



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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Adoption: 23 June 2017
Publication: 2 November 2017

Public
GrecoEval 4Rep(2016)8

FOURTH EVALUATION ROUND

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

EVALUATION REPORT ANDORRA

Adopted by GRECO at its 76th Plenary Meeting
(Strasbourg, 19-23 June 2017)

F
O
U
R
T
H

E
V
A
L
U
A
T
I
O
N

R
O
U
N
D

TABLE OF CONTENTS

| | |
|--|----|
| EXECUTIVE SUMMARY | 4 |
| I. INTRODUCTION AND METHODOLOGY | 5 |
| II. CONTEXT | 7 |
| III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT | 9 |
| OVERVIEW OF THE PARLIAMENTARY SYSTEM | 9 |
| TRANSPARENCY OF THE LEGISLATIVE PROCESS | 10 |
| REMUNERATION AND ECONOMIC BENEFITS | 12 |
| ETHICAL PRINCIPLES, RULES OF CONDUCT AND CONFLICTS OF INTEREST | 12 |
| CONFLICTS OF INTEREST | 13 |
| PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES | 14 |
| <i>Gifts</i> | 14 |
| <i>Incompatibilities</i> | 14 |
| <i>Accessory activities, financial interests, employment on leaving office</i> | 14 |
| <i>Contracts signed with public authorities</i> | 14 |
| <i>Improper use of confidential information</i> | 14 |
| <i>Improper use of public funds</i> | 14 |
| <i>Contacts with third parties</i> | 15 |
| DECLARATION OF ASSETS, INCOME, DEBTS AND FINANCIAL INTERESTS | 15 |
| SUPERVISION AND ENFORCEMENT | 15 |
| <i>Immunity</i> | 16 |
| ADVICE, TRAINING AND AWARENESS | 16 |
| IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES | 18 |
| OVERVIEW OF THE JUDICIAL SYSTEM | 18 |
| <i>The High Council of Justice</i> | 19 |
| <i>Recruitment</i> | 20 |
| <i>Career</i> | 21 |
| <i>Conditions of service</i> | 22 |
| CASE MANAGEMENT AND PROCEDURE | 22 |
| <i>Distribution of cases</i> | 22 |
| <i>Reasonable time</i> | 23 |
| <i>Transparency</i> | 23 |
| ETHICAL PRINCIPLES, RULES OF CONDUCT AND CONFLICTS OF INTEREST | 24 |
| PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES | 24 |
| <i>Gifts</i> | 24 |
| <i>Recusal</i> | 25 |
| <i>Financial interests</i> | 25 |
| <i>Restrictions applicable following termination of office</i> | 25 |
| <i>Contacts with third parties, confidential information</i> | 25 |
| DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS | 25 |
| SUPERVISION AND ENFORCEMENT | 26 |
| <i>Supervision</i> | 26 |
| <i>Sanctions</i> | 26 |
| ADVICE, TRAINING AND AWARENESS | 27 |
| V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS | 29 |
| OVERVIEW OF THE PROSECUTION SERVICE | 29 |
| RECRUITMENT, CAREER AND CONDITIONS OF SERVICE | 29 |
| CASE MANAGEMENT AND COURT PROCEDURE | 31 |
| ETHICAL PRINCIPLES, RULES OF CONDUCT AND CONFLICTS OF INTEREST | 32 |
| BAN OR RESTRICTIONS ON CERTAIN ACTIVITIES | 32 |
| <i>Gifts</i> | 32 |

| | |
|--|----|
| <i>Incompatibilities and ancillary activities</i> | 32 |
| <i>Recusal</i> | 33 |
| <i>Financial interests</i> | 33 |
| <i>Restrictions once the term of office has ended</i> | 33 |
| <i>Contacts with third parties, confidential information</i> | 33 |
| DECLARATIONS OF ASSETS, INCOME, LIABILITIES AND INTERESTS | 33 |
| SUPERVISION AND ENFORCEMENT | 33 |
| <i>Supervision</i> | 33 |
| <i>Sanctions</i> | 34 |
| ADVICE, TRAINING AND AWARENESS | 35 |
| VI. RECOMMENDATIONS AND FOLLOW-UP | 36 |

EXECUTIVE SUMMARY

1. The Principality of Andorra has made considerable efforts in the last few years to modernise its legal and institutional system, thus enabling it to benefit from a well-developed legal and organisational framework. The level of perception of corruption seems significantly lower than elsewhere in Europe and there are virtually no known financial scandals or corruption cases.

2. In terms of the focus of the Fourth Evaluation Round, the transparency of the legislative process is good. Civil society has easy access to information on the work of parliament and to the parliamentary groups, although there are few arrangements for formal participation in legislative proceedings. Members of parliament are not governed by a code of ethics or conduct in parliament. GRECO accordingly recommends addressing this shortcoming and supports the work of the parliamentary groups in this connection. The question of conflicts of interest is a particularly burning issue in Andorra given the close network of social relationships and the fact that most members of parliament carry out their duties part-time and continue to engage in their occupational activities. In order to take better account of this, GRECO recommends that conflicts of interest be made public as part of parliamentary procedures and that a system of public declaration of assets and interests be introduced. These arrangements should be supplemented by both awareness-raising measures and measures to monitor the compliance of members of parliament with their obligations.

3. Judges and prosecutors have a similar status and most aspects of their career, especially their recruitment, training, promotion and disciplinary regime, are decided by the High Council of Justice (CSJ). This body is made up of five members, only one of whom is elected by the judges. Prosecutors do not take part in this election. In application of European standards, GRECO recommends modifying the composition of the High Council of Justice to ensure that there is appropriate representation of judges and prosecutors in its membership.

4. Judges and prosecutors are appointed for a renewable period of six years. This fixed term is an exception in Europe as far as the state judicial service is concerned. GRECO notes that the conditions for non-renewal of the term are very restrictive but recommends that consideration be given to appointing judges for a term of unlimited duration, so as to further strengthen the guarantee of their independence. It considers the other aspects of the status and career of judges and prosecutors to be satisfactory. It welcomes the High Council of Justice's recent adoption of a compendium of obligations and ethical values for judges and prosecutors and the training activities envisaged in this connection. At the same time, it calls for the provision of training and ethical and integrity advice for judges and prosecutors to be continued over the long term. Finally, although the disciplinary regime for these professionals is considered adequate, this is not the case with limitation periods for offences and the time limit for investigation of a disciplinary matter, which should be increased to guarantee the effectiveness of this regime.

I. INTRODUCTION AND METHODOLOGY

5. Andorra joined GRECO in 2005. Since acceding, it has been subject to evaluation in the framework of the Joint First and Second Evaluation Rounds (December 2006) and the Third Evaluation Round (May 2011). The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on the GRECO website (<http://www.coe.int/greco>).

6. GRECO's 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 broke new ground and underlined the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work: its First Evaluation Round, which focused on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, public administration, and the Third Evaluation Round, which focused on corruption offences (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political party funding.

7. The same priority issues are addressed in the Fourth Evaluation Round 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, debts and interests;
- enforcement of the applicable rules;
- awareness.

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

9. In preparing this report, GRECO used the responses to the Evaluation Questionnaire (document GrecoEval4(2016)8-REPQUEST), including information received from civil society. In addition, a GRECO evaluation team (hereinafter referred to as the "GET") carried out a visit to Andorra from 14 to 18 November 2016. It was composed of Mr Olivier GONIN, Research Assistant, Federal Office of Justice (Switzerland), Mr Vitalie NAGACEVSCHI, former member of the Moldovan Parliament, lawyer and President of the Lawyers for Human Rights NGO (Republic of Moldova), Mr Jean-Baptiste PARLOS, judge in the Criminal Chamber of the Court of Cassation (France) and Mr Laurent THYES, Conseiller de direction adjoint, Ministry of Justice (Luxembourg). The GET was assisted by Ms Sophie MEUDAL LEENDERS from the GRECO Secretariat.

10. The GET held interviews with the *Sindic General* (Speaker of the Parliament) and representatives of the parliament and its services, including the Secretary General and the Standing Committee. It met with representatives of the parliamentary groups (democratic group, liberal group and mixed group) and the political parties (Podem Andorra, the Democratic Party, the Liberal Party, the Social Democracy and Progress Party and the Social Democratic Party). It also met with government representatives, including the Ministers of Social Affairs, Justice and the Interior, the Secretary of State for Justice and for the Interior and the Director of Multilateral Affairs and Co-operation, as well as the *Raonador del Ciutadà* (ombudsman). It also held talks with representatives of the judicial system and the prosecution service, including the president and members of the High Council of Justice, the presidents and judges of the Andorran courts (*Batllia*, *Tribunal de Corts*, *Tribunal Superior de Justicia*), the principal public prosecutor and one deputy prosecutor. Finally, it met with representatives of civil society (Association of

Building and Public Works Contractors, Association of Andorran Banks, Confederation of Andorran Businesses, Bar Association) and the media (Cadena Ser Andorra, Ràdio i Televisió d'Andorra, Bon dia, El Periòdic d'Andorra, Ara Andorra, Agència de Notícies Andorrana, Diari d'Andorra).

11. The main objective of this report is to evaluate the effectiveness of measures adopted by the Andorran authorities to prevent corruption in the case of members of parliament, judges and prosecutors and to further their integrity both in appearance and in reality. The report contains a critical analysis of the situation in the country and considers the efforts made by the players concerned and the results achieved. It also identifies possible shortcomings and makes recommendations for improving the situation. In keeping with GRECO's practice, the recommendations are addressed to the Andorran authorities, which should determine the relevant institutions/bodies responsible for taking the requisite action. Andorra is asked to report back on the action taken in response to the recommendations within 18 months of the adoption of this report.

II. CONTEXT

12. With a population of 78 264 inhabitants according to the latest municipal cumulative censuses of 2016, 43 813 of whom have Andorran nationality, the Principality of Andorra is one of the smallest members of GRECO and the Council of Europe. It experienced rapid economic and demographic expansion after the second world war, due historically to the development of the energy sector, followed by tourism, the retail trade and financial services. The Principality was also affected by periods of crisis and recession, like the economic crisis of the current decade. This crisis has strongly affected, for instance, the building sector, which completes the list of the most important sectors of the Andorran economy. Since the entry into force of law 10/2012 on foreign investments, the government aims at furthering economic openness and progressive tax harmonisation with European countries, notably by introducing a tax on direct income.

13. The Principality of Andorra has close ties to Spain and France. Its joint heads of state, the Co-Princes, are the Bishop of Urgell, a bishopric situated in the neighbouring town of the Seu d'Urgell in Spain, and the President of the French Republic. Their role is now symbolic since the Principality adopted a modern constitution, which was approved by referendum, in 1993. Considerable efforts have been made to modernise its legal and institutional system and have provided Andorra with a well-developed legal and organisational framework. This modernisation and regulatory updating process is continuing today, especially in connection with the negotiation of an association agreement with the European Union, under way since 2013. The Principality adopted the euro in 2002.

