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FOURTH EVALUATION ROUND

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

EVALUATION REPORT

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EXECUTIVE SUMMARY

1. Public perception of the level of corruption in Denmark has historically been very low. Corruption prevention – including with respect to members of parliament, judges and prosecutors – relies to a large degree on trust, openness and public scrutiny and appears to be quite effective in practice. Integrity levels of all categories of persons under review seem to be high. Moreover, GRECO identified several strong structural points – for example, the independence of the judiciary was further strengthened in 1999 by the establishment of several bodies such as the Court Administration and the Judicial Appointment Board and appears to be exemplary. Additional activities by judges are closely regulated. Ethical questions are included in the training offered to judges and prosecutors.

2. That said, GRECO is of the opinion that the current system based on trust might not always provide sufficient safeguards against corruption risks in the future, and it wishes to stress that the risks related to conflicts of interest must not be underestimated. The present report includes recommendations – as well as several further suggestions – aimed at raising awareness among members of parliament, judges and prosecutors of such risks, further enhancing transparency and public trust in them and the institutions they represent.

3. GRECO has identified areas in corruption prevention among members of parliament where there is room for improvement. In particular, it is recommended that a code of conduct be established, that *ad hoc* disclosure of actual and potential conflicts of interest be required, regular public registration of the occupations and financial interests be made mandatory and enforcement of the rules be ensured. Such measures should be seen as safeguards for ensuring that the parliamentary process is free from – and seen to be free from – improper external influence.

4. Turning to judges and prosecutors, the development, dissemination and publication of sets of clear ethical standards/codes of conduct – tailor-made for both professions – are recommended, coupled with complementary measures for their implementation, including dedicated training. It is crucial that such training is also provided to expert judges and lay judges, who play an important role in the judicial system.

I. INTRODUCTION AND METHODOLOGY

5. Denmark joined GRECO in 2000. Since its accession, Denmark has been subject to evaluation in the framework of GRECO's First (in February 2002), Second (in September 2004) and Third (in December 2008) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

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

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

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

8. As regards parliamentary assemblies, the evaluation focuses on members of national parliaments, including all chambers of parliament and regardless of whether the members of parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2013) 6E) by Denmark, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Denmark from 9-13 September 2013. The GET was composed of Mr Ernst GNAEGI, Head of the International Criminal Law Unit, Federal Office of Justice (Switzerland), Mrs Alexandra KAPIŠOVSKÁ, Legal Adviser, Ministry of Justice (Slovak Republic), Mr Jens-Oscar NERGÅRD, Senior Adviser, Ministry of Local Government and Modernisation (Norway) and Ms Angelina SARANOVIC, Advisor in the Committee on Tourism, Agriculture, Ecology and Spatial Planning, Parliament of Montenegro (Montenegro). The GET was supported by Michael JANSSEN from GRECO's Secretariat.

9. The GET held interviews with representatives of the Ministry of Justice, the Court Administration, the Maritime and Commercial Court, the Eastern High Court, the District Court of Copenhagen, the Appeals Permission Board, the Supreme Court, the Special Court of Indictment and Revision, the External Activity Board, the Judicial Appointment Council, the Director of Public Prosecutions, the State Prosecutor in Copenhagen, the Commissioners in Copenhagen and in North Zealand, the State Prosecutor for Serious Economic and International Crime. The GET also interviewed a representative of the Parliamentary Ombudsman, the Speaker of the *Folketing* (the national Parliament) and other members of the *Folketing* and its Presidium, as well as officials of the *Folketing* Administration, namely the Legal Services Office, the Committees' Secretariat, the Financial Department, the Personnel Office and the Communication Department. Finally, the GET spoke with representatives of the Association of Danish Judges and the Association of Danish Assistant Judges, the Association of Public Prosecutors,

Transparency International Denmark, the Association of Danish Media, the Aalborg University (Department of Law), the Confederation of Danish Industry and the Danish Bar and Law Society.

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

II. CONTEXT

11. GRECO's 2002 First Round Evaluation Report states that "Denmark appears to have very little corruption. (…) Denmark has addressed its concern about keeping corruption at bay by clearly heeding all international legal standards in the anti-corruption field and implementing them in the national legislation as well as within public administration."[1] This overall evaluation has been confirmed by recent international studies.[2]

12. Public perception of the level of corruption in Denmark has historically been very low. Denmark has been listed among the four least corrupt countries on Transparency International's yearly corruption perception index (CPI) since 1995, the year it was first published. In 2012 and 2013, Denmark was ranked first. In line with the CPI, rule of law and control of corruption have been ranked at the higher end of the World Bank governance indicators for almost a decade.[3]

13. Turning more specifically to the areas covered by GRECO's Fourth Evaluation Round, it would appear that, over the last decade, public trust in the Parliament and in political parties has been constantly higher in Denmark than in most other countries surveyed for the European Commission's Eurobarometer.[4] Similarly, the percentage of those surveyed who think that corruption is widespread among politicians in Denmark was 38% in 2013, as compared to the EU average (56%).[5] As far as the judiciary is concerned, according to the Eurobarometer on corruption, the percentage of those surveyed who think that corruption is widespread in this branch of power (9%) is clearly below the EU average (32%).[6] Moreover, the judiciary is said to be the most trusted institution in Denmark.

14. While the Danish system has gained the confidence of the citizens in such crucial institutions as Parliament and the judiciary, the GET still sees room for improvement in the regime for preventing corruption – and it wishes to ally itself with the following statements made in GRECO's Second Round Evaluation Report which fit well with the impressions it gained during the Fourth Round on-site visit: "At all levels of Danish society (public administration, private business, associations, scientific community or the media), the general opinion is that corruption has no chance in Danish society. There is a common conviction that even changes in moral attitudes and the evolution towards a more diversified society with different moral and ethical roots will not be a challenge to traditional Danish values with regard to corruption. The GET hopes that this certainty will not cause a false sense of security, and that people will remain aware of the dangers of corruption. In any case, formulating some more binding rules on the prevention of corruption and on avoiding conflicts of interest will strengthen this stable base."[7]

[1] See document Greco Eval I Rep (2002) 6E, paragraphs 100/102/103.
[2] See, in particular, the National Integrity System Assessment on Denmark, Transparency International (2011), and the Sustainable Governance Indicators (SGI) (2011) Denmark Report by Bertelsman Stiftung.
[3] See http://info.worldbank.org/governance/wgi/sc_chart.asp
[4] See http://ec.europa.eu/public_opinion/cf/step1.cfm, under "Trust in Institutions".
[5] Special Eurobarometer on corruption 397 (published in February 2014).
[6] Special Eurobarometer on corruption 374 (published in February 2012).
[7] See document Greco Eval II Rep (2004) 6E, paragraph 64.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

15. Denmark is a constitutional monarchy and parliamentary democracy. Under the 1953 Constitution, the Danish Parliament (*Folketing*) is tasked to enact legislation, exercise control of the Government, adopt the State's budgets and take part in international co-operation. The *Folketing* is a unicameral assembly comprised of 179 members (MPs) who are elected directly under a proportional representation system. Two MPs are elected in each of the autonomous territories of Greenland and the Faroe Islands. Parliamentary elections are held at least every four years, but it is within the powers of the Prime Minister to ask the Queen to call for an election before the term has elapsed. The Constitution sets out certain basic principles for parliamentary elections. More detailed provisions are contained in the Parliamentary Elections Act[8] which also regulates MPs' remuneration, pension and other emoluments. The internal workings of the *Folketing* are specified in greater detail in the Standing Orders.

16. Article 56 of the Constitution states that "members of the *Folketing* are bound solely by their convictions and not by any directions from their electors." From a legal perspective, therefore, it is left entirely to each individual MP to determine if s/he should represent the national public interest or more particular interests, e.g. those of her/his constituency or those of a party. The authorities indicate however that, in practice, party loyalty is very strong and in the vast majority of cases MPs vote along party lines.

17. An MP may voluntarily give up her/his mandate at any time for any reason but can only be compelled to do so if convicted of an act which in the eyes of the public makes her/him unworthy of being an MP. It is up to the *Folketing* itself to determine – by a plenary vote – if an act for which an MP has been convicted in a court makes her/him unworthy. Since 1980 there have been two cases where such plenary votes have been held. In 1991 an MP lost his seat after having been convicted of criminal offences and in 1983 an MP lost his seat after having been convicted of tax offences. Since 1980, some similar cases had not been put to a vote because, for example, the MPs in question had voluntarily given up their seat. If an MP gives up or loses her/his mandate or dies, substitute members are called in to take up the vacant mandate. Substitutes may also be called in temporarily if a permanent MP is granted a leave of absence.

18. There are 26 standing committees, most of which have spheres of competence that roughly mirror those of the Government ministers. The standing committees have 29 members each, except the Standing Orders Committee which has 21, and the Scrutineers' Committee, the Finance Committee and the Naturalisation Committee which have 17 members each. In principle, seats in the standing committees are allocated proportionally between the party groups in the *Folketing*; in practice, the party groups form two large blocks between which committee seats are allocated proportionally. Within each block, committee seats are divided between the party groups according to political agreements.

19. The *Folketing* elects a Speaker and four Deputy Speakers from among its members for each parliamentary session. The main responsibilities of the Speaker are to provide optimal conditions for parliamentary work, to ensure that parliamentary sessions are properly conducted and that MPs have favourable working conditions. The Speaker is also head of the Administration of the *Folketing* which employs about 440 people. The Speaker and the Deputy Speakers jointly constitute the supreme authority in the *Folketing*, called the Presidium.

[8] Elections in Greenland and the Faroe Islands follow slightly different rules laid down in two separate Acts.

20. There are three special institutions which are affiliated with and funded by the *Folketing* but work independently of the *Folketing*. Neither the Government nor the *Folketing* can influence their work. Firstly, the Auditor General's Office headed by the Auditor General – who is appointed by the Speaker of the *Folketing* with the consent of the Standing Orders Committee on the recommendation of the Public Accounts Committee – which audits the State's accounts. Second, the Public Accounts Committee, whose six members are appointed by the *Folketing* and which reviews the annual report of the Auditor General's Office and presents its findings to the *Folketing.* Third, the Ombudsman, who is elected by the *Folketing* and who exercises control over State, municipal and other public administrative authorities – with the exception of the judiciary – on behalf of the *Folketing*. The Ombudsman investigates complaints by citizens and also takes up cases on his own initiative (such as issues which have attracted media focus) and regularly visits public institutions.

Transparency of the legislative process

21. All MPs are entitled to introduce bills and proposals for other decisions that the *Folketing* must consider (however, the latter can decide by a simple majority in a plenary vote to dismiss a bill or other proposal). Nonetheless, in practice the vast majority of bills introduced in the *Folketing*, and the overwhelming majority of bills passed, are Government bills. As part of the preparatory work on Government bills, the responsible ministry normally carries out a public consultation[9] on a draft bill, which in most cases is the first time that a full draft for new legislation is made accessible to the public (on the internet). Public consultation on a draft bill generally involves sending the draft to a range of authorities, organisations, businesses, etc. believed to have a particular interest in the subject-matter, inviting them to provide the responsible ministry with any comments they may have within a certain timeframe. In principle, any person or entity can comment on the draft by writing to the responsible ministry. At the same time as a Government bill is introduced in the *Folketing*, the responsible ministry normally submits the comments received during public consultation to the relevant standing committee with a written statement containing the views of the ministry on the various comments.

22. According to the non-binding "Guidelines for quality in legislation" published by the Ministry of Justice, the timeframe for public consultation must be adapted to the circumstances of each case, but should be sufficiently long to allow consulted parties to produce an adequate reply. However, during the on-site visit various interlocutors including MPs shared with the GET their concerns about the fact that in practice, consultation periods are often very short, thus undermining the tradition of civil society organisations and stakeholders contributing to legislative work which may narrow the foundation for political decision-making. MPs interviewed by the GET were aware of the problem but no political agreement has yet been reached on reforms. After the visit, the authorities indicated that in the 2012-2013 parliamentary session the consultation periods had improved (in particular, the average consultation period was 27 days as compared to 21 and 22 days in the previous sessions), and that since December 2013, the Ministry of Justice has recommended that the date of submission of a draft bill for consultation and the deadline for the consultation period (or, in cases where a draft bill is not submitted for consultation prior to the bill being put before Parliament, the reason) should be included in the explanatory memorandum to a bill. The GET welcomes these developments and encourages the authorities to persist in their efforts to further enlarge the public consultation periods to ensure that they are sufficiently long in practice, as required by the above-mentioned guidelines. In the view of the GET, in addition to expanded periods, fixed time periods would be preferable, for the sake of clarity and transparency of the legislative process.

[9] Public consultation is provided for in non-binding Government guidelines for quality in legislation and is, according to the authorities, widely seen as an integral part of the legislative process.

23. As soon as a bill is introduced in the *Folketing*, it is made public on the website of the *Folketing* (www.ft.dk) and in the electronic Report of Danish Parliamentary Proceedings (www.folketingstidende.dk).

24. Plenary sessions in the *Folketing* are in principle open to the public. The Constitution and the Standing Orders provide that plenary sessions may be held *in camera*, but this option has never been used under the current Constitution. Members of the public may hear a session from the visitors' gallery to the extent that seating is available. Plenary sessions are broadcast on the website and on the television channel of the *Folketing*. Meeting reports and voting records – including the votes of each individual member – can be viewed either on the website or in the electronic Report of Danish Parliamentary Proceedings.

