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Groupe d'États contre la corruption

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Corruption prevention in respect of Members of
Parliament, Judges and Prosecutors

EVALUATION REPORT SWITZERLAND

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
I. INTRODUCTION AND METHODOLOGY	5
II. CONTEXT	7
III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT	8
OVERVIEW OF THE PARLIAMENTARY SYSTEM	8
TRANSPARENCY OF THE LEGISLATIVE PROCESS	9
REMUNERATION AND MATERIAL BENEFITS	11
ETHICAL PRINCIPLES AND RULES OF PROFESSIONAL CONDUCT	15
CONFLICTS OF INTEREST	15
PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES	17
<i>Gifts</i>	17
<i>Incompatibilities</i>	18
<i>Accessory activities, financial interests, employment on leaving office</i>	19
<i>Contracts signed with public authorities</i>	19
<i>Improper use of confidential information</i>	19
<i>Improper use of public funds</i>	19
<i>Contacts with third parties</i>	19
DECLARATION OF ASSETS, INCOME, DEBTS AND FINANCIAL INTERESTS	20
SUPERVISION AND ENFORCEMENT	22
<i>Supervision</i>	22
<i>Sanctions</i>	22
<i>Immunity</i>	23
ADVICE, TRAINING AND AWARENESS	24
IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES	25
OVERVIEW OF THE OF THE JUDICIAL SYSTEM	25
RECRUITMENT, CAREER AND CONDITIONS OF SERVICE	26
<i>Recruitment</i>	26
<i>Career</i>	29
<i>Conditions of service</i>	30
<i>Removal</i>	31
CASE MANAGEMENT AND COURT PROCEDURE	32
<i>Assignment of cases</i>	32
<i>Reasonable time</i>	33
<i>Transparency</i>	34
ETHICAL PRINCIPLES, RULES OF CONDUCT AND CONFLICTS OF INTEREST	35
PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES	37
<i>Gifts</i>	37
<i>Incompatibility</i>	37
<i>Accessory activities</i>	38
<i>Withdrawal</i>	39
<i>Financial interests</i>	39
<i>Restrictions applicable when judges leave office</i>	39
<i>Contacts with third parties, confidential information</i>	39
DECLARATION OF ASSETS, INCOME, DEBTS AND INTERESTS	40
SUPERVISION AND ENFORCEMENT	41
<i>Supervision</i>	41
<i>Sanctions</i>	41
<i>Immunity</i>	42
ADVICE, TRAINING AND AWARENESS	43

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS	44
OVERVIEW OF THE OFFICE OF THE ATTORNEY GENERAL OF THE CONFEDERATION.....	44
RECRUITMENT, CAREER AND CONDITIONS OF SERVICE.....	46
ATTORNEY GENERAL OF THE CONFEDERATION AND DEPUTY ATTORNEY GENERALS	46
FEDERAL PROSECUTORS	48
CASE MANAGEMENT AND COURT PROCEDURE	51
ETHICAL PRINCIPLES, RULES OF CONDUCT AND CONFLICTS OF INTEREST	52
PROHIBITION OR LIMITATION OF CERTAIN ACTIVITIES	54
<i>Gifts</i>	54
<i>Incompatibilities and accessory activities</i>	55
<i>Withdrawal</i>	55
<i>Financial interests</i>	56
<i>Restrictions applicable after prosecutors leave office</i>	56
<i>Contacts with third parties, confidential information</i>	56
DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS	57
SUPERVISION AND ENFORCEMENT.....	58
<i>SUPERVISION</i>	58
<i>SANCTIONS</i>	58
<i>IMMUNITY</i>	60
ADVICE, TRAINING AND AWARENESS	60
VI. RECOMMENDATIONS AND FOLLOW-UP.....	62

EXECUTIVE SUMMARY

1. Switzerland's institutions, which enjoy considerable public confidence, differ in many respects from traditional democracies in the manner in which they function. A large degree of autonomy of the components of the Confederation, consensus in decision making, the "militia" and concordance approach to government, a culture of confidence and discretion, these are all ingredients in the search for equilibrium that characterises this democracy. Major politico-judicial affairs of corruption in the broad sense of the term are rare there, or even unheard-of. The weaknesses in the system are rather to be found in the subtle pressure that can be exerted on politicians and the judiciary because of the very organisation of the system, and a disinclination to question the status quo.
2. The legislative process in Switzerland is highly transparent, at least at the level of the National Council and the Council of States sitting in plenary. It also very largely associates the public; on the one hand through the compulsory external consultation procedure for all important legislation, and on the other hand thanks to the instruments of direct democracy. This transparency does not stretch as far as the deliberations of the committees, however, and to a certain extent to the votes in the Council of States; there is some room for improvement in these areas.
3. In the absence of any code of ethics or professional conduct the members of parliament are not particularly sensitive to such issues. GRECO recommends remedying this by adopting a code and implementing additional awareness-raising measures. The subject of personal connections is an important one in the Federal Assembly and the dividing line with conflicts of interest is porous. In order to address this issue, GRECO suggests that any conflicts of interest should be announced publicly as a part of parliamentary procedure, that the system for declaring relevant interests be enlarged and that the monitoring and compliance by members of parliament with their obligations be increased.
4. In Switzerland judges of the federal courts are elected by the political powers present in the Federal Assembly. While GRECO acknowledges the legitimacy of this principle, which is the fruit of the country's history and tradition, it considers that the system should be backed up by safeguards to ensure the quality and objectivity of the recruitment of federal judges. Once judges have been elected it is important to sever the ties with the political powers by doing away with the practice whereby judges pay part of their salary to their party. It must also be ensured that no non-reelection of judges of the federal courts by the Federal Assembly is motivated by those judges' decisions, and the review or abolition of the re-election procedure is to be considered. GRECO also considers that rules of professional ethics need to be developed together with practical awareness-raising measures. Lastly, a disciplinary system needs to be put in place for federal judges and its transparency guaranteed.
5. The Office of the Attorney General of the Confederation (OAG), directed by the Attorney General, is a law enforcement authority which enjoys a large measure of independence. As regards the supervisory authority of the OAG, it should be ensured that the rules governing its composition and functioning continue to take into due account the potential conflicts of interest of its members. Like for members of parliament and judges, GRECO recommends the adoption of a code of ethics/conduct, together with awareness-raising measures. Lastly, like for judges of the federal courts it recommends greater transparency in disciplinary matters.

