MPs are largely unaware of the rationale behind the LCI, of the notion of conflicts of interest itself and how it needs to inform their choices and decisions both in the course of their parliamentary work and as regards their private interests and those of their relatives.

40. In the GET's view, several factors contribute to this state of affairs. One of them pertains to the supervision exercised by the National Integrity Commission. The particular concerns of the GET in this regard will be dealt with below. Another factor stems from the fact that Parliament does not show much proactivity in addressing integrity and corruption prevention matters in-house. This, in the GET's view, is a significant shortcoming which prevents the emergence of a culture of prevention of conflicts of interest among MPs and contributes to the Parliament's negative image. It also notes that the definition of personal interests contained in the LCI may be difficult to interpret and to apply in the context of MPs, since their votes are inevitably shaped by their preferences and political engagements. The GET is convinced that, for a culture of prevention and avoidance of conflicts of interest to emerge in Parliament, it needs to complement the legislation on conflicts of interest by developing its own rules and guidance on conflicts of interest in a code of conduct as per the recommendation contained in paragraph 32. The provision of Article 35(2) of the Rules of Procedure regarding the *ad hoc* disclosure of interests in the context of an MP's participation in an inquiry committee is a worthwhile example that could be extended to MPs' other activities. Another way of addressing conflicts of interest would be a duty to abstain from

participation in parliamentary proceedings. Whatever standards are chosen, they need to be accompanied by a proper in-house monitoring and a credible enforcement mechanism.

Prohibition or restriction of certain activities

Gifts

41. MPs are prohibited from requesting or accepting gifts, services, favours, invitations or any other benefits intended for their personal or their family's use (Article 23, LCI). The LCI does not expressly define the notion of gift, but reference is made to the Law on Corruption Prevention and Combating, according to which material benefits are tangible or intangible, movable or immovable assets obtained by any means, as well as legal acts or other documents certifying a title or a right thereto; undue advantages are also defined in that Law as services, privileges, favours, exemptions from obligations and other benefits that undeservedly improve the situation of a person as compared to the one they had before committing the corruption act or displaying corruptive behaviour.

42. Only gifts of a symbolic, courtesy or protocol nature, the value of each of which does not exceed 1 000 MDL (45 EUR), are acceptable. Any gift that exceeds this threshold has to be reported to the Committee for Gifts Assessment and Inventory and entered into a special register kept by the committee, which is accessible to the public. Gifts may also be repurchased by the recipient and this should be mentioned in the register. Exemptions to these rules are foreseen by the Rules of Procedure for medals, awards, badges etc. as well as for perishable goods. The procedure for the assessment and record of gifts is foreseen by Government's Decision No. 134 of 22 February 2013. In case of doubt as to the value of a gift, the recipient may turn to the committee, which is in charge of its assessment, on the basis of the approximate value declared by the recipient, market prices for similar goods and expert advice if necessary. Decision No. 134 also contains a right of the recipient to appeal the decision of the committee before a court in case s/he disagrees with the assessment.

43. The Committee for Gifts Assessment and Inventory forms part of the Secretariat of the Parliament. It was established by Order of the Speaker No. 125 of 24 July 2013. The register of gifts, however, is not operational, as the authorities confirmed that no gift had been declared to date. The GET sees this as a strong indication that, although detailed provisions are in place, compliance with them is not monitored. It invites the authorities to address this gap when establishing the mechanism foreseen in the second part of recommendation ii.

44. The LCI also specifies the necessary measures to be undertaken by office holders when offered gifts or other undue advantages, namely: (i) declining the advantage; (ii) securing their position with witnesses, including among colleagues; (iii) entering these actions in detail into a special register; (iv) immediately reporting the case to competent authorities; and (v) carrying on their duties properly, especially those for which undue advantages were offered.

Incompatibilities and accessory activities, post-employment restrictions

45. The incompatibility of a parliamentary mandate with the holding of another paid position, except teaching and scientific activities, is provided for in Article 70 of the Constitution and further regulated by Chapter IV of the LCI, the Law on the Status of MPs and the Rules of Procedure of Parliament. Teaching and scientific activities have to be carried out outside working hours.

46. Persons mandated by the Parliament for temporary assignments in central public administration bodies may cumulate this assignment with a parliamentary mandate for a maximum period of six months (Article 4, Law on the Status of MPs).

47. MPs must resign from any incompatible offices and duties no later than 30 days after their mandate was validated. In case they don't, they are suspended from the incompatible position upon the expiration of this deadline (Article 5, Law on the Status of MPs).

48. MPs have to make a statement to the Standing Bureau of Parliament, within 30 days of their mandate's validation, on any extra-parliamentary activity they intend to carry on. Changes in accessory activities during the mandate have to be declared to the Standing Bureau within 10 days of their occurrence (Article 6, Law on the Status of MPs).

49. The LCI provides for a one-year cooling off period during which former office holders may not represent the interests of private individuals, groups or corporate entities in any matters referring to their duties in public office. This restriction does not apply to advocates or lawyers. They also may not be employed within the management, revision or control structures of the institution they used to belong to (Articles 20(3) and 22). Companies in which they hold shares or in the management or supervision of which they work after the end of their mandate may not enter into trade contracts with the institution they used to belong to during the same one-year period. This provision does not apply when the contract was concluded prior to the former official's employment or when it was concluded following public tender procedures (Article 21).

50. Holders of public offices have to inform the leader of their organisation of any job offers if these may generate a conflict of interest. They may neither receive remuneration from their previous office, nor use inside information to obtain remuneration or a job after the end of their term of office (Article 20, LCI).

Contracts with State authorities

51. There are no provisions prohibiting MPs during their mandate or their relatives from holding shares in private companies benefiting from contracts or doing business with state authorities, nor from serving in the management or supervision of, or acting as an authorised person for, such companies. Such relationships may, however, give rise to conflicts of interest and have to be notified to the Speaker (Article 9, LCI).

Misuse of confidential information, misuse of public resources and third party contacts

52. MPs have to abide by the general rules of the Law on Personal Data Protection and the Law on State Secrets and may be held liable if they do not. As mentioned above, the LCI also bans the use of privileged information for personal gain (Article 5, LCI).

53. In the exercise of their duties, holders of public offices may not use, directly or indirectly, public property for their personal interest (Article 5, LCI).

Third party contacts

54. Lobbying is not regulated. The GET was informed that one of the parties of the governmental coalition in power at the time of the on-site visit attempted to introduce a law on lobbying, but did not receive support from its partners in the coalition. The issue of politicians being lobbied was mentioned several times as a matter of concern on-site, although the GET could not ascertain to what extent the industry of lobbying *per se* is developed in the country. That said, GRECO has expressed in many reports its viewpoint that it is important to set in place appropriate procedures in order to instil greater transparency in the interactions of parliamentarians and third parties, i.e. lobbyists and

any others (interest groups, associations etc.) seeking to influence the legislative process. Therefore, in order to further enhance transparency of the parliamentary process and to complement the existing provisions on public participation[6], GRECO recommends introducing rules for parliamentarians on how to interact with third parties seeking to influence the legislative process.

Declaration of assets, income, liabilities and interests

55. MPs are required to file regular statements of income and property, as well as statements of personal interests.

Statements of income and property

56. The filing of statements of income and property is regulated by Law No. 1264-XV of 19 July 2002 on Declaring and Control of Income and Property of Public Dignitaries, Judges, Prosecutors, Civil Servants and of Certain Persons holding Management Positions (hereinafter LIP). Statements have to be filed on paper following a model form appended to the law.

57. Statements comprise the following data regarding the declarant and his/her family members (understood as his/her spouse, minor children and dependents): all income; immovable and movable property (e.g. motor vehicles of all types subject to registration); assets transferred via mediators, transmitted against payment to ascendants, descendants, brothers, sisters and relatives of the same degree, as well as assets transferred for free to any person; financial assets (e.g. bank accounts, investment funds, placements, bonds, checks, direct investments in national or foreign currency, etc.); shares in the capital of commercial companies; and liabilities (e.g. debts, mortgages, guarantees issued in favour of third parties, loans, credits, etc.).

58. Statements are to be submitted at the beginning of the mandate (20 days from the day of appointment), annually by the 31st of March, at the end of the mandate (20 days from its termination) and one year after the end of the mandate (by the 31st of March of the following year).

Statements of personal interests

59. Statements of personal interests are regulated by the LCI. They also have to be filed on a model form appended to the LCI and have to include information on: paid professional activities; capacity as a founder or member of the board, administration, inspection or control of NGOs or political parties; capacity as an associate or shareholder of an economic agent, credit, insurance or financial institution; relationship with international organisations. Candidates to elections also have to declare their personal interests.

60. Statements of personal interests have to be submitted manually by MPs at the beginning of their mandate (15 days from the day of election), annually by 31st March, when changes in the content of the statement occur (15 days from the occurrence of the changes), at the end of the mandate (15 from its termination) and one year after the end of the mandate (by 31st March of the following year).

61. Both the MPs' statements of income and property and their statements of personal interests are collected by the Human Resources Directorate of the Parliament's Secretariat and recorded into two dedicated registers, according to models appended to the relevant laws. They are then forwarded, within 20 days from receipt, to the National Integrity Commission which is responsible for checking the accuracy of the statements

[6] Law No. 239-XVI of 13 November 2008 on transparency in the decision-making process.

and publishing them on its website. The statements expunged from personal details (e.g. personal identification numbers, biographical data, addresses, information on creditors and debtors) are published within 30 days of their receipt.

62. The Human Resources Directorate compiles a list of MPs who have not submitted their declarations on time and sends it to the National Integrity Commission. Failure to submit a declaration in due time without justification triggers the onset of an *ex officio* control procedure by the Commission.

63. A law on declaring property and personal interests has been adopted by Parliament on 17 June 2016 and will enter into force on 1 August 2016. The idea of this law is to merge both declarations, introduce electronic declaration – which will be implemented as of 1 January 2017 – and improve the system. The notion of conflicts of interest will be made more comprehensive and further detailed, by introducing the concepts of "potential", "real" or "consumed" conflicts of interest. Gifts and incompatibilities will be regulated in more detail. Another law on the National Integrity Authority which is part of the same package aims at increasing the efficiency of the activity of the National Integrity Commission, ensuring its institutional and operational independence by consolidating the supervision system. It was also adopted by Parliament on 17 June 2016 and will enter into force on 1 August 2016.

64. MPs' statements of personal interests and of income and assets are published online by the National Integrity Commission – as well as those of judges, prosecutors and other officials subject to declaration duties. However, the process of scanning manual declarations and removing personal data is time-consuming and inevitably encroaches on the time available for control of the content of these declarations. The GET was informed that a project to develop an online declaration system, with the assistance of international funding, had been put forward but that the legal basis for its implementation was lacking. The authorities of the Republic of Moldova are encouraged to pursue this project as a matter of priority.

65. MPs' declarations are also available on the Parliament's website[7]. The GET noted, however, that while most MPs' statements of income and property, as well as statements of personal interests are indeed posted online, some declarations appeared to be missing in respect of up to one third of MPs[8]. This matter is addressed in the section on supervision and enforcement below.

Supervision and enforcement

66. MPs, judges and prosecutors in the Republic of Moldova are subject to a common system of supervision and enforcement. Consequently, this section dealing with MPs also refers to judges and prosecutors and contains recommendations applying to all three categories. Cross references to this section are made in the subsequent chapters dealing with judges and prosecutors.

The National Integrity Commission

67. Main supervision over conflicts of interest and incompatibility rules, statements of personal interests and statements of income and property lies with the National Integrity Commission (hereinafter the commission). The commission was established by Law No. 180 of 19 December 2011 on the National Integrity Commission, but it only started its operation in 2013. It is an independent authority and its budget is provided by the State. The commission is composed of five members, elected by Parliament for a single five-

[7] http://parlament.md/StructuraParlamentului/Deputies/tabid/87/language/en-US/Default.aspx (each MP's declarations may be found on his/her own page.)
[8] Website consulted on 12 February 2015.

year mandate. They are assisted by a secretariat of 21 public officials. The commission meets weekly, sessions are public as a rule and decisions are taken by majority vote.

68. Candidates to three of the five positions in the commission are proposed on behalf of the parliamentary majority, one on behalf of the parliamentary opposition and one on behalf of civil society by the Standing Legal Committee for Appointments and Immunities, from a list of candidates presented by public associations. The chairperson of the commission is appointed by Parliament, upon proposal of the Speaker, from among the members of the commission who do not hold decision-making positions. The vice-chairperson is proposed by the chairperson and appointed by Parliament. Candidates to positions in the commission have to fulfil a series of requirements, e.g. to have over seven years of working experience with perfect reputation, no criminal record, no membership of a political party as of the moment of their appointment.

69. The commission's main tasks are (i) to verify the statements of income, property and personal interests in order to identify any significant and unjustified divergences between income earned during the performance of official duties and property acquired in that period; and (ii) to establish violations of the rules on conflicts of interest and incompatibilities. It is to be noted that for statements of income and property, a first formal check of the forms is be carried out by the authority in charge of collecting the statements – in the case of MPs, the Human Resources Directorate of the Parliament's secretariat – which asks declarants to complement statements within five working days if any deficiencies are noticed (Article 10, LIP).

70. The commission may initiate verification *ex officio* – following media reports, for instance – or upon request of any interested private individuals or corporate entities. This interest is interpreted broadly, as it can be justified merely by the complainant's quality of citizen. Complaints may not be anonymous and have to include relevant facts and information, as well as sources from where information can be obtained. Complaints have to be examined by the commission within 30 days of receipt. Although it is not required by law, in practice, the commission informs the complainant of the action taken, including of a decision not to initiate a verification procedure. The latter decision may be challenged in accordance with the civil procedure code and administrative law procedure. The commission may require all necessary documents and information from public authorities, private entities and individuals, who have to communicate the requested elements within 15 days. The inspected person may be heard, assisted by a lawyer and may produce any justificatory documents necessary.