14. There are few national or international studies on the perception of corruption in Andorra. The World Bank publishes some indices, according to which in 2015 the Principality ranked 16th out of 43 countries as far as controlling corruption is concerned and 14th out of 43 with regard to the rule of law.¹ At the national level, a survey based on the Eurobarometer method was carried out in 2010 by the Andorran Socio-Economic Observatory² in response to a recommendation made by GRECO in its Evaluation Report on the Joint First and Second Rounds. According to that survey, 47% of people interviewed thought corruption was an issue for the country (Eurobarometer average in 2010: 78%). Among the individuals seen as being the most affected by corruption, 49% of those interviewed mentioned officials responsible for granting planning permission, 39.5% national politicians and 33% local politicians. The justice system was ranked only seventh (18%) in the replies.

15. According to the GET's interlocutors, there are virtually no known corruption cases or financial scandals. The general public hold the justice system in high esteem. It is considered impartial but plagued by slow case-processing times, although these are within the European average. As GRECO noted in its Third Round Evaluation Report on incriminations (paragraph 73), "the small size of the Andorran community probably gives social control a greater role than elsewhere and apparently helps to reduce certain criminal tendencies. At the same time though, (...) the closeness of social ties (is) a negative constraint on the reporting of corruption". During the on-site visit, some of the GET's interlocutors also pointed to the difficulty in implementing mechanisms to protect whistle-blowers and witnesses in view of the country's size. It is clear that the scant information available on levels of actual or perceived corruption makes it particularly hard to assess the risks of corruption, and it would therefore be helpful to carry out studies and research on this subject.

¹ The Corruption Control Index (http://www.theglobaleconomy.com/rankings/wb_corruption/) captures perceptions of the extent to which public authority is exercised for private gain. The Rule of Law Index (http://www.theglobaleconomy.com/rankings/wb_ruleoflaw/) measures confidence in a country's institutions, including the justice system.

² <http://www.iea.ad/images/Observatori/Temes/Corrupcio-2010.pdf> (available in Catalan only)

16. In 2015 the Principality experienced an important money-laundering case that led to the restructuring of the country's fourth largest bank. This case also resulted in the resignation of a member of parliament, against whom a judicial investigation for alleged corruption was opened. She is suspected of having engaged in lobbying in return for undeclared kickbacks from the bank in question. Moreover, a minister resigned because of an incompatibility between his ministerial office and his professional activity.

17. The ramifications of this case and the prospect of an association agreement with the European Union mark new steps in the great change the Principality of Andorra has been going through in recent decades. Questions are being asked by the population and civil society about the country's future economic model and there are more tense relations between the majority and the opposition within the parliament, but also a shared political determination to bring Andorra's legal framework fully up to European standards.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

18. Andorra is a parliamentary co-principality (Article 1.4 of the Constitution of the Principality of Andorra). The role of the two Co-Princes, the President of the French Republic and the Bishop of Urgell, who are joint heads of state, mainly consists in guaranteeing compliance with the Constitution, to which they swear loyalty. Accordingly, they have an arbitration and moderation role with regard to the functioning of public authorities and institutions but assume no political responsibility. Their functions include carrying out the following acts with the countersignature of the head of government or the Speaker of Parliament, who assume political responsibility for them: calling general elections at the request of the head of government, appointing the head of government on a proposal from parliament, calling referendums, accrediting Andorra's diplomatic representatives abroad and receiving the accreditation of foreign representatives to Andorra; each of them also appoints a representative to the Constitutional Court and another to the High Council of Justice; finally, they promulgate the laws adopted by parliament and order their publication in the Official Gazette. Each Co-Prince appoints a personal representative for Andorra in order to monitor the affairs of the Principality.

19. The Andorran parliament is the General Council (*Consell General*). It is unicameral and its 28 members are known as General Councillors (*Consellers Generals*). It exercises legislative authority, approves the state budgets and promotes and oversees the government's political action. The elected members of parliament nominate from among their ranks the Speaker (*Síndic*) and the Deputy Speaker (*Subsíndic*), who together with the two secretaries elected in the General Council (GC) make up the Bureau of the Parliament (*Sindicatura*).

20. The GC has eight standing committees: Internal Affairs; Foreign Affairs; Economic Affairs; Finance and Budget; Town and Country Planning; Health and the Environment; Social Affairs; and Education, Research, Culture and Sport (Rule 46 of the Rules of Procedure of the General Council, hereinafter "RGC"). The task of these committees is, among other things, to examine draft laws or legislative proposals that fall within their remit and are referred to them by the Speaker in agreement with the *junta dels presidents*, a body consisting of the Chairs of all the parliamentary groups (Rule 30 RGC). The GC can create legislative or special commissions, as well as study or enquiry commissions on a public interest issue for the duration of the legislature, on a proposal from the Speaker, two parliamentary groups or one third of the Councillors.

21. The 28 General Councillors are elected by direct universal suffrage from among all Andorrans in full possession of their political rights (Article 51 of the Constitution). Half are elected by a majority vote in each of the seven parishes that make up Andorra's administrative organisation, with two Councillors for each parish. The 14 other Councillors are elected by proportional representation in a single national constituency. The General Council is thus a mixed assembly that represents the various parts of the Principality and its people. According to some of the GET's interlocutors, members of parliament elected in the national constituency tend more to represent the interests of the state and those elected in local constituencies represent more the interests of the parishes.

22. The grounds for revocation of a General Councillor's mandate are as follows (Rule 11 RGC):

- Expiry of the mandate, when the term of the GC expires, with the exception of members of the Standing Committee (which plays an oversight role between parliamentary sessions and during the recess between the legislative periods of the GC);

- Formal decision annulling the election or the proclamation;
- Death;
- Judicially declared incapacity;
- Exercise of a public office incompatible with that of General Councillor;
- Final conviction disqualifying the person concerned from the exercise of public office for a period longer than that remaining to complete the mandate in question;
- Resignation from the seat, addressed in writing to the Speaker of the GC and personally confirmed before the Bureau of the GC.

Transparency of the legislative process

23. The right of legislative initiative can be exercised by the General Council – or more precisely the parliamentary groups or at least three General Councillors – and the government, as well as by three parishes acting jointly or by 10% of the electorate (Article 58 of the Constitution and Rule 102 RGC).³

24. The General Council's Rules of Procedure contain an obligation to publish in the Official Gazette of the General Council⁴ details of all draft laws and legislative proposals, all amendments proposed, reports by the legislative committees containing amendments adopted by them, individual opinions to be debated in plenary session, agreements of the committees and the plenary session, questions and answers, communications and agreements that the government must forward to the GC, as well as any other text or document required by the Rules of Procedure or ordered by the Speaker of the General Council and of relevance for the parliamentary procedure (Rule 90 RGC).

25. The General Council's Rules of Procedure ensure the timely publication of legislative documents: draft laws/legislative proposals are published in the Official Gazette of the GC as soon as they are admitted by the Bureau (Rules 92 and 103 RGC) and are also published under the heading "legislative initiatives" on the GC's website.⁵ Amendments tabled are also published in the Official Gazette within 48 hours of the end of the committees' work. It is not possible to table amendments in writing at the last minute or to table them orally during the examination of draft laws/legislative proposals, except in the case of a compromise proposal on amendments previously tabled in writing. The agendas of sessions and meetings must be published one week in advance and General Councillors must receive all relevant documents five days before the meeting or session. Even urgent questions to the government must be published at least 24 hours before the deliberations (Rule 131 RGC).

26. The GET was able to determine during its on-site visit that the relevant rules are fully complied with in practice. The media and civil society representatives confirmed that easy access can be gained to information on the work of the parliament. However, discussions on legislative initiatives partly take place in advance of their formal presentation to the General Council and thus escape transparency. According to the GET's interlocutors, the aim is to seek solutions that can command the broadest possible majority and to avoid entrenchment of the political groups' positions in the course of the public debate.

27. Andorran legislation does not provide for a specific public consultation on draft laws/legislative proposals, but Article 76 of the Constitution provides for the head of government, with the agreement of the majority of the GC, to request the Co-Princes to call a referendum on a public order issue. In addition, amendments to the Constitution

³ The right of initiative of 10% of the electorate has been exercised once for the adoption of anti-tobacco legislation. During the on-site visit, signatures were being collected for the introduction of longer maternity leave.

⁴ <http://www.consellgeneral.ad/ca/newsletters/butlleti-del-consell-general>

⁵ <http://www.consellgeneral.ad/ca/activitat-parlamentaria/iniciatives-legislatives>

must also be put to a referendum (Article 106 of the Constitution). No referendum has taken place under the 1993 Constitution.

28. It emerged from the interviews carried out on the spot by the GET that there would seem to be a relatively large number of interactions on this subject between the General Council and civil society. The parliamentary groups in particular play an important role here. For example, they forward the government's legislative proposals to the associations concerned in order to seek their views. Before introducing proposals into the legislative procedure, they consult civil-society associations and receive representatives of the various interest groups that wish to put forward their grievances, demands or proposals. According to the explanations provided on the spot, the associations try to see all parliamentary groups in their lobbying work. These practices seem common and make it possible to avoid the General Council being perceived as an ivory tower cut off from society's social and economic realities.

29. Despite these many contacts, the GET thinks it would be desirable to introduce a formal public consultation procedure into the legislation, at least with regard to legislative initiatives on important subjects. The present arrangements for informal consultations seem above all to come about on the initiative of the parliamentary groups, which decide whether, when and whom they consult. These consultations mainly seem to be held with established business associations, such as the Association of Building and Public Works Contractors or the Association of Andorran Banks. In the GET's opinion, it is necessary at the same time to make it easier for ordinary citizens – or residents – to express their views on legislative work. GRECO consequently recommends considering the introduction of a public consultation procedure in connection with legislative proceedings.

30. The sessions of the General Council are held in public (Rule 53 RGC) and broadcast live on Andorran public television. They are also available on catch-up TV. Furthermore, they are permanently published on the GC's website in paper and video format. The outcome of a vote is only recorded in the form of overall figures in the minutes of a session and not individually by name. However, when the result is read out during the session, the GC's screen displays a picture of the chamber showing the way the Councillors voted. As they have their own named seat in the chamber, it is easy to identify how each Councillor voted. Some votes are taken orally (Rules 72 ff. and 112 RGC), in particular the election of the head of government and voting on motions of censure and motions of no confidence.