I. INTRODUCTION AND METHODOLOGY

6. Switzerland joined GRECO in 2006. Since its accession, the country has been subject to evaluation in the framework of GRECO's First and Second Joint Evaluation Rounds (March/April 2008) and the Third Evaluation Round (October 2011). The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (http://www.coe.int/t/dghl/monitoring/greco/default_EN.asp?).

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

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

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

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

10. In preparing this report, GRECO used Switzerland's replies to the Evaluation Questionnaire (document GrecoEval4(2016)5), including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out a visit to Switzerland from 30 May to 3 June 2016. The GET was composed of Mrs Dominique DASSONVILLE, First Advisor to the Department of Legal Affairs, Belgian Senate, Federal Parliament (Belgium), Mrs Anca JURMA, Chief Prosecutor of the Service for International Cooperation and Public Relations, National Anticorruption Directorate, Prosecutor's Office attached to the High Court of Cassation and Justice (Romania), Mr Jean-Baptiste PARLOS, Advisor to the Criminal Division of the Court of Cassation (France) and Mr Philippe POIRIER, Holder of the Chair of Parliamentary Studies of the Chamber of Deputies of Luxembourg, Coordinator of the Research Programme on Governance – Jean Monnet action at the University of Luxembourg (Luxembourg). The GET was assisted by Mrs Sophie MEUDAL LEENDERS of the GRECO Secretariat.

11. The GET met the President of the Council of States, the Second Vice-President of the National Council, members of the National Council and the Council of States, including members of the Political Institutions Committees and the Judicial Committee, as well as the Secretary General, the Deputy Secretary General and representatives of the parliamentary services of the Federal Assembly. The GET also spoke with the Vice-President of the Federal Supreme Court, the President of the Federal Administrative Court, the Vice-Presidents of the Federal Criminal Court and the Federal Patent Court as well as judges and representatives of the general secretariats of these courts. The GET also met the Attorney General of the Confederation, the Deputy Attorney General, representatives of the Office of the Attorney General and of the Supervisory Authority of the Office of the Attorney General. Lastly, it spoke with representatives of the Ethics

Committee of the *Association suisse des Magistrats de l'ordre judiciaire* (Swiss Judges' Association) and the Conference of public prosecutors of Switzerland, a member of the Bar, a professor of law, and representatives of the press and of Transparency International Switzerland.

12. The main purpose of this report is to evaluate the effectiveness of measures adopted by the Swiss authorities to prevent corruption in respect of members of parliament, judges and prosecutors and to reinforce their integrity, both real and perceived. 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 GRECO practice, recommendations are made to the Swiss authorities, which are to designate the relevant institutions or bodies responsible for taking the requisite action. Switzerland shall report back on the action taken in response to the recommendations contained in this report within 18 months of its adoption.

II. CONTEXT

13. Switzerland is a federal country whose institutions operate in a manner that distinguishes them in many respects from traditional democracies. The index of public confidence in the institutions is high, Switzerland rating high in the Corruption Perception Index of Transparency International (TI)¹, where it ranked between 5th and 8th from 2010 to 2015, with a steady score of between 85 and 88 out of 100. Other international indexes, such as the Control of Corruption Index and the Rule of Law Index of the World Bank confirm this perception. According to TI's Global Corruption Barometer for 2013, Swiss citizens have a positive opinion of their government's action against corruption, only 17% considering it to have little or no effect. As regards perception of the institutions most affected by corruption, political parties top the list (43% of the people questioned deemed that they were subject or highly subject to corruption), followed by the media, the private sector and Parliament (25%). The judiciary is one of the institutions perceived as being the least affected (14%) - the public's trust in the justice system is even rated amongst the highest in Council of Europe member states - even though, according to this barometer, 6% of the people surveyed who had been in contact with representatives of the judiciary in the previous year admitted to having given them a bribe.

14. Instruments of direct democracy, consensus in decision making, the concordance system, a culture of confidence and discretion are all major ingredients in the quest for balance that characterises Swiss democracy. Another is the considerable autonomy of the cantons forming the Confederation, a 'militia' or non-professional parliament, which is thus lobbyist in essence, a judicature which is often elected according to political criteria, painting a clear picture of the how the institutions function in this country proud of its traditions and its assumed originality. At the turn of the century Switzerland nevertheless embarked upon a vast reform of its judicial organisation. Three of the four federal courts were created recently: the Federal Criminal Court (2004), the Federal Administrative Court (2007) and the Federal Patent Court (2012). In 2011, the statute and organisation of the Office of the Attorney General of the Confederation underwent substantial changes.