71. The verification is concluded with a resolution adopted by the commission. Resolutions which conclude that the provisions on conflicts of interest or incompatibilities have been violated are subject to appeal by the inspected person before the competent court. Unless contested, the resolution becomes final within 15 days of its adoption, after which the commission informs the competent authorities so that they can initiate disciplinary proceedings or terminate the mandate of the person concerned. The commission lacks the power to impose sanctions itself.

72. In case it detects a significant and unjustified divergence between the official's income and property, the commission is to notify the criminal prosecution – if it suspects a criminal offence – and/or the tax authorities.

73. The new Law on the National Integrity Authority foresees a reorganisation of the existing National Integrity Commission. It will consist of a president, assisted by a vice-president, an Integrity Council and 30 integrity inspectors who will be independent in their functions and will not be subordinated to the Council or the (vice-)president. The Council will be composed of seven members: one representative of the Parliament, one representative of the government, one representative of the Superior Council of Magistracy, one representative of the Superior Council of Prosecutors, one representative

of the Congress of local authorities and two representatives of civil society. Inspectors will be competent to impose administrative sanctions.

74. According to its annual reports, the commission performed the following activity in 2013-2015:

- *2013 (first year of operation)*

  The commission initiated 120 verifications, of which 66 were *ex officio* and 54 following complaints; 49 verifications focused on possible violations of the legal regime of income and property, 41 on possible conflicts of interest, 10 on possible incompatibilities and the other 20 verifications on a combination of suspected violations. Among these verifications, 13 targeted MPs, 19 judges and 12 public prosecutors.

  The commission also closed 74 procedures. In 28 cases, it concluded that an infringement had taken place. Eight cases were deferred to the National Anticorruption Centre for sanctioning, 16 cases were sent to the General Prosecutor's Office and four cases to the State Tax Inspectorate. In 46 cases, the commission concluded that no violation had taken place.

- *2014*

  The commission initiated 354 verifications, including 190 *ex officio* ones. 63 controls were reactions to media reports, 127 self-complaints, 120 complaints received from various institutions and 44 were citizens' complaints; 228 verifications focused on possible violations of the legal regime of income and property, 84 on possible conflicts of interest and 42 on possible incompatibilities. Among these verifications, five targeted MPs. The commission also found that prosecutors were among the most vulnerable categories regarding compliance with the rules on the statement of income and property, with seven cases of infringements identified in 2014. The commission deferred 56 cases to the National Anticorruption Centre for sanctioning and 57 cases to the General Prosecutor's Office for initiation of a criminal procedure.

- *2015 (until the end of September)*

  The commission initiated 234 verifications, of which 75 were *ex officio*. 13 cases followed media reports, 62 self-complaints, 104 complaints from various institutions, 48 complaints from citizens and seven interpellations forwarded by MPs; 135 verifications focused on possible violations of the legal regime of income and property (57.7 % of the total number of verifications performed), 76 on possible conflicts of interest (32.5 % of the total number of verifications performed), 23 on possible incompatibilities (9.8 % of the total number of verifications performed). Among these verifications, four targeted MPs.

  During that period, the commission performed 34 verifications, which is 17% of the total of procedures open at that time.

  The commission also closed 233 procedures, including 128 procedures initiated in 2014 and 105 initiated in 2015. Out of the total of completed procedures, 78 (33.4%) concluded that infringements had taken place. 58 of these cases concerned violations of the rules on statements of income and property, 16 cases dealt with conflicts of interest and 4 cases were infringements of the rules on incompatibilities. Elements were also found indicating suspicion of certain criminal acts. In 155 cases (66.5%), the commission concluded that no violation had taken place.

Sanctions

75. Failure to submit a statement of income and property or a statement of personal interests within the given deadlines represents a contravention punishable by a fine of 75 to 150 conventional units (1 500 to 3 000 MDL, i.e. 67 to 135 EUR) (Article 330[2] of the Contravention Code). Failure to declare a conflict of interest entails a fine of 100 to 300 conventional units (2 000 to 6 000 MDL, i.e. 90 to 270 EUR) (Article 313[2] of the Contravention Code). Failure to submit information or documents requested by the National Integrity Commission entails a fine of 100 to 150 conventional units for the individual responsible (2 000 to 3 000 MDL, i.e. 90 to 135 EUR), 100 to 250 conventional units for the person holding a managerial position (2 000 to 5 000 MDL, i.e. 90 to 226 EUR) and 200 to 350 units for the legal entity (4 000 to 7 000 MDL, i.e. 181 to 317 EUR). Failure to apply the sanction decided by the Anti-Corruption Centre is sanctioned by a fine of 100 to 250 conventional units for the manager responsible (Article 319[1] of the Contravention Code).

76. Provision of false information is a criminal offence punishable by a fine of up to 600 conventional units (12 000 MDL, i.e. 538 EUR) or by imprisonment of up to one year, with the deprivation of the right to hold certain positions or to practice certain activities for a period of up to five years (Article 352[1] of the Criminal Code). A new offence of intentional provision of inaccurate or false information or intentional omission to provide relevant data in the statements of income and personal interests (Article 352[1] paragraph 2 of the Criminal Code) is included in a draft law which was adopted by Parliament in on 17 June 2016. The Criminal Code also provides for offences of passive corruption, abuse of power or office and forgery of documents.

77. The GET takes the view that supervision by the National Integrity Commission which, as already highlighted, applies to MPs, judges and prosecutors has some positive aspects, such as the fact that controls can be initiated on the basis of a range of different elements, including media reports, and that verifications appear to take place in a timely manner. None of the GET's interlocutors signalled a lack of sufficient human resources as a reason for concern. On a less positive note, however, the GET is firmly convinced that the commission's legal and operational framework constrains its activity and is severely detrimental to its efficiency. A first problem is that the commission's composition reflects the parliamentary majority and that decisions on violations of the declaration regime are taken by majority. It cannot be excluded, therefore, that decisions of the commission may be politically motivated, for instance when a verification procedure concerns an MP. Another problem lies with the severely limited mandate and powers of the commission: its task is merely to compare the information indicated in the declarations of assets and of personal interests with the information contained in the relevant databases. It cannot take action in respect of non-declared assets, for instance in order to uncover hidden assets or assets transferred to relatives to avoid declaring them. Moreover, the commission can only verify declarations of the previous year and cannot perform cross-checks between successive declarations by the same declarant. As already mentioned, the Parliament adopted on 17 June 2016 law No. 46 on the National Integrity Authority, which intends to widen the scope of action and competences of the Commission and to bring its composition in line with the necessary requirements of independence and integrity. The GET takes the view that the entry into force of this law on 1 August 2016 has the potential to adequately address the problems highlighted above, but it remains to be seen how the law will be implemented in practice. Therefore, GRECO recommends ensuring a significantly more independent and effective control, by the National Integrity Commission, of compliance by members of Parliament, judges and prosecutors with the rules on conflicts of interest, incompatibilities, statements of personal interests and statements of income and property.

78. Further significant deficiencies of the enforcement system pertain to the sanctioning mechanism and the statute of limitation for imposing sanctions. As was

mentioned above, the National Integrity Commission cannot itself decide on sanctions and has to defer cases of violation to the National Anti-Corruption Centre, the General Prosecutor's Office or the tax authorities. As regards criminal sanctions, although many files were deferred to the General Prosecutor's Office according to the statistics above, the GET understood that only very few of them reached the courts and none resulted in a conviction so far, allegedly because of the level of evidence required by the courts to establish the offence. As a result, although many irregularities are reported in the media regarding incomplete declarations, undervalued properties, loans without interest or concealment of assets, no criminal sanctions have been imposed. As regards administrative sanctions, no convincing reason was given as to why the National Integrity Commission, which is in charge of the whole verification process over declarations of assets and of personal interests, as well as over rules on conflicts of interest and incompatibilities, cannot decide on administrative sanctions for violations of these rules. The GET can only underline that this set-up is detrimental to the system's efficiency. It was pleased to learn, therefore, that the above-mentioned law No. 46 on the National Integrity Authority will give it the authority to impose administrative sanctions. This new set-up will also need to be adequately reflected in the Contravention Code.

79. Furthermore, sanctions foreseen in the Contravention Code are under a statute of limitation of three months, a time-limit which GRECO already found very short in its Third Round Evaluation Report on Transparency of Party Funding[9]. The GET recalls that a specific recommendation aimed at lengthening the limitation period applicable to political financing offences foreseen under the Contravention Code was issued in the aforementioned report. The part of the recommendation dealing with that issue was not implemented. The GET deems this to be an outstanding issue in the Republic of Moldova and the concerns expressed with regard to political financing offences are also valid in the context of the current Evaluation. It notes that a draft law amending the Contravention Code (No. 137 of 4 April 2016) is under preparation, which foresees extending the limitation period from three months to one year.

80. This problem is compounded by the divergent interpretation of the rules on the statute of limitation by the National Integrity Commission and the National Anti-Corruption Centre. The commission calculates the three month time-limit from the moment it sends a violation file to the National Anti-Corruption Centre for sanctioning, while the National Anti-Corruption Centre calculates it from the moment the violation occurred. According to the Third Round Evaluation Report, the latter interpretation seems to be the correct one, but it follows that administrative sanctions cannot be imposed in practice, as most offences are already time-barred by the time the National Anti-Corruption Centre receives the files. In view of the above paragraphs, GRECO recommends ensuring that the mechanism by which administrative sanctions are imposed for violations of the rules on conflicts of interest, incompatibilities, statements of personal interests and statements of income and property works effectively in practice, notably (i) by providing the National Integrity Commission with the authority to impose administrative sanctions and (ii) by increasing the limitation period applicable to the violations foreseen in the Contravention Code and clarifying its scope of application.

Immunities

81. MPs enjoy immunity (non-liability) against any judicial proceedings for opinions expressed while discharging their duties (Article 71 of the Constitution). Moreover, they enjoy immunity (inviolability) on account of criminal or misdemeanour charges (Article 70(3) of the Constitution). They may not be detained, arrested, searched or put on trial

[9] According to this Report (paragraph 59), "The limitation period concerning questions of contraventional liability […] is three months from the date of commission of the offence; in the event of an ongoing offence, the time-limit begins to run from the date of the most recent act or failure to act. The time-limit for executing the sanction is one year."

without prior approval of the Parliament, except when caught in the act of committing a crime. According to the Law on the status of MPs, requests to waive an MP's immunity are submitted to the speaker by the prosecutor general. They are announced to the Parliament in plenary session within 7 days of the request and then examined by the Standing Legal Committee for Appointments and Immunities, which votes on the request's merits by secret ballot within 15 days.

82. In case of flagrant offence, MPs may be subjected to house arrest for maximum 24 hours, upon prior consent of the Prosecutor General, who has to inform immediately the Speaker of the Parliament. If the Parliament considers that the MP's arrest is unfounded, it immediately orders the annulment of this measure (Articles 9-11 of the Law on the Status of MP).

83. Shortly before the on-site visit, on 15 October 2015, the immunity of an MP and former prime minister was lifted by Parliament and he was arrested on charges of taking bribes in the context of the disappearance of 250 million USD from Moldovan banks (see paragraph 17). According to the GET's interlocutors, this was the first time an MP's immunity had been lifted since 2006, out of six requests by the Prosecutor General. In the other five cases, the Parliament voted against lifting the immunity of the MPs concerned. Beyond this case, the GET learned from several civil society representatives, MPs and prosecutors that the issue of MPs' immunity in respect of criminal proceedings is widely known as a major obstacle in prosecuting MPs for any crime, including corruption. The GET recalls that GRECO had already addressed this issue in its First Evaluation Round Report and gave a specific recommendation to the Republic of Moldova to establish guidelines for the Standing Legal Committee for Appointments and Immunities and the Parliament when deciding on requests to lift immunities. Although measures were taken to respond to this recommendation in the form of guidelines by the Prosecutor General on the preparation of applications for lifting immunities, discussions on-site indicate that this remains a problematic area in practice. The authorities do point out that the Constitutional Court recently ruled[10] that the wording of Article 70(3) of the Constitution clearly allows criminal investigative authorities to start and perform investigations against MPs without the need to ask the Parliament to lift their immunity, as immunity can only occur in three cases, namely apprehension, arrest and search. Nevertheless, the GET notes that immunity prevents a full investigation against an MP from taking place, using searches or special investigative techniques, without his/her immunity being lifted. An MP undergoing such a process will be informed of the on-going investigation, which may yet be another obstacle to the gathering of evidence. Furthermore, the Parliament was said to already assess the substance of the alleged offence when deciding on a request and decisions appear to be taken mainly on political grounds. An initiative by 39 MPs to modify Article 70(3) of the Constitution in order to abolish the immunity of MPs will soon be examined by Parliament. The GET takes the view that, in order to complement measures taken by the Prosecutor General further to GRECO's First Evaluation Round Report, clear and objective criteria need to guide the parliamentary procedure and decisions for lifting immunity, specifying in particular that the Parliament and the Standing Legal Committee for Appointments and Immunities should not make a legal examination of the substance of the case and that immunity should be construed and applied in a restrictive manner. In view of the foregoing and with reference to Guiding Principle 6 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption, GRECO recommends that determined measures be taken in order to ensure that the procedures for lifting parliamentary immunity do not hamper or prevent criminal investigations in respect of members of Parliament suspected of having committed corruption related offences.

[10] Constitutional Court decision No. 2 of 20 January 2015.