31. The GC can decide by an absolute majority, on a proposal from the Speaker, two parliamentary groups or one-quarter of the General Councillors, to hold a plenary session in camera, but this has never happened since the entry into force of the GC's Rules of Procedure in 1994. The Official Gazette of the GC must record all interventions, incidents and agreements adopted in the GC's public sessions (Rule 89 RGC). It is also possible to hold votes by secret ballot when the Rules provide for this (for the election of the Speaker and Deputy Speaker) or when the GC so decides, at the request of two parliamentary groups or a fifth of the General Councillors. The GC has never made use of this possibility since the entry into force of the RGC.

32. The parliamentary committees are made up of the number of Councillors established by the Bureau of the General Council, in agreement with the *junta dels presidents*. A minimum of five Councillors is required, and the composition of the committees must reflect the political forces present in the GC. Councillors are appointed by the parliamentary groups (Rules 38 and 46 RGC). Each Councillor may be a member of no more than three legislative committees. The committees must elect a Chair and a Vice-Chair. In agreement with the *junta dels presidents*, the committee chairmanships are distributed by the Bureau of the GC among the parliamentary groups on a proportional basis according to the number of Councillors in each group. The composition

of the legislative committees is published on the GC's website, even though no legal or regulatory instrument makes provision for this.

33. Committee members can be replaced by General Councillors from the same parliamentary group by means of a simple announcement made to the Speaker of the GC by the Chair of the parliamentary group concerned. If the substitution only affects a single meeting, it is sufficient for the announcement to be made at the beginning of the meeting to the Chair of the committee concerned. This possibility is particularly helpful for the small parliamentary groups, but it also enables committees dealing with particular draft laws to benefit from the specific knowledge of General Councillors who are not among their members.

34. Sessions are not public when the committees are working on reports to be submitted to the GC's plenary sessions (Rule 53 RGC). However, the Official Gazette of the GC publishes reports to be discussed in plenary session, with the amendments and individual opinions of the committees, as well as the agreements reached by the latter.

Remuneration and economic benefits

35. The average gross monthly salary in Andorra was EUR 2 072.61 in 2016.

36. The 2016 budget provides for an allocation of EUR 954 467.34 for the remuneration of the General Councillors, which corresponds to the following salaries, paid 13 times a year:

- Gross salary of the Speaker of the GC: EUR 6 602.24;
- Gross salary of the Deputy Speaker of the GC: EUR 5 613.58;
- Gross salary of the Chairs of the parliamentary groups: EUR 3 865.53;
- Gross salary of the secretaries of the Bureau of the GC: EUR 2 066.06;
- Gross salary of the General Councillors: EUR 2 018.45.

37. Most of the Councillors work part-time. However, each parliamentary group is entitled to have one-third of its members work full-time on parliamentary duties, that is to say seven to eight Councillors out of 28. In addition to their salary, Councillors who work full-time receive a bonus corresponding to the difference between the salary of the Chair of a parliamentary group and that of a General Councillor, namely EUR 1 847.03.

38. Councillors who form part of an international delegation are entitled to EUR 130 per day or a proportional amount for a half-day as travel expenses. This sum is not meant to cover transport or accommodation expenses, which are directly paid by the General Council.

39. Finally, the General Council provides Councillors with the necessary office space and IT equipment necessary for carrying out their parliamentary activity. Councillors receive no other benefits.

Ethical principles. rules of conduct and conflicts of interest

40. There is no code of ethics or code of conduct in the General Council. The only provisions containing rules of conduct for members of parliament are Rules 6, 7 and 8 RGC, which lay down the following obligations:

- obligation to be present at plenary sessions and at meetings of the committees of which Councillors are members, and the obligation to carry out the functions and duties provided for by the Rules of Procedure;
- obligation to show courtesy and to comply with the rules of order and discipline laid down by the Rules of Procedure;

- obligation to maintain confidentiality in relation to confidential procedures and acts;
- ban on invoking or using the position of Councillor in the exercise of commercial, industrial or professional activities.

41. The GET was informed that discussions are taking place in the General Council on revising the Rules of Procedure with the aim, in particular, of incorporating ethical standards. Two legislative proposals are also under discussion within the parliamentary groups, one on transparency, conflicts of interest and incompatibilities and the other on confidentiality.

42. The GET supports these initiatives because, as GRECO has constantly stressed in its reports, it is absolutely necessary that a code or rules of conduct be adopted by and for members of parliament. Such a code should in particular encompass rules on conflicts of interest, relations of members of parliament with third parties possibly wishing to influence their activities, the acceptance of gifts, invitations and other benefits, accessory activities and financial interests (together with comments and/or concrete examples). The process of drawing up a code and keeping it up to date also gives members of parliament an opportunity to discuss what is and what is not acceptable conduct and accordingly makes them more aware of what is expected of them. Therefore, GRECO recommends that a code of conduct, accompanied by explanatory comments and/or concrete examples, be adopted for the members of the General Council and that it be brought to the knowledge of the public.

Conflicts of interest

43. The issue of conflicts of interest is particularly acute in Andorra, where there is a dense fabric of social relationships and most General Councillors carry out their duties part-time and continue to engage in their occupational activities. Apart from certain incompatibilities between a parliamentary mandate and civil service posts, there is no restriction on their activities and interests (nor on those of members of their family and relatives) which may concern all the key sectors of Andorra's economy: banks, the building industry, tourism, commerce, etc. Nothing prevents them from defending these interests in the committees – where the proceedings are confidential – or the General Council. The General Council's Rules of Procedure say nothing about how a member of parliament should take these interests into account in the exercise of his/her mandate. The only relevant provision is Rule 71 RGC, the scope of which is very limited: it states that Councillors cannot take part in votes involving their personal status as Councillors.

44. Some of the GET's interlocutors mentioned a public demand for greater transparency in this area and even for a public debate, which would enable current practices to be better regulated, in order to limit what they described as "mixing of genres", while at the same time taking account of the situation in Andorra and of the need not to paralyse parliamentary work. The GET believes such a debate would be useful and should take place in connection with the preparation of the code of conduct recommended above. Moreover, the part-time parliamentary status of the majority of the General Councillors and their various accessory or principal activities, which are legitimate in themselves, require sufficient transparency concerning interests that may be the driving force behind positions taken by Councillors in the context of parliamentary proceedings. This transparency is a need additional to the introduction of a system for members of parliament to declare their accessory activities and interests (see below). Consequently, GRECO recommends introducing an obligation to declare any conflict between a General Councillor's specific private interests and a matter examined in parliamentary proceedings (plenary session and in committee), irrespective of whether such a conflict could also be identified under a system of public declaration of interests and activities.

Prohibition or restriction of certain activities

Gifts

45. There are no rules on gifts and no discussions are taking place in the General Council on the acceptability of gifts or invitations. The members of parliament met on the spot did not seem to have a clear idea of the regime applicable to the invitations to dinners that are received by the parliamentary committees and seem to be a fairly common practice. The GET therefore considers that the discussions to be held in connection with the preparation of a code of conduct as recommended above (see paragraph 42) should also encompass the questions of acceptability and transparency with regard to gifts and invitations.

Incompatibilities

46. The incompatibility rules relate to public posts and offices. According to sections 16, 17 and 54 of the Act governing the organisation of elections and referendums, the office of General Councillor is incompatible with the following posts: Constitutional Court judge; member of the High Council of Justice; active *batlle* (court of first instance judge), judge or prosecutor; member of the Electoral Council; Chief Executive or elected member of a municipality; head of the government or minister; unspecified municipal posts; staff of the General Council, the government or public or parapublic entities, unless leave for personal reasons has been obtained; and the exercise of delegated government powers for a period exceeding six months.

47. According to the information gathered during the on-site visit, each Councillor submits a statement on his/her situation with regard to the above-mentioned rules to the General Council's Standing Committee, which is responsible for checking compliance with the incompatibility rules. The Standing Committee can call for any document it considers necessary for the accomplishment of its task, but its scrutiny generally does not go beyond the information contained in the statements.

Accessory activities, financial interests, employment on leaving office

48. The General Councillors are free to carry out any accessory function and to hold any financial interest, subject to the rules on incompatibilities set out above. There are no restrictions on their employment after the end of their mandate.

Contracts signed with public authorities

49. There are no specific rules other than those on incompatibilities mentioned above.

Improper use of confidential information

50. Rule 7 RGC establishes an obligation for Councillors not to disclose confidential information. However, the rules contain no provision on the consequences of a breach of this confidentiality rule. However, Article 377 of the Criminal Code on breaching professional secrecy and Article 393 of the Criminal Code on misuse of confidential information in order to obtain an economic advantage apply to Councillors.

Improper use of public funds

51. Article 389 of the Criminal Code punishes the improper administration of public funds by an authority or an official.

Contacts with third parties

52. There is no institutionalised lobbying in Andorra and no rule on the subject. However, there are frequent and intensive contacts between the General Council and Andorran society, especially with the business and professional associations. The General Council and its members can be easily contacted and, as pointed out above, most members of parliament carry out their mandate part-time and continue to engage in their occupational activities. Within the General Council they are therefore in a way themselves lobbyists of the sectors that employ them, and this may well guide their decisions and result in conflicts of interest. According to some of the GET's interlocutors, political and economic interests are closely intertwined and the business community is overrepresented in the General Council.

53. The GET is of the opinion that interactions between the General Councillors and third parties that could influence their work, although legitimate, must be made more transparent. It therefore calls on the Andorran authorities to conduct an in-depth analysis to this end in connection with the work on the code of conduct recommended above. The aim of this analysis should in particular be to provide members of parliament with guidelines or rules to enable them to understand what is expected of them in their interactions with third parties and to provide information to the public on potential links between third parties and members of parliament and their work in the General Council.

Declaration of assets, income, debts and financial interests

54. There is no mechanism in Andorra applicable to members of parliament requiring them to make a public declaration of their assets, income, debts or financial interests, a situation which constitutes an exception among the member states evaluated by GRECO so far. The only obligation to issue a declaration concerns General Councillors' accessory activities, which must be notified to the Standing Committee for the purpose of monitoring the implementation of the rules on incompatibilities. However, this information is not made public. The GET learnt during its on-site visit that some parties ask their elected representatives to declare their assets before a notary at the beginning and end of their term of office, but these declarations are not made public and their main purpose would seem to be demonstrating that there has been no personal enrichment of a member of parliament if there is any doubt on the subject.

55. There is accordingly no public declaration of a member of parliament's interests aimed at enhancing transparency with regard to possible conflicts of interest, which is a gap as shown by the recent events surrounding the failure of a bank suspected of money-laundering (see paragraph 16). The part-time status of the majority of General Councillors and their various accessory or principal activities, which are legitimate in themselves, necessitate sufficient transparency regarding income, assets and principal debts, ensured by means of easily accessible and regularly updated public declarations. Consequently, GRECO recommends (i) that a system for the public declaration of General Councillors' assets and interests containing quantitative data on financial and business interests (income, assets and significant debt items) be introduced and (ii) that consideration be given to including information on the parliamentarian's spouse and dependent family members (on the understanding that this information will not necessarily be made public).