15. In Switzerland major politico-judicial affairs of corruption in the broad sense of the term are rare or even unheard-of. The weaknesses in the system are rather to be found in the subtle pressure that can be exerted on politicians and the judiciary by the very organisation of the system, as well as in the reverse side of the culture of confidence: as the system appears to work well there seems to be no need to question it or to put additional safeguards in place, on the ethical level, for example, or at least this is not seen as a priority.

¹ <http://www.transparency.org/qcb2013/country/?country=switzerland>

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

16. Switzerland is a federal State, where legislative power is exercised at federal level by the Federal Assembly, a bicameral parliament composed of the National Council and the Council of States, which meet separately most of the time. It is a perfect bicameral system because the two chambers have exactly the same powers and are on an equal footing. The Federal Assembly is "the supreme authority of the Confederation, subject to the rights of the people and of the cantons", according to the Constitution (art. 148). The Services of the Parliament employ about 300 people and are common to the two chambers.

17. Swiss parliamentary law concerning the integrity of members of parliament is governed by:

- a) The Federal Constitution of the Swiss Confederation of 18 April 1999 (Cst., as at 1 January 2016);
- b) The Law on the Federal Assembly of 13 December 2002 (Parliament Act, ParlA) (as at 1 March 2016). The purpose of this law is to determine, *inter alia*, the rights and obligations of the members of the Federal Assembly, the applicable procedures and relations between the Federal Assembly and the federal courts;
- c) The Rules of Procedure of the National Council of 3 October 2003 (as at 30 November 2015);
- d) The Rules of Procedure of the Council of States of 20 June 2003 (as at 1 June 2015);
- e) The Federal Law on political rights of 17 December 1976 (as at 1 November 2015);
- f) The order of the Federal Assembly implementing the Parliament Act and relating to the administration of Parliament (Order on the administration of Parliament, OLPA) of 3 October 2003 (as at 7 September 2015);
- g) Principles of action of the judicial Committee concerning the procedure to follow in the event of removal and non-re-election, of 3 March 2011;
- h) Principles of action of the Immunities Committee of the National Council and the Legal Affairs Committee of the Council of States concerning the application of sections 17 and 17a ParlA and section 14 of the Liability Act of 27 June and 15 November 2012;
- i) Incompatibilities between the office of National Councillor or State Councillor and other offices or functions: Principles of interpretation issued by the Bureau of the National Council and the Bureau of the Council of States in order to facilitate the application of section 14.e and f ParlA of 17 February 2006 (as at 14 February 2014);
- j) Criminal provisions on the fight against corruption. Recommendations of the Bureaux for the attention of Council members of 1 December 2015.

18. The National Council is composed of 200 representatives of the people (art. 149 Cst.). Seats are shared among the 26 cantons in proportion with the size of their resident population, based on the population registers as updated the year after the previous federal elections. Each canton has at least one seat. The members of the National Council are elected directly by the people for a period of four years. They are elected by proportional representation except in those cantons with only one seat, where the majority system applies.

19. The Council of States is composed of 46 representatives of the cantons (art. 150 Cst.). Each canton elects two representatives, except for the cantons of Obwalden, Nidwalden, Basel-Stadt, Basel-Landschaft, Appenzell Ausserrhoden and Appenzell Innerrhoden, which each elect one representative. The cantons regulate the election of

their representatives to the Council of States. The election is by direct suffrage in all the cantons, and by the majority system in all but the cantons of Jura and Neuchâtel (proportional system). The canton of Appenzell Innerrhoden is a special case on two counts: first, the election is held during an assembly of all the citizens ("*Landsgemeinde*") and not by individual secret ballot; and second, the assembly meets at the beginning of the year, whereas in all the other cantons the election takes place at the same time as the renewal of the whole National Council (second half of October). In all the cantons the members of the Council of States are now elected for a four-year period.

20. The Federal Constitution prohibits voting instructions (art. 161). The members of the two Councils thus deliberate and vote without following any instructions from political parties, interest groups, cantons, citizens, associations, etc. Under the same article the members must disclose any links they have to interest groups. In addition, the Swiss political system makes no provision for removal from parliamentary office. Members may resign from office, but they may not be forced to do so.

Transparency of the legislative process

21. In addition to the parliamentary legislative process, the Swiss political system is characterised by instruments of direct democracy. By popular initiative any 100,000 citizens may demand that a full or partial amendment of the Federal Constitution be submitted to a vote of the people (articles 138 and 139 Cst.). The time allowed for collecting the 100,000 signatures is 18 months. The authorities may propose a counter-amendment (which may differ slightly), in the hope that the people and the cantons will prefer their version. The Constitution also provides for certain proposals to be submitted to a mandatory referendum (art. 140 Cst.). These include revisions of the Constitution, accession to organisations for collective security or to supranational communities and emergency federal acts that are not based on a provision of the Constitution and whose term of validity exceeds one year. The above proposals must also be put to a vote of the cantons. Other acts must be submitted to a vote of the people only, namely popular initiatives for a total revision of the Constitution, popular initiatives formulated in general terms for a partial revision of the Constitution that have been rejected by the Federal Assembly, and, in the event that there is disagreement between the two Councils, the question whether a total revision of the Constitution should be carried out. Lastly, an optional referendum may be organised (art. 141 Cst.) at the request of 50,000 citizens or eight cantons, concerning federal acts, emergency federal acts whose term of validity exceeds one year, federal decrees provided that the Constitution or the law so requires, and international treaties which may not be terminated, or which provide for accession to an international organisation, or which require multilateral harmonisation of the law. The referendum must be requested within 100 days of the publication of the text in the Federal Gazette. Under Article 142 of the Constitution proposals submitted to the vote of the people are accepted if a majority of those who vote approve them. Proposals that are submitted to the vote of the people and the cantons are accepted if a majority of those who vote and a majority of the cantons approve them. The result of a popular vote in a canton determines the vote of the canton. The cantons of Obwalden, Nidwalden, Basel-Stadt, Basel-Landschaft, Appenzell Ausserrhoden and Appenzell Innerrhoden each have half a cantonal vote.