Advice, training and awareness

84. The secretariat of Parliament publishes internal rules and guidelines for MPs. The secretariat and the standing bureau also have to provide advice on MPs' request. However, several MPs informed the GET that these venues were not much used in practice. Little attention seems to be paid in the Parliament for issues of ethics and conduct. A recommendation to raise awareness on standards of conduct is contained in paragraph 32.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

85. The ordinary judicial system of the Republic of Moldova consists of the Supreme Court, four courts of appeal and 46 first instance courts. There are two special courts, one commercial court and one military court. Outside the ordinary judicial system, there is also an independent Constitutional Court. The main laws governing the courts and the judiciary are Chapter IX of the Constitution, Law No. 514-XIII of 1995 on the organisation of the judiciary (LOJ), Law No. 789-XIII of 1996 on the Supreme Court of Justice, Law No. 947-XIII of 1996 on the Superior Council of Magistracy, Law No. 544-XIII of 1995 on the statute of judge (LSJ), Law No. 154 of 2012 on the selection, performance evaluation and career of judges and Law No. 178 of 2014 on the disciplinary liability of judges.

86. The courts of first instance are competent in civil, criminal and administrative matters. Cases are heard by a single judge or, by decision of the court president, by a panel of three judges. The courts of appeal are competent to try appeals against judgments delivered in first instance by courts, including the commercial and the military court. In criminal matters, they also review cases against court judgements that, according to the law, cannot be challenged in appeal. Cases are examined by a panel of three judges. The Supreme Court decides on regular legal remedies against decisions of the courts of appeal, as well as on extraordinary legal remedies. It is also competent to examine in first instance criminal cases on offences committed by the President of the Republic of Moldova.

87. There are 407 professional judges in the Republic of Moldova, of whom 223 are men and 184 are women. There are neither lay judges nor juries.

88. The principle of judicial independence is enshrined in the Constitution and the above-mentioned laws. The Constitution provides that justice is administered in the name of the law solely by courts of law (Article 114) and that judges are independent, impartial and irremovable under the law (Article 116(1)). The law on the organisation of the judiciary states in its Article 1 that the judicial power is independent and has its own attributions, exercised by the courts. Article 13 of the same law prohibits interference in the administration of justice and pressure on judges. The law on the statute of judge, for its part, proclaims that the judicial power is exercised by courts in the person of the judge as sole bearer of this power and that judges must take decisions in an independent and impartial manner and act without any restrictions, influences, pressures, threats or interference, direct or indirect, by any authority, including the judicial authority. It adds that the hierarchical organisation of the courts may not affect the individual independence of a judge (Article 1). The GET takes the view that the legal basis for judicial independence is sufficient overall, although it is spread out in several texts.

The Superior Council of Magistracy

89. The Superior Council of Magistracy (SCM) has an important role in guaranteeing the independence of the judiciary and in organising and managing the judicial system. It is an independent body, composed of 12 members, among whom the President of the Supreme Court, the Minister of Justice and the Prosecutor General are *ex officio* members. Three members are law professors selected in an open and transparent manner by the Standing Legal Committee for Appointments and Immunities of the Parliament and elected by the Parliament. They may not be elected for two consecutive mandates. The six remaining members of the SCM, as well as two alternate members, are elected by secret vote by the General Assembly of Judges, which gathers all judges from all court levels, according to a procedure set out in Chapter V of the Regulation on the functioning of the General Assembly of judges, approved in November 2012.

Elections have to be announced by the SCM at least two months before the date of the General Assembly of judges and candidates' curriculum vitae and manifesto are published on the SCM website. Lists of candidates, including candidates for substitute members and for the SCM subordinate bodies, are drawn up separately by the Supreme Court, the courts of appeal and the first instance courts respectively three days before the General Assembly and are published on the SCM website. The mandate of the elected members of the SCM is of four years.

90. The SCM is competent regarding the selection, training, evaluation, ethics and disciplinary liability of judges; it also has certain duties regarding declarations of income and property and declarations of personal interests of judges; finally it has certain tasks regarding the administration of courts, notably as regards budgetary matters (Article 3, Law on the SCM). In order to carry out these tasks, several bodies function under the authority of the SCM, namely the Judges' Selection and Career Board, the Judges' Performance Evaluation Board, the Disciplinary Board and the Judicial Inspection (Article 7, Law on the SCM). Decisions of the SCM are taken in plenary sessions in which at least two thirds of its members are present. Decisions are taken by majority and must be reasoned. They may be challenged by any interested person to the Supreme Court, within 15 days of their communication, but not on their merits and only as regards compliance of the procedure of adoption. The appeals are examined by a specialised panel of nine judges (Article 25, Law on the SCM). Decisions on the SCM in disciplinary matters can, however, be challenged for any reason, according to the Law on Disciplinary Liability of Judges (see below under enforcement).

91. The GET has serious misgivings about the composition and operation of the SCM. First, it has reservations as to the *ex officio* participation of the Minister of Justice as a member of the SCM, all the more given past claims of politicisation of the judiciary in the Republic of Moldova. The GET draws the attention of the authorities to Opinion No.10 (2007) of the European Council for European Judges, which explicitly stresses that members of the Judicial Council should not be active politicians, in particular members of the government[11]. As regards the *ex officio* participation of the Prosecutor General, the GET refers to the case-law of the European Court of Human Rights[12], according to which the presence of the Prosecutor General in a body concerned with the appointment, disciplining and removal of judges creates risks for the impartiality of that body. The authorities point out that the government lodged on 12 April 2016 an initiative to revise the Constitution in order to abolish the participation of the Prosecutor General in the SCM. This initiative was approved by the Constitutional Court. Moreover, against the background of a deeply negative public image of the judiciary, the SCM could benefit from a composition reflecting the users of the judicial system in a broader manner. In this context, a number of the GET's interlocutors were of the view that the position of lay members of the SCM could be extended to other categories of persons beyond law professors, such as representatives of civil society. The above-mentioned initiative contains provisions to this effect.

92. The GET has further concerns as to the selection process of the members of the SCM, which does not ensure that sufficient information is available to the voters and the public on candidates. Judicial members of the SCM are elected by the General Assembly of Judges, but the GET was told that the time between the announcement of candidates and their election is too short, which gives little opportunity for voters to get acquainted with candidates' backgrounds and ideas. Lay members, for their part, are elected by Parliament. In order to dispel impressions that they may be elected according to political criteria, amendments to the Law on the SCM introduced a requirement that candidates be selected by the Standing Legal Committee for Appointments and Immunities following

[11] Opinion No.10 (2007) of the Consultative Council for European Judges on the Council for the Judiciary at the service of society: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/CCJE-opinion-10-2007_EN.pdf.
[12] Oleksandr Volkov v. Ukraine

a public competition. This procedure was implemented for the first time in December 2013 in a rather rushed manner: a competition was announced in December 2013, a hearing held on 19 December and the candidates were selected by the commission immediately following this hearing, with no explanation given of the selection criteria. In view of the above, GRECO recommends (i) changing the composition of the Superior Council of Magistracy, in particular by abolishing the *ex officio* participation of the Minister of Justice and the Prosecutor General and by allowing for more diverse profiles among lay members of the Council, on the basis of objective and measurable selection criteria; (ii) ensuring that both judicial and lay members of the Council are elected following a fair and transparent procedure.

93. The GET is also concerned about the insufficient justification of the SCM's decisions, especially in recruitment, career and disciplinary matters. As will be explained below, the SCM is not bound by the decisions of the Selection Board on the respective merits of candidates to positions of judges and gives no reasoning when it chooses to deviate from them, citing only the number of votes obtained by each candidate. This practice erodes judges' and the public's confidence in the SCM's decisions and in the fairness and objectivity of the selection process[13]. While there may sometimes be reasons for which the SCM does not follow the recommendation of the Selection Board, such exceptions must be justified in a clear, complete and conclusive manner. Moreover, the GET has misgivings regarding the lack of full judicial review of SCM's decisions. They may be appealed to the Supreme Court, but only on procedural issues[14]. In 2013, for instance, six SCM decisions on appointment and transfer of judges were appealed by unsuccessful candidates to the Supreme Court, but all were rejected because they concerned the merits of the case. As highlighted by the European Council of European Judges[15], the independence of judicial councils does not mean that they are outside the law and exempt from judicial supervision. GRECO therefore recommends that decisions of the Superior Council of Magistrates be adequately reasoned and be subject to judicial review, both on the merits of the case and on procedural grounds.

Recruitment, career and conditions of service

94. Judges are appointed by the President of the Republic of Moldova upon proposal of the SCM. Judges are first appointed, following an open competition, for a period of five years. After expiry of this first period, they have life tenure until the retirement age (Article 116, Constitution). The President of the Republic may reject once the candidate proposed by the SCM, but only if irrefutable evidence is found confirming the candidate's incompatibility with this position or him/her violating the legislation or procedure for his/her selection or promotion. The refusal has to be reasoned and presented within 30 days of the proposal, a period that can be extended by 15 days in case additional investigation is necessary. Upon a repeated proposal of the SCM, the President of the Republic has to appoint the person proposed. Investigating judges, with special responsibilities in the conduct of criminal proceedings, are appointed by the SCM from among the judges in each court (Article 15 (2), LOJ). Court presidents are appointed by the President of the Republic, upon proposal by the SCM, for a term of four years and can hold two consecutive mandates at most (Article 16 (3), LOJ). Judges of the Supreme Court are appointed by the Parliament on the proposal of the SCM (Article 11 (2), LSJ).

[13] According to a survey conducted in October-December 2015 by the Centre of Sociological Investigations and Marketing Research at the request of the Legal Resources Centre from Moldova, to which 273 judges responded, 62% of respondents thought that the mechanism for initial appointment of judges was fair and based on merits. Only 54% thought that the promotion system was fair and based on merits.

[14] On 2 July 2013, the Constitutional Court (decision No. 17) found that the wording "only on procedural issues" in Article 25 of the Law on the SCM was in line with the Constitution.

[15] Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society

The Parliament can also reject once the candidate proposed by the SCM for similar reasons as the President of the Republic regarding other judges.

95. A judge can be dismissed: a) if s/he resigns; b) if an obvious incompliance is established in a performance evaluation; c) if s/he is transferred to another position; d) as a consequence of disciplinary proceedings; e) if a final conviction was passed against him/her; f) in case of loss of citizenship; g) in case of a violation of the rules on incompatibility; h) in case of medical disability; i) upon expiry of his/her term of office when not appointed for life tenure or j) if his/her (limited) legal capacity was confirmed by a final court judgment (Article 25, LSJ).

96. Recruitment to any position of judge/court president occurs on the basis of a competition organised by the SCM according to Regulation No. 741/31 from 2013 of the SCM on the method of organisation and course of the competition for the fulfilment of the position of judge. Basic requirements for appointment at a first instance court include Moldovan citizenship, domicile in the country, command of the language, legal capacity, an irreproachable reputation, a clean criminal record, fulfilling the medical requirements for the function, holding a bachelor's degree in law or its equivalent, having a minimum of five years of service in a legal profession or passing qualification exams at the National Institute of Justice (according to Article 6 (3), LSJ) and passing a polygraph test (Article 6, LSJ). Candidates also have to be entered in a register of participants in the competitions for fulfilling judicial vacancies prior to the competition being announced. Additional conditions of working experience are required for appointment to higher positions within the judiciary, according to Regulation No. 211/8 from 2013 of the SCM on the selection, promotion and transfer of judges.

97. Candidates are selected by the Judges' Selection and Career Board (hereafter the Selection Board) of the SCM. The Board is composed of seven members, among whom four are judges from all levels of courts (two judges from the Supreme Court, one from a court of appeal and one from a first instance court) elected by the General Assembly of Judges and three are representatives of civil society, selected by the SCM following a public competition. The term of office of the members of the Selection Board is four years and members cannot be elected or appointed for two consecutive terms (Articles 3 and 4, Law No. 154 of 2012 on the selection, performance evaluation and career of judges). The Selection Board assesses and ranks the candidates on the basis of the written materials submitted in the application, the results of the exam taken before the Graduation Commission of the National Institute of Justice (for beginning of career posts) or the results of judges' performance evaluations (for higher posts within the judiciary) and an interview. Criteria to be taken into account include the level of knowledge and professional skills, the ability to apply knowledge into practice, the length of experience as a judge or in other functions, qualitative and quantitative indicators of work undertaken as a judge or in other legal professions, ethical standards and teaching and scientific activity (Article 2 of the Law on the selection, performance evaluation and career of judges). Meetings of the Selection Board are public and decisions are taken by open majority vote. Decisions are motivated, with the possibility for members of the Board to issue dissenting opinions. They are published on the SCM's website within five days of their adoption and are subject to appeal before the SCM within ten days of their adoption.

98. In addition, the integrity of candidates to judicial positions is checked by the Information and Security Service (SIS) according to Law No. 271 of 2008 on Verification of Public Office Holders and Candidates. The aim of the verification is to prevent, identify and exclude certain risk factors, such as conflicts of interest. The verification, which is conducted with the written consent of the candidate, entails completion by the candidate of a written questionnaire and the gathering by the SIS of relevant information held by other public authorities or private entities, such as previous employers and banks. In case the SIS concludes that a candidate's appointment is incompatible with the interests

of the public office, s/he cannot be appointed. This candidate may file a complaint before the court if s/he thinks that the SIS exceeded its duties and his/her rights were violated.

99. Law No. 325 of 2013 on Professional Integrity Testing introduced an assessment of the performance of public officials' professional duties, including judges, by the National Anti-Corruption Centre, in order to prevent and combat corruption. The application of this law to ordinary and constitutional court judges was challenged before the Constitutional Court in June 2014, as it was alleged that it would undermine judicial independence. An *amicus curiae* brief[16] issued by the Venice Commission in December 2014 confirmed these concerns. On 16 April 2015, the Constitutional Court (decision No. 7) found some provisions of this law unconstitutional and consequently they are not applied to judges.

100. The GET takes the view that the selection process of judges by the Selection Board appears reasonably transparent and based on objective criteria, although some of the GET's interlocutors took the view that the selection criteria could be further refined. The next stages in the selection and appointment process do, however, raise more pressing concerns. The GET already explained its misgivings regarding the insufficient transparency of the SCM's decisions in matters of recruitment and promotion of judges, as well as the lack of appeal available to unsuccessful candidates. A recommendation to address these issues is given in paragraph 93.