Supervision and enforcement

56. The Standing Committee of the General Council ensures compliance with the rules on incompatibility applicable to members of parliament. To this end, it receives statements from General Councillors concerning the posts they hold and any posts they may have decided to relinquish. The Committee can ask them to provide the documents

it considers necessary in support of these statements. However, no sanction or procedure is provided for in the event of a breach of these rules.

57. More generally, the General Council's Rules of Procedure provide for practically no penalty to be imposed on members of parliament apart from in cases of absence without justification.

58. The GET believes that the above recommendations aimed at the introduction of a system for the public declaration of General Councillors' interests, the notification of conflicts of interest and, more generally, the adoption of standards of professional conduct should be accompanied by measures to monitor compliance with those rules by members of parliament and the application of appropriate sanctions in the event of non-compliance. The GET was moreover interested to learn that the proposed law on transparency, conflicts of interest and incompatibilities currently being drafted in one of the parliamentary groups contains a section on supervision and sanctions, which is to be welcomed.

59. It is, of course, a matter for the Andorran authorities to decide the best way to organise appropriate supervision. The GET notes that the General Council's Standing Committee, on which all the political groups are represented, is already responsible for monitoring compliance with the rules on incompatibilities. It has indicated its willingness to have its role extended. Whether this or another body is chosen, it will need to have sufficient resources to carry out this supervisory work and exercise its powers of investigation.

60. In the light of the above, GRECO recommends that measures be taken to ensure the appropriate supervision and enforcement of the future obligations concerning disclosure and the standards of conduct of members of parliament.

Immunity

61. The General Councillors enjoy full immunity (non-accountability) for the votes they cast and the opinions they express in the exercise of their functions (Article 53.2 of the Constitution). Their immunity cannot be waived.

62. On the other hand, General Councillors have no immunity that would protect them from criminal prosecution or require authorisation in order for a prosecution to be brought or continued. The law merely provides that specific authorities are charged with carrying out investigations and passing judgment. Arrest, detention and indictment must for example be decided by a panel of judges of the *Tribunal de Corts* (Article 53.3 of the Constitution), whereas for ordinary citizens jurisdiction for these aspects lies with the court of first instance. The High Court of Justice rules on the merits of cases, at both first and last instance. The GET observes that the fact there is no procedure for authorising prosecutions entrusted to a parliamentary body is a relatively exceptional situation among GRECO members and considers that this should be welcomed as an excellent practice.

Advice, training and awareness

63. In the absence of rules of conduct applicable to members of parliament and of rules relating to conflicts of interest and a declaration of assets and interests, there is currently no mechanism in the General Council for raising awareness and providing advice on these matters.

64. The introduction of a code of ethics, an obligation to notify conflicts of interest and to issue a declaration of assets and interests, as recommended above by the GET, will require an effort to provide training and raise the awareness of members of parliament,

for example at the beginning of each parliamentary term, so that they incorporate the rules of ethics in their working practices. More generally, the General Councillors will also have to be able to benefit from confidential advice on any issue of ethics or professional conduct, advice which could be provided by the services of the parliament. This is all the more important in Andorra because, as this report has emphasised several times, most members of parliament are not career politicians and continue to engage in accessory activities and maintain many links with Andorran society. GRECO accordingly recommends (i) that training and awareness-raising measures be introduced for members of parliament with regard to the ethical conduct expected of them and the issuance of declarations of interests and (ii) that members of parliament be able to benefit from confidential advice on any issue of ethics or professional conduct.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

65. Andorra has a unique judicial system with no specialist or *ad hoc* courts, in accordance with Article 85 of the Constitution. The judicial system is governed by the Justice Act (LQJ), which was amended in 2015. The reform, which came into force on 10 June 2015, was designed to ensure that the organisation and functioning of the Andorran judicial system met the requirements of independence and impartiality. Nevertheless, the GET considers that certain aspects could be improved still further, as will be discussed in the remainder of this section.

66. Andorra has the following courts:

- the *Batllia*, the court of first instance for civil and administrative matters. In certain cases specified by law the *Batllia* is also the criminal court of first instance;
- the *Tribunal de Corts* is the criminal court of first instance. It also hears the majority of appeals against decisions of an investigating judge;
- the High Court of Justice is the highest Andorran court. It has three chambers, civil, criminal and administrative, and hears all appeals against decisions of the *Batllia* and the *Tribunal de Corts*.

67. There is no appeal on points of law but it is possible to lodge an appeal with the Constitutional Court when a decision of the High Court of Justice has breached one of the fundamental rights laid down in Part II chapters III and IV of the Andorran Constitution (fundamental rights and public freedoms, and political rights). The Constitutional Court hears an average of ten such appeals per year.

68. Andorra has a single corps of professional judges, composed of *batlles*, or judges of the *Batllia*, and judges of the *Tribunal de Corts* and of the High Court of Justice. The country has a total of 24 judges, 10 of whom are men and 14 women.

- the *Batllia* has 14 judges (13 of whom are established holders of the office), including 10 women;
- the *Tribunal de Corts* has three permanent and two part-time judges. Three are men and two are women;
- the High Court of Justice currently has nine judges and one judge emeritus. Three of them are women and six are men. Eight judges work half-time, one post is permanent and there is a vacant post.

69. Access to a judicial career is in principle confined to Andorrans, under section 66 of the LQJ, but in view of the fact that until recent years the Principality did not have a sufficient reservoir of qualified legal specialists the legislation authorises Spanish or French judges to apply for posts that cannot be filled by equally qualified Andorrans. A transitional period is under way until 2023, so that eventually all lower and higher court judges are Andorrans. At present, all the judges of the *Batllia* are Andorrans, as are two of the five judges of the *Tribunal de Corts*. However, all the judges of the High Court of Justice but one are still Spanish or French. The French judges are exempted from their duties in France, whereas the Spanish judges carry out their judicial functions in both Andorra and Spain. The Andorran judges whom the GET met welcomed the current transition, which improves their career prospects and will help to make the judiciary a more attractive prospect. On the other hand, the incorporation of Spanish and French judges into certain Andorran judicial posts means that the country's judiciary enjoys insights into foreign experience and standards.

70. Judicial independence is enshrined in Article 85 of the Constitution and in the LOJ.

Article 85.1 of the Constitution:

In the name of the Andorran people, justice is solely administered by independent judges, with security of tenure, and while in the performance of their judicial functions, bound only by the Constitution and the laws.

Section 2.1 LOJ:

In the exercise of their judicial powers, the batlles and judges are independent of all the judicial bodies and of the High Council of Justice.

Section 67 LOJ:

During their term of office, the batlles and judges may not be subject to reprimands, suspended from their duties or separated from their posts unless this is the result of a penalty imposed for criminal or disciplinary liability, in accordance with established procedure and the right to a fair hearing of all parties.

71. Judges who think that their independence is threatened or being interfered with can appeal to the High Council of Justice. Judicial independence appears to be respected in practice and the GET has not been informed of any disputes on this subject.

The High Council of Justice

72. The High Council of Justice is the representative, governing and administrative body for the judicial system. It ensures that justice is administered independently and properly and that the judicial system has the necessary resources to operate effectively. It appoints judges to the various courts and acts as their disciplinary body. It has the same role *vis-à-vis* the prosecution service.

73. The Council has five members, all of whom are Andorrans over 25 years old with special knowledge of the administrative and judicial systems. Each Co-Prince appoints one member, as do the Speaker of Parliament and the head of government. The last member is elected by the *batlles* and other judges. They serve for six years, with the possibility of a single renewal of this term. The High Council of Justice is chaired by the member appointed by the Speaker of Parliament (Article 89 of the Constitution). Its members elect a Vice-Chair and a secretary. The Council takes its decisions by majority vote and is empowered, under the Justice Act, to issue regulations. Its members cannot be dismissed by the authorities that appointed them, other than in established cases of serious misconduct, with the unanimous agreement of the other members. This has never occurred.

74. All of the GET's interlocutors welcomed the High Council of Justice's active and positive role in increasing the effectiveness and resources of the Andorran judicial system. The Council has commissioned two inspectors, one French and one Spanish, to assess the functioning of certain court and prosecution activities, so as to identify ways of making them more efficient. In consultation with the High Council of Justice, the government has also decided on the construction of a new law courts building in Andorra-la-Vella. This will undoubtedly improve judges' and prosecutors' working conditions, which are currently unsatisfactory, as will be seen below.

75. The GET nonetheless considers that the current composition of the High Council of Justice needs to be revised, as it has noted that the *batlles* and other judges only appoint one in five of the Council's members, with the remainder being appointed by the executive and legislative authorities. The GET observes that this composition does not comply with European standards, particularly Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, according to which "not less than half

the members of such councils should be judges chosen by their peers". At the same time, prosecutors are not represented in the Council and are not involved in the appointment of its members, even though the body plays a leading role in the selection and disciplinary supervision of members of the prosecution service. The GET is aware of the specific circumstances of Andorra, where the judiciary and the public prosecution service have very few members, which can create organisational problems, but still considers that the Council should be made more representative by increasing the number of its members chosen by their peers. GRECO recommends that the composition of the High Council of Justice be modified to ensure that there is appropriate representation of judges and prosecutors elected by their peers in its membership.

Recruitment, career and conditions of service

76. All judges are appointed by the High Council of Justice for a six-year renewable term, from among qualified legal specialists capable of exercising judicial functions (Article 90 of the Constitution and section 31 LQJ). An appeal against an appointment decision lies to a full bench of the High Court of Justice.

77. The Council will renew judges' term of office unless the individual concerned chooses otherwise or in the event of serious misconduct. It initiates the non-renewal procedure if a judge has been disciplined for two cases of serious or very serious misconduct and the penalties imposed have not become time-barred or been automatically removed from the register (section 68.3 LQJ). Decisions not to renew a term of office are taken by a resolution, giving reasons, after a hearing of the person concerned. Such resolutions may be appealed against to the High Court of Justice.

78. The renewable term of office of judges, which is an exception among GRECO member States, reflects a pre-constitutional tradition. The Co-Princes then appointed judges for six years and this period was maintained in the 1993 Constitution. In practice, renewal is automatic, other than in the very limited circumstances described above. The GET received confirmation that, since the 1993 Constitution came into force, all the terms of office of lower and higher court judges have been renewed.

79. The GET did not hear any criticisms of this renewal procedure during its on-site visit, nor did it receive any indication that it might have resulted in undue influence on the independence and functioning of the judicial system. Nevertheless, all those it spoke to, including representatives of the authorities, favoured its abolition. This has not taken place so far because the authorities are reluctant to initiate a constitutional reform at the moment. GRECO therefore recommends that consideration be given to appointing judges for an indefinite term of office.