25. As a rule, committee meetings are held *in camera*, but the committees may decide to hold them openly. In particular, consultations with ministers are often open to the public (upon prior registration and within the limits of available seating) and broadcast on the website and/or on the *Folketing*'s own television channel.[10] During the interviews, the GET was informed that more generally, many committee meetings are public. Committees may invite anyone – including lobbyists – they deem suitable to impart their views on the matter at hand. The composition of committees at any given time and agendas for ordinary committee meetings are transparent and can be found on the parliamentary website. Information on the members present at a particular meeting is not available, but the names of experts heard and proposals discussed will often be apparent from the meeting agenda. When a committee refers a bill or other proposal back to the plenary, it does so in the form of a report that contains the recommendations, proposed amendments and often detailed political remarks of the party groups in the committee. The report is made public and can be found on the website at least two days prior to the subsequent plenary reading.

26. While it is widely recognised that openness and transparency of State institutions are an important part of the Danish culture – and media representatives reported to the GET that overall conditions for doing investigative work were good – the GET's attention was repeatedly drawn to certain restrictions on access to information. In particular, several interlocutors were concerned that certain provisions of the recently adopted Access to Public Information Act, which triggered significant public protest, may prevent the media and the public at large from gaining the necessary insight into public decision-making and from acting as public watchdogs. I*nter alia*, it was mentioned that under the new legislation the exchange of documents between MPs and ministers in matters concerning legislation and other "corresponding political processes" will not be accessible to the public. In this connection, the GET was interested to hear that the Parliamentary Ombudsman has been tasked with assessing the application of the new legislation, which will enter into force in January 2014, over a period of three years. Given the important role of the public in the control of State institutions in the Danish system, the GET encourages the authorities to keep the legislation on access to information under review in order to ensure that such access is not unduly restricted.

Remuneration and economic benefits

27. According to Statistics Denmark, in 2011 the average gross salary ("standard calculated monthly earnings") in Denmark was 38,090.47 DKK/approximately 5,100 EUR per month.

28. An MP currently receives a taxable base remuneration of 50,083 DKK/approximately 6,700 EUR per month. The Speaker of the *Folketing* receives the

[10] The television channel, known simply as *Folketinget*, is broadcast free-to-air in Denmark as well as being part of the basic packages of all major Danish cable TV operators.

same (taxable) remuneration as the Prime Minister, i.e. 1,458,214 DKK/approximately 195,400 EUR per annum in 2012. In addition to the aforementioned basic remuneration, each MP – including the Speaker – receives a tax-free so-called cost allowance of 4,962 DKK/approximately 660 EUR[11] per month. The cost allowance is intended as a fixed and simple allowance to cover a range of minor costs associated with the work of an MP. From a legal perspective there is no obligation on an MP to work for a specified amount of time.

29. The *Folketing* provides flats within its premises free of charge and free of tax to the Speaker and the Deputy Speakers. Other MPs who are not domiciled in the Zealand area are entitled either to a flat provided free of charge and free of tax or to tax-free reimbursement of the cost – up to 73,223 DKK/approximately 9,810 EUR per annum – of a second home in the greater Copenhagen area. Such costs must be accounted for annually. In addition, such MPs receive DKK 29,290/approximately 3,920 EUR per annum as a fixed, tax-free allowance for the additional costs of keeping two homes. Other MPs are entitled to reimbursement of up to 12 nights' hotel accommodation in Copenhagen, per calendar year, in connection with meetings etc. in the *Folketing*. Finally, an MP is entitled to reimbursement of up to 12 nights' hotel accommodation, in his/her constituency, per calendar year and subject to certain restrictions. In all cases, hotel costs are only reimbursed on the basis of supporting documentation and up to DKK 1,025/approximately 140 EUR per night (DKK 1,160 in the Faroe Islands). Reimbursements are tax-free.

30. MPs are provided, upon request, with a first-class rail and bus pass which they may use freely for travel within Denmark for their political work as well as for personal purposes (in the latter case, it is taxable). MPs are reimbursed for domestic flights in connection with their political work. For travel within Denmark, the *Folketing* maintains a restrictive and quite detailed policy on reimbursement for taxi rides or distances driven by the MPs themselves in their own cars. When MPs travel abroad in an official capacity, e.g. as members of parliamentary delegations, their travel and accommodation expenses as well as travel insurance are paid entirely by the *Folketing*. Most of the travel benefits are tax-free.

31. MPs are granted technological equipment consisting of a laptop computer, internet access from home, a tablet computer and a mobile phone, which may be used for personal as well as political purposes.

32. MPs begin to accrue pension rights (taxable) after one year's membership of the *Folketing*. The pension rights accrued reach a maximum of 57 per cent of the base remuneration after 20 years' membership.

33. If an MP leaves the *Folketing* following an election or due to illness, s/he can continue to collect an amount equal to the base remuneration ("post-remuneration") for between 12 to 24 months, depending on the duration of the membership. However, income from other sources is deducted from the post-remuneration, with the exception of income from other sources up to 100,000 DKK/approximately 13,400 EUR in the first 12 months after having left the *Folketing*. The former MP is also entitled to coverage – free of tax – of costs for adult education, for the same period of time, up to a maximum amount of 20,000 DKK/approximately 2,700 EUR per year of membership or up to a total of 100,000 DKK/approximately 13,400 EUR (whichever amount is lower).

34. The *Folketing* provides MPs (and the staff of party groups) with office space, furniture, technological equipment, etc. The individual MPs receive no public funds for office budgets. They are allowed to use private means to run their offices and are not required to report on such expenditure. During the interviews, the GET was however

[11] 6,616 DKK/approximately 880 EUR for MPs elected in Greenland or the Faroe Islands.

informed that such private support was not common, MPs questioned on the subject were not aware of any such cases.

35. Parliamentary party groups receive public funds (party group grants) which are mostly used to pay the staff employed by the party groups. They are composed of a base amount for each party group (in 2013, 286,758 DKK/approximately 38,430 EUR per month)[12] and an amount per member (44,962 DKK/approximately 6,020 EUR per month).[13] Use of party group grants is governed by a set of rules issued by the Standing Orders Committee and party groups must provide annual accounts of their use of the grants to the Presidium of the *Folketing*. The accounts are reviewed by external auditing firms and published on the website of the *Folketing*. The party groups are not barred from supplementing their party group grants with funding from external sources.

Ethical principles, rules of conduct and conflicts of interest

36. Some general principles can be found in the Constitution – according to which MPs are bound solely by their convictions,[14] in the Standing Orders – according to which the Speaker has to ensure that order is maintained and that the form of parliamentary debates is "sufficiently dignified",[15] and in the provisions of the Criminal Code (CC) on offences committed in the execution of public office – which also apply to MPs, with a few exceptions. There is, however, no distinct set of written ethical principles or standards of conduct for MPs.

37. Integrity standards among MPs appear to be high and until recently, MPs had not considered it necessary to establish a code of conduct, nor had there been any significant or sustained calls for such a tool from other stakeholders. However, the GET was interested to hear that the drawing up of a code of conduct for MPs had been briefly contemplated recently in light of GRECO evaluations of other member States. In recent discussions, the Presidium of the *Folketing* has generally viewed the idea of compiling such a code – possibly inspired by codes developed in countries with a comparable cultural and political background – positively. The GET is in favour of the *Folketing* having a comprehensive set of ethical and conduct standards, drawn up and published by MPs themselves – or at least with their participation. The GET is of the firm opinion that the process of developing a code of conduct would further raise awareness among MPs of the ethical dimensions of their status as elected representatives, provide them with guidance and demonstrate to the public their willingness to act in order to uphold high levels of integrity. The rule of law and public confidence in parliamentary institutions can be enhanced when citizens know what conduct they should be able to expect from their elected representatives.

38. Regarding the content of a code of conduct, the GET takes due note of the position expressed by the Presidium of the *Folketing* that such a document should primarily serve to raise awareness of MPs of key ethical questions rather than imposing overly specific or imperative rules, which would risk leading to complacency and formalism. In the view of the GET, the code will have to contain and make more appropriately accessible the basic standards concerning the fundamental duties of MPs and restrictions on their activity. At the same time, however, given the fact that the legal framework is rather vague, and in order for it to be a meaningful tool in the hands of MPs, it is crucial that the code provides clear guidance on the prevention of conflicts of interest and on related key issues, such as the acceptance of gifts and other advantages, misuse of information and of public resources and interaction with third parties such as lobbyists (including elaborated examples). The current absence of standards is, for instance, evident when it

[12] For any party group of four members or more – smaller groups receive proportionally less.
[13] For the Speaker of the *Folketing* or for a member who is also a minister it is 14,988 DKK/approximately 2,010 EUR.
[14] See article 56 of the Constitution and paragraph 16 above.
[15] See, in particular, section 4 (2) of the Standing Orders.

comes to MPs' behaviour in cases of conflicts of interest, which is completely left to the individual ethics and discipline of the MPs concerned (see below). Similarly, there are no rules on the acceptance of gifts and other advantages, except for the general bribery provisions of the CC (article 144). Neither the CC nor any other legal instrument give clear indications on what kind of gifts or other advantages MPs can accept, and there is no set procedure for returning or disposing of unwanted gifts. While it is apparently not usual for MPs to be offered and to accept gifts, and MPs are quite reluctant to accept even minor advantages (mainly due to media interest in such matters), the GET heard that the media have reported allegations that some MPs have accepted undisclosed advantages such as trips and invitations to cultural events, paid for by private contractors. The GET believes that it is crucial that the parliamentary process is not only free from improper external influence, but that it is also seen to be so by the general public. Clear guidance on the handling of gifts and other advantages would therefore be beneficial to MPs and their reputation as elected representatives, as well as to gift-givers.

39. Furthermore, the GET is of the opinion that the code of conduct has to address questions relating to MPs' contacts with lobbyists and other third parties who seek to influence the parliamentary process. The GET was informed that whether to regulate lobbying has been discussed several times over the years. In October 2012, MPs were given the possibility to register contacts with lobbyists, organisations, businesses etc. under a specific category in the voluntary register of occupations and financial interests (see below). However, the system was abandoned again shortly afterwards, mainly because MPs found it excessively burdensome to record their contacts adequately and difficult to determine if a contact was significant enough to be registered. Instead, MPs can now have a link on the parliamentary website to their personal or party websites where they can describe contacts with lobbyists etc., providing as much detail as they deem appropriate. During the interviews held on site, it was stressed that in Denmark lobbying is generally seen as a necessary and positive phenomenon, providing law-makers with useful information and expertise, and that it is part of the political culture and tradition that MPs are highly accessible to the public and are free to have contacts with whomever they wish as part of their political work. That said, the GET notes that according to some interlocutors discussions about possible undue forms of influence and conflicts of interest of politicians have only started and need to be stimulated. The GET shares this view and is convinced that the code of conduct needs to also provide guidance on how to deal with third parties seeking to obtain undue influence on MPs' work and to actively promote transparency in this area (e.g. by way of the above-mentioned voluntary disclosure of contacts by MPs).

40. In addition to the guidance provided by the code of conduct itself, complementary measures – in due course, following the drafting of the code – such as the provision of specific training or confidential counselling on the above issues and on the code as a whole would be a further asset. Given the preceding paragraphs and in line with Guiding Principle 15 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption, **GRECO recommends (i) that a code of conduct for members of parliament – including, *inter alia*, guidance on the prevention of conflicts of interest, on questions concerning gifts and other advantages and on how to deal with third parties seeking to obtain undue influence on MPs' work – be adopted and made easily accessible to the public; and (ii) that it be complemented by practical measures for its implementation, such as dedicated training or counselling.**

Conflicts of interest

41. There is no general definition of a conflict of interests. Furthermore, the current framework does not provide for a mechanism to report on conflicts of interest which might arise in the handling of a specific matter by the *Folketing*. The authorities state that while MPs themselves may pay close attention to avoiding conflicts of interest, or

what might appear to be a conflict of interest, no general rules or procedures to that effect exist. While it is quite common for MPs not to take part in plenary votes (the quorum requirement is half of the members, i.e. 90) or not to participate in committee meetings, no record is taken of the specific reasons for an MP's decision not to participate. MPs interviewed during the visit were confident that MPs who find themselves in a conflict of interests would abstain from participating in a plenary or committee meeting or from voting, but they were not aware of any recent cases. The authorities state that there is no basis in the Constitution that would permit excluding an MP from taking part in a vote in which the MP in question has a vested interest. The system is based on voluntary abstention and scrutiny by the public and the electorate.

42. The GET finds that the absence of rules for disclosing potential conflicts of interest is unsatisfactory. The current regime does not guarantee an adequate level of transparency. While the authorities argue that the principal function of Parliament is to pass general legislation and control the Government but not to process specific cases where individuals have a direct interest in the outcome, other interlocutors interviewed on site pointed out that MPs (or close persons) may well have a specific personal interest in the outcome of the law-making process. The GET shares this view, bearing also in mind that the law does not place any restrictions on the business activities and financial interests of MPs.[16] The GET is of the strong opinion that a requirement on MPs to publicly declare conflicts of interest as they arise in relation to their parliamentary work – as exists in some other member States – would ensure that MPs and the public can properly monitor and determine when and how the interests of MPs might influence the decision-making process. This would be of benefit not only to MPs themselves but also to the public at large and its confidence in Parliament and its members. Consequently, **GRECO recommends that a requirement of *ad hoc* disclosure be introduced when a conflict between the private interests of individual members of parliament may emerge in relation to a matter under consideration in parliamentary proceedings.** Such a requirement will need to be reflected in the code of conduct recommended in paragraph 40 above.