101. The GET is also deeply concerned by indications that candidates presenting integrity risks are appointed as judges. The integrity of candidates is verified by the SIS and the results of this assessment are communicated to the President of the Republic and the SCM. In case of a negative assessment, the President of the Republic has to refuse to appoint the candidate proposed by the SCM. But the SCM may decide by a simple majority vote to propose the candidate again and in this case, the President has to appoint him/her. According to information gathered by the GET, this occurred in nine cases in 2015. All the judges concerned were proposed again by the SCM and finally appointed. It is likely, therefore, that candidates presenting integrity risks are appointed as judges, all the more since the SCM confirmed to the GET that the integrity of candidates was not assessed by them during the selection process, as this was seen as the SIS's sole prerogative. In view of the detrimental effect of such questionable practices on public confidence in the SCM's decisions and in the selection process of judges, a system needs to be devised in order to avoid making questionable appointment proposals to judicial positions.

102. Finally, the GET is firmly convinced that the five-year initial appointment period for judges is detrimental to their statutory independence. Young judges may feel pressured to decide cases in a particular way or to deal with the real or assumed expectations of those who can make or break their career. It welcomes the initiative recently launched by the government to abolish the five-year initial appointment period, which is currently pending before the Constitutional Court and hopes that it will bear fruit. In light of the preceding paragraphs, GRECO recommends (i) that appropriate measures be taken, with due regard to judicial independence, in order to avoid the appointment and promotion to judicial positions of candidates presenting integrity risks; and (ii) abolishing the five-year probation period for judges.

103. Judges are subject to performance appraisals every three years, as well as extraordinary appraisals in certain cases, such as an insufficient performance, transfer or promotion. The appraisals are carried out by the Judges' Performance Evaluation Board (hereafter the Evaluation Board) of the SCM. The Evaluation Board is composed of seven members, among whom five are judges from all levels of courts (two judges from the Supreme Court, two judges from courts of appeal and one judge from a first instance

[16] Amicus Curiae Brief for the Constitutional Court of Moldova on certain provisions of the law on professional integrity testing

court) elected by the General Assembly of Judges and two are representatives of civil society selected by the SCM following a public competition. The term of office of the members of the Evaluation Board is four years and members cannot be elected or appointed for two consecutive terms (Articles 15 and 16, Law on the selection, performance evaluation and career of judges). Detailed evaluation criteria are foreseen in an SCM regulation, published in the Official Gazette and on the SCM's website. The results of these appraisals are used for promotion – making up 40% of a candidate's final grade – professional training, administration of courts and for granting judges' qualification degrees. In case a judge's performance is assessed as 'insufficient', an extraordinary appraisal is conducted. A judge's performance being assessed as 'insufficient' during two consecutive extraordinary appraisals constitutes a ground for initiation of dismissal proceedings by the SCM.

104. The Evaluation Board started its activity in April 2014 and at the time of the on-site visit it had completed 373 appraisals according to the ordinary procedure and 61 in extraordinary procedure. Each judge receives a score, which is published on the SCM's website[17]. S/he may challenge this score before the SCM. Three challenges have been submitted to the SCM so far and all have been rejected. The performance of six judges was assessed as 'insufficient' and they were given a time-frame of 6 to 12 months to address the situation. In one case, a judge's performance was assessed twice as 'insufficient' and a dismissal procedure was initiated by the SCM.

105. In the GET's view, the Evaluation Board endeavours to carry out its tasks in a dedicated manner. It meets every month, its members carry out on-site visits, some of which are unannounced. They attend trials, review cases and discuss with court presidents and staff. This represents quite a heavy workload, all the more since the members of the Board are still acting judges, with a regular workload reduced only by 25%. The kinks in the new system are still being worked out, with some criteria or issues still being unclear to the Board's members and all judges have to be evaluated within two years of the entry into force of the law. This combination of factors negatively affects the performance of the Board and some of the GET's interlocutors pointed out that some appraisal interviews were more formal than substantial and that the results of the evaluation were poorly explained. The authorities are encouraged to keep this issue under close review, in order to improve the system as needed. In the longer term, a system of a random annual sample of judges to be appraised, with special attention given to smaller courts and indications given by the presidents of larger courts could be worth exploring, in order to induce a better balance between the goal of an enhanced professionalism of judges and the Board's workload.

106. Judges cannot be transferred without their consent (Article 116 (4) of the Constitution).

107. Judges' salaries are regulated by Law No. 328 of 2013 on the salaries of judges. They vary depending on the level of the court, the position in the court and the years of service. Gross annual salaries range from 135 168 MDL (6 042 EUR) for a judge at the beginning of his/her career to 225 288 MDL (10 062 EUR) for a Supreme Court judge. Judges also receive a material aid amounting to their annual wage. Until 2013, Moldovan judges had the lowest salary among Council of Europe member States. Salaries have been increased every year since then, including a 100% increase in 2013 and 2014. The GET recalls that an adequate salary is an important element of the independence of judges and it encourages the Moldovan authorities to pursue their on-going efforts in this regard.

[17] http://csm.md/hotariri-ce.html

Case management and procedure

108. Cases are allocated automatically at random through the electronic case-management system to a panel of judges. Judges' panels are created and their chairpersons appointed at the beginning of the year by the court president. They can only change in exceptional circumstances, based on a motivated resolution of the court president and according to objective criteria foreseen in a regulation by the SCM. Cases' reassignment occurs if necessary through the electronic system as well, upon a motivated ruling of the court president. A card containing all data about random case assignments is mandatorily attached to each case file.

109. The principle of random case allocation was established several years ago and an electronic system became operational in 2013, thanks to international donors and to it becoming a priority for the SCM. Media and civil society reported occurrences in which the system had been tampered with, including cases always being allocated to the same judges and other judges being excluded from the allocation system without reason. According to the authorities, the Judicial Inspection investigated these cases and failure to comply with provisions on random case allocation was invoked in two disciplinary proceedings in 2013, in which the Disciplinary Board concluded that no misconduct had taken place. Measures were taken to address the system's deficiencies, including an obligation to motivate the reallocation of cases within the system and the authorities assured the GET that manipulations of the electronic system were now impossible. The GET assesses positively the authorities' efforts to deploy the electronic case allocation system. Every step needs to be taken to strengthen confidence in the correct operation of this system, including by investigating allegations of manipulation and by publicly disclosing the results of such investigations.

110. The Criminal Procedure Code proclaims the right to a trial and criminal investigations within a reasonable timeframe (Article 20). The Civil Procedure Code also contains measures aimed at preventing undue delay, including deadlines for adjudicating cases (Article 192). Another law (Law No. 87/2011) foresees compensation of material and moral damages for breaching reasonable timeframes for judicial proceedings. A breach obviously attributable to the judge of the timeframes for conducting procedural actions or drafting judgments can constitute a disciplinary offence. The GET heard, however, of a worrying practice of even simple court cases being broken up in several court meetings instead of being dealt with in one hearing, creating unnecessary delays and reportedly offering opportunities to ask for bribes in order to speed up the adjudication of the case.

111. Court procedures are generally public, but the public may be excluded during the whole trial or for certain procedural acts in cases provided for by law (e.g. to protect state secret) by decision of the court (for instance to protect private life, public order or morality). Judgments are always pronounced publicly and are supposedly published on internet[18]. According to media representatives, however, this rule was not consistently implemented in practice, with numerous links to decisions by courts of first instance and courts of appeal leading to a blank page. Although the authorities pointed out that the SCM's website is constantly updated, some of the GET's interlocutors still highlighted the need for an improvement, including as regards the quality of information posted, especially concerning the activity of the Judicial Inspection, timely updates and the introduction of a search function. In view of the above paragraphs, GRECO recommends that additional steps be taken (i) to ensure that cases are adjudicated without unjustified delays and (ii) to increase the transparency and accessibility of information available to the public on judicial activity.

[18] http://instante.justice.md/cms/

Ethical principles and rules of conduct, conflicts of interest

112. A Judicial Code of Ethics was approved by the SCM in 2007 and became effective on 1 January 2008. This code contained 16 articles divided into six chapters, among which the principles of judicial independence and impartiality, the duties and obligations of the judge, incompatibilities and interdictions. Judges were disciplinarily liable for violation of the code's provisions. Commentaries to the Code of Ethics, prepared with international assistance, were published by the SCM in 2008.

113. Shortly before the on-site visit, a new Code of Professional Conduct and Ethics was approved by the SCM in June 2015 and adopted by the General Assembly of Judges on 11 September 2015. This new code contains ten articles, with numerous sub-articles and proclaims the values of independence, impartiality, integrity, professionalism, fairness, collegiality, confidentiality and transparency. The implementation of the code is monitored by the Judicial Inspection and the SCM, who can examine alleged violations, notably on the basis of citizens' complaints. Violations of the code's provisions do not represent disciplinary offences as such, but the more serious ones are incriminated separately in the Law on Disciplinary Liability of Judges.

114. Like MPs, judges are subject to the provisions of the Law on Conflicts of Interest No. 16-XVI of 15 February 2008 (LCI). The conflicts of interest regime described above in the section relating to MPs, applies accordingly to judges.

115. The GET welcomes the new Code of Professional Conduct and Ethics, which contains a robust set of rules, takes international standards into account and is coupled with an accountability mechanism, even if this mechanism is not as efficient as it should be, as will be seen later in this report. It takes the view, however, that more could be done to develop judges' awareness on rules of ethics and conduct. There needs to be a change in mind set and approach in order to focus on the preventive angle of the notion of conflict of interest too, rather than looking into this matter only from a repressive side. First, the commentaries to the previous code of ethics, which is a worthwhile document, could usefully be updated to illustrate the new code. Second, there is no body or mechanism at present providing confidential advice to judges on the concrete implementation of the rules of conduct and possible ethical dilemmas. As GRECO has highlighted throughout its reports in this Evaluation Round, such mechanisms are undoubtedly valuable for better advising judges in case of integrity-related dilemmas, but also for bringing coherence to integrity policies and developing best practices across the profession. GRECO recommends (i) that the Code of Professional Conduct and Ethics be communicated effectively to all judges and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; (ii) that dedicated training of a practice-oriented nature and confidential counselling within the judiciary be provided for all judges.

Prohibition or restriction of certain activities

Recusal and routine withdrawal

116. The reasons for disqualification are listed in the relevant procedural laws (Criminal Procedure Code (CPC), Civil Procedure Code). Article 33 of the CPC foresees an obligation of (self-) recusal in case of a conflict of interest resulting from family or marital relations, prior involvement in the case or from any other circumstances that may cast a doubt on the judge's impartiality.

117. The obligation of a judge to abstain and disqualify in case his/her impartiality might be questioned is also addressed in Article 4 of the Code of Professional Conduct

and Ethics and failure to request disqualification in such a case constitutes a disciplinary offence (Article 4 (1) a), Law on disciplinary liability of judges).

Gifts

118. The Code of Professional Conduct and Ethics (Article 5.2) forbids judges to solicit or accept, directly or indirectly, any payment, gifts or other advantages for performing their duties in connection to a case. Judges are also prohibited from illegally obtaining goods or services below market value. The SCM also adopted a Regulation No. 25/2014 on evidence in case of undue influence.

119. Moreover, judges are subject to the provisions of the LCI prohibiting the acceptance of gifts and any other advantages, as described above in relation to MPs. According to the authorities, a register of gifts is in place and there is a commission in the SCM to valuate gifts. However, the GET notes that none of the judges interviewed during the on-site visit seemed to be aware of these arrangements. There is no information available on how rules on gifts are complied with, as compliance with these rules does not appear to be monitored in practice[19]. GRECO recommends that (i) further measures be taken to inform judges about the mechanisms foreseen in the Law on Conflicts of Interest regarding gifts and (ii) that compliance with the rules on gifts, hospitality and other advantages foreseen in this law and other relevant texts be properly monitored.

Incompatibilities and accessory activities, post-employment restrictions

120. The principle of exclusive dedication applies. Judges may not hold any public or private position, be an MP or a councillor in local administration authorities, be a member of a political party or a social-political organisation (including when detached to other functions), practice entrepreneurial activities or conduct any activity implying a conflict of interest, unless this conflict was brought in writing to the notice of the court president or, as the case may be, conveyed to the SCM (Article 8, LSJ).

121. The only exceptions to this general prohibition are the exercise of didactic and scientific activities, as well as collaboration with literary, scientific or social publications or shows, on the occasion of which the judge may not express his/her views on current issues of judicial internal policy.

122. There are no post-employment restrictions applicable to judges.

Misuse of confidential information and third party contacts

123. Judges are prohibited from communicating about a case allocated to them with the parties or any other persons, except in the manner prescribed by procedural rules (Article 8 (3^1), LSJ). Judges are bound by professional secrecy related to their deliberations and confidential information obtained in the exercise of their duties. They have to take all measures necessary to adequately preserve confidential information and prevent its unauthorised disclosure (Article 15 (1) f), LSJ; Article 9, Code of Professional Conduct and Ethics).

[19] After the on-site visit, the Secretariat of the SCM explained that a register on recording cases of undue influence within the SCM and courts was put in place pursuant to a decision of December 2014. Similar registers have been created in other courts and responsible persons appointed to monitor cases of undue influence pursuant to the registers. However, no mention of these arrangements was made during the on-site visit.

Declaration of assets, income, liabilities and interests

124. Judges are subject to the same provisions of the Law No. 1264-XV of 19 July 2002 on Declaring and Control of Income and Property of Public Dignitaries, Judges, Prosecutors, Civil Servants and of Certain Persons holding Management Positions and of the LCI as MPs. Like them, they are required to file regular statements of income and property, as well as statements of personal interests. The declaration system described above in relation to MPs applies accordingly to judges. The authorities responsible for collecting statements of income and property in the case of judges are employees from the human resources section of the SCM. These statements are then sent on to the National Integrity Commission for publication and verification. Statements of personal interests are filed by the Secretariat of the SCM. Statements are published on the National Integrity Commission's website as well as the SCM's[20]. It was confirmed to the GET that all judges had submitted their statements.