Recruitment

80. As noted above, eligibility for lower court judges' posts is restricted to Andorran citizens. For higher court judges' post, however, candidates of French or Spanish nationality may be appointed when posts cannot be filled by equally qualified Andorran citizens (section 66 LQJ).

81. The other conditions for entering the judiciary are a legal qualification, the enjoyment of civic and political rights, no criminal record, no charges or investigations connected with offences relating to the exercise of public or judicial duties, no physical or psychological impediments to the exercise of these duties and no disqualification for reasons of incompatibility (section 66.3 LQJ).

82. Judges of the *Batllia* are recruited via a two stage selection procedure (*concurso-oposició*) organised by the High Council of Justice (section 66 LQJ). The published notice

of the selection procedure includes an assessment scale drawn up by the Council to enable it, in the first – *conkurs* – stage, to determine candidates' qualifications. The scale takes account of academic education, professional experience, courses attended, publications and lectures given, language skills and other competences that the Council considers relevant, such as experience as a court registrar. The Council gives a weighting to each element of the scale.

83. The second, *oposició*, stage comprises at least three tests, one of the first two of which must be conducted orally: a theoretical test on subjects published in the recruitment notice, two practical cases in the legal field, which are also specified in the recruitment notice, and a language test. There is also a separate psychological test to ensure there are no impediments to exercising judicial functions.

84. Candidates are selected on the basis of the two stages of the procedure by a five-member selection board, chaired by the President of the High Council of Justice or his/her representative. The other members include one member of the Council and three others appointed by it from among the judges of the *Tribunal de Corts* and the High Court of Justice, the principal public prosecutor, university professors and other legal professionals with at least fifteen years' experience. A new selection board is constituted for each selection procedure. The written and oral tests account for 75% of candidates' final marks and their curriculum vitae for 25%. At the end of the selection procedure, the board ranks the candidates by order of the marks obtained and publishes a list of names equal to the number of posts to be filled.

85. The candidates selected must then undergo additional theoretical and practical training, as specified by the Council, for at least one year. This period may be reduced to six months for candidates with at least three years' experience as a registrar or lawyer. The Council assesses the candidates at the end of the training period and only those with a positive report are appointed as *batlles*. Appointment decisions are subject to judicial appeal.

86. The LQJ also authorises the High Council of Justice to appoint replacement *batlles* in urgent cases, when a vacant post cannot be filled by the normal procedure (section 66 of the Justice Act). A list of replacement *batlles* is drawn up each year for this purpose. It includes former judges and persons who have successfully completed the *conkurs-oposició* but have not obtained a post. Replacement *batlles* are appointed for a minimum of one and a maximum of six years, with reasons given in the appointment decision.

87. Judges of the *Tribunal de Corts* and the High Court of Justice are recruited via an internal promotion competition open to *batlles* and prosecutors who have completed at least two terms of office or by an external competition for legal professionals with 15 to 20 years' experience (section 66 ter LQJ). According to the LQJ, three-quarters of posts are, in principle, filled by promotion and one quarter by external recruitment, but if there are too few candidates for one of these recruitment methods the other method is used.

88. Candidates are selected by the High Council of Justice using a scale similar to the one used for *Batllia* judges and published in the vacancy notice. The selection procedure also includes an interview focusing on subjects that are specified, together with their weighting, in the vacancy notice.

Career

89. The High Council of Justice also decides which judges to promote to higher grades of their post. *Batlles* posts include three grades and those of higher court judges two. Promotion to a higher grade depends on completion of at least one or two terms of office and training activities determined by the Council, and the decision is based on an assessment report drawn up by the Council (section 64bis LQJ). Judges who have been

subject to disciplinary measures for two cases of slight misconduct or one of serious misconduct may not be promoted to a higher grade, so long as the penalties have not become time-barred.

90. The Council also appoints the presidents of the three courts and of the chambers of the High Court of Justice (section 33 LQJ).

91. Regarding mobility, judges retain their posting throughout their term of office, even if they change grade. Which *batlles* are attached to each of the sections of the *Batllia* is decided annually by the President of this court.

Conditions of service

92. At the start of their career, *batlles* receive a gross salary of EUR 59 098 per annum and judges of the more senior courts EUR 88 660 (Act 7-2016 of 26 May).

93. There are also grade-related supplements. For example, *batlles* on the second grade receive an annual supplement of EUR 14 781 and those on the third grade EUR 29 562. Judges do not receive any additional benefits. There are bonuses for those exercising presidential duties: EUR 10 400 for the President of the *Batllia* and EUR 3 900 for the President of the High Court of Justice. In addition there is a length of service bonus of EUR 1 300 per year served, which is paid every three years. Judges in Andorra do not receive any additional benefits.

94. The GET discovered during the on-site visit that judges and prosecutors currently work in unsuitable premises, particularly with regard to the security afforded to persons and procedural documents. The recently commenced construction of new law courts in Andorra-la-Vella should shortly remedy these problems.

Case management and procedure

Distribution of cases

95. *Batllia*: At the start of the judicial year, the President decides which *batlles* will be assigned as principal and replacement members to each of the sections (section 31 of the Transitional Judicial Procedures Act (LTPJ) of 21 December 1993). He then establishes the case lists for:

- rapporteurs for each of the civil, administrative and juvenile sections, from among the *batlles* assigned to these sections;
- investigating criminal cases, from among the *batlles* assigned to the investigations section;
- single-judge benches in civil, administrative and juvenile cases, from among the *batlles* assigned to these sections;
- duty/on call *batlle*, in which all judges take part.

96. Cases are allocated according to the chronological order in which they are entered in the case register (section 32 LTPJ). The allocation cannot be altered and nor can the case lists, other than in exceptional circumstances. Cases may be allocated to *batlles* in their absence and are then dealt with by the replacement *batlle* or, failing that, by the next one on the list. The President can only allocate cases to other *batlles* of the same section if absence or another unavoidable impediment could result in an unbalanced distribution of cases (section 33 LTPJ). The case lists and all the documents used to constitute them are public (section 34 LTPJ).

97. *Tribunal de Corts*: At the start of the judicial year, the President decides which of the court's judges to include in the case lists for rapporteurs and single-judge benches.

He also establishes the lists for carrying out the functions assigned to the court under sections 55 and 78.2 of the Justice Act (detention and prosecution of members of parliament and of the government) and for the court sitting as a full bench. Cases are then allocated according to the chronological order in which they are entered in the case register, subject to the same rules as those described earlier applicable to the *Batllia* (section 37 LTPJ).

98. High Court of Justice: at the start of the judicial year, the President decides, after consulting them, which judges will be assigned as principal and replacement members to each of the chambers, to ensure that the required workload of each represents a fair distribution of responsibilities. He also establishes the rapporteur lists for each chamber and for the full bench. Cases are then allocated according to the chronological order in which they are entered in the case register, subject to the same rules as those described earlier applicable to the *Batllia* (section 38 LTPJ).

99. Judges may only be withdrawn from cases already allocated to them if there are doubts about their impartiality (see below).

100. The GET considers that the case list system established by each of the courts, having regard to their size, ensures that cases are distributed in an appropriate manner.

Reasonable time

101. Article 10 of the Constitution grants all citizens the right to a fair hearing within a reasonable time. Many of the appeals to the Constitutional Court concern alleged breaches of this right. Unjustified delays may result in disciplinary proceedings against the judge concerned. Those concerned are also eligible for compensation for damage caused by a violation of the right to a fair hearing within a reasonable time.

102. Several persons whom the GET spoke to drew attention to the slow pace of Andorran justice, above all in civil law cases. For example, proceedings for recovery of an unpaid debt last an average of three years in Andorra, compared with six months in Spain. Complaints regarding defects in building construction can take five to ten, or even thirteen, years to settle at first instance. According to the *Batllia* judges, these delays are the result of an ancient and unsuitable civil procedure and should be eradicated with the entry into force of a new Code of Civil Procedure, which is currently being drafted. The High Council of Justice has also taken steps to rectify the problem, particularly through the computerisation of case files, which is currently in hand and should be completed in 2017. As noted above, it has also commissioned two inspectors, one French and one Spanish, to assess the functioning of certain departments and courts and make recommendations to it on how to improve their effectiveness.

Transparency

103. Court hearings are public, unless the law provides otherwise, as for example with criminal cases involving minors. In exceptional circumstances, courts may also decide, either of their own motion or at the request of one of the parties, to sit in camera (section 13 of the LQJ). Recording of all hearings is planned for the near future.

104. The High Council of Justice deals with issues of communication and relations between the judicial system and the media. The *batlles* interviewed during the visit considered that a specialised person within the *Batllia* should manage the court's communication and apparently a request to this effect has been made to the Council. The GET considers that this could well be envisaged, in liaison with the Council. However, the judges of the *Tribunal de Corts* regarded their court as too small to be able to manage its own communication.

Ethical principles, rules of conduct and conflicts of interest

105. The authorities refer in general to the fundamental values set out in the Constitution and the LQJ, which are also applicable to judges. These include the legality principle and the hierarchy of norms, fundamental and political rights and public freedoms, which are directly applicable and must be upheld by the courts, as well as the right to a fair trial.

106. The LQJ contains certain rules of conduct, such as a series of incompatibilities. It also lays down a detailed disciplinary procedure, with an exhaustive list of disciplinary offences. In addition, the Criminal Code contains specific articles on the corruption of judges (articles 383 to 385).

107. The High Council of Justice approved a compendium of ethical obligations and values for judges and prosecutors on 12 October 2016. It was drawn up by the Council, the presidents of the courts and the principal public prosecutor. All serving judges and prosecutors were consulted on the content. This inclusive approach is to be welcomed.

108. The compendium is not a disciplinary code. It is intended as a guide for the exercise of judicial functions and according to its preamble is designed to secure the compatibility of the two roles of citizen and member of the judiciary. It also seeks to offer the public a closer insight into the complexity of judges' and prosecutors' work and to increase confidence in the independent and impartial functioning of the judicial system. It has two parts, one on ethical obligations such as independence, impartiality and objectivity, integrity, reserve, discretion, attentiveness and professionalism, and a second on values such as good sense, loyalty, willingness to listen and prudence.

109. There is no legal definition and/or typology of conflicts of interest, but the authorities state that the rules on recusal or withdrawal from cases are intended to prevent conflicts of interest. These rules will be described in detail below in the relevant section of the report.