Prohibition or restriction of certain activities

Gifts

43. There are no specific rules or guidance concerning the receipt of gifts, other than the applicable criminal law provisions on bribery. Under article 144 CC, "any person who, while exercising a Danish, foreign or international public office or function, unduly receives, demands or accepts the promise of a gift or other advantage is liable to a fine or imprisonment for up to six years." Only in cases where the advantage is of a subordinate nature and involves no risk of influencing the performance of the recipient's work will the situation fall outside the criminal scope. Ordinary presents offered in acknowledgement of the recipient's general work, for instance at anniversaries, upon resignation or transfer, are generally not deemed an undue advantage in the meaning of article 144 CC. A recommendation aimed at providing guidance on questions concerning gifts and other advantages has been made above.[17]

Incompatibilities and accessory activities, post-employment restrictions

44. Apart from the Speaker of the *Folketing*, MPs are not legally restricted from holding other posts or functions or engaging in accessory activities, whether in the private or public sector. In principle, MPs can for instance be town councillors, have directorships in private or public companies, operate a business themselves or perform other activities that generate income. However, the GET's interlocutors stressed that the

[16] See paragraph 46 below.
[17] See paragraphs 38 and 40 above.

duties arising from parliamentary work require full time dedication from MPs, and that accessory activities – in particular in the private sector – are not very common. They could not remember any cases of MPs being board members of a large company, nor were they aware of any who were currently mayors. The GET does not see a need to recommend the regulation of specific incompatibilities between an MP's mandate and other functions or activities. That said, the authorities may wish to reflect on possible legal amendments to abolish the theoretical possibility for MPs to hold office within other branches of State power, e.g. as a judge or prosecutor, which raises questions as regards the separation of powers.

45. There are no particular legal restrictions on the activities of MPs once they leave office. While it is clear that a parliamentary mandate will not, as a rule, span a whole career, the GET is nevertheless concerned that an MP could influence decisions in Parliament while bearing in mind the potential benefit s/he might gain once s/he leaves Parliament possibly to join/return to the private sector. The authorities are encouraged to reflect on the necessity of introducing adequate rules/guidelines for such situations.

Financial interests, contracts with State authorities, misuse of public resources, third party contacts

46. There is no prohibition or restriction on the holding of financial interests by MPs or on them entering into contracts with public authorities. Moreover, there are no specific rules on misuse of public resources by MPs. The general CC provisions on economic crimes such as theft, fraud and embezzlement apply to MPs.

47. MPs are free to have contacts with whoever they wish as part of their political work, including lobbyists, interest groups, NGOs, trade unions, employers' associations or other organisations. A recommendation aimed at providing guidance on interaction with third parties such as lobbyists has been made above.[18]

Misuse of confidential information

48. Under article 152 CC, any person who carries out or has carried out public service or acted in a public office and, without any authority, discloses or exploits confidential information obtained in connection with her/his service or office, may be liable to a fine or up to six months' imprisonment.[19] Information is confidential when it has been designated as such by statute or any other provision in force or when it is otherwise necessary to keep it secret in order to protect important public or private interests. In practice, MPs are most likely to come into possession of confidential information when exercising supervision of Government action, typically on the occasion of answers by ministers to parliamentary questions that concern the personal affairs of private citizens, sensitive matters of national security, public safety or the economic interests of the State, or business secrets of private entities. In a few cases more specific legislation imposes a duty on MPs to maintain confidentiality about certain pieces of information, for instance, members of the Intelligence Services Committee are bound by law to respect the confidentiality of any information they receive in the committee.

49. Unless the committee in question decides otherwise, MPs are obliged to respect the confidentiality of what is said by other MPs during meetings held *in camera* in the standing committees. A member who breaches that confidentiality may be liable to a fine or up to three months' imprisonment under article 129, 1st sentence, CC (on the unlawful disclosure, *inter alia,* of the negotiations of public bodies).

[18] See paragraphs 39 and 40 above.
[19] If the offence is committed with the intent to obtain an unlawful gain for oneself or for others, or if other particularly aggravating circumstances are present, the penalty may be increased to up to two years' imprisonment.

Declaration of assets, income, liabilities and interests

50. There is no legal obligation on an MP to declare assets, income, liability or interests in Denmark. However, the Standing Orders Committee of the *Folketing* has adopted, on 18 May 1994,[20] "Rules regarding the voluntary registration of the occupations and financial interests of Members of the Danish Parliament". The committee recommends that MPs register such interests and if they decide to do so, they are to accept the rules in their entirety. According to the guidelines issued by the Presidium of the *Folketing* on 22 June 1994, "the purpose of the rules is to create greater transparency for the press and the general public about the individual member's financial interests in addition to her/his parliamentary work." The aim is that registration will "make public any conflict of interests that could arise between a member's occupation as an MP on the one hand, and her/his private financial interests on the other."

51. The above-mentioned rules provide that registrations are to be made within a month of the assembly of a new Parliament, of the approval of a substitute member as an ordinary member, or of the coming into effect of the registration obligation for a temporary member. New information, including on newly-acquired company interests or changes in previously registered information, must in principle be registered within a month of it becoming available. The annual, written consent of the MP to the information being made public is a condition for registration.

52. Under the above-mentioned rules, MPs are to declare the following information:

1) income deriving from
- remunerated directorships in private or public companies (positions and companies are registered),
- remunerated posts, occupations or similar in addition to the occupation as an MP (positions and the employer are registered), and
- independent profit-earning activities performed in addition to the occupation as an MP (the type of activity are registered);

2) gifts, travel abroad, financial support, etc.:
- financial support, including material benefits, secretarial assistance, etc. provided to MPs by domestic companies, organisations, institutions or individuals (the name and type of support are registered),
- gifts from domestic donors when individual gifts clearly exceed 3,000 DKK/approximately 400 EUR in value and are connected with membership of the *Folketing* – i.e. not including private gifts received, for instance, from family members; in contrast, advantages such as free advertising provided directly for an MP in connection with an election campaign, for instance, must be declared – (the donor's name, the type of gift and the date on which the gift was received are registered),
- journeys and visits to foreign countries which are not paid wholly from State funds, by the MP's political party or by the MP her/himself and which are connected with membership of the *Folketing* (the donor's name, the date on which the journey was carried out and the name of the country visited are registered), and
- financial considerations, financial benefits, gifts or similar of any kind received by MPs from public authorities, organisations or individuals from other countries when what has been received clearly exceeds 3,000 DKK/approximately 400 EUR in value and is connected with membership of the Folketing (the donor's name, the type of consideration etc. and the date of receipt are registered);

3) financial circumstances:
- company interests that clearly exceed 75,000 DKK/approximately 10,050 EUR in value (the name of the company is registered);

[20] The rules were last amended on 12 December 2012.

4) agreements with former and/or future employers on current or future circumstances:
- agreements of a financial nature with former employers, including agreements regarding leave, leave of absence without pay, continued remuneration, staff benefits, pension entitlements, etc. during membership of the Folketing (the type of agreement and the employer's name are registered);
- agreements regarding employment or similar with a future employer, irrespective of whether the appointment first comes into effect after the MP has left the Folketing (the type of agreement and the employer's name are registered).

53. Declarations by MPs are made on the basis of a standard form approved by the Presidium of the *Folketing*. The information submitted is registered by a civil servant appointed by the Presidium (head of section in the Legal Services Office). The register must be made available to the public within 20 weekdays from the expiry of the deadline for registration after a general election. Updates must be made within 10 weekdays of the MP registering new information and the data previously registered for the MP concerned must be placed on file. The information on gifts, travel abroad and financial support, etc. is on record for four years after the receipt of the gift etc. As decided by the Presidium, the information registered is also placed on the parliamentary website. Thus, anyone can have access to the information in the register either by getting a copy of the register in the *Folketing* or by consulting the information on each MP's page on the parliamentary website.[21]

54. The GET acknowledges the existence of a public register of MPs' occupations and financial interests, and of the standard form and accompanying guidelines which are quite detailed and, according to the GET's interlocutors, quite easy to apply. Moreover, the GET was interested to hear that making the – currently voluntary – registration mandatory had been considered. However, such an obligation was not introduced as some MPs had considered that information to be of a private nature. Moreover, the authorities state that the introduction of an enforceable legal obligation on MPs in respect of registration of occupations and financial interests would raise constitutional concerns. On the other hand, the GET noted that a number of representatives, including MPs, met during the visit did see some merits in making the reporting arrangement obligatory. The GET also noted that currently 43 of the 179 MPs do not participate in the registration system, and it is not unlikely that they have stronger links with the private sector than those who declare their occupations and interests. Mandatory declaration could therefore bring to light potential conflicts of interest. Furthermore, the GET cannot see that compulsory registration (at least on the model of the current system) would unduly interfere with the right to privacy. Nor can it see any possible conflicts with the Constitution – on the understanding that a breach of the rules would not lead to loss or suspension of a parliamentary mandate or other harsh consequences of direct relevance for the MPs' rights and duties under the Constitution. This view was shared by several interlocutors consulted on the subject. In the GET's opinion, mandatory and regular registration and disclosure of interests (e.g. on an annual basis) would be the logical next step, bearing in mind that in the Danish system supervision over the conduct and possible conflicts of interests of MPs relies, to a large extent, on scrutiny by the general public and the media.

55. The GET furthermore takes the view that the content of the current registration system leaves room for improvement. At present, quantitative information on the above-mentioned occupations and financial interests is not – and even cannot be – registered (for example, not even approximate figures on income, gifts or company interests). Moreover, information on MPs' real estate and other property, income from investments, business contracts with State authorities or on liabilities is not included in the declarations. Finally, the rules on voluntary registration only apply to MPs themselves,

[21] See http://www.thedanishparliament.dk/Members.aspx.

not their family members, namely spouses or dependents. During the visit, the GET noted that there is much resistance among MPs to register more comprehensive and more detailed information, such as quantitative information or information on spouses or dependents. The GET is of the opinion, however, that widening the scope of the register to include such data would further facilitate the identification of potential conflicts of interest. Given the preceding paragraphs, **GRECO recommends (i) that regular public registration of occupations and financial interests by members of parliament be made mandatory; (ii) that the existing system be further developed, in particular, by including quantitative data on the occupations and financial interests of members of parliament as well as data on significant liabilities; and (iii) that consideration be given to widening the scope of the declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public).**

Supervision and enforcement

56. Information on the use of public funds, namely of the benefits received by MPs as detailed above[22] (e.g. accommodation costs and reimbursement of travel expenses) must be submitted by MPs to the *Folketing* Administration which verifies the information submitted. Party groups must provide annual accounts of their use of party group grants to the Presidium of the *Folketing*. The accounts are reviewed by external auditing firms and published on the website of the *Folketing*.

57. As described above, MPs are neither restricted nor prohibited from acting in cases or matters in which they have a private interest, neither are they legally restricted from holding other posts or functions or engaging in accessory activities, from holding financial interests, etc. Moreover, registration of an MP's occupations and financial interests is voluntary. Therefore no specific supervisory mechanism or sanctions are in place. The information submitted voluntarily by MPs is neither reviewed nor verified or approved by the Presidium or the civil servant responsible for registrations. There are no specific legal sanctions or procedures if incomplete or inaccurate information is provided. However, if the information reported discloses a potential violation of any law or regulation, the general enforcement mechanisms apply.

58. MPs may be subject to criminal proceedings and sanctions if they commit offences such as fraud, bribery or breach of professional confidentiality. According to article 57, 1st sentence, of the Constitution, "no member of the *Folketing* shall be prosecuted or imprisoned in any manner whatsoever without the consent of the *Folketing*, unless s/he is taken *in flagrante delicto*." Such consent is given via a plenary vote. The authorities indicate that in practice, the *Folketing* always consents to the prosecution of its members if the prosecution service petitions for such consent, and subsequently the Ministry of Justice informs the *Folketing* about the final decision of the court. Since 2001, there have been four such cases: 2003 (fraud), 2004 (sexual assault), 2006 (traffic offence) and 2010 (racist utterances). No consent is required if an MP agrees to pay a fine without the involvement of the courts, e.g. for minor traffic violations. Once a person is no longer an MP, s/he may be prosecuted (without the consent of the *Folketing*) even for offences committed when in Parliament.

59. The GET notes that according to the authorities, the perception that election is synonymous with an expression of confidence in certain individuals – rather than merely a method of appointment – is particularly pronounced in Denmark. It was explained that, as a matter of philosophy, faith in the individual conscience of MPs, not instructions and the *minutiae* of bureaucratic controls, is the guiding principle for the relationship between citizens and their elected representatives. Those responsible for ensuring that

[22] See paragraphs 29/30 above.

parliamentary office is not abused for personal gain or nepotism are principally the voters to whom each MP is accountable at least every four years. While the GET takes account of this approach, it is convinced that public control, which is central and indispensable to preventing corruption in the context of political decision-making, would be even more effective if it was accompanied by administrative safeguards – not least in order to ensure that the public has access to adequate information. Bearing in mind the above recommendation to make the registration of MPs' occupations and financial interests mandatory,[23] the GET believes that it would be natural to require some kind of monitoring and enforcement of the rules by a competent body. More generally, the GET believes that an internal mechanism for monitoring MPs' compliance with the standards relevant to MPs' comportment (e.g. standards set by a code of conduct, as recommended above)[24] could be an effective tool for preventing minor violations – which, if they are only subject to *ex-post* control by the public, might otherwise give rise to mistrust of politicians and damage the reputation of the system over time. That said, it is clear that the Danish culture of transparency and trust should be preserved and no unnecessary bureaucracy created, and that it is up to the Danish authorities themselves to decide how the supervision and enforcement could best be organised. Consequently, **GRECO recommends that appropriate measures be taken to ensure supervision and enforcement of i) the rules on registration of the occupations and financial interests by members of parliament and ii) standards of conduct applicable to them, where necessary.**

Advice, training and awareness

60. Introductory sessions are organised for newly elected MPs, but they do not include ethical questions. Each elected MP must however sign a declaration to observe the Constitution.[25] Moreover, after a general election, all MPs receive an e-mail or a letter about voluntary registration of occupations and financial interests, enclosing the relevant rules and guidelines and the contact details for the civil servant in charge of registration. In addition, each year MPs who have chosen to register occupations and financial interests receive an e-mail concerning renewal of their consent to make the information registered public. Finally, MPs can contact the Legal Services Office to obtain advice on the above-mentioned rules. The GET was informed that once a year around the time of the consent renewal as well as after general elections, it happens that MPs contact the Legal Service Office with questions about the rules. Most concern whether the rules require a certain occupation to be registered, for example, town councillor.