Supervision and enforcement

125. Main supervision over conflicts of interest and incompatibility rules, statements of personal interests and statements of income and property lies with the National Integrity Commission. As regards the Commission and the modalities of this supervision, as well sanctions incurred by judges for violation of the declaration, reference is made to the Chapter of this report on MPs. Statistics regarding the Commission's activity, including as regards judges, are provided in paragraph 74. The GET makes reference to its concerns as regards the supervision carried out by the National Integrity Commission and the corresponding system of sanctions, as well as to *the recommendations given in paragraphs 77 and 80, which are also relevant as regards judges*.

126. Judges are disciplinary liable for committing an offence as listed in Article 4 of Law No. 178 of July 2014 on Disciplinary Liability of Judges (LDLJ) or disregarding the provisions of the Judicial Code of Ethics. Notification regarding suspected disciplinary offences or misconduct may be submitted by any interested person, the SCM, the Judges' Performance Evaluation Board or the Judicial Inspection on its own initiative. Facts of the case are then verified by the Judicial Inspection, after which the Admissibility Board decides on the admissibility and the Disciplinary Board decides on the substance of the case and imposes sanctions if necessary.

127. The Judicial Inspection is a subordinate body of the SCM, composed of five inspecting judges, elected by the SCM for a term of office of four years. Candidates have to have a bachelor's degree in law or its equivalent, a length of service of at least seven years in a legal area and an irreproachable reputation. Inspecting judges may exercise their functions during two consecutive terms at the most (Article 7^1, Law on the SCM). Cases to be verified are distributed at random by the senior inspecting judge – who heads Judicial Inspection – to an inspecting judge. The inspecting judge verifies within 30 days the facts of the case, in the process of which s/he can request any necessary information from court presidents, other judges, as well as other public authorities or private persons. These persons and authorities are under a legal obligation to submit the requested information. The inspecting judge also has to seek the written opinion of the judge suspected of misconduct. S/he then reports back to the Disciplinary Board of the SCM. The Judicial Inspection keeps (electronic) statistical records of all complaints and results of the verification procedure.

128. The Disciplinary Board of the SCM is composed of five judges (two judges from the Supreme Court, two judges from courts of appeal and one judge from a first instance court) elected by the General Assembly of Judges and four representatives of civil society selected by open competition organised by the SCM and appointed by the Minister of

[20] http://csm.md/declaratii-pe-venit.html

Justice. The term of office of members of the Board is six years and members cannot be elected or appointed for two consecutive terms. Membership in the Disciplinary Board is incompatible with membership in the SCM, the Selection Board, the Evaluation Board, with the position of inspecting judge, as well as with the position of president or vice-president of a court (Articles 9 and 10, LDLJ). The Disciplinary Board also comprises admissibility panels consisting of three members of the Board (two judges and one civil society representative) appointed by the Board. The panel reviews the case, together with the report submitted by Judicial Inspection, and decides to admit or reject the disciplinary case. The decision of the admissibility panel can be challenged within 15 days before the plenary of the Disciplinary Board. If the case is admitted, it is passed on to the Board. Meetings of the Disciplinary Board are public in principle, but decisions are taken in closed sessions by majority of the members present. Appeals against the Board's decision can be lodged within 15 days of receipt of the decision by the judge concerned, the person who filed the notification or the Judicial Inspection. They are decided upon by the SCM within 30 days of their registration. The SCM's decision may be challenged within 20 days by the same persons/bodies before the Supreme Court, which decides within 30 days in a panel of five judges.

129. Disciplinary measures consist of a written warning, written reprimand, salary reduction from 15% to 30% for a period between three months and one year, removal from the office of court president or vice-president and dismissal (Article 6, LDLJ). The latter two measures are proposed by the Disciplinary Board to the plenary of the SCM, which, once the decision is final, passes the proposal on to the President of the Republic (for first instance and appeal court judges) or the Parliament (for Supreme Court judges) (Article 38, LDLJ). The President of the Republic or the Parliament has to accept the proposed dismissal of a judge.

130. The statute of limitation for disciplinary liability is two years from the commission of the disciplinary offence. However, when disciplinary liability results from an irrevocable decision of a national or international court, the disciplinary sanction has to be applied within one year from the court's decision, but not later than five years from the commission of the disciplinary offence (Article 5, LDLJ).

131. The authorities provided the following statistics regarding disciplinary cases against judges in 2014 and 2015:

- 2014: the Disciplinary Board initiated 52 disciplinary procedures against judges and carried out nine procedures over from 2013. 55 judges in total were concerned. The Disciplinary Board held ten sessions and issued 46 rulings. Among these 46 rulings, 16 disciplinary sanctions were issued, 26 proposals to issue disciplinary sanctions were rejected by the plenary of the SCM, two proceedings were suspended because of the expiry of the statute of limitation and 15 disciplinary proceedings were transferred for further examination in 2015.

Among the 16 disciplinary sanctions issued, warnings were imposed to 12 judges, reprimands were applied to three judges and one judge was dismissed. 14 complaints were filed against 13 decisions of the Disciplinary board, of which 10 were rejected and three were admitted by the SCM. Four decisions of the SCM were appealed to and examined by the Supreme Court.

- 2015 (until the end of October): 32 disciplinary procedures were registered by the Disciplinary Board, of which 15 were transferred from 2014. The Board held 12 sessions and adopted ten disciplinary sanctions in respect of nine judges: warnings were imposed on two judges of first instance courts; reprimands were applied to two judges of first instance courts and one Supreme Court judge; one judge of a court of first instance received a severe reprimand and one

judge of a court of first instance was dismissed. Moreover, four disciplinary procedures were rejected, one was suspended because the period of limitation had expired and in three procedures, the judges were found not disciplinarily accountable. Seven decisions of the Board were challenged to the SCM, of which three were admitted. Following appeals, the SCM applied two disciplinary sanctions in respect of the four judges of first instance courts and three judges of the Supreme Court. Two decisions issued by the SCM were further challenged to the Supreme Court.

132. The capacity of the Judicial Inspection and the Disciplinary Board of the SCM to deal with misconduct of judges in a determined and effective manner is crucial, especially against the perception of judicial bias and self-reporting by many of paying bribes to the judiciary. The legal framework for the disciplinary liability of judges was reformed in 2014 with the adoption of the LDLJ. As already mentioned, this law was adopted by emergency procedure and, although the Venice Commission and OSCE/ODIHR provided a joint opinion on the draft[21], the recommendations issued in this document were not taken into account in the adopted version of the law. The LDLJ does have a number of positive aspects, such as a certain improvement of the list of disciplinary offences, new sanctions including of a financial nature, an extension of the statute of limitation to two years, the Disciplinary Board being composed of a majority of judges and new provisions for the impartiality of its members being introduced. However, numerous concerns remain regarding this framework and its efficiency and adequacy in addressing judges' misconduct. The GET heard recurring criticism from across the board about the LDLJ during the on-site visit with judges, the SCM, the Disciplinary Board and representatives of civil society often being in agreement about the law's flaws.

133. A major concern pertains to the limited competences of the Judicial Inspection and to the role of the admissibility panels in the disciplinary procedure. The Judicial Inspection only reviews cases, gathers evidence and submits the files to an admissibility panel. It has to process all cases, even obviously unsubstantiated ones, and it cannot dismiss a case nor re-qualify the facts of a case. The admissibility panel acts only as a filter, deciding by unanimous vote to dismiss unsubstantiated cases and passing the others on to the Disciplinary Board. It cannot re-qualify the facts of the case either. As a result of both bodies being unable to change the legal qualification of the facts of a case, the GET heard that an incorrect legal qualification is sometimes used to delay or bury a case. Moreover, virtually all of the GET's interlocutors, including members of the SCM and the Disciplinary Board themselves, saw the admissibility stage of the proceedings as superfluous. It needlessly complicates and lengthens disciplinary proceedings and the GET notes in this context that some procedures were discontinued in 2014 and 2015 due to the expiry of the statute of limitation, although the two-year period appears adequate on paper. In the GET's view, the procedure could easily be simplified by removing the admissibility stage and giving Judicial Inspection the power to change the qualification of facts and to terminate proceedings by a reasoned decision, subject to appeal before the Disciplinary Board.

134. Moreover, the GET points out that a number of disciplinary offences as laid out in Article 4 of the LJDJ lack precision and could be detrimental to judicial independence. In particular, the offence of "intentional application, or application with bad faith, or repeated negligence of legislation contrary to uniform judicial practice" (Article 4(1)b) may unduly restrict the independence of judges in drafting judgments and prevent the evolution of case-law; the offence of "other actions affecting the honour or professional integrity or reputation/prestige of justice, committed in performance of duties or outside them" (Article 4(1)p) is too general and could give rise to varying interpretations. As to Article 4(1) m which stipulates that committing an act with elements of a crime or a misdemeanour that was detrimental to the prestige of justice is considered a disciplinary

[21] Joint Opinion on the draft Law on disciplinary liability of judges of the Republic of Moldova

offence, it is unclear and seems to combine elements of criminal and disciplinary liability, which should be avoided. For a more complete list of offences requiring reformulation, reference is made to the Venice Commission's opinion.

135. Finally, several of the GET's interlocutors expressed the view that the SCM did not react to reported misconduct of judges in a sufficiently determined manner. Numerous cases are reported in the media and are allegedly not acted upon by the SCM. Decisions are reportedly not well explained, available sanctions are not used to their full extent and the GET was given examples of judges being allowed to resign at their own request instead of being dismissed, in order to be entitled to legal allowances and social benefits. This sends out unfortunate messages that misconduct and lack of diligence are tolerated with no effective deterrents. Giving greater publicity to cases, explaining decisions not to prosecute, publishing details about sanctions imposed in disciplinary cases, both anonymised overall figures of numbers sanctioned and specific penalties imposed, and in severe cases publically by naming individuals removed from office with reports of the behaviour and outcome would start to improve the system's accountability to the public it serves. This would reinforce standards of expected behaviour, might rebalance negative press reporting and improve public confidence. In view of the above paragraphs, GRECO recommends that the legal and operational framework for the disciplinary liability of judges be revised with a view to strengthening its objectivity, efficiency and transparency.

136. Immunity of judges was restricted in 2013 and is currently regulated by Article 19 of the LSJ. Judges enjoy immunity for opinions expressed and judicial decisions taken, unless found guilty of a criminal offence by a final court decision. Criminal investigation against a judge may only be initiated by the Prosecutor General or his/her First Deputy, upon authorisation of the SCM. Preliminary consent of the SCM is not required in case of a flagrant offence or the offences of money laundering, passive corruption, trading in influence and illicit enrichment, as specified in Articles 243, 324, 326 and 330[2] of the Criminal Code. Prior consent of the SCM is also required for detaining, arresting or searching a judge, except in case of a flagrant offence. The GET was informed that in 2015, criminal investigations started in respect of six judges, including two former judges. One of these cases was a flagrant offence. No problems were reported on site regarding the immunity of judges and a track record of investigations and convictions has apparently started to develop since 2013.

Advice, training and awareness

137. Initial and in-service training of judges and prosecutors is organised by the National Institute of Justice, according to plans approved every quarter or semester. Judges have to follow at least 40 hours of training courses per year. Examples of courses dealing with ethical issues include "ethics and professional conduct of the judge. Judge behaviour in dealing with the media"; "aspects of preventing and combating corrupt behaviour. Ways to prevent interference in the work of justice and combating corruption"; "special and extended confiscation of goods, income originated from crime. The declaration of income, property and personal interests. Financial/economic investigation". In these courses, the ethical dimension forms a component of another main subject, in reaction to a certain lack of interest by judges in attending courses dealing only with ethics and conduct. The ethical dimension is also taken into account in initial training in case studies and in the end of training exam.

138. Some attention is also paid to the transparency of judicial activities. Training events are organised for court presidents and staff coming in contact with the public, each court has a press officer and press conferences are organised. The GET welcomes such activities, which are instrumental in addressing the negative image of the judiciary in public opinion, and encourages the authorities to intensify them.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

139. At the time of the on-site visit, the prosecution service of the Republic of Moldova was composed of the General Prosecutor's Office, four specialised prosecutor's offices, (anti-corruption, transport, military and prosecutor's offices attached to the Courts of Appeal) and 44 territorial prosecutor's offices – including the six offices of the Chisinau municipality and the four offices of the Gagauzia autonomous territorial unit, which are organisationally distinct from the other 34 territorial offices. After the entry into force of the new Law on the Public Prosecution Service (see below), all the offices of the Chisinau municipality will be merged into one, as well as the four offices of the Gagauzia autonomous territorial unit, which will also be merged into one. Moreover, only one existing specialised prosecutor's office will remain, namely the anti-corruption office, which will be reorganised. A new specialised prosecutor's office on combating organised crime and exceptional cases will be created. There are currently 658 prosecutors, of whom 472 are men and 186 are women.

140. At the time of the on-site visit, the operation of the prosecution services was governed by Law No. 294 of 2008 on the Public Prosecutor's Office (LP). A new Law on the Public Prosecutor's Office (new LP) was adopted by Parliament on 25 February 2016, promulgated by the President of the Republic on 17 March 2016 and will enter into force on 1 August 2016. Both laws are therefore relevant and in this Chapter, reference will be made to both the provisions of the current law and of the new law.