22. Article 147 of the Constitution provides for the organisation of a consultation procedure prior to the parliamentary legislative process whenever important legislation or other projects of substantial impact are in preparation, as well as in relation to significant international treaties. This notion is interpreted broadly, so consultation is the rule rather than the exception. There is a public list of bodies which are systematically consulted. In addition, bodies with a sectoral interest are also consulted when the project affects their sector of activity. Otherwise, any person or organisation may take part in the consultation and express their opinion. In principle the consultation lasts three months; reasons must be given for any exception to this principle. If the matter is urgent the

consultation may exceptionally be held in the form of a conference, with a written record of the proceedings. Depending on the results of the consultation, a project may be upheld, modified or withdrawn. The projects in respect of which consultations are organised and the results of the consultations are published on the Internet².

23. The final draft laws which the Federal Council submits to the Federal Assembly, together with an explanatory report called a "Message", are published in the Federal Gazette³. The same applies to draft laws proposed by the Federal Assembly, which are accompanied by an explanatory report and the opinion of the Federal Council.

24. The sessions of the two Councils are open to the public, with very rare exceptions, of which there have been none for several decades. The debates are published in full in the Official Bulletin⁴ (art. 158 Cst., further developed in section 4 ParlA). The modes of publication are laid down by decree of the Federal Assembly⁵. Visitors may follow the debates from the public galleries and the debates are also broadcast live on the Internet. Under section 5 ParlA the Councils and their bodies inform the public of their work in good time and in detail, in so far as no overriding public or private interest dictates otherwise. The use of the audiovisual recordings of Council debates and the accreditation of journalists are regulated by decrees of the Federal Assembly or the rules of the Councils.

25. The tasks of the committees and their composition are published on the Internet⁶. The deliberations of the committees are confidential (section 47 ParlA), as are the detailed minutes of the sittings, but the agenda is published on the Internet and the public is systematically informed of the decisions taken (section 48 ParlA). Only rarely is use made of the possibility provided for by law of organising public hearings. The principle of the confidentiality of committee deliberations concerns *inter alia* "the positions defended by the different people who attended the sittings and how they voted" (section 47.1 ParlA). The idea is to allow members of parliament to work together to develop solutions likely to win a majority of votes in favour, as freely and in as calm an atmosphere as possible, without putting them under unnecessary pressure. The authorities emphasise the importance of this approach in Switzerland: no party, no political "bloc", no "coalition", no "majority" can impose its views; everything must be discussed and negotiated, majorities must form on a case-by-case basis, so to speak. They feel that making committee debates public would have the opposite effect: the discussions might still take place in a calm atmosphere, but the centre of gravity would be moved "upstream", towards informal groupings with no structure, legitimacy or oversight.

26. As indicated above, the results of the voting in committee are made known to the public at press conferences or in press releases, but how each individual member of parliament voted remains confidential. As to the results of voting in the Councils, the rules of procedure of each Council determine in which cases the results of the voting are published in the form of nominative lists (section 82 ParlA). In practice the results of votes in the Councils are public when the debates are held in public. The result of a given vote is displayed by the president at the end of the voting procedure; it is also announced on the electronic voting system screens, which can be seen by those in the room and also those following the proceedings on the Internet, live or at a later time. How each member of parliament voted is also displayed on the electronic voting system screens, which show a plan of the room with as many coloured dots (green / red / white) as there were votes cast – visible once again to those in the room and to those watching on the Internet, live or later. Nominative lists are published in the Official Bulletin for all votes in the National Council. A database of the votes also makes the results easier to

² <https://www.admin.ch/gov/fr/accueil/droit-federal/procedures-consultation.html>

³ <https://www.admin.ch/gov/fr/accueil/droit-federal/feuille-federale.html>

⁴ <https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin>

⁵ Order relating to the administration of Parliament of 3 October 2003 (OLPA)

⁶ <https://www.parlament.ch/fr/organe/commissions>

consult⁷. In the Council of States, where electronic voting was introduced more recently (2014), a nominative list is only published for important votes, namely qualified majority votes, votes covering a project in its entirety following the detailed examination of the project, and final votes held at the end of the procedure for passing a law (Rule 44a.4 of the Rules of Procedure of the Council of States (RCS)).

27. The transparency of the legislative process in Switzerland is quite good, at least at the level of the Councils, and the Federal Assembly communicates effectively on its activities. Arrangements for consulting the public are also effective, the interested parties being involved in the elaboration of the legislation at an early stage. The frequent use of the instruments of direct democracy – popular initiative, referendums – is another positive point. The GET takes the view, on the other hand, that the confidentiality of the debates and the voting in the committees may raise a problem. While it may well, as suggested by its supporters, help to reach the compromise needed to win over a majority, this confidentiality, and in particular the non-publication of votes in a nominative manner may conceal conflicts of interest or even influence by third parties. Some of the members of parliament the team met during its on-site visit actually referred on this subject to section 8 ParIA, on the professional secrecy required of Assembly members, aimed, in particular, at safeguarding “overriding public or private interests, and in particular in order to protect personal privacy or to avoid prejudicing pending court proceedings”. They are uncomfortable with this notion of safeguarding private interests, in so far as it might, in practice, partly undermine the principle prohibiting federal parliamentarians from receiving instructions on how they should vote. Lastly, confidentiality also makes it difficult to verify the application of the rules designed to prevent conflicts of interest and withdrawal. It must be noted, however, that commission members themselves, who represent the various parliamentary groups, may exercise oversight to a certain extent. The GET thinks that there is room for improvement in terms of increased transparency, and that this should be encouraged, without necessarily undermining the very essence of the Swiss legislative process and its originality. The GET further notes that the arrangements for announcing the results of voting in the Council of States are less developed than in the National Council⁸. Accordingly, **GRECO recommends that consideration be given to increasing the degree of transparency (i) of debates and voting in both chambers’ committees and (ii) of voting in the Council of States.**