61. The GET notes that no training focuses on ethics and conduct, corruption prevention, conflicts of interest and related issues. It takes the view that more could be done to maintain or even further raise awareness of MPs – in particular newly elected MPs – about these issues, notably in view of the development of the more comprehensive standards of conduct advocated for in this report. A recommendation aimed at the provision of further guidance to MPs, e.g. through dedicated training or counselling, has been made above.[26]

[23] See paragraph 55 above.
[24] See paragraph 40 above.
[25] See article 32 (7) of the Constitution.
[26] See paragraph 40 above.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

62. The judicial system in Denmark is established by the Constitution (Chapter 6, The Courts) and several laws, in particular the Administration of Justice Act (AJA). The latter also includes specific provisions on the status of judges, which complement the general provisions of the Civil Servants Act.

63. The independence of the judiciary vis-à-vis the executive and legislative powers is enshrined in the Constitution. In accordance with article 3 (on the tripartite division of power), all judicial authority lies with the courts. Article 61 makes it clear that the execution of the judicial power (e.g. competencies, procedures and organisation of the courts) can be regulated by statute only. Article 64 (on the functional and personal independence of judges) states that judges must abide solely by the law and they cannot be dismissed except by a judgment, nor may they be transferred against their wishes except in the event of a reorganisation of the courts. The authorities add that no one can give directions in individual cases to judges, and that judges are thus fully independent in the exercise of their judicial functions.

64. The Court Administration ensures proper and adequate administration of the courts' and the Appeals Permission Board's funds, staff, buildings and IT. It was established in 1999 as an independent institution and it is headed by a board of governors and a director who is appointed and may be discharged by the board of governors. The board has 11 members, eight of whom are court representatives, one is an attorney in private practice and two have special management and social expertise. They are appointed by the Minister of Justice on the recommendation of the Supreme Court, the High Courts, the General Council of the Bar and Law Society, the Employment Council and the Rectors' Conference, District Court judges, other academic staff and non-academic staff, respectively. The Court Administration belongs under the Ministry of Justice, but the Minister of Justice has no instructive power and cannot change decisions taken by the Court Administration.

65. The court system is based on a unified structure in which all courts of law may decide cases in legal areas such as civil and criminal law, labour, administrative and constitutional law, with the following exceptions. The Maritime and Commercial Court is a special court competent, *inter alia*, for cases concerning the Trade Marks Act, the Design Act, the Marketing Practices Act, the Competition Act and cases concerning international trade. The Land Registration Court, which was established in 2007, handles registration of titles to land, mortgages and other charges, marriage settlements, etc., and decides on disputes arising from registration. The special Court of Impeachment mainly decides cases brought against ministers[27] and the Special Court of Indictment and Revision deals, *inter alia*, with disciplinary matters concerning judges and other legal staff employed by the courts.[28]

66. There are 24 District Courts (first tier) whose decisions may be appealed to the two High Courts (second tier). Appeal to the Supreme Court in Copenhagen (third tier, final court of appeal) requires a special permission from the Appeals Permission Board, which is granted in cases that may have implications for rulings in other cases, or in cases of special interest to the public.[29] In terms of grants and administration, the Appeals Permission Board belongs under the Court Administration, but it is otherwise independent of the judiciary and the Government services. The Supreme Court also

[27] The Court of Impeachment is composed of Supreme Court judges and MPs.
[28] The Special Court of Indictment and Revision also takes final decisions on petitions to reopen criminal cases and on appeals against decisions to disqualify defence counsels in criminal cases.
[29] There are some exceptions to the general rules described in the paragraph above. E.g. in some civil cases the Supreme Court hears appeals as a second tier and no special permission is required for such appeals.

decides on appeals against judgments by the Maritime and Commercial Court. Decisions of the Land Registration Court are subject to appeal to the High Court of Western Denmark.

67. The court of the Faroe Islands, situated at Tórshavn, tries the same cases as do District Courts in other regions of Denmark. Appeals are taken to the High Court of Eastern Denmark. The courts of Greenland are composed of the High Court of Greenland, the Court of Greenland and 4 Magistrates' Courts. Most cases are heard in the first instance by the Magistrates' Courts, whose judges are lay judges with a special education and thorough knowledge of the Greenlandic society. The judges in the Court of Greenland – which processes legally complicated cases in the first instance and handles supervision and education of magistrates – and the High Court of Greenland, are lawyers.[30] Rulings issued by the High Court of Greenland may, with the permission of the Appeals Permission Board, be appealed to the Supreme Court in Copenhagen.

68. The court system comprises professional judges, lay judges and expert judges. Professional judges are employed full-time and are lawyers who are either appointed judges or deputy judges. Lay judges and expert judges work part-time in the judiciary. In the District Courts, the general rule is that civil cases are heard by a single professional judge. However, they may be heard by three professional judges or by a professional judge and two expert judges. Minor criminal cases are heard by a single professional judge and more serious criminal cases are heard by a professional judge and two lay judges (decisions are adopted by simple majority). The most serious criminal cases are heard by three professional judges and six jurors (i.e. lay judges) and a guilty verdict requires a two thirds majority among both the professional judges and the jurors.[31] The High Courts are split into chambers which consist of three professional judges. In civil appellate cases which were heard with expert judges in the court below, two expert judges may participate. In more serious criminal cases, three lay judges participate and decisions are adopted by simple majority; in case of a tie the result most favourable to the accused is adopted. In the most serious criminal cases, nine jurors participate and decisions are adopted as in the District Courts. The Supreme Court has only professional judges, normally 15, and is split into two chambers. A case is heard by at least five judges.[32]

69. Civil cases in the Maritime and Commercial Court are heard by one (exceptionally three) professional judge and two (exceptionally four) expert judges (decisions are adopted by simple majority). The Land Registration Court's case handling is to a wide extent automatic (in approximately 70 % of the cases). Most cases which cannot be handled automatically are handled by office assistants who have been authorised by the court president to do so. Complicated cases are handled by a professional judge.

70. Altogether, there are approximately 640 professional judges (380 appointed judges and approximately 260 deputy judges) and approximately 11,500 lay judges. In addition, there are six appointed lay judges in Greenland as well as a number of temporary and assistant lay judges. Finally, there are 125 expert judges in the Maritime and Commercial Court and 205 expert judges serving in the Eastern High Court and the District Courts under its jurisdiction; the number of expert judges serving in the Western High Court and the District Courts under its jurisdiction was not available.

71. The Danish Association of Judges aims for its part to maintain the independence of the courts, further law and order, manage the interests of judges and further their unity. Similarly, the Danish Association of Deputy Judges aims to strengthen the unity between

[30] In this report, the term "lawyer" is to be understood as a legally trained person, as opposed to laypersons.
[31] If a guilty verdict is returned, the sentence is decided by the judges and jurors together, each group having an equal vote (i.e. each judge has 2 votes, each juror has 1 vote); in case of a tie the result most favourable to the accused is adopted.
[32] Most of the information in this paragraph does not apply to the Faroe Islands or Greenland.

its members and secure their interests. Membership in both associations is voluntary, but currently all professional judges (appointed judges and deputy judges) are members. Finally, there is a specific association of expert judges.

72. The GET recognises that the Danish judicial system has several strong structural points. For various tasks there are independent bodies within the judiciary, such as the Appeals Permission Board, the Court Administration, the External Activities Board, the Judicial Appointment Council and the Special Court of Indictment and Revision.[33] These bodies do not only add to the institutional autonomy and independence of the judiciary *vis-à-vis* the other public powers, but they also foster impartiality inside of the system – e.g. through their multidisciplinary composition and the procedures for nominating their members – and establish a quite sophisticated system of checks and balances inside the judiciary. In this context, it is noteworthy that the formation of the Court Administration – like that of the Judicial Appointment Council (see below) – in 1999 was explicitly aimed at strengthening the autonomy and independence of the judiciary and demonstrating its position as the third power of government. Following a long debate in the *Folketing* and the media, the *Folketing* unanimously resolved that the courts were no longer to be administered by the Ministry of Justice. Although there was no evidence that the previous system (in which the Ministry of Justice administered the courts and appointed judges) had an adverse effect on judicial independence, the *Folketing* did not want to leave room for even the theoretical possibility that such independence could be questioned.

Recruitment, career and conditions of service

73. Judges are appointed by the Queen on recommendation from the Minister of Justice as advised by the Judicial Appointment Council.[34] Judges are appointed for an indefinite period of time but must retire at the age of 70. It is generally expected that the recommendations of the Council for the appointment of judges will be followed by the Minister. If the Minister does not follow the recommendation s/he has to inform Parliament, but in practice there have not been any such cases.

74. The Judicial Appointment Council[35] is an independent institution composed of one Supreme Court judge, one High Court judge, one District Court judge, one attorney in private practice and two representatives of the general public. The Minister of Justice appoints the members of the Council for a non-renewable term of four years, based on the nominations by the Supreme Court, the High Courts, the Association of Danish Judges, the General Council of the Danish Bar and Law Society, Local Government Denmark and the Danish Adult Education Association. The Court Administration handles the secretariat functions of the Council. The Council also promotes the recruitment of judges from all branches of the legal profession (before 1999, it was felt that too many judges had a career background within the Ministry of Justice).

75. The appointment of judges is to be based on an overall assessment of the applicants' qualifications for the post concerned. Decisive importance is attached to the legal and personal qualifications, and the breadth of the applicants' legal experience is also given importance.[36] Having received applications for an open position as a judge, the Judicial Appointments Council also collects written statements on the applicants from the president of the court where the position is open and, if the court in question is a District Court, from the president of the High Court under which the district belongs. The Council may request further information on the applicants and it can ask selected applicants to attend oral interviews. The recommendation of the Council has to be reasoned, and the

[33] For more details on the External Activities Board, the Judicial Appointment Council and the Special Court of Indictment and Revision see paragraphs 74, 112 and 118 below.
[34] See section 42 AJA.
[35] See sections 43a to 43d AJA.
[36] Section 43 AJA.

Council may only recommend one applicant for a vacancy. The name of the person recommended to fill the vacancy is made public.

76. Many candidate judges have previously worked as deputy judges who are recruited by the Court Administration either directly from law school or after a few years of varied legal experience, for example in a law firm or a ministry. There is no formal entrance test, employment is made on the basis of university diplomas (a Danish Master degree in law is required), impressions given in a personal interview, and relevant work experience. The deputy judge is responsible for her/his own judicial decisions and is independent in this capacity, but may seek guidance from the judge who is responsible for her/his training. During the first three years of employment, deputy judges complete a basic training programme at one of the 24 District Courts, following which they pass a test aimed at assessing whether they are suitable for continuing employment at the courts. A further important career step is a temporary employment as acting judge in a High Court, which normally lasts nine months. Finally, the deputy judge is typically employed at the District Courts for some more years before applying for appointment as a judge.

77. The Judicial Appointments Council is to ensure that judges are recruited from all branches of the legal professions, for example deputy judges, civil servants, academics and attorneys in private practice. For this purpose, all posts for judges are broadly advertised in the relevant branch journals. Moreover, attorneys have the opportunity to apply for service as an acting judge for three months in one of the High Courts or in a District Court, during which they act as judges on equal terms with the other members of the court and gain insight and knowledge of the profession.[37] During the talks on site, it was indicated to the GET that the number of former attorneys recruited as judges had effectively increased in recent years.

78. As a rule, the procedure for the appointment of court presidents is similar to that for the appointment of judges in general but the Judicial Appointments Council may give applicants a test in order to examine their leadership skills. The president of the Supreme Court is appointed by the Queen on the recommendation of the Minister of Justice as advised by the Supreme Court (i.e. in practice, though not in law, the Supreme Court elects its president from among its members).

79. The same entities that are responsible for the appointment of judges are responsible for the promotion or transfer of judges. The procedures are substantially the same. A judge can only be promoted or transferred on application. Only the Special Court of Indictment and Revision can, by a judgment, dismiss or transfer a judge against her/his will, except in cases where a reorganisation of the courts is made. In the course of the 2007 reorganisation of the courts which merged the 82 District Courts into 24, no judge was dismissed but some were transferred against their will as their District Court ceased to exist.

80. Average annual salaries are 778,330.22 DKK/approximately 104,300 EUR for District Court judges, 856,822.19 DKK/approximately 114,800EUR for High Court judges and 1,313,391.30 DKK/approximately 176,000 EUR for Supreme Court judges. Every judge receives a basic salary and a negotiated addition, both are included in the above figures. All judges on the same level or position receive the same salary. Individual judges do not negotiate their own salaries, they are negotiated by the Association of Danish Judges and the Court Administration. Judges are not entitled to any additional benefits.