141. The aim of the reform, which is based on the Justice Reform Strategy for 2011-2016 and on the Concept on Reforming the Public Prosecutor's Office adopted by Parliament in Law No. 122 of July 2014, is to address several problems affecting the activity of the prosecution service and to a) enhance the professionalism and procedural independence of prosecutors; b) ensure the specialisation of prosecutors in specific cases and examine the possibility for the functioning of specialised prosecutors' offices; c) establish specific areas of competence of the prosecution service; d) consolidate and specify the competence of the prosecution service in the criminal area; e) establish certain criteria and a clear and transparent procedure for the selection, appointment and promotion of prosecutors; f) review the procedure of appointment of the Prosecutor General; g) reconsider the rules on the liability of prosecutors; and g) build the capacity of the Superior Council of Prosecutors. Among the general objectives of the Strategy and the reform are objectives to comply with European standards and contribute to the trust of society in the administration of justice.

142. According to Article 124 of the Constitution, the LP and the new LP, the prosecution service is an autonomous institution which forms part of the judicial authority. It is independent from the legislative, executive and judicial powers and any interference in its work is prohibited (Article 3, new LP). The prosecution service is organised in a hierarchical manner, each prosecutor's office being headed by a chief prosecutor who manages and supervises the work of the office. The LP provides for a strict internal hierarchical control, whereby hierarchically superior prosecutors can verify the correctness and legality of the activity and decisions taken by the hierarchically inferior prosecutors (Article 2(5), LP). They can also give binding orders to their subordinates, who may ask that the orders be given in writing and may file an appeal to the superior of the prosecutor who issued the order (Article 56, LP). The Code of Criminal Procedure (CPC) also gives prosecutors the right to challenge an order given by a superior with the Prosecutor General and his/her deputies (Article 51). In addition, hierarchical superior prosecutors may withdraw cases from a subordinate prosecutor and transfer them to another, for reasons listed in Article 52 of the CPC.

143. The new LP aims at increasing the procedural autonomy of individual prosecutors by providing that a prosecutor may independently and personally take decisions on the cases s/he manages (Article 3 (4), new LP). A prosecutor from a higher hierarchical level may give binding written indications to a subordinate prosecutor as well as orders on procedural actions to be carried out which, however, cannot refer to the solution of the case (Article 13 (2) c) and (3), new LP). The subordinate prosecutor may refuse to execute an illegal indication and has to challenge it to the superior of the prosecutor who issued it (Article 13 (4), new LP).

144. The autonomy, objectivity and impartiality of prosecutors is guaranteed by the Superior Council of Prosecutors (SCP), which is one of the bodies of self-administration foreseen by the LP (Article 80). The SCP is composed of 12 members, among whom the Prosecutor General, the President of the Superior Council of Magistracy and the Minister of Justice are *ex officio* members. Six members – two from among prosecutors of the General Prosecutor's Office and four from among prosecutors of territorial and specialised prosecutor's offices – are elected by the General Assembly of Prosecutors (Article 129, LP). The other three members are law professors selected in an open and transparent manner by the Standing Legal Committee for Appointments and Immunities of the Parliament and elected by the Parliament. Members elect a President from among them, who cannot be one of the *ex officio* members. The term of office of the elected members of the SCP is four years, renewable. The SCP is competent regarding the selection, training, evaluation, ethics and disciplinary liability of prosecutors (Article 82, LP). It has two subordinate boards, the Qualification Board and the Disciplinary Board. The Qualification Board consists of 11 members (three from among prosecutors from the General Prosecutor's Office, six from among prosecutors from territorial and specialised prosecutor's offices elected by the General Assembly of Prosecutors and two professors of law assigned by the SCP). Its term of office is four years. The Disciplinary Board is composed of nine members elected for a term of office of four years (three by the General Prosecutor's Office among prosecutors of that office and six prosecutors of territorial and specialised prosecutor's offices elected by their peers). Members of the SCP and of the Performance Board cannot be members of the Disciplinary Board.

145. The new LP will amend slightly the composition of the SCP and give it greater competences. The Chief Prosecutor of the autonomous territorial unit of Gagauzia will be added to the members by right, five members will be elected by the General Assembly of Prosecutors – only one of them coming from the General Prosecutor's Office – and the three lay members will be elected following an open competition, one by the President of the Republic, one by the Parliament and one by the Academy of Sciences (Article 69, new LP). A provision has been added according to which elected members of the SCP cannot hold two consecutive terms (Article 73, new LP). Among the new competences to be granted to the SCP by the new law are a greater role in selection and promotion procedures, the power to develop a draft Code of Ethics for prosecutors, to approve its own budget and to participate in the development of the budget and strategic development plans for the prosecution service (Article 70, new LP). Three Boards will operate under the SCP, namely the Selection and Career Board, the Performance Evaluation Board and the Discipline and Ethics Board. All three will consist of seven members, five being elected by the General Assembly from among prosecutors and two being elected by the SCP following an open competition from among civil society representatives (Article 83, new LP).

146. Lack of independence has been unanimously identified during the on-site visit as one of the prosecution service's most serious problems. Concerns pertain both to the service's internal and external independence. As regards prosecutors' internal independence, the GET wishes to highlight the very strong hierarchical structure of the prosecution service under the current law. Each prosecutor has a high number of hierarchical superiors, all of whom can give instructions before and during an investigation, including on the opportunity of undertaking procedural measures.

Intervening upon complaint or on their own initiatives, they can cancel the orders of hierarchically inferior prosecutors and give mandatory instructions. According to the law, instructions have to be given in writing. Some of the GET's interlocutors indicated, however, that verbal instructions do occur in practice and it cannot be excluded that they sometimes concern the outcome of a case. Moreover, each procedural decision or abstention has to be authorised by one or several senior prosecutors, but the decision is only signed by the most junior prosecutor in charge of the case. Therefore, the chain of responsibilities behind each decision does not appear, which makes it all too easy for undue interferences to occur.

147. As exposed above, the first objective of the new LP is to enhance the procedural independence of prosecutors. It contains a number of helpful features in that regard, such as the removal of the possibility for hierarchical superiors to review the correctness and legality of the decisions taken by hierarchically lower prosecutors and the principle that indications cannot refer to the solution of a case. The new LP also intends to reduce the number of senior prosecutors involved in a given decision by establishing a two-tier hierarchical system and separating the administrative hierarchy from the procedural hierarchy. However, some grey areas remain in the text of the new LP which may reduce or negate the positive impact of these changes. In particular, while stating the principle of written instructions, the law does not specifically exclude verbal instructions, nor does it indicate how prosecutors should react if they receive them[22]. It remains to be seen if and how the regulations implementing the law will deal with these issues and how practice will develop under the new law. However, the GET is firmly convinced that addressing them is instrumental in strengthening the functional independence of prosecutors. Therefore, GRECO recommends (i) expressly notifying all prosecutors in writing that verbal instructions given to hierarchically subordinate prosecutors are not binding, unless they are confirmed in writing, including in such notifications the procedures to be followed in providing timely confirmations and (ii) ensuring that all hierarchical interventions regarding a case are properly documented in practice. The second part of this recommendation also applies to hierarchical decisions regarding case (re-)allocations (see paragraph 160).

148. Another cause for concern is the weak position and lack of independence of the Superior Council of Prosecutors (SCP) under the current system, which have prevented it from fully exercising its role of safeguarding the autonomy, objectivity and impartiality of the prosecution service. Unlike the Superior Council of Magistracy, the SCP is not mentioned in the Constitution[23]. It does not have its own budget, deployed members, auxiliary staff or premises. The new LP aims to build its capacity, to widen its membership and to give it greater competences in order to strengthen its independence and its institutional autonomy. In the constitutional framework of the Republic of Moldova where the prosecution service is an autonomous state body, this is clearly to be welcomed. It is obviously too early to assess whether the new composition, increased capacity and powers of the SCP will be sufficient to achieve this goal. However, the concerns expressed with respect to the Superior Council of Magistracy in the chapter on judges apply *mutatis mutandis* to the SCP and the GET refers to its comments made in that context (see paragraphs 91-93), in particular as regards the *ex officio* membership of the Minister of Justice – all the more since the Constitution provides that the prosecution service forms part of the judicial authority – and the President of the Superior Council of Magistracy as well as the rushed election procedure of the members of the Superior Council of Magistracy. It is important to ensure that prosecutorial and lay members of the SCP are elected according to fair and transparent procedures, which enable voters to get sufficiently acquainted with candidates' qualifications and programmes. Regarding the transparency of the SCP's activity, it is important in order to

[22] In its Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, the Venice Commission recommends stipulating that all verbal instructions be confirmed in writing or withdrawn.
[23] The Constitutional Court issued a favourable opinion (opinion No 5 of 19 April 2016) on a government initiative to amend Article 125 of the Constitution to expressly mention the SCP.

build confidence that its decisions are properly motivated, especially in recruitment, promotion and disciplinary matters. Consequently, GRECO recommends that appropriate measures be taken to ensure that the composition and operation of the Superior Council of Prosecutors be subject to appropriate guarantees of objectivity, impartiality and transparency, including by abolishing the *ex officio* participation of the Minister of Justice and the President of the Superior Council of Magistracy. Paragraph 156 on recruitment and promotion and paragraph 186 on disciplinary liability are also pertinent in this regard.

Recruitment, career and conditions of service

149. Prosecutors are appointed by the Prosecutor General upon proposal of the SCP and have life tenure until the retirement age of 65, except for the holders of certain senior positions who are appointed on fixed-term offices. According to the current law, the Prosecutor General is appointed by Parliament upon the proposal of the Speaker for a term of office of five years; s/he cannot hold more than two consecutive terms (Article 40, LP). The new LP will bring changes to the appointment and term of office of the Prosecutor General: s/he will be appointed for a single seven-year term by the President of the Republic upon the proposal of the SCP following a competition it organises and assesses. The President of the Republic will be able to reject once by a reasoned decision the candidate proposed by the SCP, but only if compelling evidence is found of the candidate's incompatibility with the position or if the law or the selection procedure were violated. If the SCP then nominates the candidate again by a 2/3 majority, the President will have to appoint him/her. These changes will, however, only take effect once the Constitution is amended – which requires a 2/3 majority in Parliament – as Article 125 still provides that the Prosecutor General is appointed by Parliament upon proposal by the Speaker.

150. The GET generally welcomes the new modalities for the appointment of the Prosecutor General, which seem conducive to reinforcing his/her independence from political influence. It notes that some of these modalities will only enter into force after a constitutional reform – a possibility which seems highly unlikely in the current political context[24]. According to the transitional provisions of the new LP (Article 98(1)), until article 125 of the Constitution is amended, the Prosecutor General will be appointed by the Speaker of the Parliament upon proposal of the SCP, following a public competition organised by the SCP. The transitional provisions, however, only refer back to Article 40(1) of the LP according to which the Prosecutor General is appointed for a term of office of five years. Therefore, there is no limit to the number of mandates of the Prosecutor General in the transitional period. Given the Prosecutor General's central role in the system and the widespread suspicions of politicisation of this institution[25], the GET takes the view that until the single mandate foreseen in the new LP can be implemented, Article 40(7) of the LP which foresees that the Prosecutor General cannot hold more than two consecutive mandates, needs to remain applicable. As regards the possibility for the SCP to override the refusal of the President of the Republic to nominate a candidate, the GET refers to its concerns expressed in the chapter on judges, regarding the similar possibility for the Superior Council of Magistrates to override the President's objections on the appointment of judges (see paragraph 101). It is essential for the credibility of the institution that a candidate in respect of whom serious integrity concerns exist cannot be appointed Prosecutor General. Consequently, in order to minimise risks of improper political influence, GRECO recommends maintaining, throughout the transitional period until the Constitution is amended, the application of Article 40(7) of Law No. 294 of 2008 on the Public Prosecutor's Office which provides that the Prosecutor General cannot hold more than two consecutive mandates.

[24] The authorities point out that the Constitutional Court gave a favourable opinion (opinion No. 5 of 19 April 2016) on the government's proposal to amend Article 125 of the Constitution to provide that the Prosecutor General would be appointed by the President of the Republic for a single seven-year term.
[25] See for instance the Concept on Reforming the Prosecution Service.

151. Deputies to the Prosecutor General are currently appointed by the Prosecutor General upon the proposal of the SCP for a term of office of five years, with no more than two consecutive terms. They will be appointed without competition by the Prosecutor General and their term of office will be tied to his/hers (Article 18, new LP). Chief prosecutors from territorial and specialised prosecutor's offices are currently appointed by the Prosecutor General upon the proposal of the SCP for a term of office of five years, with no more than two consecutive terms and this will not change (Article 25, new LP).

152. A prosecutor can be dismissed: a) following an honourable dismissal; b) if s/he resigns; c) upon reaching the age limit; d) upon expiry of his/her term of office; e) following the systematic commission of disciplinary violations or of a severe disciplinary violation; f) due to his/her insufficient qualification as established following his/her appraisal; g) if convicted by a final court decision; h) upon losing citizenship; i) upon refusal of being transferred following a reorganisation or liquidation of his/her office and j) in the event of death (Article 66, LP). The new LP contains three articles dealing with dismissal (Articles 56 to 58), dividing the conditions for dismissal into circumstances not depending on the will of the parties – such as reaching the age of retirement, losing legal capacity, incompatibility etc. – and dismissal following certain circumstances. These circumstances are more precise and some new ones have been added, such as failing to show up twice consecutively for a performance assessment, without valid reasons; becoming a candidate in an election campaign for the Parliament or local public administration authorities; refusal to undergo a verification by the Information and Security Service.

153. Recruitment occurs on the basis of a competition organised by the SCP, as currently regulated by Articles 36-40 of the LP and a Regulation of the SCP on the organisation of competitions (Decision of the SCP NO. 12-155/12 with subsequent amendments). Basic requirements for appointment at a beginning-of-career post include Moldovan citizenship and domicile in the country, command of the language, legal capacity, medical capacity, a clean criminal record and holding a bachelor's degree in law or its equivalent. Additional conditions of work experience apply for higher positions in the prosecution service. Competitions are organised annually or as needed by the SCP and include a capacity examination to be passed by the candidate before the SCP Performance Board and an assessment of the results by the SCP. Candidates having graduated from the National Institute of Justice or having exercised functions in the legal sphere for at least ten years do not have to pass the capacity examination. Promotion of a prosecutor occurs on the proposal of a hierarchical superior, the Prosecutor General, his/her deputies or the SCP on the basis of the principles of free consent, transparency and appraisal of professional and personal achievements (Article 58, LP).