Prohibition or restriction of certain activities

Gifts

110. Under the LQJ, judges may not receive, directly or via the budget, any judicial or other fees for their own benefit, other than their salary (section 11.2). The compendium of ethical obligations and values states that judges and prosecutors may not use their positions to obtain for themselves or their relatives benefits or favours of any kind whatever. Finally, the Criminal Code makes it an offence for any judge or prosecutor to seek or accept any unfair advantage (articles 383 and 384).

Incompatibilities and accessory activities

111. Under section 69 of the LQJ, the post of judge is incompatible with any other public position, whether held by election or by appointment, any other commercial, industrial or professional activity, the practice of law and any other form of legal advisory service and, more generally, with responsibilities or duties of any other type in companies or business undertakings, both private and public.

112. Under sub-section 2 of section 69, the following accessory activities may be authorised as exceptions: managing one's personal assets; participation in congresses, conferences, seminars or courses; literary, artistic, scientific and technical production and creation; teaching and academic research; and unpaid participation in non-profit associations and foundations. Educational and other activities entailing more than six months' continuous commitment require the authorisation of the High Council of Justice.

Recusal

113. The grounds for recusal are set out in section 73 of the LQJ and are mainly concerned with family and occupational ties, close friendship or obvious hostility, legal, commercial or financial relationships or a direct interest in a matter before the courts. The decision is taken by the judge him or herself, the court concerned or, in the event of disagreement, the High Court of Justice. If the request for recusal concerns a judge of the High Court, the decision is taken by a bench of three members, of which the person concerned may not form part (section 75 LQJ).

114. In practice, according to professionals with whom the GET spoke, the recusal system, or rather the abstention of the judge concerned, which is usually the case, functions well. Several persons said that judges showed great caution, as soon as there was any appearance of partiality. The GET considers this to be an adequate response to the specific risks arising from the size of the country.

Financial interests

115. There are no specific restrictions concerning possession of financial interests.

Restrictions applicable following termination of office

116. Former judges may not act as lawyers in cases with which they have been involved in the performance of their judicial duties. Nor, during the first six months following termination of their duties, may they act as defence lawyers for individuals or legal persons that have been parties to cases with which they were involved in their final year of office (section 69bis LQJ).

117. The compendium of ethical obligations and values also stresses the importance of ensuring that judges' and prosecutors' impartiality and objectivity cannot be called into question after the end of their judicial service.

118. The GET has discovered that in the past there were frequent moves from the judges' bench to the bar. Since the possibilities for Andorrans to gain promotion in a judicial career have been improved, the profession has become more attractive and nowadays the trend is increasingly in the other direction. The first transfer from the bench to the prosecution service took place a few months before the on-site visit, accompanied by a corresponding movement of a prosecutor into a judicial career.

Contacts with third parties, confidential information

119. Judges are required to maintain professional confidentiality (section 72.1 LQJ). Disclosing facts and information obtained in the performance of judicial duties to third parties constitutes serious misconduct (section 84.d. LQJ). In addition, breaching professional secrecy (article 377 of the Criminal Code) and insider dealing (article 393 of the Criminal Code) are criminal offences. The compendium of ethical obligations and values stresses the importance of discretion, according to which judges must not comment on their decisions or those of their colleagues other than in the context of existing statutory remedies.

Declaration of assets, income, liabilities and interests

120. There are no arrangements for such declarations, other than the previously cited rules on incompatibilities and the tax return covering income from employment, property, business activities and moveable assets, to which all taxpayers are subject. Since no concerns have been expressed about possible cases of corrupt behaviour of

judges and since the judicial system is widely seen to enjoy public confidence, the GET does not consider it necessary to issue a recommendation on this subject.

Supervision and enforcement

Supervision

121. Accessory activities lasting more than six months must be authorised by the High Council of Justice.

122. The Council also oversees the functioning of the judicial system, including ensuring that judicial personnel abide by the duties attached to their posts. To this end, it can appoint inspectors from outside the Andorran judicial system. If the latter find evidence during an inspection that a judge has committed a disciplinary offence they must inform the Council and the president of the relevant court. Where there is evidence of criminal liability, the prosecution service must also be informed (section 35bis LQJ).

Sanctions

123. The disciplinary regime for judges is dealt with in sections 79 ff. LQJ. The High Council of Justice decides whether to initiate disciplinary proceedings, either of its own motion or at the request of the injured party, a citizen with knowledge of the facts, the prosecution service or the president of the court in which the judge performs his or her duties. When it institutes proceedings, the Council appoints one of its members to investigate the case within a maximum of six months. That person then submits his or her disciplinary report, which is forwarded to the individual concerned and the prosecution service, each having eight days to respond. The investigating member then decides whether or not to refer the case to the Council. The latter, after interviewing the judge concerned, takes a final decision, giving reasons, on his/her disciplinary liability. An appeal lies to the High Court of Justice.

124. The LQJ includes provisions on minor, serious and very serious misconduct (sections 83 to 84bis), for which the limitation periods are three months, six months or one year respectively from the date of the commission of the offence or the date when the facts ought to have been known. The limitation period stops running when disciplinary proceedings commence (section 82). The possible sanctions, which vary according to the seriousness of the misconduct, are a written warning, a fine of up to EUR 12 000, suspension from duties of up to one year and dismissal. The sanctions are time-barred after two years, in the case of minor misconduct, four years for serious misconduct and six years for very serious misconduct, as from the date on which they were decided (section 85).

125. Judges are civilly liable for damage and prejudice caused wilfully in the performance of their duties (section 76 LQJ).

126. Sections 77 and 78 of the LQJ establish a special procedure to determine the criminal liability of judges accused of crimes or lesser offences, which resembles the one applicable to members of parliament. Decisions on launching criminal proceedings, detention in custody and bringing of charges are taken by the full bench of the *Tribunal de Corts*, one of whose members investigates the case. Where a judge is charged with an offence, committed either intentionally or through negligence, he or she is automatically suspended from duty. The merits of the case are heard by the criminal chamber of the High Court of Justice and appeals by the full court, excluding the judges of the criminal chamber.

127. According to information received by the GET during the visit, there have been two disciplinary cases to date, but neither of them led to disciplinary measures. In the

first, in 2014, a party had contacted an investigating judge outside the legal context. However, the facts dated from more than three months earlier and the proceedings were therefore time-barred. In the second case, in 2015, the High Council of Justice could not conclude that misconduct was constituted, as the violation of the rules on incompatibilities that had taken place was time-barred. However, it found that the judge was guilty of inexcusable negligence and suspended him, along with his salary. Moreover, his term of office as a court president was not renewed, as the LOJ in its new version foresees that the mandate of court presidents is only renewable once and this judge had already presided a court for ten years.

128. The GET considers that, overall, the disciplinary system applicable to judges of the various tiers of courts and to prosecutors appears to be satisfactory. The offences are specified and the sanctions seem to be sufficiently dissuasive and proportionate. However, certain aspects of the system could be improved. The most significant problem concerns the limitation periods for disciplinary offences and their investigation, which are too short. The GET notes that the limitation periods are three months, six months or one year, depending on the seriousness of the misconduct, and that the time-limit for investigations is six months. Several people with whom the GET spoke referred to the difficulties arising from these time bars, which prevent a sufficiently detailed investigation of disciplinary cases. The High Council of Justice is itself aware of this problem and has proposed an extension of these periods to the government.

129. Secondly, the LOJ does not lay down a special procedure for disciplinary hearings before the High Council of Justice. In the two aforementioned cases, the procedure applicable to public officials was used. The Council considers that this constitutes a shortcoming and has asked for a special procedure to be approved, in particular so as to afford greater protection of the rights of defendants.

130. Finally, failure to publicise disciplinary decisions was mentioned as an issue. Most of the judges spoken to wanted the Council to improve its arrangements for communicating disciplinary decisions, so as to avoid rumours and situations where the media were informed about certain cases before members of the judiciary themselves. However, they also drew attention to the potential consequences of excessive publicity for the careers and personal lives of accused or sanctioned persons, given the size of a country "where everybody knows everybody else". The GET considers that this could be resolved by ensuring that decisions are publicised so that they are presented anonymously and/or only to the judicial authorities rather than to the public at large. At all events, judges should, at the very least, have access to a summary list of the forms of conduct that have been sanctioned, to make them aware of the behaviour that is expected of them.

131. In the light of the foregoing, GRECO recommends (i) that the arrangements for determining judges' disciplinary liability be revised by increasing the limitation period for offences and the time-limit for investigations and establishing a specific procedure for disciplinary hearings, and (ii) that steps be taken to ensure that sufficiently detailed information is available about disciplinary proceedings concerning judges, including a possible publication of the relevant case-law, while preserving the anonymity of the persons concerned.

Advice, training and awareness

132. The LOJ makes the High Council of Justice responsible for determining judges' – and prosecutors' – initial and in-service training courses, organising training activities or entering into relevant agreements with other institutions. It collaborates in particular with the French and Spanish legal service training colleges. Even the French and Spanish

judges occupying certain Andorran judicial posts have spoken of the added value offered by these training activities, which they are also entitled to take part in.

133. Persons who become judges must undertake an initial one-year period of training, which includes both theoretical aspects and practical placements in judicial departments. Eligibility for the higher grades of judge in all tiers of the court system is subject to the completion of training courses specified by the Council, for which points are awarded.

134. In 2016, the first High Council of Justice training plan included in the in-service training programme a four-hour course on judicial ethics and legal language and another of the same length on financial offences and corruption. Those who attended the first course were awarded two points and those attending the second one point. Six points were the minimum required for training in 2016, with an additional four if the judge was to be eligible for promotion.

135. Following the recent introduction of the compendium of ethical obligations and values for judges, batlles and prosecutors, the subject of the launch conference for the 2017 training programme, which took place in January 2017, was "judicial ethics and legal language". These are welcome initiatives and it is important, for both future and current judges, that they be continued. Bearing that in mind, and since the compendium of ethical obligations and values applies to both judges and prosecutors, the GET considers it important that the relevant training take full account of the particular circumstances of and challenges faced by judges of the various courts, which may differ from those relating to the profession of prosecutor.

136. The GET has also been informed that judges can ask the High Council of Justice for advice on how to deal with ethical dilemmas. However, this facility seems to be informal and relatively little known.

137. In the light of the foregoing, GRECO recommends (i) that training on various topics relating to ethics and integrity continue to be provided on a regular basis for judges, and (ii) that the possibility for judges to obtain confidential advice on these subjects be placed on a permanent and institutional footing.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the Prosecution Service

138. The prosecution service is governed by the Public Prosecution Act of 12 December 1996 (LMP). Established to represent Andorran society before the courts, it consists of a principal public prosecutor and five deputy prosecutors, who intervene in cases before all the courts. Three of them are men and three are women. Prosecutors are not members of the judiciary, although the rules governing their appointment and conditions of service are the same as for judges (section 15 of the LMP). Their training and disciplinary regime are also largely the same as that of members of the judiciary.