81. Lay judges are appointed for a period of four years by the High Courts following proposals by the municipalities. In each municipality, a special committee composed of

[37] Section 44c AJA.

local council members selects a number of residents who are considered suitable to serve as lay judges and includes them in a list which is sent to the relevant High Court president. Following criminal record checks, lists of available persons to act as lay judges are established through a system of lottery. According to sections 68 *et seq.* AJA, members of certain professions – e.g. professional judges, officials employed by central government, etc. – are excluded from acting as lay judges. During the talks on site, it was indicated to the GET that campaigns by the authorities aimed at achieving ethnic diversity and age balance among lay judges are quite successful. New lay judges are invited to an introductory meeting which includes a presentation of the disqualification rules. When a case starts that involves lay judges, the latter have to sign a declaration of impartiality.

82. A lay judge may be suspended temporarily or permanently if s/he is charged with or convicted of a criminal offence that makes her/him unfit to perform as a lay judge. A lay judge who misbehaves in court can be suspended if s/he continues to behave in an improper way. The president of the relevant High Court decides on any question of suspension.

83. Expert judges acting at the Maritime and Commercial Court are experts in the field, nominated by a number of different organisations (e.g. the Danish Chamber of Commerce)[38] and appointed by the court president. They must fulfil several requirements specified in section 93 (4) AJA – e.g. they must be of "unblemished reputation" and not subject to bankruptcy proceedings – but the appointment process is not further regulated by law. Following their appointment, expert judges are called by the presiding (professional) judge in a particular case to participate in the adjudication of the case, depending on the qualifications required. New expert judges are invited to an introductory meeting which includes a presentation of the disqualification rules. The remuneration of an expert judge is 2,500 DKK/approximately 335 EUR per day of participation in court hearings. Regarding expert judges acting at the High Courts and the District Courts, one list of expert judges is drawn up for each of the two High Court divisions. Appointments to the two lists are made by the presidents of the two High Courts. Apart from that, the above-mentioned information on expert judges applies correspondingly.

84. It is the clear impression of the GET that the recruitment process for professional judges is highly transparent and ensures that appointments are based only on objective factors. The GET acknowledges the 1999 reform and the establishment of the Judicial Appointment Council which was aimed – like the formation of the Court Administration – at ensuring independence of the judiciary vis-à-vis the executive and legislative powers. The importance of the Judicial Appointment Council in practice is evidenced by the fact that so far, the Minister of Justice has always followed its recommendations. As far as lay judges and expert judges are concerned, the GET takes due note of the fact that the judiciary is involved in the appointment process.

85. The GET notes that expert judges can, at least theoretically, overrule the professional judges in court decisions and thus play an important role in the system, especially at the Maritime and Commercial Court where expert judges participate in every case that goes to trial (whereas at High Courts and District Courts, their participation is at the court's discretion). After their nomination by private organisations, the experts submit to the court a letter of motivation including a *curriculum vitae*, their criminal records are checked and personal interviews are held. After the on-site visit, the GET was informed that expert judges are asked to answer a questionnaire in order to inform the court, *inter alia*, of their present and past specific field of expertise and of their employment and any membership of boards of governors. If an expert judge is employed

[38] Under section 93(1) AJA, it is the Minister of Justice who authorises an organisation to nominate expert judges.

by or otherwise affiliated to a group of companies s/he is asked to list all companies in the group in question. The information submitted is stored in the court's database and is updated on a yearly basis according to a standard procedure. The names of the expert judges are made public on the internet and the parties are informed of the identity of the expert judges who are selected for the particular case. Information on the current main employment of the expert judges is also published on the internet, with the consent of the expert concerned. The GET acknowledges that the current procedure promotes transparency and easy access to information on expert judges.

Case management and procedure

86. The president of the court after consultation with the judges decides on the allocation of the cases between them and on the administrative handling of the cases.[39] The everyday allocation of cases is normally done randomly.

87. As a rule, a judge can be removed from hearing a case only if there are grounds for disqualification (see below). The authorities indicate that the president of a court oversees the distribution of cases, but will never remove a case from a judge against her/his will. Redistribution of cases between judges only occurs if there is mutual agreement, e.g. to obtain an even distribution of the workload (for instance, a judge might receive a large and complicated case and for that reason need to transfer other, minor cases to fellow judges).

88. According to the AJA, all criminal cases must be processed within due time depending on the nature of the case. Furthermore, all courts must – in both civil and criminal cases – by the end of the trial have notified the parties of when a decision will be delivered, and give a decision as soon as possible after the trial. The law provides for precise deadlines for different types of cases. For example, in criminal cases the decision must in principle be given within one week after the trial if the decision cannot be given on the same day and in jury trials, no later than the day after the trial. If a judge does not follow the requirements on processing times, s/he may in serious cases be criticised by the Special Court of Indictment and Revision for having shown unseemly conduct, but such cases are rare. In 2005, a judge was criticised for not ending a simple case in due time and in 2006 a judge was criticised for failing to comply with a request from the prosecution to conduct a preliminary hearing within 24 hours of the arrest of a person (as required by the Constitution). Unseemly conduct may in very serious cases lead to a verdict from the Special Court that the judge is to be removed from her/his position, but this has never happened in practice.

89. The authorities add that each year goals are set by the courts concerning the processing time in the District Courts. If a court has problems meeting the goals, the Court Administration might initiate a dialogue with the president of the court in order to discuss what can be done to improve processing times.

90. Court proceedings are as a main rule public and oral.[40] The presiding judge can limit the number of spectators to be let into the court room if people show up in great numbers. The court can decide that proceedings are to be conducted behind closed doors in certain circumstances,[41] e.g. to obtain order in the court room or, in criminal cases, when the defendant is under 18 years of age, in situations when full public access to the court room is deemed to be a decisive obstacle in handling the case.

[39] See sections 3 (1), 7 (1) and 12 (1) AJA.
[40] See article 65 (1) of the Constitution.
[41] Section 29 AJA.

Ethical principles, rules of conduct and conflicts of interest

91. Article 64, first sentence of the Constitution sets forth the general principle that "in their vocation, judges must abide solely by the law." There is, however, no distinct set of written ethical principles or standards of conduct for judges. In 2005 the Danish Association of Judges debated whether there was a need for ethical principles or standards of conduct specifically for judges and it concluded that there was no such need. However, the issue is currently on the agenda again (see below).

92. There is no definition of conflict of interest provided by law. Judges cannot act in a particular case in which they hold a private interest; the specific grounds for disqualification are provided by law.[42]

93. While it is true that Danish judges generally seem to be well aware of ethical requirements inherent in the judicial profession, the GET notes that there is very little written guidance in this respect. During the talks on site, a few interlocutors argued that the general Code of Conduct in the Public Sector[43] of 2007 might be applicable to judges, but various judges and other persons interviewed did not seem to have a clear common view on this question. In any case this document is not tailor-made for the judiciary and is not included in the training for judges organised by the Court Administration and the Association of Danish Judges. While the establishment of a specific code of conduct for the judiciary was not seen as necessary by some of the GET's interlocutors, the issue is currently on the agenda of the Association of Danish Judges. A committee composed of judges from different levels has been charged with preparatory works and it is expected to submit a draft, probably in the course of 2014, for approval by the plenary of the association.

94. The GET welcomes the current initiative by the Association of Danish Judges which has apparently been triggered by the development and promotion of international standards in this area, in particular Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe.[44] The GET is convinced that the establishment of a set of ethical standards/code of conduct will send a positive message to the public as to the high standards of conduct to be upheld in and by the judiciary. It will also offer a good opportunity to clarify specific questions and provide detailed guidance, including practical examples, e.g. on gifts, third party contacts/confidentiality and on how to act if and when confronted with a conflict of interest – an issue of key importance given the size of the country and the close links that may exist between its inhabitants, as was repeatedly stressed during the interviews. Such guidance could furthermore be provided by complementary measures such as confidential counselling within the judiciary and, in any case, specific (preferably regular) training activities of a practice-oriented nature. To conclude, the GET wishes to stress how important it is that such measures also be taken for the benefit of lay judges, expert judges and professional judges who are recruited from other branches (e.g. attorneys in private practice). Consequently, **GRECO recommends i) that a set of clear ethical standards/code of professional conduct – accompanied by explanatory comments and/or practical examples, including guidance on conflicts of interest and related issues – be made applicable to all judges and be made easily accessible to the public; and ii) that it be complemented by practical measures for its implementation, including dedicated training for professional judges, lay judges and expert judges.**

[42] See paragraphs 104 to 106 below.
[43] For more details, see below under "Corruption prevention in respect of prosecutors, in particular paragraph 147.
[44] See Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

95. Judges are permitted to engage in accessory occupations ("employment alongside their official position") under the conditions specified in section 17 of the Civil Servants Act and the more specific sections 47a and 47b AJA (only applicable to appointed judges) which were introduced in 2007. The former provision states that a statutory civil servant – including an appointed judge – "may solely have other employment than her/his position as a civil servant in so far as and to the extent that this is compatible with the conscientious performance of the official duties of the position as a civil servant and with the esteem and trust required by the position." The authorities indicate that judges are not allowed to appear as attorneys or public defence counsels.

96. In accordance with section 47a (1) AJA, a judge may only have a permanent paid accessory occupation if it is determined by statute that the task concerned should be managed by a judge[45] or if the judge's managing of that task is permitted by the External Activity Board, which was established in 2007.[46] In contrast, tasks of a temporary or specific kind – e.g. particular arbitration tribunals – do not require the permission of the Board. According to the *travaux preparatoires,* the decision of the Board is to be based on an assessment of whether the employment might cause problems of qualification or would not, in other ways, be compatible with the task of a judge. The extent of the paid occupation in relation to the official position is also taken into consideration, if it has already been established that the occupation in question might have an adverse influence on the work of the official position.

97. Under section 47a (2) AJA, the tasks of member of a public or private board can only be carried out by a judge from the superior courts,[47] if it is determined by statute that the task should be managed by such a judge or is permitted by the External Activity Board. According to the *travaux preparatoires*, the boards covered by the provision include all complaint and appeal boards established by private organisations etc., which hear private disputes, including the complaint and appeal boards approved by the Minister of Business and Growth. When deciding on the question of a superior judge's membership of a public or private board the External Activity Board especially takes into consideration whether the board in question makes decisions on issues of legal politics or in other ways involving significant general interests. In principle, permission to participate in specific boards is given for judges from the superior courts in general, but it can be limited to a specific judge or a specific period of time.

98. Pursuant to section 47a (3) AJA, the nomination of a judge as member of a public or private board, as member of an arbitration tribunal or for other kinds of dispute resolution than the courts must be made by the president of the relevant court. It follows that the parties to a dispute cannot appoint a judge for such tasks.

99. The authorities state that, for example, in 2012 permission was given to lecture at university, edit a book and act as chairman of the Pharmacy Board, and permission was not granted to take up membership of the board of a special insurance company.

100. Section 47b AJA lays down a limit on the income of judges from accessory occupations (including both permanent and temporary or specific activities). Taken as an average over a period of three years such income may not exceed 50% of the judges'

[45] E.g. according to the Aliens Act, the chair and vice chair of the Refugee Appeals Board must be judges. Another example is that the chair and the vice chair of the Criminal Injuries Compensation Board must be judges.
[46] For more details, see paragraph 112 below.
[47] Namely Supreme Court judges, the High Court judges and the president and vice-president of the Maritime and Commercial Court.

salary in their official position or of the salary of a Supreme Court judge (whichever is the lowest).

101. Each year, before 1 February, judges have to report to the president of the relevant court on paid accessory occupations (including both permanent and temporary or specific activities) during the previous calendar year, and on income from each of those occupations.[48] The report must contain information on the type of occupation and the employer. If it concerns arbitration, the report must state the name of the attorneys or other representatives of the parties (but not the name of the parties themselves) and how the judge was appointed. The court presidents transmit the information to the External Activity Board, which makes it public, except the information on the income received.

102. The authorities indicate that the main aims of the 2007 reform were to ensure that the extent of the accessory activities of each judge be kept at a reasonable level and that the appointment of judges to accessory activities be carried out in a way which does not raise questions as to the judge's independence and impartiality in her/his main employment. During the talks on site, the GET was informed that prior to the reform there had been public debate about accessory activities, in particular about fair amounts of income that judges may derive from such activities and about the impact on their main profession as judges. The general view was that the legal amendments had adequately addressed those issues and that the new regime allowed for satisfactory oversight by the relevant bodies and by the public. The very rare cases where judges had not respected the rules (in particular by exceeding the statutory income limits) attracted considerable media attention. The GET has no reason to doubt these indications and commends the authorities for the recent reforms in this area.

103. There are no specific rules prohibiting or restricting the possibilities for judges to be employed in certain posts/functions or engage in other activities after exercising a judicial function. The GET did not find this to be a particular source of concern in the context of Denmark. That said, this is a potentially challenging area where conflicts of interest may well emerge, and which deserves to be kept under review by the authorities.

Recusal and routine withdrawal

104. The conditions for disqualification are specified in Chapter 5, sections 60 to 65 AJA. These provisions apply to all judges, i.e. professional judges (appointed judges and deputy judges), lay judges and expert judges. In particular, a judge is disqualified from acting in a case[49] if s/he:

- is one of the parties to the case or has an interest in its outcome or is the victim in a criminal case;
- is related to any of the parties in a civil action or the accused in a criminal case;
- is related with the attorney of one of the parties in a civil action or the victim, the prosecutor or the defence counsel in a criminal case;
- has testified or acted as an expert in the case or in other ways has participated as a representative of a party to the case or for the accused in a criminal case;
- has acted as a judge with the inferior authority or has participated as judge or lay judge in a criminal case;
- has acted as judge, lay judge, juror or assessor in a criminal case that has been remitted to a new trail.

[48] Section 47c AJA.
[49] See section 60 (1) AJA.