Remuneration and material benefits

28. According to official statistics the average salary in Switzerland in 2014 was 6,189 francs per month before tax, or 74,268 francs per year (about 5,700 and 68,400 euros)⁹.

29. In keeping with the “militia” system of non-professional government, the members of parliament do not devote all their time to their parliamentary duties. Most of them have a professional activity as well, even if this principle needs to be put in perspective. On the one hand, the time members devote to their parliamentary duties depends mainly on the number of committees and delegations of which they are members. This ranges from one or two in the National Council to between three and eight in the Council of States. But it is not uncommon for the professional activity they exercise in parallel to be linked, sometimes closely and directly, with their parliamentary work. Some members of parliament, for example, are also presidents of national political

⁷ <https://www.parlament.ch/fr/ratsbetrieb/abstimmungen/abstimmungs-datenbank-nr>

⁸ The GET notes on this subject that initiative [15.436](#), aimed at having the results of votes published in nominative form in the Council of States, was supported by the Committee on Political Institutions of the National Council, but not by its counterpart in the Council of States.

⁹ The lowest-paid 10% of Swiss workers earned less than 4,178 francs per month (3,846 euros) while the highest-paid 10% earned more than 10,935 francs per month (10,067 euros). (Source: Federal Statistics Office, Survey on salary levels and structures in 2014; exchange rate at 4 January 2016: 1 euro = 1.0862 francs)

parties, "public affairs" managers for large firms, trade union representatives, managers of umbrella organisations or members of cantonal or communal councils. The reality of the everyday lives of members of parliament is therefore quite varied. While it is probably difficult for members of the National Council to devote less than 40% of their time to their parliamentary duties, according to the authorities the average for that chamber is 50%. In the Council of States, on the other hand, some members devote 60%, or even 80% of their time to their parliamentary work.

30. The remuneration of members of parliament is made up in part of fixed basic amounts and in part of allowances linked to the number of sessions (Federal law on funds allocated to parliamentarians, of 18 March 1988 (LMAP) and the related decree (OMAP) of the same date). As the number of sessions can vary considerably from one Council member to another (see above), we can only give the average amounts allocated. The following table summarises the situation¹⁰.

Allowance	Amount	Payment
Annual allowance for the preparation of parliamentary work (section 2 LMAP)	26,000 francs taxable	Monthly
Per diem (sections 3 and 8 LMAP) paid for each day of presence at meetings in Switzerland and abroad (even in the event of sickness, accident and maternity).	440 francs taxable	Monthly
Annual contribution to cost of staff and equipment (section 3a LMAP)	33,000 francs taxable	Monthly
Meals allowance (section 4 LMAP; section 3.1 OMAP) paid for each day of presence at meetings.	115 francs non-taxable	Monthly
Overnight allowance (section 4 LMAP; section 3.1 and 2 OMAP) paid for each night between two consecutive days of meetings. Not paid to members living in a 10 km radius of the meeting venue as the crow flies or within a 30-minute journey by public transport.	180 francs non-taxable	Monthly
Subsistence and accommodation allowance for activities abroad (section 4 LMAP; section 3.3 OMAP)	395 francs non-taxable	Monthly
Long distance allowance (section 6 LMAP; section 6 OMAP) paid to members who have to make particularly long journeys. Two-thirds of the allowance is to cover expenses and one-third to make up for lost income.	22.50 francs per quarter hour of journey from home in Bern for the part of the journey in excess of 1.5 hours. 2/3 non-taxable, 1/3 taxable	Monthly
Travel expenses (section 5 LMAP; section 4 OMAP). Members have the choice between a general Swiss transport pass in first class, or a lump-sum allowance corresponding to the cost to Parliament of such a pass. The Bureaux may grant additional allowances to cover actual costs incurred. For meetings abroad the Confederation covers the actual cost of the journey: air fares are in economy class for short journeys and in business class for journeys over four hours.	4,640 francs non-taxable	Annual
Pension and insurance contribution (section 7 LMAP; section 7 OMAP). The contribution is double the maximum authorised payment for accepted forms of individual insurance (pillar 3a) for people on pillar 2; the MP pays one quarter of the contribution.	13,536 per year taxable, in principle tax deductible	Paid quarterly to the pension / insurance institution
Family allowance (section 6a LMAP). Paid in accordance with the Federal Law on federal employees.	Difference between the authorised ceiling and the allowance already received	Monthly
Allowance paid to chairpersons of committees (section 9 LMAP). An allowance for chairing the committee, corresponding to a per diem allowance, is paid for each committee meeting.	440 francs taxable	Monthly
Allowance paid to rapporteurs (section 9 LMAP). Rapporteurs who report to the Council on behalf of a committee are paid half a per diem for each oral report.	220 francs taxable	Monthly
Supplements for presidents (section 11 LMAP; section 9 OMAP). An annual supplement is paid to the	44,000 francs non-taxable	Monthly