139. The prosecution service is governed by the principles of legality, unity and internal hierarchy and enjoys extensive functional autonomy (section 88 LQJ, section 2 LMP and Article 93.3 of the Constitution). Its budget is drawn up by the High Council of Justice, following a proposal by the principal public prosecutor, and is included in a chapter of the overall budget for the administration of justice (section 19 LMP and section 36 LQJ).

140. The principal public prosecutor can receive general instructions from the government on how to conduct prosecutions, since the government is responsible for guiding Andorran criminal justice policy. Such instructions must be given in writing (section 6 LMP). However, paragraph 2 of section 6 qualifies this principle, as follows: "Whatever recommendations are received by the prosecution service, its members must always act in such a way as to respect the principle of legality, and they remain free to comment on the facts and the assessment of the facts as they deem fit, even if it means countering the recommendations of the government".

141. The principal public prosecutor is responsible for organising and managing the prosecution service. The deputy prosecutors are subject to his or her authority regarding the organisation of their work, the nature of their assessments, legal interpretations and findings. In the event of a disagreement between members of the prosecution service, the principal public prosecutor confirms his or her instructions in writing. Notwithstanding, the deputy prosecutors remain free to make their own oral submissions in court on the interpretations and findings (section 14 LMP). The GET did not encounter any problematic issue in the practice regarding instructions during the on-site visit.

142. Andorra applies the principle of mandatory prosecution. The Andorran criminal system is accusatory: if no one carries the accusation, criminal proceedings cannot be pursued. Accordingly, Article 130 of the criminal procedure code states that if the public prosecutor asks that the proceedings be dropped and there is no accusation by a private party, the judge asks that the prosecutor's position be brought to the knowledge of persons interested by the proceedings, so that they may carry the accusation within 15 days if they so wish. If they do not, the judge declares the proceedings as terminated. Associations may also bring criminal or civil proceedings, through their legal representative, in order to defend the collective interests they stand for. The system also allows an *action popularis*. A decision by the prosecution service to drop proceedings is not open to appeal, but in such cases the matter may be referred to the investigating judge.

Recruitment, career and conditions of service

143. The principal public prosecutor is appointed by the High Council of Justice for a 6-year term, which is renewable once, based on a proposal from the government and from among people qualified to be a judge (section 10.2 LMP). The High Council of Justice consists of 5 members appointed by representatives of the Andorran State, as described in paragraph 73 of the previous chapter.

144. Deputy prosecutors are also appointed by the High Council of Justice based on a proposal from the government and from among people qualified to be a *batlle* (Article 2 of the Constitution and section 10.3 LMP). They are appointed for a 6-year term, which is renewable indefinitely.

145. The High Council of Justice grants the renewal of a deputy prosecutor's term of office, unless he or she resigns or has been convicted in court of a crime committed with intent (without prejudice to possible criminal liability, section 10.7 LMP). The High Council of Justice may also decide not to renew a deputy prosecutor's term of office if he or she has been the subject of disciplinary sanctions for two cases of gross misconduct or one case of gross misconduct without dismissal, providing the sanctions imposed are not time-barred or have not been automatically removed from the register. Non-renewal decisions are based on a resolution setting out the grounds for the decision, after a hearing with the person concerned. The resolution is open to appeal before the High Court of Justice sitting as a full court.

146. The GET reiterates that the renewable term of office is left over from a tradition which pre-dates the Constitution, as explained in the section of the report on judges. Paragraph 79 contains a recommendation to the effect that consideration be given to appointing judges for an indefinite period. Insofar as the status of deputy prosecutors is largely the same as that of judges, the Andorran authorities, in connection with this recommendation, could also consider appointing deputy prosecutors for an indefinite period in future.

147. Pursuant to section 10 of the LMP the principal public prosecutor is recruited under the same terms and conditions as higher court judges, and deputy prosecutors are recruited under the same terms and conditions as judges of the court of first instance, as described in detail in paragraphs 82 to 88 above. Based on a notice of competition and an assessment scale published by the High Council of Justice, the selection procedure is in two stages: shortlisting based on candidates' curriculum vitae followed by a series of written and oral tests. Candidates are marked and ranked by a 5-member selection panel appointed by the High Council of Justice. The candidate ranked highest is recommended by the government for appointment by the High Council of Justice. The appointment decision is open to appeal before the High Court of Justice sitting as a full court (section 10.4 LMP).

148. There are three grades of deputy prosecutor. The first level is the entry grade. Promotion to the second level comes after having completed at least one term of office, having taken part in training activities set or recognised by the High Council of Justice, and with the agreement of the principal public prosecutor. Promotion to the third level comes after having completed at least two terms at the second level, having taken part in the training activities set or recognised by the High Council of Justice, and with the agreement of the principal public prosecutor. Appointment is subject to a favourable opinion from both the High Council of Justice and the principal public prosecutor (section 10 bis LMP).

149. It is clear that the High Council of Justice plays a key role in prosecutors' appointment and careers, as well as in any disciplinary liability procedure, as explained below. However, members of the prosecution service are currently not represented within the High Council of Justice, and nor do they have any say in the appointment of the one member elected by the judiciary. The principal public prosecutor is consulted on recruitment procedures, which to some extent makes up for the lack of representation. Yet, the GET considers that the change in the composition of the High Council of Justice recommended in the previous chapter (see paragraph 75) should ensure in particular that prosecutors are represented within that body.

150. As there is only one prosecution service in Andorra, there is no mobility scheme for prosecutors. However, the new version of the LQJ enables mobility between prosecutors' and judges' careers.

151. The reasons for prosecutors' leaving office are listed in section 10.6 of the LMP as follows: expiry of the period for which they were appointed; resignation subject to a notice period of at least 6 months; disciplinary sanction disqualifying them from holding office; main or additional penalty disqualifying them from public office; incompatibility or incapacity; retirement.

152. Act 7-2016 of 26 May sets the annual gross salary of a junior prosecutor at EUR 59 098 and that of the principal public prosecutor at EUR 104 000.

153. As in the case of judges, prosecutors' salaries vary as a result of grade-related supplements. For example, a grade two deputy prosecutor receives an additional payment of EUR 14 781 per annum, while a grade three deputy prosecutor receives an additional EUR 29 562 per annum. Seniority is rewarded with an annual bonus of EUR 1 300 every three years. Prosecutors receive no additional benefits.

Case management and court procedure

154. The principal public prosecutor is responsible for the organisation of the prosecution service and has discretionary power to allocate cases. There are no rules in such matters, but the practice for many years has been to keep a register so that cases are fairly distributed. The GET welcomes this practical initiative. The principal public prosecutor can also remove a prosecutor from a case without following any particular procedure, except in recusal cases (see below).

155. The GET takes no issue with the fact that, in the hierarchical structure of the prosecution service, the principal public prosecutor has the authority to issue instructions to subordinate members of the service and to take discretionary decisions about proceedings. It notes that instructions are given in writing, and that a system is in place to ensure the fair distribution of cases. This is a means of ensuring that the process is impartial and regarded as such. However, except in recusal cases, decisions to remove a prosecutor from a case are not subject to any particular procedure or requirement as regards transparency. To improve transparency of decision-making, GRECO recommends that decisions to remove a prosecutor from a case be justified in writing.

156. Concerning the need to deal with cases within a reasonable timeframe, the authorities refer to sections 26 g) and 27 e) of the LMP, whereby a decline in the case processing rate qualifies as misconduct ranging from serious to very serious. According to section 27bis an unjustified delay in carrying out the duties and responsibilities of a prosecutor constitutes minor misconduct. In practice, the registry keeps a record of cases in a database which cannot be modified by the prosecutors. It can be used to check that timeframes are respected.

157. The prosecutors whom the GET met during the on-site visit drew attention to the shortage of financial and procedural resources which was affecting their efficiency, particularly with regard to economic and financial cases. The GET welcomes the recent launch of construction work on a new courthouse in Andorra-la-Vella which means that the prosecution service will soon be able to move into purpose-built premises offering more security with respect to both individuals and procedural documents. More generally, however, mention was made of the deficiencies in terms of human and financial resources, means of policing, and special investigative techniques. Furthermore, the protection of whistle-blowers – in respect of whom there is still a legal vacuum – and witnesses is proving problematic in practice, on account of the size of Andorra, where

“everybody knows everybody else”. The GET points out that the Principality has experienced rapid economic and demographic growth since the mid-20th century. In addition to the recent institutional reform of the organisation and functioning of the judicial system, the Andorran prosecution service and justice system need to be granted resources commensurate with this development, whether in the form of funding or in terms of the capacity to investigate economic and financial crime.

Ethical principles, rules of conduct and conflicts of interest

158. Generally speaking, the authorities refer to the fundamental values set out in the Constitution, the LQJ, which lists a series of incompatibilities, and the LMP, regarding the disciplinary rules that apply to prosecutors.

159. The High Council of Justice approved a compendium of ethical obligations and values for judges and prosecutors on 12 October 2016. It was drawn up by the Council, the presidents of the courts and the principal public prosecutor. All serving judges and prosecutors were consulted on the content. This inclusive approach is to be welcomed.

160. The compendium is not a disciplinary code. It is intended as a guide for the exercise of judicial functions. It also seeks to offer the public a closer insight into the complexity of judges’ and prosecutors’ work. It has two parts, one on ethical obligations such as independence, impartiality and objectivity, integrity, reserve, discretion, attentiveness and professionalism, and a second on values such as good sense, loyalty, willingness to listen and prudence.

161. There is no legal definition and/or typology of conflicts of interest, but the authorities state that the rules on recusal or withdrawal from cases are intended to prevent conflicts of interest. These rules will be described in detail below in the relevant section of the report.

Ban or restrictions on certain activities

Gifts

162. The compendium of ethical obligations and values stipulates that judges and prosecutors may not use their position to obtain favours or advantages of any kind, either for themselves or their families. Moreover, it is a criminal offence under Articles 380 and 381 of the Criminal Code to seek or accept any undue advantage.

Incompatibilities and ancillary activities

163. Incompatibilities with respect to prosecutors are the same as those listed in the LQJ (section 20 LMP). Consequently, the position of prosecutor is incompatible with any other public position, whether held by election or by appointment, any other commercial, industrial or professional activity, the practice of law and any other form of legal advisory service and, more generally, with responsibilities or duties of any other type in companies or business undertakings, both private and public (section 69 LQJ).

164. Ancillary activities open to prosecutors are the same as those allowed to judges, namely: managing one’s personal assets; participation in congresses, conferences, seminars or courses; literary, artistic, scientific and technical production and creation; teaching and academic research; and unpaid participation in non-profit associations and foundations. Educational and other activities entailing more than six months’ continuous commitment require the authorisation of the High Council of Justice (section 69.2 LQJ).