105. A judge is furthermore disqualified from trying a case where other circumstances give rise to doubt as to her/his complete impartiality.[50] The fact that a judge has previously been involved in a case (due to combined responsibilities) does not lead to disqualification when there is no reason to believe that s/he has any particular interest in the outcome.[51]

106. Judges are obliged to examine whether there are reasons that might lead to their disqualification. The decision whether or not to remove a judge because of disqualification is taken by the judge (or panel of judges) hearing the case.[52] A party to the case can also raise the question of disqualification. A decision not to remove a judge from a case is subject to appeal.

Gifts

107. There are no detailed rules on the acceptance of gifts or other advantages specific to judges. The authorities refer in this respect to the bribery provisions of article 144 CC.[53] They add that judges are in general not allowed to receive gifts or other advantages (e.g. invitations, hospitality) as part of their job – except under special circumstances, in cases where it may seem rude to return or reject the gift, in cases of small gifts e.g. from foreign guests on official business (host gifts). The GET has the clear impression that judges do not consider it permissible for them to accept gifts, and that it was implicit in the status of a judge to maintain an impeccable character and to be, and to be seen to be, independent. That said, the GET believes that some clarifications concerning the aforementioned exceptional circumstances in which gifts or other advantages may be acceptable could be usefully provided by the set of ethical standards/code of conduct recommended above.

Third party contacts, confidential information

108. There are no specific rules concerning communication between a judge and third parties outside the official procedures. However, judges are bound by the general rules on confidentiality and are therefore not free to provide confidential information to third parties – e.g. information that might compromise further investigation or the court proceedings, or information relating to physical or mental health, previous criminal convictions, political or religious opinions, genetic data, sex life, etc. Disclosure or misuse by a judge of confidential information is punishable under article 152 CC.[54]

Declaration of assets, income, liabilities and interests

109. As stated above, judges are obliged to disclose any circumstance that might warrant disqualification in a particular case and to report annually on paid accessory occupations during the previous calendar year and on income from each of those occupations. In contrast, no specific other obligations, duties or regulations require judges and their relatives to submit asset declarations, nor have there been any recent discussions on introducing such requirements. Given that no concerns have come to light as regards corrupt behaviour by judges and that the judiciary is generally perceived as being a highly trustworthy institution, the GET does not consider it necessary to issue a recommendation in this connection.

[50] Section 61 AJA.
[51] Section 60 (7) AJA.
[52] Section 62 AJA.
[53] See above under "Corruption prevention in respect of members of parliament", paragraph 43.
[54] See above under "Corruption prevention in respect of members of parliament", paragraph 48.

Supervision and enforcement

Supervision of accessory activities

110. Observance by judges of the rules pertaining to paid accessory occupations is monitored by the court presidents and the External Activity Board. As described above, judges have to annually report to the court president – who transmits the information to the External Activity Board – on any paid accessory occupation and on the income received.[55] If necessary, the president of the relevant court can also instruct a judge to submit an account of the time spent on accessory tasks or to submit a statement of the income that the judge has received in a given period in connection with such tasks (possibly also in relation to future income). If appropriate, in light of the information submitted by a judge, the president of the relevant court, having consulted the External Activity Board, may decide that for a given period or until further notice the judge may only take up accessory tasks with the permission of the president or the External Activity Board, see section 47d AJA.

111. The court presidents check, *inter alia*, that the income generated by judges from accessory occupations does not exceed the statutory limit.[56] If the limit is exceeded, they report the case to the External Activity Board and pass on the information on income submitted by the judge. The Board may decide to set a lower income limit for the judge concerned in the following three-year period, and decide that the judge be included in the specific report and permission arrangement under section 47d AJA.

112. The External Activity Board was founded in 2007 and consists of seven members,[57] i.e. the presidents of the Supreme Court and the High Courts; one court president chosen by the other presidents and one judge appointed by the Danish Association of Judges (both of them are appointed by the Minister of Justice on recommendations from the District Courts and the Maritime and Commercial Court and the Danish Association of Judges respectively); and two representatives of the public (appointed by the Minister of Justice, for a non-renewable six-year period, on recommendations from the Danish Council for Adult Education and the Danish Rectors Conference). MPs, county councils and municipal councils cannot be members of the Board. The Board has laid down its own rules of procedure. Its secretariat is handled by the Supreme Court.

113. Every year the External Activity Board gives a public account of its work which includes information about the decisions taken, in particular the number of judges concerned by the decisions (the judges are not named) and the court at which those judges have their official position.[58] In addition, every third year the Board must publish a review of the decisions made with respect to judges who have exceeded the statutory income limit.

Disciplinary and criminal proceedings

114. Violations by judges of other rules – including the rules on disqualification, gifts and confidentiality as described above – may result in either disciplinary actions or criminal sanctions.

115. Where a judge is guilty of negligence or carelessness in the performance of her/his duties in a way that does not result in punishment under the law, or where the judge otherwise conducts her/himself in an unseemly or improper manner, a caution may be administered to the judge by the relevant court president (or by the president of the

[55] See paragraph 101 above.
[56] Section 47b AJA. See paragraph 100 above.
[57] Section 47e AJA.
[58] Section 47f AJA.

closest superior court if the conduct of a court president is concerned).[59] Such cases can be instituted by complaint within four weeks of the plaintiff becoming aware of the conduct occasioning the complaint, or by the court president.

116. Furthermore, a person who considers that s/he has been offended by the unseemly or improper conduct of a judge in the performance of the latter's official duties may lodge a complaint with the Special Court of Indictment and Revision which acts as a disciplinary court in such cases.[60] The complaint has to be filed within four weeks of the plaintiff becoming aware of the conduct occasioning the complaint. The case can also be brought before the Court by the relevant court president or by the Director of Public Prosecutions upon request of the Minister of Justice, if the latter finds that a judge's conduct diminishes or makes her/himself unworthy of the esteem and confidence presupposed by judicial office. In the disciplinary procedure, the judge concerned is requested to submit a written statement on the alleged facts. If s/he contests them, ordinary standard procedures for inquiries and investigation may be put into action. If the judge wishes or if the nature of the case demands it, the Court may order that the case be heard either publicly or *in camera*. Upon request, the Court may assign a counsel to the judge and the private complainant.

117. The Special Court of Indictment and Revision cannot review a judge's judicial decision, but it can reprimand the judge in a written statement or impose a fine if it is found that the judge has behaved improperly or unseemly in her/his acts in office. In case of serious misconduct, the Court can dismiss the judge. Judgments in these cases can be appealed to the Supreme Court. Finally, the Court can suspend a judge if criminal proceedings have been instituted against her/him, if the judge must be presumed to be guilty of such unseemly conduct as described above, or if the judge has become unreliable or is unable to perform her/his duties due to mental or bodily weakness.

118. The Special Court of Indictment and Revision is composed of five members – one Supreme Court judge as the chairman, one High Court judge, one District Court judge, one professor of law and one attorney in private practice – who are appointed by the Queen on the recommendation of the Minister of Justice for a non-renewable term of ten years. Four members are nominated by the Supreme Court, the High Courts, the Association of Danish Judges, the General Council of the Danish Bar and Law Society, respectively. The professor of law is appointed without nomination.

119. Judges may be subject to ordinary criminal proceedings and sanctions if they commit offences such as bribery or breach of professional confidentiality. Furthermore, the intentional submission by judges of incorrect information relating to paid accessory occupations is punishable under article 162 CC (fraudulent misrepresentation) by a fine or up to 4 months' imprisonment. Judges do not enjoy immunity.

Statistical information

120. Regarding the enforcement in practice of the rules on conflicts of interest and related issues regarding judges, the authorities indicate that there have been no recent criminal offences by judges which would fall under the above-mentioned criminal law provisions, nor is there any knowledge of recent violations of the rules which would have led to disciplinary actions. The GET's interlocutors indicated that on average, 80 complaints concerning judges are recorded annually, however, almost all are ill-founded and do not concern the judges' conduct but rather the outcome of cases. The last time that the Special Court of Indictment and Revision imposed a fine on a judge was in 2003.

[59] See section 48 AJA.
[60] See section 49 AJA.

121. In contrast, in some instances judges have not respected the rules on paid accessory occupations. According to the annual report for 2012 by the External Activities Board, it had dealt with 12 cases where the income limit for the three-year period 2010-2012 had been exceeded.[61] The judges concerned were invited to submit a statement to the External Activities Board which, in one case, permitted the excess income because of the small amount in question (2,016 DKK/approximately 270 EUR). In respect of each of the other judges, the Board lowered the income limit for the following three-year period 2013-2015 by the amount of the excess income received.

122. It is widely held in Denmark that judges have a high level of integrity, impartiality and independence and that there are hardly any cases of misconduct. The GET has no reason to doubt that the system to make the judiciary accountable is well construed and operates effectively. The variety of control mechanisms, namely internal control by the courts, external control and enforcement by the External Activity Board, the Special Court of Indictment and Revision and the criminal justice system, provide independent protection against misconduct of judges. It seems that the disciplinary and criminal sanctions available in the case of a breach of official duties by a judge are dissuasive and effective.

Advice, training and awareness

123. The Court Administration is responsible for the training of all court staff, including judges and deputy judges. It offers around 200 to 270 courses for judges per year. Deputy judges must take part in a three-day introduction course which includes, among other subjects, ethics, rules on incompetency/disqualification and on impartiality/independence as well as best practices in how to conduct oneself in the court room. These subjects also underlie training activities with a different main focus. Furthermore, the current training catalogue includes a topic devoted to ethical dilemmas that judges may face. Namely, in recent years, a three-day course on questions of ethics and conduct has been organised twice a year for the benefit of around 80 to 100 judges each time. All training activities except introductory training for deputy judges are voluntary, but it was indicated to the GET that in practice, almost all judges participate regularly.

124. Judges can obtain advice on the rules on paid accessory occupations from the External Activity Board or its secretariat. They can furthermore obtain informal advice on the conduct expected of them from the president of the court.

125. After the on-site visit, the GET was left with the clear impression that judges are well aware of ethical principles and proper conduct. Several interlocutors commended the Court Administration for its training programme which has improved over time and now includes regular courses on ethical questions in which a significant number of judges participate. In the view of the GET, it needs to be ensured that future training takes into account the ethical standards/code of professional conduct currently under preparation and advocated for in this report, and that professional judges especially who are recruited from other branches, as well as lay judges and expert judges also benefit from such training. A recommendation to that effect has been made above.[62]

[61] The cases concerned two Supreme Court judges with excess income of 253,531 DKK/approximately 33,970 EUR and 378,983 DKK/approximately 50,780 EUR respectively, and ten judges from the High Courts and the Maritime and Commercial Court with excess income ranging from 2,016 DKK/approximately 270 EUR to 765,041 DKK/approximately 102,500 EUR.
[62] See paragraph 94 above.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

126. The prosecution service is not expressly mentioned in the Constitution, but belongs to the executive branch and is subordinated to the Minister of Justice. Formally the prosecution service cannot be considered a completely autonomous institution given that the Minister of Justice is superior to the public prosecutors, supervises their work and may issue general guidelines about the carrying out of their tasks, see section 98 (1) and (2) AJA. However, apart from cases where the Minister of Justice is required by law to approve a decision to prosecute, the prosecution service functions autonomously in practice when deciding whether or not to prosecute in a given case.

127. In certain types of cases – regarding terrorism etc. – the Minister of Justice is required by law to decide whether or not a specific case shall be prosecuted.[63] In these cases, the Minister of Justice acts on the recommendation of the Director of Public Prosecutions (the General Prosecutor). In other cases, the Minister of Justice may only issue instructions concerning the handling of a specific case, including commencing or continuing, abstaining from or terminating prosecution, in accordance with section 98 (3) AJA. This means that the decision must be taken in writing, be reasoned, and be included in the case file, and that the Speaker of Parliament must be informed of the decision taken. In practice, this power to issue instructions concerning the prosecution of concrete cases has not been exercised since its introduction in 2005.

128. The GET recalls that it is crucial for public confidence that prosecution is, and appears to be, impartial and free of any improper influence, particularly of a political nature. Recommendation Rec(2000) 19 of the Committee of Ministers to member States on the role of public prosecution in the criminal justice system stresses that instructions by the Government to prosecute in a specific case must carry with them adequate guarantees of transparency and equity. Instructions not to prosecute are to remain exceptional and subject to an appropriate specific control, in order in particular to guarantee transparency. The GET acknowledges that the power of the Minister of Justice to give instructions in specific cases under section 98 AJA, which had given rise to concern and had been addressed by a recommendation in GRECO's First Evaluation Round,[64] was amended in 2005 in order to introduce the above-mentioned conditions in paragraph 3 of that section. The GET furthermore notes that use has never been made of this power since the reform, and it takes the view that the current situation is not at variance with the requirements of Recommendation Rec(2000) 19.

129. The organisation and tasks of the prosecution service are set out in Chapter 10 (sections 95-107) AJA. It is the task of the prosecution service in co-operation with the police to prosecute crimes in pursuance of the rules of that act. The prosecution service is structured as a hierarchy of three levels headed by the Director of Public Prosecutions. The second level comprises two State Prosecutors while, at the local level, 12 Commissioners head both the local prosecution service and the local police. In addition, the prosecution service includes the Prosecutor for Serious Economic and International Crime who has a nationwide jurisdiction.

130. The Director of Public Prosecutions and her/his staff conduct criminal cases before the Supreme Court and the Special Court of Indictment and Revision. The Director is superior to the other prosecutors and may issue instructions to them, both of a general nature and with regard to specific cases. The Director of Public Prosecutions also plays an important role in providing general advice to the Ministry of Justice and with respect to international co-operation commitments.

[63] See articles 110f and 118a CC.
[64] See document Greco Eval I Rep (2002) 6E, paragraph 105.