¹⁰ Unless otherwise indicated: situation at 1 January 2015; internal documents the content of which is published in a slightly different form on the Internet: <https://www.parlament.ch/fr/organe/indemnités>.

presidents of the two Councils to cover the costs incurred in the exercise of their duties.		
Supplements for vice-presidents (section 11 LMAP; section 9 OMAP). An annual supplement is paid to the vice-presidents of the two Councils to cover the costs incurred in the exercise of their duties.	11,000 francs non-taxable	Monthly
Special allowance (section 10 LMAP). May be allocated for the performance of special duties for the presiding College of the Council, the Bureaux or a committee.	Entitlement and amount at the discretion of the Bureau of the Council.	

Income and allowances 2014

Average per member

National Council

Allowances (taxable)

Annual allowance	26,000
Daily allowances (including sessions)	40,205
Allowances paid to presiding colleges and rapporteurs	1,774
Long distance travel allowance (1/3 for loss of income)	465
Daily allowance in the event of sickness, accident or maternity	385
Maintenance allowance	1,008

Costs

Annual contribution	33,000
Meals allowance	10,074
Overnight allowance	9,492
Allowance for accommodation and subsistence abroad	1,475
Long distance travel allowance (2/3 for cost actually incurred)	929
Full travel pass	4,640

Pension (taxable)

Pension contribution	10,109
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*(2014: Special 4-day session)

Council of States

Allowances (taxable)

Annual allowance	26,000
Daily allowance (including sessions)	47,702
Allowance paid to presiding Colleges and rapporteurs	4,400
Long distance travel allowance (1/3 for loss of income)	756
Daily allowance in the event of sickness, accident or maternity	1,004
Dependents allowance	898

Expenses

Annual contribution	33,000
Meals allowance	11,522
Overnight allowance	10,935
Allowance for accommodation and subsistence abroad	2,897
Long distance travel allowance (2/3 for cost actually incurred)	1,511
Full travel pass	4,640

Pension (taxable)

Pension contribution	10,109
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31. In addition to the allowances and reimbursements mentioned above, members of parliament are also entitled to:

- reimbursement of the cost of language classes or classes in working methods, up to 2,000 francs per year;
- data processing equipment: members of parliament have the choice between standard computer equipment (hardware + software + IT support + about 3,500 francs for a 4-year term of office) and an allowance corresponding to the value of the standard equipment (about 9,000 francs per 4-year term);
- telecommunications: each Member receives 200 francs per month under this head (mobile phone, Internet access at home, etc.);
- at the end of the term of office a member may apply for a transitional allowance for a maximum duration of two years if he leaves the Parliament before the age of 65 and cannot earn income equal to the allowances he was

receiving while in Parliament. This allowance cannot exceed the maximum old-age pension (28,200 francs in 2015). Few members actually apply for this allowance.

32. They are not entitled, on the other hand, to such benefits as health and accident insurance in Switzerland. MPs do not have an official residence, a chauffeur-driven car (except, in very exceptional cases, for a specific official journey) nor free office space either. Only the Presidents of the Councils have official offices. A number of (open space) work stations are made available in the Parliament building, but not enough for all the MPs. Nor do members have their own secretariat or staff. The support they receive under this head is limited to the annual contribution to staff and equipment costs mentioned in the tables above. If a member wishes to open a proper office, with premises and staff, they must find other sources of funding. In that case there are no official limits and no obligation to declare the sums concerned.

33. All the information mentioned above is published on the Internet¹¹. The press often publish information of this type, for example when new Councils are elected. The Administrative Committee of the Federal Assembly, which is composed of the three members of the Bureaux of the two Councils, supervises the management and the financial administration of the Parliamentary Services. In the event of doubt about entitlement to an allowance or defrayal, or if a member questions the accuracy of a sum, the Administrative Committee decides (section 14.3 LMAP).

34. Each parliamentary group has about three offices, one of which, in principle, is used for meetings. The groups are free to use these offices as they see fit. It is usual, however, to reserve a place for the President of the national party and one for the leader of the parliamentary group. One or two work places are set aside for administrative staff. The groups receive a contribution to cover their secretariat costs, in the manner provided for in the LMAP. Each group receives annual public financial support made up of a lump sum of 144,500 francs plus 26,800 francs per member (section 12 LMAP and 10 OMAP). For the largest group (UDC, 74 members) that amounts to 2,127,700 francs (a little less than 2 million euros) and for the smallest group (Green Liberal party), 332,100 francs (just over 300,000 euros). Each year, by the end of March at the latest, the groups submit a report to the Administrative Committee explaining how the contributions received the previous year were spent (section 10.2 OMAP).

35. Many of the people the GET spoke to during their visit drew the team's attention to the limited means with which MPs were supposed to perform their duties. The reason for this is the fact that the Federal Assembly, an emanation of the "militia" system, is composed of members who are not professional MPs. That said, MPs may receive assistance from the staff of political groups and parliamentary bodies – in particular from the secretariat of parliamentary committees. In practice, however, for most of them politics is their principal activity, but the small size of the budget available to them prevents them from hiring people to assist them in their work, with the result that their parliamentary statements and interventions are sometimes drafted by pressure groups. In addition to greater transparency as regards MPs' connections with interest groups, a subject addressed below, the GET encourages the Swiss authorities to examine the matter of the means allocated to MPs, which should be sufficient to enable them to seek out objective information and make up their own minds. It notes that the Political Institutions Committee (PIC) of the National Council recently followed up a parliamentary initiative¹² to provide each MP with a parliamentary assistant and a lump sum of 10,000 francs to cover their costs, instead of the 33,000 francs they currently receive as a contribution towards staff costs.