Recusal

165. The grounds for withdrawal and recusal are the same as for judges (sections 20 and 21 LMP, which refer to section 73 LQJ). In particular, they include family and occupational ties, close friendship or obvious hostility, legal, commercial or financial relationships, or a direct interest in the matter under consideration. The decision is taken by the prosecutor concerned or by the principal public prosecutor, at the request of the parties. If the recusal request concerns the principal public prosecutor, the decision lies with the High Council of Justice (section 22 LMP).

Financial interests

166. No mention was made of any specific restrictions on financial interests.

Restrictions once the term of office has ended

167. As is the case for judges, prosecutors may not act as lawyers in cases with which they have been involved in the performance of their duties. Nor, during the first six months following termination of their duties, may they act as defence lawyers for individuals or legal persons that have been parties to cases with which they were involved in their final year of office (section 69bis LQJ).

168. Moreover, according to the compendium of ethical obligations and values, particular care must be taken to ensure that the impartiality and objectivity of a judge or prosecutor cannot be called into question as a result of an activity carried out outside the judicial system.

Contacts with third parties, confidential information

169. Prosecutors who disclose facts and information obtained in the course of their duties to third parties are guilty of serious misconduct (section 27.c LMP), punishable by a disciplinary sanction. In addition, breaching professional secrecy (section 377 of the Criminal Code) and insider dealing (section 393 of the Criminal Code) are criminal offences which apply to prosecutors. Lastly, the compendium of ethical obligations and values refers to the duty of discretion, which covers the confidentiality of judicial proceedings and information that has come to the knowledge of prosecutors in the course of their duties.

Declarations of assets, income, liabilities and interests

170. Andorra does not have a system for declaring prosecutors' assets, income, liabilities and interests other than the previously cited incompatibility rules and the tax return on income from employment, property, business activities and movable assets which concerns all taxpayers. Given that no concerns were raised about corruption involving prosecutors and since the prosecution service generally seems to enjoy public trust, the GET does not see any need for a recommendation in this regard.

Supervision and enforcement

Supervision

171. It is the principal public prosecutor who oversees respect by prosecutors of the rules governing incompatibilities and ancillary activities. Respect of these rules by the principal public prosecutor him/herself falls in the remit of the High Council of Justice (section 22 LMP, which is applicable by analogy). In case the rules regarding

representation restrictions after the end of a prosecutor's duties are disregarded, it is up to the parties affected to raise the matter.

Sanctions

172. The disciplinary system applicable to prosecutors is governed by sections 24 to 30 of the LMP. Disciplinary proceedings may be initiated by the High Council of Justice of its own motion or at the request of the injured party, a citizen having knowledge of the facts, the principal public prosecutor, the president of the court concerned or the government. The prosecution service is not party to the proceedings. When initiating disciplinary proceedings, the High Council of Justice also appoints one of its members to investigate the case within three months. The disciplinary report is then forwarded to the prosecutor concerned and to a judge appointed by the High Court of Justice to produce a report setting out the facts and charges. After hearing the prosecutor concerned, the High Council of Justice hands down a final reasoned decision on his or her disciplinary liability. The decision is open to appeal before the High Court of Justice.

173. The LMP provides for minor, serious, and very serious cases of misconduct which are time-barred after a period of three months, six months, or one year, respectively, starting from when the facts were committed or from when they should have been known. This period is suspended by the start of disciplinary proceedings. Possible sanctions vary according to the seriousness of the misconduct and are the same as for judges, in other words a written warning, a fine of up to EUR 12 000, suspension from duties for up to a year, and dismissal. Sanctions are time-barred after two years for minor misconduct, four years for serious misconduct, and six years for very serious misconduct, starting from when they were imposed.

174. Prosecutors are civily liable for damage and harm caused intentionally in the performance of their duties (section 23 LMP, which refers to section 76 LQJ).

175. The criminal liability of prosecutors for crimes or lesser offences can be established according to a special procedure set out in the LQJ (sections 77 and 78). It is the same procedure as for judges. Accordingly, decisions to launch criminal proceedings against prosecutors, detain them and bring charges must be taken by the full bench the *Tribunal de Corts*, and it is a judge from this court who investigates the case. A prosecutor charged with an offence deemed to involve intent or negligence is automatically suspended from his or her duties. The Criminal Chamber of the High Court of Justice rules on the merits at first instance, and the full court rules on appeal, but without the judges from the Criminal Chamber.

176. In recent years, there have been no disciplinary, criminal or civil cases involving prosecutors.

177. The GET recalls that in the previous section it noted that the disciplinary system applicable to judges is satisfactory overall, with clearly specified offences and sanctions that are sufficiently dissuasive and proportionate. Given that the disciplinary system for prosecutors is very similar, the same findings also apply here. However, the previously mentioned aspects of the system that leave room for improvement also apply in the case of prosecutors. The main problem is the limitation periods according to section 25 of the LMP, which are three months, six months and one year respectively for minor, serious and very serious cases of misconduct. The time-limit for investigating cases involving prosecutors is three months, compared with six months for judges. As pointed out by several of the GET's interlocutors, these time limits are too short to allow sufficiently thorough detection and investigation of disciplinary cases. The GET notes that the High Council of Justice is aware of the problem and has moreover proposed to the government that the time limits be extended. It also recalls its findings in the previous section as to the lack of a special procedure for disciplinary hearings before the High Council of Justice

and the fact that disciplinary decisions are not public (see paragraphs 128 to 131). Finally, the GET notes that the LMP does not foresee a systematic consultation of the principal public prosecutor regarding disciplinary sanctions to be imposed on prosecutors. It takes the view that adopting such a measure could also be a way of overcoming the lack of representation of prosecutors within the High Council of Justice observed at the beginning of this chapter. Consequently, GRECO recommends (i) that the arrangements for determining prosecutors' disciplinary liability be revised by increasing the limitation period for offences and the time-limit for investigations, establishing a specific procedure for disciplinary hearings and including a provision that the principal public prosecutor must be consulted on any disciplinary action taken against deputy prosecutors, and (ii) that steps be taken to ensure that sufficiently detailed information is available about disciplinary proceedings concerning prosecutors, including a possible publication of the relevant case-law, while preserving the anonymity of the persons concerned.

Advice, training and awareness

178. The arrangements regarding the initial and in-service training of prosecutors, including with regard to ethics, appropriate conduct, prevention of corruption and conflicts of interest are the same as for judges (see paragraphs 132 to 136). Responsibility for devising training courses, organising training activities, or entering into relevant agreements with other institutions lies with the High Council of Justice.

179. The GET reiterates that following the recent introduction of the compendium of ethical obligations and values for judges and prosecutors, the subject of the launch conference for the 2017 training programme, which took place on 26 January 2017, was "judicial ethics and legal language". These are welcome initiatives and it is important, for both future and current prosecutors, that they be continued. Bearing that in mind, and since the compendium of ethical obligations and values applies to both judges and prosecutors, the GET considers it important that the relevant training take full account of the particular circumstances of and challenges faced by prosecutors, which may be quite different from those concerning judges.

180. Lastly, the GET points out that prosecutors faced with ethical dilemmas can seek advice from the principal public prosecutor or the High Council of Justice, although the latter possibility would appear to be informal, relatively unknown, and little used in practice.

181. In the light of the foregoing, GRECO recommends (i) that training on various topics relating to ethics and integrity continue to be provided on a regular basis for prosecutors, and (ii) that the possibility for prosecutors to obtain confidential advice on these subjects be placed on a permanent and institutional footing.

VI. RECOMMENDATIONS AND FOLLOW-UP

182. In view of the findings of the present report, GRECO addresses the following recommendations to Andorra:

Regarding members of parliament

- i. considering the introduction of a public consultation procedure in connection with legislative proceedings (paragraph 29);
- ii. that a code of conduct, accompanied by explanatory comments and/or concrete examples, be adopted for the members of the General Council and that it be brought to the knowledge of the public (paragraph 42);
- iii. introducing an obligation to declare any conflict between a General Councillor's specific private interests and a matter examined in parliamentary proceedings (plenary session and in committee), irrespective of whether such a conflict could also be identified under a system of public declaration of interests and activities (paragraph 44);
- iv. (i) that a system for the public declaration of General Councillors' assets and interests containing quantitative data on financial and business interests (income, assets and significant debt items) be introduced and (ii) that consideration be given to including information on the parliamentarian's spouse and dependent family members (on the understanding that this information will not necessarily be made public) (paragraph 55);
- v. that measures be taken to ensure the appropriate supervision and enforcement of the future obligations concerning disclosure and the standards of conduct of members of parliament (paragraph 60);
- vi. (i) that training and awareness-raising measures be introduced for members of parliament with regard to the ethical conduct expected of them and the issuance of declarations of interests and (ii) that members of parliament be able to benefit from confidential advice on any issue of ethics or professional conduct (paragraph 64);

Regarding judges

- vii. that the composition of the High Council of Justice be modified to ensure that there is appropriate representation of judges and prosecutors elected by their peers in its membership (paragraph 75);
- viii. that consideration be given to appointing judges for an indefinite term of office (paragraph 79);
- ix. (i) that the arrangements for determining judges' disciplinary liability be revised by increasing the limitation period for offences and the time-limit for investigations and establishing a specific procedure for disciplinary hearings, and (ii) that steps be taken to ensure that sufficiently detailed information is available about disciplinary proceedings concerning judges, including a possible publication of the relevant case-law, while preserving the anonymity of the persons concerned (paragraph 131);

- x. (i) that training on various topics relating to ethics and integrity continue to be provided on a regular basis for judges, and (ii) that the possibility for judges to obtain confidential advice on these subjects be placed on a permanent and institutional footing (paragraph 137);

Regarding prosecutors

- xi. that decisions to remove a prosecutor from a case be justified in writing (paragraph 155);
- xii. (i) that the arrangements for determining prosecutors' disciplinary liability be revised by increasing the limitation period for offences and the time-limit for investigations, establishing a specific procedure for disciplinary hearings and including a provision that the principal public prosecutor must be consulted on any disciplinary action taken against deputy prosecutors, and (ii) that steps be taken to ensure that sufficiently detailed information is available about disciplinary proceedings concerning prosecutors, including a possible publication of the relevant case-law, while preserving the anonymity of the persons concerned (paragraph 177);
- xiii. (i) that training on various topics relating to ethics and integrity continue to be provided on a regular basis for prosecutors, and (ii) that the possibility for prosecutors to obtain confidential advice on these subjects be placed on a permanent and institutional footing (paragraph 181).

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

184. GRECO invites the authorities of Andorra to authorise, at their earliest convenience, the publication of this report, to translate the report into the 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 Romania 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 Romania 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.