131. The State Prosecutors and their staff conduct criminal appeal cases before the High Courts. They also decide if District Court decisions should be appealed to the High Court and whether to prosecute or not in certain cases, particularly those concerning very serious crime. Furthermore, they supervise the handling of criminal cases by the Commissioners and have full powers to instruct prosecutors and police officers.

132. The legal staff of the Commissioners conduct criminal cases before the District Courts. In minor cases police officers may act as prosecutors in court. The Commissioners are responsible for the police investigation of all criminal cases and decide to prosecute or not in the vast majority of criminal cases, apart from serious economic and international crime cases (including corruption cases), which are investigated by the State Prosecutor for Serious Economic and International Crime. The Commissioners are subject to supervision by the State Prosecutors.

Recruitment, career and conditions of service

133. Staff employed by the Ministry of Justice, the Director of Public Prosecutions and the Local Commissioners take part in the processes of appointment, promotion and dismissal of prosecutors. The final formal legal decisions on such matters are made by the Ministry of Justice (in some cases by the Queen at the recommendation of the Minister of Justice). There is no appeal system regarding administrative decisions on the appointment and promotion of prosecutors, but a public prosecutor can bring a case about unfair dismissal to court.

134. Prosecutors are generally appointed for an indefinite period of time. They are either employed under collective labour agreements on public accord, governed by the Employers' and Employees' Act,[65] or as statutory civil servants, to whom the Civil Servants Act applies. Appointment as a statutory civil servant is typically used for senior staff in the prosecution service. In July 2013, 578 lawyers (prosecutors) were employed by the prosecution service, of whom 209 were statutory civil servants and 369 were employed under collective labour agreements.

135. The majority of new appointments of lawyers within the institutions under the Ministry of Justice – including all appointments of prosecutors – are subject to a centralised recruitment procedure. All applications are assessed by members of the Central Recruitment Board which consists of representatives of the Ministry of Justice, the Department of Civil Affairs, the Director of Public Prosecutions, the National Police, the Immigration Service and the Prison and Probation Service. The authorities appoint their own representatives in the Recruitment Board. The formal decision on the appointment of lawyers within the institutions under the Ministry of Justice is made by the Ministry of Justice, but in practice it always follows the recommendation of the Recruitment Board.

136. Suitable applicants with a Danish Master degree in law (*Candidates Juris*) are interviewed by the Recruitment Board which then determines which candidates are qualified to receive an offer of employment. The general principle is that the most suitable person for the position must be appointed. Subject to individual scrutiny, the applicant's listed references may be contacted prior to employment. The approved candidates are then submitted to the local police commissioners for approval and, if required, for a second interview with the police district where it is proposed that they will be offered employment. Subject to the police commissioner's approval, the candidate is then offered a position.

[65] The Employers' and Employees' Act applies not only to public officials but to labour contracts in general.

137. The Director of Public Prosecutions is appointed and may be dismissed by the Queen on the recommendation of the Minister of Justice. The position of Director of Public Prosecutions is publicly advertised by the Ministry of Justice. On the basis of written applications and interviews, the Ministry of Justice presents a candidate to the Government's Appointment Committee composed of members of Government seconded by their permanent undersecretaries. The approval of the Appointment Committee – which is a political approval (on the coordination of appointments of top level civil servants) – is followed by the legally binding decision of the Minister of Justice to recommend the selected candidate for appointment by the Queen. The Director of Public Prosecutions is appointed for a six-year term, which may be prolonged for three years.

138. When seeking promotion, the prosecutor has to submit an application to the Ministry of Justice for a position as a statutory civil servant, otherwise to the Local Commissioner. In either case the prosecutor's superior must comment on the applicant's qualifications and whether the application can be recommended.

139. The Local Commissioner of one of the 12 police districts or the State Prosecutors, the Director of Public Prosecutions and the Ministry of Justice are involved in the dismissal of prosecutors. Under the Civil Servants Act and the Employers' and Employees' Act, the dismissal must be based on reasonable grounds such as ill health, unfitness/co-operation problems, misconduct or restructuring. The Director of Public Prosecution may be dismissed subject to the same rules and reasons as other statutory civil servants.

140. The decision to transfer a prosecutor from one office to another is taken by the Local Commissioner or the State Prosecutor, in some cases together with the Director of Public Prosecutions. The Ministry of Justice has the formal competence to transfer staff including prosecutors against their will if organisational considerations require it. However, this competence is rarely exercised – an exception to this may be if a position in a geographically remote part of Denmark has to be filled. Finally, it is to be noted that within the Ministry of Justice, including the prosecution service, the overall aim is to effect competence development through job rotation. The general principle is that employees with a Master degree in law will hold at least three different positions or functions during their first 10 years of employment.

141. The gross annual starting salary of a prosecutor is approximately 397,714 DKK/53,290 EUR. Increases in salary follow those for State-employed academics, they are based on the number of years of service and are automatic. The gross annual salary of the Director of Public Prosecutions is approximately 1,450,153 DKK/194,320 EUR. On top of this salary the Director of Public Prosecutions has a public management contract that provides additional income of approximately 100,750 DKK/13,500 EUR a year, if the goals in the contract are reached. An evaluation of the public management contract is made once every year. Prosecutors receive no additional benefits on top of their salary.

Case management and procedure

142. In each of the local police districts, the prosecution service is divided into separate units dealing with certain types of criminal cases (e.g. economic crime, organised crime, etc.) in order to ensure that cases are handled by a prosecutor who is specialised within that field. Cases are therefore assigned to prosecutors according to their specific competences. In addition, other criteria such as experience and current workload may be taken into consideration when assigning cases. The assignment of criminal cases is decided by a senior prosecutor, usually the head of unit.

143. The persons who are competent to assign cases can also decide to remove a prosecutor from a case, on the basis of the same criteria as apply to the assignment of cases. Similarly, the superior authorities, i.e. the State Prosecutors and the Director of

Public Prosecutions, may decide that a case must be transferred to another police district, for example, if there is a potential risk of conflicts of interest.

144. Prosecution is mandatory in Denmark. Limited exceptions to this principle are provided for by the AJA. According to section 96(2) AJA, the prosecution service shall proceed with every case at the speed permitted by the nature of the case. The authorities add that one of the key elements of the supervision performed by the State Prosecutors is to ensure that the police and the prosecution service proceed with all cases as effectively as possible. It may lead to criticism from the State Prosecutor if it is discovered that a case has not been dealt with within a reasonable time.

145. In addition, the Director of Public Prosecutions, the State Prosecutors and the Commissioners are bound by contracts which require them to fulfil certain goals, including the processing time of criminal cases. These contracts are renewed every year. If the goals in the contract are not fulfilled, a reduction in salary may result.

Ethical principles, rules of conduct and conflicts of interest

146. Section 10 of the Civil Servants Act contains the general rule that "the civil servant must conscientiously comply with the rules that apply to her/his position, and both on duty and off duty prove worthy of the esteem and trust required by the position".[66] Specific regulations on the prosecutors' work have been issued regularly over several decades by the Director of Public Prosecutions. They include, *inter alia*, requirements pertaining to different types of cases, co-operation with different authorities and treatment of the victims of crime. The regulations are guidelines with binding effect, not following them may result in the reopening of a case and may eventually lead to disciplinary actions if the violation is serious.

147. There is currently no specific code of conduct or ethics for prosecutors and the development of such a code has not been on the agenda. However, the 2007 Code of Conduct in the Public Sector[67] is applicable to all employees of the public sector, including all categories of prosecutors. The Code deals with practical aspects pertaining to difficult situations that may arise in the public administration under different chapters, namely "fundamental values and principles for public administration", "authority to issue directions", "freedom of expression", "duty of confidentiality", "impartiality" and "acceptance of gifts, etc.", "other occupations", "responsibility" and "the employer's possibilities of reacting". Each chapter contains a description of the underlying principles and constitutional/legal aspects, supplemented with practical examples on how to act in certain situations as well as a summary of guidelines for public employees.

148. The authorities add that high ethical standards are a core value in the training and development of prosecutors. The prosecution service operates with seven core competences for prosecutors, of which "integrity" is the overall central competence. These seven core competences are the basis for the training programme, which further forms the basis for the mandatory annual development interview which each employee has with her/his direct superior.

149. There is no definition of conflict of interest provided by law. Prosecutors cannot act in a particular case in which they hold a private interest; the specific grounds for disqualification are provided by law (see below).

[66] The above-mentioned provision directly applies only to public prosecutors with civil servant status, but the authorities indicate that the same principles regarding behaviour, as set out in the Civil Servants Act, apply to prosecutors employed under a collective labour agreement on public accord.

[67] The Code of Conduct in the Public Sector was prepared and published by the State Employer's Authority. It has been published on the internet, and a short version in English is also available on-line, see http://hr.modst.dk/~/media/Publications/2008/Code%20of%20Conduct%20in%20the%20Public%20Sector%20-%20in%20brief/Code%20of%20conduct-pdf.ashx

150. In the view of the GET, the Code of Conduct in the Public Sector is a comprehensive document which deals broadly with the relevant themes of corruption prevention – including by way of practical examples – and can serve as a useful basis also for the prosecution service. During the visit, the GET was told that the code was distributed among prosecutors but it noted that its existence and content did not seem to be well known by more senior prosecutors (presumably those who entered the prosecution service before 2007 when the code was issued). The GET was also informed that the main themes of the code were part of the initial training for young prosecutors which, however, focused more concretely on typical ethical dilemmas prosecutors might face throughout their career. The GET is of the opinion that the development of a tailor-made code of conduct for prosecutors could provide a useful tool in guiding both young and more senior prosecutors in ethical questions more specifically, maintaining and even further raising their awareness and in informing the general public about the existing standards.[68] Such a reference document for the profession could be based on the general Code of Conduct in the Public Sector and be complemented by specific guidance and examples for prosecutors (e.g. drawing from the existing training material) with regard, *inter alia*, to conflicts of interest and related matters (such as disqualification, accessory activities, gifts, third party contacts/confidentiality). Moreover, complementary measures such as the provision of confidential counselling and, in any event, specific – preferably regular – training of a practice-oriented nature on the above issues would be a further asset. Consequently, **GRECO recommends i) that a set of clear ethical standards/code of professional conduct – based on the general Code of Conduct in the Public Sector and accompanied by explanatory comments and/or practical examples specifically for prosecutors, including guidance on conflicts of interest and related issues – be made applicable to all prosecutors and be made easily accessible to the public; and ii) that complementary measures for its implementation, including dedicated training, be made available to all prosecutors.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

151. Generally, prosecutors may combine their work with any other occupation in the private and the public sector – with or without remuneration – that does not compromise the esteem and integrity deriving from their role as prosecutors. According to section 17 of the Civil Servants Act,[69] accessory occupations must be compatible with the "conscientious performance of the official duties" and with the "esteem and trust required by the position". According to the Code of Conduct in the Public Sector, this means that part-time accessory activities must not imply any risk of conflicts of interest with regard to the primary employment, they must not place too much of a demand on the employee's capacity for work and must not conflict with the "dignity requirements" set out, *inter alia*, in section 10 of the Civil Servants Act (see above). The authorities indicate that prosecutors may not hold additional (part-time) jobs as a judge or defence counsel. They furthermore state that the above-mentioned principles also apply to prosecutors employed under a collective labour agreement on public accord, even if this is not specifically regulated.

[68] See in this connection principle 35 of Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe to member States on the role of public prosecution in the criminal justice system, which requires States to ensure that "in carrying out their duties, public prosecutors are bound by codes of conduct". The explanatory memorandum to the Recommendation further explains that such codes should not be a formal, static document, but rather a "reasonably flexible set of prescriptions concerning the approach to be adopted by public prosecutors, clearly aimed at delimiting what is and is not acceptable in their professional conduct".
[69] Cf. above under "Corruption prevention in respect of judges", paragraph 95.

152. It follows from the Code of Conduct in the Public Sector that as a general rule, employees with part-time accessory activities are not required to report them to the appointing authority, but they must provide information about such activities in response to properly justified requests. An employee can always consult with management if s/he is in doubt as to whether a current or planned activity is acceptable. The authorities add that there is a standing practice much similar to the written rules for police officers, which implies that prosecutors, if in doubt, seek advice either from the Local Commissioners or the Director of Public Prosecutions about whether a function outside the prosecution service is compatible with their work as prosecutors.

153. During the visit, the GET was informed that few prosecutors are engaged in accessory activities. Some prosecutors are occasionally employed as, for example, part-time university lecturers, reserve officers in the Danish Defence Force, etc. The GET's interlocutors stated that there is no similar tradition of prosecutors being involved in private business, as a member of a company board for example. Given that no concerns have come to light as regards inappropriate behaviour by prosecutors and that the prosecution service is generally perceived as being a highly trustworthy institution, the GET does not consider it necessary to recommend further regulation of accessory activities. At the same time, it is clear that reforms in this area similar to those implemented for judges – for example, the introduction of a reporting obligation – could contribute to maintaining a high level of trust in the prosecution service. The authorities are therefore encouraged to reflect on possible legal amendments to that effect.

154. There are no regulations that would prohibit prosecutors from being employed in certain posts/functions, or engaging in other paid or unpaid activities after exercising a prosecutorial function. As in the case of judges, the GET did not find this to be a particular source of concern in the context of Denmark. That said, this is an area where conflicts of interest may well emerge, and which deserves to be kept under review by the authorities.