¹¹ See footnote 10. See also Parliamentary Library information sheet (<https://www.parlament.ch/centers/documents/fr/faktenblatt-bezuege-f.pdf>), for details of the amounts paid over the years.

¹² <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20150445>

Ethical principles and rules of professional conduct

36. There is no code of ethics for members of parliament, or formal rules of conduct, simply certain principles. The obligations of members of parliament are laid down in the legislation – principally the Constitution and the Parliament Act – on the one hand, and through the recommendations and principles embodied in the positions taken by the Bureaux of the two Councils.

37. The Federal Constitution prohibits voting instructions and requires MPs to declare any links with interest groups (art. 161). Each member of the Federal Assembly takes an oath or makes a solemn promise prior to taking office. The wording is as follows: “I swear before almighty God/I promise to abide by the Constitution and the laws and to conscientiously fulfil the duties of my office.” MPs are also expected to observe the confidentiality of their function.

38. The GET was informed that no general discussion had been held in the National Council or the Council of States concerning the need to adopt a code or principles of professional conduct. Only certain ethical issues have been discussed as and when necessary, in particular the matter of links between MPs and interest groups. The general message that emerged from the interviews conducted during the visit was that Swiss MPs do not really feel the need for a code of conduct and are not really concerned by the subject.

39. The GET believes, on the contrary, that the adoption of a code or rules of conduct by and for members of parliament is necessary, as GRECO has constantly stated in its reports on the subject. All the more so in Switzerland, where the existing rules referred to appear insufficient, especially where conflicts of interest are concerned (see below). The political parties too seem to have no internal rules of conduct to make up for the lack of such rules in the two Councils. In addition to rules to address the shortcomings mentioned above, a code of professional conduct should also include rules concerning relations between MPs and third parties who might want to influence their activities, accepting gifts, invitations and other advantages, accessory activities and financial interests (together with comments and/or concrete examples). The process of drafting and updating a code of conduct is also an opportunity for MPs to examine what conduct is acceptable and what is not, and to make them more aware of what is expected of them. In order better to integrate the rules of professional conduct into the working habits of parliamentarians, additional measures are also important, such as providing them with appropriate specialised training, preferably at regular intervals and/or with confidential advice on the issues raised above. For these reasons and taking into account the issues above, **GRECO recommends (i) that a code of professional conduct, together with explanatory comments and/or concrete examples, be adopted for the members of the Federal Assembly and brought to the attention of the public, and that (ii) in addition, practical information and advisory measures be set in place.**

Conflicts of interest

40. There is no legal definition and/or typology of conflicts of interest, but the Swiss authorities explain that several rules exist on the general subject of conflicts of interest, namely those on incompatibilities, withdrawal, the obligation to declare interests, immunity, and the criminal provisions on corruption. These rules apply only to MPs, however, not to their family members or associates. They are explained in detail in the relevant sections of this report below.

41. Concerning withdrawal, the Parliament Act regulates the following three specific cases:

- In high supervisory matters, members of committees or delegations are expected to stand down when they have a direct personal interest in a matter under deliberation or when their impartiality might be questioned for other reasons (section 11a). The law points out that “the defence of political interests, on behalf of communities, parties or associations, for example, is not grounds for standing down”. In the event of doubt or disagreement, the committee or delegation decides whether the MP concerned must stand down, after listening to his arguments (section 11a.2).
- Any MP who sits on the Immunities Committee of the National Council or the Legal Affairs Committee of the Council of States must withdraw if the committee concerned is called upon to examine a request for the lifting of his parliamentary immunity (section 17a.7).
- When the Judicial Committee opens proceedings to remove a member of the judiciary whom it has elected, its members must declare any factors that might appear as an impediment or suggest partiality. If certain factors are objectively likely to create the appearance of an impediment or of partiality, the member or members of the committee concerned must stand down for the duration of the proceedings. Grounds for standing down include: a) kinship or alliance; b) strong relations, for example close friendship or personal enmity; c) involvement in the activities likely to be held against the person concerned. Here too the law reiterates certain principles: “The fact that a member of the committee belongs to the same party as the person concerned is not grounds for standing down.” In the event of disagreement over whether a committee member should stand down, the committee has the last word.

42. Beyond these obligations each member is at liberty at any time to decide not to take part in a discussion or a vote in order to avoid a conflict of interests.

43. A parliamentary initiative with the aim of obliging MPs to withdraw in the event of a direct personal financial interest in a matter during confidential discussions in committee was rejected in April 2016 the Parliamentary Institutions Committee of the National Council because it would be virtually impossible on a case-by-case basis to distinguish between defending political interests and personal financial interests.

44. Furthermore, any MP whose personal interests are directly concerned by a matter under deliberation is nevertheless required to say so when speaking on the subject in the Council or in committee (section 11.3 ParlA). The Bureau of the National Council defines the notion of direct personal interest as a decision directly beneficial to the MP, any person close to him or a client of his. Personal interests therefore include economic, professional and political interests as well as family and friendly relations¹³. If there is any doubt, the interest should be declared, as recommended in the letter of the President of the Council of States of 16 September 2013. This obligation to declare does not concern interests which have already been made public and are therefore in the public domain.