154. The new LP will noticeably reinforce the selection and promotion process – which will form a single procedure – in order to strengthen its objectivity, impartiality and transparency. Candidates for initial appointment and promotion will have to be entered into a registry of candidates to vacant functions kept by the Secretariat of the SCP and selection will be carried out by the Board for Prosecutors Selection and Career under the SCP (hereafter the Selection Board). A new requirement of irreproachable reputation is introduced for candidates. Following an interview, the Selection Board will assess and rank the candidates on the basis of the following criteria: a) the level of professional knowledge and skills; b) the ability in the practical application of knowledge; c) the length of service as a prosecutor or in other positions; d) the capacity and efficiency in the office of prosecutor; e) compliance with the rules of professional ethics; and f) scientific and educational activity. The Board's assessment will represent at most 50% of the candidate's final score, the other at least 50% being determined by his/her result in the final exam before the Graduation Commission of the National Institute of Justice (for beginning-of-career posts) or his/her performance appraisals (for higher posts). The exact percentages will be determined by new internal rules on selection and promotion of

prosecutors, to be adopted by the SCP. The results of the candidates' assessment will be published on the website of the SCP[26] and candidates who disagree with these results may lodge an appeal with the SCP or in second instance with the Supreme Court. Successful candidates will be appointed by the Prosecutor General upon the proposal of the SCP. The Prosecutor General will be able to reject the candidate proposed, motivating this decision, but the SCP may override this opposition by proposing the same candidate again with a vote of 2/3 of its members.

155. In addition, the integrity of candidates is checked by the Information and Security Service (SIS) according to Law No. 271 of 2008 on Verification of Public Office Holders and Candidates (see paragraph 98). As explained in the chapter of this Report on judges, Law No. 325 of 2013 on Professional Integrity Testing, which aimed at introducing an assessment of the performance of public officials' professional duties, including prosecutors, by the National Anti-Corruption Centre, was challenged before the Constitutional Court (see paragraph 99). As a result, the provisions of this law are currently not applied to prosecutors.

156. The GET understood that a majority of prosecutors currently in office are young, many of the more experienced ones having left the prosecution service due in part to the low salaries offered to prosecutors under the current law. Arbitrary recruitment and promotion appear to be less of a problem in the case of prosecutors than of judges, according to civil society representatives, although they attribute this situation to prosecutorial positions being less in demand than judicial ones. Still, a majority of prosecutors do not see the mechanism of promotion as fair, according to a recent survey[27]. Against this background, the GET takes the view that the revised selection and promotion process to be introduced by the new LP seems able, on paper, to offer guarantees for a fair and objective recruitment procedure. Much will depend, of course, on how this system is implemented in practice by the bodies intervening in the process. It would seem, according to the new LP, that the SCP will have to follow the results of the assessment of candidates by the Selection Board, although this is not stated expressly. It is important, in case the SCP deviates from these results, that its decision be justified in a clear, complete and convincing manner. Again, this is not stated expressly in the law.

157. Prosecutors are subject to performance appraisals carried out every five years by the Performance Board. The Prosecutor General and his/her deputies as well as members of the SCP and of its subordinated bodies are not subject to appraisals during their mandates (Article 42, LP). The new LP foresees periodic appraisals every four years and extraordinary appraisals in case an "insufficient" grading was obtained or when applying to a position of chief prosecutor (Article 29, new LP). Appraisals will be carried out by the Performance Board under the SCP, following detailed criteria and a procedure to be determined by the SCP in a regulation. The current and foreseen intervals between external performance appraisals may seem long, but it was pointed out during the on-site visit that prosecutors are also subject to internal appraisal by their head of office on a monthly, semi-annual and annual basis. These internal appraisal reports will also be reviewed during the external appraisals by the Performance Board.

158. Prosecutors may only be temporarily assigned without their consent for organisational reasons for a maximum period of one month per year (Article 64, LP). The new LP will add a possibility for prosecutors who are members of criminal investigative groups to be transferred without their consent for a maximum period of six months.

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[26] www.procuratura.md

[27] According to a survey conducted in October-December 2015 by the Centre of Sociological Investigations and Marketing Research at the request of the Legal Resources Centre from Moldova, to which 509 prosecutors responded, 59% of respondents thought that the mechanism for initial appointment of prosecutors was fair and based on merits. Only 44% thought that the promotion system was fair and based on merits.

159. Prosecutors' gross monthly salaries currently vary between 4 995 and 5 265 MDL (227 to 239 EUR). Chief prosecutors from territorial and specialised prosecutor's offices, as well as heads of sections and divisions of the General Prosecutor's Office earn between 6 480 and 8 370 MDL (294 to 380 EUR). The Prosecutor General's monthly salary is 11 205 MDL (508 EUR). A monthly bonus from 200 to 500 MDL (9 to 23 EUR), depending on the classification degree – which is granted on the basis of the length of service or the performance – is added to the monthly salary. The new LP will provide for a new salary system correlated to that of judges and this is a welcome point of the reform, given the current low salaries and the correlated low attractiveness of the function of prosecutor mentioned above. Prosecutors enjoy free medical insurance under the LP, but this will not be the case anymore under the new LP.

Case management and procedure

160. As already mentioned, the prosecution service is based on a strict hierarchical relationship. Cases are allocated manually by the chief prosecutor of each office, taking into account the specialisation of the prosecutor as well as his/her personal capacities and workload. Cases can be taken from a prosecutor and assigned to another by his/her hierarchical superior in the case of absence for objective reasons, inaction for more than 30 days, violation of the rights of the parties to the proceedings or irreparable omission in administrating evidence (Article 52, CPC). The GET welcomes that objective criteria are in place to guide decisions from superior prosecutors to take over and reassign cases. However, such decisions ought to be justified in writing in order to avoid arbitrary decisions[28]. The GET refers in this context to the second part of the recommendation contained in paragraph 147.

161. Safeguards are in place to ensure that prosecutors deal with cases without undue delay, namely deadlines for certain stages of the criminal proceedings, as well as the possibility for the parties to file a complaint against the inaction of a prosecutor to his/her superior. An Order of the Prosecutor General No. 9/28, issued in November 2014, aims at ensuring that cases are dealt with within reasonable time and without undue delay. Mistakes committed by prosecutors in the course of their duties, including an intentional delay of proceedings, entail financial liability of the state and possibly of the prosecutor him/herself (Article 63, LP; Article 53, new LP).

Ethical principles and rules of conduct, conflicts of interest

162. Several codes of ethics for prosecutors have been adopted over the years, the first one in 2004 and then in 2007 and 2011. In March 2015, a working group was created by the Prosecutor General, consisting of prosecutors and representatives of some international organisations, to draft a new code of ethics. According to the authorities, this code takes into account the recommendations given by GRECO to other countries in the Fourth Evaluation Round. After consultations within the prosecution service as a whole, the Code of Ethics and Conduct of a Prosecutor was adopted by the SCP and it entered into force on 30 July 2015. Following the adoption of the new LP, a new Code of Ethics[29] was adopted by the General Assembly of Prosecutors on 27 May 2016, which is expected to enter into force by 1 August 2016. Disregard for the provisions of the Code may give rise to disciplinary proceedings against the prosecutor.

163. An Ethics Commission was established in 2006, but its functions were later taken over by the SCP through its Disciplinary Board, which has solely a role in disciplinary matters. Under the new LP, a Disciplinary and Ethics Board will be created. It will have both a preventive and repressive role, to adopt recommendations on ethical issues and the prevention of disciplinary violations and to examine alleged disciplinary violations and

[28] Cf. Venice Commission, CDL-AD(2012)008, paragraph 32.
[29] http://procuratura.md/file/2016-06-03_CODUL%20de%20etica%20al%20procurorului%20aprobat%20la%20AG%2027.05.2016.pdf

if necessary to apply sanctions (Article 89, new LP). In addition, a Prosecutorial Inspection to be created will provide confidential counselling on ethical issues for prosecutors.

164. The GET welcomes the new Code of Ethics and Conduct, which takes into account international and GRECO standards. That said, information gathered by the GET clearly suggests that more needs to be done to raise prosecutors' awareness of ethical dilemmas they may encounter in their professional life, of the existing standards, and to provide practical guidance on how principles apply in daily practice and help in solving concrete dilemmas – through further written guidance, confidential counselling within the prosecution service and dedicated training. The GET refers in this connection to its comments made with respect to judges above (see paragraph 115). It would appear that some of the above-mentioned measures will probably be taken on board by the future Disciplinary and Ethics Board which has been given the task of providing interpretative guidance, as well as by the future Prosecutorial Inspection. The precise articulation of roles between these two bodies remains to be seen, but the GET wishes to stress that the function of providing confidential counselling in concrete cases ought to be given to dedicated practitioners who have specific expertise in the field and are distinct from disciplinary bodies. GRECO recommends (i) that the Code of Ethics and Conduct be communicated effectively to all prosecutors and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; (ii) that dedicated training of a practice-oriented nature and confidential counselling within the prosecution service be provided for all prosecutors.

165. Like MPs and judges, prosecutors are subject to the provisions of the Law on Conflicts of Interest No. 16-XVI of 15 February 2008. The conflicts of interest regime described above in the section relating to MPs, applies accordingly to prosecutors.

166. In addition, Article 35 of the LP foresees an obligation for prosecutors to refrain from any activity related to the exercise of his/her duties when s/he assumes that there is a conflict between his/her interests and those of the public, justice and the society, except if the potential conflict was signalled in writing to the head of the office, who may decide that the conflict does not affect the prosecutor's impartiality. The new LP also foresees an obligation to avoid or declare conflicts of interest and more specifically, a prohibition on being involved in cases when subject to recusal and a prohibition of relations of subordination with relatives (Article 15).

167. A Regulation on conflicts of interest in the Public Prosecutor's Office bodies, approved by Order No. 40/35 of the Prosecutor General of April 2009 further specifies the manner to deal with conflicts of interest. Conflicts are settled by the Prosecutor General or the relevant ethics commission, by resorting to one of the following options: the person concerned giving up the personal interest; recusal; limiting access to certain information; transfer; redistribution of tasks and responsibilities; resignation. If it is established that material benefits were gained by a person as a result of a conflict of interest, the Prosecutor General has to initiate criminal investigation.

Prohibition or restriction of certain activities

Recusal and routine withdrawal

168. The reasons for recusal and self-recusal of prosecutors are listed in Article 54 of the CPC and include conflicts of interest arising from family and marital relations, as well as any other circumstances that raise reasonable doubt as to the prosecutor's impartiality. Disqualification is decided upon, during the investigation, by the hierarchically superior prosecutor and, during the trial, by the court. In case the Prosecutor General has to be recused, this is decided by a judge of the Supreme Court.

169. Failure to request recusal in such a case constitutes a disciplinary offence (Article 61, LP; Article 38, new LP).

Gifts

170. Prosecutors are subject to the provisions of the LCI prohibiting the acceptance of gifts and any other advantages, as described above in relation to MPs. The Prosecutor General issued in November 2014 Order 59/28 creating a permanent commission for the record and assessment of gifts, a template for the register of gifts and a template for applications to return gifts. The public has access to the information contained in the register, which has to be provided within 15 working days of the request.

171. The Code of Ethics and Conduct also contains a prohibition on requesting or accepting gifts, favours or other benefits in order to fulfil the duties or due to the position held by prosecutors.

Incompatibilities and accessory activities, post-employment restrictions

172. The holding of any public office or the exercise of any activity in the private sector is prohibited (Article 34, LP; Article 14, new LP).

173. The only exception to this general prohibition is the exercise of scientific and cultural activities, which must be brought to the knowledge of the management of the Prosecutor General's Office.

174. There are no post-employment restrictions applicable to prosecutors. The authorities indicate that 23 prosecutors left their office in 2014 and 60 from January to November 2015. Some were appointed as judges, but between 70% and 80% of them applied to the Bar Association to obtain a lawyer's licence and practice in commercial, criminal, labour, family and contentious matters. In view of the possible risks of conflicts of interest, the GET encourages the authorities to reflect on the necessity of introducing adequate post-employment restrictions in respect of prosecutors.

Misuse of confidential information and third party contacts

175. Prosecutors are under a prohibition to provide advice on litigious matters, except to their relatives (Article 35, LP; Article 15, new LP). The Code of Ethics and Conduct contains a prohibition on disclosing, commenting on and using for personal purposes any confidential or secret information received in the course of their duties and a prohibition on making public any information that may prejudice the activity of the prosecution service or of other law enforcement bodies and public institutions. Violation of the provisions of the code is a disciplinary offence and the Criminal Code also provides for criminal liability of a person conducting investigations for disclosure of criminal investigation data (Article 315).

Declaration of assets, income, liabilities and interests

176. Prosecutors are subject to the same provisions of the Law No. 1264-XV of 19 July 2002 on Declaring and Control of Income and Property of Public Dignitaries, Judges, Prosecutors, Civil Servants and of Certain Persons holding Management Positions and of the LCI as MPs. Like them, they are required to file regular statements of income and property, as well as statements of personal interests. The declaration system described above in relation to MPs applies accordingly to prosecutors. The authority responsible for collecting statements of income and property, as well as statements of interests, in the case of prosecutors is the human resources section of the General Prosecutor's Office. They are filed and sent on to the National Integrity Commission for publication and

verification. It was confirmed to the GET that all prosecutors had submitted their statements.