Recusal and routine withdrawal

155. Section 97 AJA states that no one who, according to section 3 of the Public Administration Act, is considered disqualified in relation to a specific case may act as a prosecutor in the case. Under the latter provision, a person acting within the public administration including a prosecutor is disqualified relative to any specific matter if:

> "1) such person is her/himself particularly interested personally or financially in the outcome of the matter or represents or previously in the selfsame matter represented any person who is thus interested;
> 2) such person's husband or wife, any person related by blood or marriage in the direct line of ascent or descent or in the collateral branch as close as a first cousin, or any other closely attached person, is particularly interested personally or financially in the outcome of the matter or represents any person who is thus interested;
> 3) such person takes part in the management of or otherwise is closely related to any company, partnership, association or other private legal entity particularly interested in the outcome of the matter;
> 4) such matter concerns a complaint about or exercise of the control or supervision of another public authority, and such person previously when serving with that other authority assisted in making the decision or in implementing the measures relating to such matter; or
> 5) circumstances other than those referred to in items 1) to 4) of this subsection are likely to lead to any doubt about such person's impartiality."

156. The authorities indicate that in order to avoid conflicts of interest, the question of impartiality is always considered before assigning a case to a prosecutor. A prosecutor

who, at a later stage, considers her/himself not impartial must react immediately so that the case can be transferred to another prosecutor. More precisely, it follows from the Code of Conduct in the Public Sector that a prosecutor must report to her/his superior if any doubt arises regarding the question of impartiality in a specific case. If, in exceptional cases, the entire prosecution entity is considered not impartial in relation to a specific case, the handling of the case will be transferred to another police district.

157. Any party to a case can submit a request to disqualify a prosecutor. If the question arises in relation to a criminal court case and the prosecution service does not agree that there is a lack of impartiality the judge assigned to the case will make a decision which can be appealed to the superior court. In any other cases the decision will be made by a superior to the prosecutor. The complainant can apply to the superior authorities, i.e. the State Prosecutor or the Director of Public Prosecutions, for a review of the decision.

Gifts

158. The authorities state that prosecutors, like any other public employees, should in general be extremely reticent to accept gifts or other advantages in connection with their work. This premise is based on general administrative law principles – aimed at preventing situations that might raise doubt about the impartiality of public employees[70] – and the bribery provisions of article 144 CC,[71] and it is also reflected in the Code of Conduct in the Public Sector. The Code makes it clear that, as a rule, public employees including prosecutors who are offered a gift or other advantage by a person or company should not accept it if it is related to their employment in the public sector but that in certain situations there will be no impediment to receiving a small gift in connection with events of a personal nature (such as an anniversary) or to receiving small gifts from business connections or customary host gifts in connection with official visits from abroad. Prosecutors are not compelled by law to report the acceptance of gifts but it follows from the Code of Conduct in the Public Sector that management must be contacted immediately if a gift or an offer could form the basis of any suspicion of corruption.

159. After the talks held on site, the GET was left with the impression that prosecutors do not consider it permissible to accept gifts or other advantages (e.g. invitations, hospitality), as it would impair the dignity of their office. That said, the GET believes that some explanations concerning the above-mentioned exceptional circumstances in which gifts or other advantages may be acceptable could be usefully provided by the code of conduct for prosecutors recommended above.

Third party contacts, confidential information

160. Like all public officials, prosecutors enjoy freedom of speech according to the Constitution and are thus, as a general rule, allowed to communicate with third parties about matters relating to their work. Since the hearing and adjudication of criminal cases is usually conducted in open trials, prosecutors may also communicate with the press – in an objective and loyal manner – parallel with the court proceedings. However, prosecutors are – like judges – bound by the rules on confidentiality pursuant to section 27 of the Public Administration Act and are therefore not free to provide confidential information to third parties.[72]

161. Prosecutors who unlawfully reveal or exploit confidential information obtained in connection with their function, are criminally liable under article 152 CC.[73]

[70] See, in particular, section 3 of the Public Administration Act.
[71] See above under "Corruption prevention in respect of members of parliament", paragraph 43.
[72] See above under "Corruption prevention in respect of judges", paragraph 108.
[73] See above under "Corruption prevention in respect of members of parliament", paragraph 48.

Declaration of assets, income, liabilities and interests

162. While prosecutors are obliged to disclose any circumstance that can be considered as warranting disqualification in a particular case (see above), there are no specific obligations, duties or regulations which would require prosecutors and their relatives to submit asset declarations – nor has the introduction of such requirements been discussed recently. Given that no concerns have come to light as regards corrupt behaviour by prosecutors and that the prosecution service is generally perceived as being a highly trustworthy institution, the GET does not consider it necessary to address a recommendation in this connection.

Supervision and enforcement

Internal review

163. Prosecutors are supervised in order to ensure that they act in accordance with the legislative framework. Review is exercised by both the State Prosecutors and the Director of Public Prosecutions who check whether the cases have been handled correctly in respect of quality and time. It includes review of prosecutors' compliance with the regulations issued by the Director of Public Prosecutions. The Director of Public Prosecutions as well as the State Prosecutors may issue instructions to a Commissioner concerning measures to enforce effective and proper case processing.

Disciplinary and criminal proceedings

164. Violations by prosecutors of the relevant rules, in particular the rules on the prohibition or restriction of certain activities as described above (e.g. relating to accessory activities, disqualification, gifts and confidentiality), may result in either disciplinary actions or criminal sanctions.

165. The Ministry of Justice, as the appointing authority, is responsible for disciplinary proceedings against public prosecutors (both statutory civil servants or prosecutors employed under a collective labour agreement on public accord). It decides on the opening of disciplinary procedures, in case of a possible violation of section 10 of the Civil Servants Act[74] or of the corresponding rules applicable to prosecutors without civil servant status.

166. A disciplinary procedure concerning a statutory civil servant opens with a notification to the Ministry of Justice which includes the factual information of the case. The prosecutor receives a copy of the notification and is given an opportunity to comment on the case. At the same time it will be decided whether the prosecutor is to be suspended while the case is pending. In minor cases the matter may be closed without official questioning and sanctioned with a warning, reprimand or fine of up to 1/25 of the monthly salary.

167. In more severe cases the Ministry of Justice appoints an investigator (usually an official from the public administration) who investigates the matter and submits a report. During the proceedings, the prosecutor has the right to the assistance of an assessor during the process (the cost can be refunded if found reasonable). Issues relating to witnesses and the provision of further evidence are determined by the investigator. Question sessions, as well as hearings held during the proceedings are usually not public. After the investigator's report is completed, the prosecutor has the right to submit written observations. Based on the investigator's report and any written observations submitted by the prosecutor, the Ministry of Justice determines the sanction, if any,

[74] See paragraph 146 above.

which must comply with the principles of equality and proportionality. The sanctions available are caution, reprimand, fine, transfer, demotion and dismissal.[75]

168. There is no appeals system for disciplinary actions, but a prosecutor may bring a complaint to the Parliamentary Ombudsman or bring the case to the civil court system.

169. Similar principles apply to proceedings concerning prosecutors employed under a collective labour agreement. However, no formal question sessions are conducted in these cases, and the disciplinary sanctions are different. In minor cases the Ministry of Justice may choose just to guide the employee, or give a warning. If the breach is of some gravity, the Ministry may terminate the employment relationship. In the most serious cases, the employment relationship may be terminated with immediate effect. The relevant rules are contained in the collective labour agreement as well as the Employers' and Employees' Act and the Public Administration Act. The latter stipulates, *inter alia*, that a warning constitutes a decision which the recipient has the right to examine and object to before the warning can be formally issued.

170. Prosecutors may be subject to criminal proceedings and sanctions if they commit offences such as bribery or breach of professional confidentiality. They do not enjoy immunity. On 1 January 2012, the "Independent Police Complaints Authority" was established, its main task is to investigate criminal offences committed by police officers or by prosecutors in the course of their duties, e.g. abuse of powers.[76] It is headed by a council and a chief executive and exercises its functions in complete independence of both police and prosecutors.

171. Regarding the enforcement in practice of the rules on conflicts of interest and related issues regarding prosecutors (such as accessory activities, disqualification, gifts and confidentiality), the authorities report that no such cases have been initiated in the last three years. They add that there is no knowledge of recent criminal offences by prosecutors which would fall under the above-mentioned criminal law provisions.

Oversight by the Parliamentary Ombudsman

172. The Parliamentary Ombudsman, who is elected by the *Folketing*, exercises control over public authorities including prosecutors on behalf of the *Folketing*.[77] However, the Ombudsman has no jurisdiction once a case has been brought before a court. The Ombudsman carries out *ex officio* investigations. In addition, any citizen may file a complaint; no costs and few conditions apply.

173. A complaint may not be anonymous and must be lodged within twelve months of the act that is the object of the complaint and it must concern a decision that is final. About two thirds of all complaints are summarily rejected. The investigation of complaints that are accepted is almost always conducted by examining the documentation on the basis of which the action complained of was taken. The public authority that is the object of the complaint is presented with the complaint and asked to provide an explanation and all files relevant to the decision. The public authority is obliged to cooperate with the Ombudsman and to provide any documentation asked for and to answer any questions that may be asked. If the public authority disagrees with the complainant, the complainant is provided with its arguments for review and comment.

174. The Ombudsman may state criticism and recommend that the authorities reopen a case and perhaps change their decision, but cannot make decisions. However,

[75] Section 24 of the Civil Servants Act.
[76] The Police Complaints Authority also considers and decides complaints of police misconduct, e.g. rude or inappropriate behaviour. The relevant procedural rules are described in detail in sections 93b and 93c AJA.
[77] By contrast, the jurisdiction of the Ombudsman does not cover the judiciary, see paragraph 20 above.

traditionally, the Ombudsman's recommendations are followed by the authorities concerned. The Ombudsman may consider legal questions but not matters which require other specialist knowledge.

175. Statistics provided in the Ombudsman's annual report for 2011 show that 215 complaints relating to cases within offices of the Local Commissioners (police and prosecutors), State Prosecutors and the Director of Public Prosecutions had been received and 47 of them investigated. Mainly, the complaints concerned case decisions, case processing and case processing times. In 6 cases the Ombudsman voiced criticism and/or issued recommendations on lengthy proceedings or errors of reasoning in decisions by a prosecutor. In contrast, there were no cases of corruption or conflicts of interest involving prosecutors.

176. The GET notes that it is widely held in Denmark that prosecutors have a high level of integrity and are aware of their role and duties as representatives of the State. It would appear that the sanctions available in case of misconduct are dissuasive and effective as they are for judges.

Advice, training and awareness

177. During the mandatory three-year initial training programme for prosecutors, a three-day course focuses on ethics and behaviour. New prosecutors learn about their role in the organisation and in society and gain an understanding of their interaction with the police, the courts and other partners. They are taught the ethical rules that apply to them particularly in connection with legal proceedings, including those on confidentiality, and in general about the behaviour expected of them. The GET was also informed that further training (voluntary) was made available to prosecutors throughout their career, including on ethical questions.

178. The authorities indicate that during the three-year initial training period young prosecutors have an individual mentor. When facing many situations, seeking advice from the mentor or the immediate supervisor will be the most obvious choice. Otherwise, prosecutors can always contact their local police Commissioner, the HR-centre of the Director of Public Prosecutions or the Personnel Division of the Ministry of Justice for advice.

179. After the visit, the GET was left with the impression that training for prosecutors in ethical questions – especially the mandatory training for young prosecutors – is of a high standard and considered an important part of professional development. Pilot projects have been launched which include examinations for young prosecutors on dealing with ethical dilemmas. The GET encourages the authorities to continue such projects and to offer adequate training and advice to all prosecutors, including more senior ones. A recommendation to that effect has been made above.[78]

[78] See paragraph 150 above.

VI. RECOMMENDATIONS AND FOLLOW-UP

180. In view of the findings of the present report, GRECO addresses the following recommendations to Denmark:

Regarding members of parliament

i. **(i) that a code of conduct for members of parliament – including, *inter alia*, guidance on the prevention of conflicts of interest, on questions concerning gifts and other advantages and on how to deal with third parties seeking to obtain undue influence on MPs' work – be adopted and made easily accessible to the public; and (ii) that it be complemented by practical measures for its implementation, such as dedicated training or counselling** (paragraph 40);

ii. **that a requirement of *ad hoc* disclosure be introduced when a conflict between the private interests of individual members of parliament may emerge in relation to a matter under consideration in parliamentary proceedings** (paragraph 42);

iii. **(i) that regular public registration of occupations and financial interests by members of parliament be made mandatory; (ii) that the existing system be further developed, in particular, by including quantitative data on the occupations and financial interests of members of parliament as well as data on significant liabilities; and (iii) that consideration be given to widening the scope of the declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public)** (paragraph 55);

iv. **that appropriate measures be taken to ensure supervision and enforcement of i) the rules on registration of the occupations and financial interests by members of parliament and ii) standards of conduct applicable to them, where necessary** (paragraph 59);

Regarding judges

v. **i) that a set of clear ethical standards/code of professional conduct – accompanied by explanatory comments and/or practical examples, including guidance on conflicts of interest and related issues – be made applicable to all judges and be made easily accessible to the public; and ii) that it be complemented by practical measures for its implementation, including dedicated training for professional judges, lay judges and expert judges** (paragraph 94);

Regarding prosecutors

vi. **i) that a set of clear ethical standards/code of professional conduct – based on the general Code of Conduct in the Public Sector and accompanied by explanatory comments and/or practical examples specifically for prosecutors, including guidance on conflicts of interest and related issues – be made applicable to all prosecutors and be made easily accessible to the public; and ii) that complementary measures for its implementation, including dedicated training, be made available to all prosecutors** (paragraph 150).

181. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Denmark to submit a report on the measures taken to implement the above-mentioned recommendations by 30 September 2015. These measures will be assessed by GRECO through its specific compliance procedure.

182. GRECO invites the authorities of Denmark 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 country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

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

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