Supervision and enforcement

177. Main supervision over conflicts of interest and incompatibility rules, statements of personal interests and statements of income and property lies with the National Integrity Commission. As regards the Commission and the modalities of this supervision, reference is made to the Chapter of this report on MPs. Statistics regarding the Commission's activity, including as regards prosecutors, are provided in paragraph 74. The GET makes reference to its concerns as regards the supervision carried out by the National Integrity Commission and the corresponding system of sanctions, as well as to the *recommendations given in paragraphs 77 and 80, which are also relevant as regards prosecutors.*

178. Failure to submit a statement of income and property or a statement of personal interests within the given deadlines represents a contravention punishable by a fine of 75 to 150 conventional units (1 500 to 3 000 MDL, i.e. 67 to 135 EUR) (Article 330^2 of the Contravention Code). Failure to declare a conflict of interest entails a fine of 100 to 300 conventional units (2 000 to 6 000 MDL, i.e. 90 to 270 EUR) (Article 313^2 of the Contravention Code). Failure to submit information or documents requested by the National Integrity Commission entails a fine of 100 to 150 conventional units for the individual responsible (2 000 to 3 000 MDL, i.e. 90 to 135 EUR), 100 to 250 conventional units for the person holding a managerial position (2 000 to 5 000 MDL, i.e. 90 to 226 EUR) and 200 to 350 units for the legal entity (4 000 to 7 000 MDL, i.e. 181 to 317 EUR). Failure to apply the sanction decided by the Commission is sanctioned by a fine of 100 to 250 conventional unit for the manager responsible (Article 319^1 of the Contravention Code). Failure to submit a statement also constitutes a disciplinary offence under Article 61 f), LP).

179. Provision of false information is a criminal offence punishable by a fine of up to 600 conventional units (12 000 MDL, i.e. 538 EUR) or by imprisonment of up to one year, with the deprivation of the right to hold certain positions or to practice certain activities for a period of up to five years (Article 352^1 of the Criminal Code).

180. Prosecutors are disciplinary liable for committing a disciplinary offence as listed in Article 61 of the LP and Article 38 of the new LP. The latter article reduces the number of disciplinary offences to six, instead of 13 under the current system, namely: a) inappropriate fulfilment of the service duties; b) incorrect or biased application of legislation, if this action is not justified by the change of practice of application of legal norms established in the current law enforcement; c) illegal interference in the activity of another prosecutor or any other interventions with the authorities, institutions or officials for the purpose of solving any issue; d) intentional hindrance, by any means, of the activity of the Prosecutor's inspection; e) severe violation of the legislation; and f) undignified attitude or manifestations affecting the honour, professional trustworthiness, prestige of the prosecution service or that violate the code of ethics for the prosecutor.

181. The current disciplinary liability mechanism is laid down in Articles 60-63 of the LP. The right to initiate a procedure belongs to any member of the SCP or prosecutors heading the subdivision of the General Prosecutor's Office, a territorial or a specialised prosecutor's office, on the basis of complaints from citizens, their own control as hierarchical superiors or an interlocutory ruling by a court. Facts of the case are then verified by the Internal Security Section of the General Prosecutor's Office and the prosecutor subject to the procedure is asked for his/her written explanations. S/he also may provide additional explanations and evidence before the case is passed on to the Disciplinary Board. The Disciplinary Board examines the case in the presence of at least 2/3 of its members, the prosecutor subject to the procedure being mandatorily present.

A decision is taken by majority vote, but if the procedure was initiated by a member of the Disciplinary Board, that member cannot take part in the vote. Possible sanctions are: a) warning; b) reprimand; c) sharp reprimand; d) demotion; e) demotion in the class degree or in special military rank; f) withdrawal of the badge of "Honorary Employee of the Public Prosecutor's Office" and; g) dismissal. The decision of the Disciplinary Board is then transmitted to the SCP for validation and may be challenged on this occasion by the prosecutor sanctioned, the person who initiated the procedure and any other person who considers that his/her rights were affected by the decision. The SCP's decision may be appealed before a court in an administrative review procedure. The statute of limitation is six months from the initiation of the proceedings (not counting the time when the prosecutor was sick or absent on leave) and one year from the commission of the offence. All decisions of the SCP in disciplinary matters are published on its website.

182. According to the disciplinary procedure established by the new LP (Articles 36-52), the Disciplinary Board will be replaced by a Discipline and Ethics Board, composed of seven members, five being elected by the General Assembly from among prosecutors and two being elected by the SCP following an open competition from among civil society representatives. The procedure may be initiated by a) any interested person; b) members of the SCP; c) the Evaluation Board and d) the Inspection of Prosecutors. The stages of the procedure are largely the same as the current one. The notification starting the proceedings is submitted to the SCP and forwarded to the Inspection of prosecutors, which is a subdivision of the General Prosecutor's Office, under the direct supervision of the Prosecutor General. It is composed of civil servants and employees with special status. The Inspection may decide to dismiss the case or to pass it on to the Discipline and Ethics Board. A new sanction of salary reduction from 15% to 30% for a period of between three months and a year will be added to the current ones. In addition to sanctions, the Discipline and Ethics Board may recommend to the SCP that the prosecutor be subject to an extraordinary performance assessment. The statute of limitation will remain one year from the commission of the offence, but three years if the offence was committed in the course of the prosecutor's work. A last change is that the appeal against the decisions of the SCP in disciplinary matters will be heard by the Supreme Court, specifically by the same panel of five judges which hears the appeals against decisions of the Superior Council of Magistracy in disciplinary cases against judges.

183. In 2014, 52 disciplinary cases against prosecutors were examined by the Disciplinary Board, resulting in 34 sanctions being applied. Ten of these 52 cases concerned issues of ethics. In the first half of 2015, 22 sanctions were applied, including three proposed dismissals.

184. Prosecutors enjoy immunity, which appears to be limited under the new Law. According to Article 57 of the LP, they cannot be held disciplinarily or patrimonially liable for opinions expressed and decisions taken during criminal prosecution and in the administration of justice, except if their guilt is established by a final sentence. Article 34 of the new LP provides that prosecutors cannot be held legally liable for "statements made by observing the professional ethics". Both laws provide that criminal investigation against a prosecutor may only be initiated by the Prosecutor General, but the new LP adds that the SCP must be informed and start disciplinary proceedings. Moreover, the new LP provides for an important change regarding the initiation of criminal proceedings against the Prosecutor General. They will be initiated by a prosecutor appointed by the SCP, instead of by the Parliament at the initiative of the Speaker.

185. According to the authorities, the Prosecutor General does in practice authorise investigation against prosecutors in all cases. In 2014, the Prosecutor General initiated eight criminal cases against prosecutors for passive corruption and trading in influence. These cases were prosecuted by the Anticorruption Prosecutor's Office. In three cases, the prosecutor decided to dismiss the case and drop the charges. In one case, the

Supreme Court acquitted a prosecutor accused of passive corruption, assessing that it was a case of entrapment, i.e. the use of evidence obtained as a result of police incitement. The remaining four cases are pending before the courts.

186. As is the case for judges, numerous cases of misconduct by prosecutors have been reported in the media and several of the GET's interlocutors expressed the view that the prosecution service has so far not been very proactive and transparent in addressing such cases. Legal provisions on accountability were said not to be enforced in full and sanctions appeared lenient. Against this background, the capacity of the disciplinary bodies to deal with misconduct of prosecutors in a determined and effective manner is crucial, especially given the negative image of the prosecution service. As with other aspects of the reform, much will depend on how the new system will be implemented in practice. Three specific issues, however, deserve mention at this stage. The GET notes that according to the new LP, the Inspection of Prosecutors will be a subdivision of the General Prosecutor's Office, under the direct supervision of the General Prosecutor. A sufficient number of adequately trained inspectors will be instrumental to its efficiency. The GET is concerned that the Inspection's statutory and budgetary dependence on the Prosecutor General may lead to self-censorship in sensitive cases. The GET also notes that nothing prevents a member of the SCP from being involved in several stages of disciplinary proceedings against a prosecutor, by initiating a disciplinary procedure, appealing against a decision of the Discipline and Ethics Board and voting on this appeal as a member of the SCP. Finally, transparency is a key element of a successful accountability policy. Along the same lines as the measures recommended in the chapter on judges, disciplinary cases need to be given sufficient publicity, it is necessary to ensure that decisions are properly motivated as required by law, that decisions not to prosecute are adequately explained, and that details about sanctions are published, both anonymised overall figures and, in severe cases, leading to removal from office, reports that name the individuals concerned, the behaviour involved and the outcome. GRECO recommends that additional measures be taken in order to strengthen the objectivity, efficiency and transparency of the legal and operational framework for the disciplinary liability of prosecutors.

Advice, training and awareness

187. Candidates to the position of prosecutor undergo an 18-month initial training period at the National Institute of Justice. During this period, they follow a theoretical course of eight hours and a practical course of 16 hours on professional ethics and conduct. This course, which is mandatory for all graduates of the Institute, deals with ethical standards, restrictions and requirement during and outside of office hours, integrity criteria, risk factors in the activity of prosecutors, disciplinary liability and sanctions.

188. Prosecutors have to undergo at least 40 hours of continuous training per year. Examples of courses dealing with ethical issues include "Some aspects of preventing and combating corrupt behaviour in the justice sector. Professional ethics" and "Professional ethics and deontology of a prosecutor. Prosecutor behaviour in dealing with the media".

VI. RECOMMENDATIONS AND FOLLOW-UP

189. In view of the findings of the present report, GRECO addresses the following recommendations to the Republic of Moldova:

Regarding members of Parliament

i. ensuring (i) that draft legislation, all amendments and all supporting documents as required by law are published in a timely manner and (ii) that adequate timeframes are followed to allow for meaningful public consultation and parliamentary debate, including by ensuring that the emergency procedure is applied only in exceptional and duly justified circumstances (paragraph 26);

ii. (i) adopting a code of conduct for members of Parliament and ensuring that the future code is made easily accessible to the public; (ii) establishing a suitable mechanism within Parliament, both to promote the code and raise awareness among its members on the standards expected of them, but also to enforce such standards where necessary (paragraph 32);

iii. introducing rules for parliamentarians on how to interact with third parties seeking to influence the legislative process (paragraph 54);

iv. ensuring a significantly more independent and effective control, by the National Integrity Commission, of compliance by members of Parliament, judges and prosecutors with the rules on conflicts of interest, incompatibilities, statements of personal interests and statements of income and property (paragraph 77);

v. ensuring that the mechanism by which administrative sanctions are imposed for violations of the rules on conflicts of interest, incompatibilities, statements of personal interests and statements of income and property works effectively in practice, notably (i) by providing the National Integrity Commission with the authority to impose administrative sanctions and (ii) by increasing the limitation period applicable to the violations foreseen in the Contravention Code and clarifying its scope of application (paragraph 80);

vi. that determined measures be taken in order to ensure that the procedures for lifting parliamentary immunity do not hamper or prevent criminal investigations in respect of members of Parliament suspected of having committed corruption related offences (paragraph 83);

Regarding judges

vii. (i) changing the composition of the Superior Council of Magistracy, in particular by abolishing the *ex officio* participation of the Minister of Justice and the Prosecutor General and by allowing for more diverse profiles among lay members of the Council, on the basis of objective and measurable selection criteria; (ii) ensuring that both judicial and lay members of the Council are elected following a fair and transparent procedure (paragraph 92);

viii. that decisions of the Superior Council of Magistrates be adequately reasoned and be subject to judicial review, both on the merits of the case and on procedural grounds (paragraph 93);

ix. (i) that appropriate measures be taken, with due regard to judicial independence, in order to avoid the appointment and promotion to judicial positions of candidates presenting integrity risks; and (ii) abolishing the five-year probation period for judges (paragraph 102);

x. that additional steps be taken (i) to ensure that cases are adjudicated without unjustified delays and (ii) to increase the transparency and accessibility of information available to the public on judicial activity (paragraph 111);

xi. (i) that the Code of Professional Conduct and Ethics be communicated effectively to all judges and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; (ii) that dedicated training of a practice-oriented nature and confidential counselling within the judiciary be provided for all judges (paragraph 115);

xii. that (i) further measures be taken to inform judges about the mechanisms foreseen in the Law on Conflicts of Interest regarding gifts and (ii) that compliance with the rules on gifts, hospitality and other advantages foreseen in this law and other relevant texts be properly monitored (paragraph 119);

xiii. that the legal and operational framework for the disciplinary liability of judges be revised with a view to strengthening its objectivity, efficiency and transparency (paragraph 135);

Regarding prosecutors

xiv. (i) expressly notifying all prosecutors in writing that verbal instructions given to hierarchically subordinate prosecutors are not binding, unless they are confirmed in writing, including in such notifications the procedures to be followed in providing timely confirmations and (ii) ensuring that all hierarchical interventions regarding a case are properly documented in practice (paragraph 147);

xv. that appropriate measures be taken to ensure that the composition and operation of the Superior Council of Prosecutors be subject to appropriate guarantees of objectivity, impartiality and transparency, including by abolishing the ex officio participation of the Minister of Justice and the President of the Superior Council of Magistracy (paragraph 148);

xvi. maintaining, throughout the transitional period until the Constitution is amended, the application of Article 40(7) of Law No. 294 of 2008 on the Public Prosecutor's Office which provides that the Prosecutor General cannot hold more than two consecutive mandates (paragraph 150);

xvii. (i) that the Code of Ethics and Conduct be communicated effectively to all prosecutors and complemented by further written guidance on

ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; (ii) that dedicated training of a practice-oriented nature and confidential counselling within the prosecution service be provided for all prosecutors (paragraph 164);

xviii. that additional measures be taken in order to strengthen the objectivity, efficiency and transparency of the legal and operational framework for the disciplinary liability of prosecutors (paragraph 186).

190. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the Republic of Moldova to submit a report on the measures taken to implement the above-mentioned recommendations by 31 January 2018. These measures will be assessed by GRECO through its specific compliance procedure.

191. GRECO invites the authorities of the Republic of Moldova to authorise, at its earliest convenience, the publication of this report, to translate the report into its national language and to make the translation publicly available.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: www.coe.int/greco.