45. The GET notes that the subject of conflicts of interests of Members of Parliament comes up regularly in the political debate in Switzerland. The dividing line between the interests of MPs and conflicts of interest is very porous and the interviews conducted in Switzerland gave the impression that MPs do not always have a very clear vision of the problem. Yet this is a crucial problem in the Federal Assembly, whose members are free to engage in any additional activity, subject to the rules on incompatibilities – which are

¹³ Reply of 17 September 2001 of the Bureau of the National Council to interpellation 01.3272 “Personal connections of MPs. Publication and scrutiny.” tabled by the Ecology Group.

in fact interpreted in a rather flexible manner – and to hold all forms of financial interest. Moreover, in the absence of public financing of political parties and election campaigns and of transparency rules regarding such financing, MPs may also receive donations from physical or legal persons, without such financing being apparent, as highlighted by GRECO in the Third Evaluation Round Report. This dependence upon private financing could further increase MPs' exposure to the economic sphere and to conflicts of interest. Relevant connections must be declared and are public, but there is no verification of the exhaustive nature of the information given, as we shall see below. Many MPs have direct links with economic interests, associations or interest groups and defend those interests in the committees – where the debates and the voting are confidential – and in the Councils. The rules on withdrawal and the obligation to declare personal interests, as set out in art. 11 ParIA, are limited and do not prevent a majority of the members of the committees on health and energy, for example, from working for firms in those sectors. It is not unusual for the positions defended by certain MPs in committee or before one of the two Councils to have been drafted directly by the interest group concerned. The GET was also informed of a practice whereby MPs sitting on a particular committee would give up their place to other members of the Council on the pretext that the latter had interests to defend in connection with one of the items on the agenda. As stated in the parliamentary initiative mentioned above, "it frequently occurs that projects submitted to a Council by one of its committees are not in the interests of the economy, that is to say the general interest, but call for generous subsidies or tax relief in favour of specific sectors or of particular interests."¹⁴ One MP even admitted to passing on certain information picked up in committee meetings to his companies¹⁵, without the Bureau of the National Council taking any measure in the case. Some cantons have in fact adopted stricter rules on withdrawal, from which the Federal Assembly might do well to draw inspiration. In the meantime however, in the opinion of the GET, a satisfactory level of transparency of parliamentary proceedings can only be achieved by requiring every MP to publicly declare any conflict with his/her private interests, even if it could also be identified through the register of interests. Thus, **GRECO recommends extending the obligation to declare personal interests to include any conflict between the specific private interests of an MP and the subject under examination in parliamentary proceedings, be it in the Councils or in committee, regardless of whether the conflict could also be identified by examining the register of interests.**

Prohibition or restriction of certain activities

Gifts

46. The authorities refer to the criminal law provisions on bribery (articles 322ter to 322octies of the Criminal Code (CrC)), which also apply to Members of Parliament. In particular, the offence of accepting benefits (art. 322sexies CrC) is broad in scope¹⁶, as it does not require there to be any link between the improper benefit and a specific concrete act by the public official. It is sufficient for the benefit to have been solicited or accepted in order for the MP to do his duty. This covers progressive incitation, for example (from the first improper benefit received). This also covers low value gifts and donations, as highlighted by GRECO in its Third Round Evaluation Report. Under Swiss criminal law only small benefits in keeping with social custom (two cumulative conditions) and those authorised by the regulations are not punishable. However, an MP suspected of having committed an offence directly related to his functions or his parliamentary work can only be prosecuted with the authorisation of the competent committees of the two Councils (see below under immunity).

¹⁴ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20150467>

¹⁵ <https://www.parlament.ch/press-releases/Pages/2015/mm-bue-n-2015-05-08.aspx?lang=1036>

¹⁶ Its scope was further extended, from 1 July 2016, by a legislative amendment adopted by Parliament stating that articles 322quinquies and 322sexies CrC, respectively criminalising the giving and the accepting of a benefit, explicitly cover cases where the improper benefit is meant for a third party.

47. The Bureaux of the two Councils have published recommendations to MPs which put the acceptance of gifts and invitations to events and travel in perspective. The recommendations have been published on the Internet¹⁷. They leave it up to the MP to decide whether accepting a gift or benefit would undermine their independence and possibly expose them to criminal proceedings. They explain the notions of "improper benefit" and "small benefit in keeping with social custom" and reiterate the importance of MPs declaring their interests.

48. In addition, members of the Councils are prohibited from exercising an official function for a foreign State and from accepting titles and decorations from foreign authorities (section 12 ParIA).

49. In spite of the above-mentioned rules and recommendations on gifts, certain MPs told the GET that they often wondered, or were asked by colleagues, if this or that gift or invitation was acceptable. The GET invites the authorities to clarify and develop the rules and advice on the subject, in keeping with recommendation ii in paragraph 39.

Incompatibilities

50. Under article 144 of the Constitution no member of the National Council, of the Council of States, of the Federal Council or judge of the Federal Supreme Court may at the same time be a member of any other of these bodies. Section 14 ParIA further bars the following people from membership of the Federal Assembly:

- persons elected by it or whose appointment it has confirmed;
- judges of the federal courts whom it has not elected;
- staff of the central and decentralised Federal Administration, the Parliamentary Services and the federal courts, the secretariat of the Supervisory Authority for the Office of the Attorney General of the Confederation, and of the Attorney General's Office itself, as well as members of extra-parliamentary commissions with decision-making powers, unless specific statutory provisions provide otherwise;
- members of the armed forces command staff;
- all members of the governing bodies of organisations or entities under public or private law that do not form part of the Federal Administration but which are entrusted with administrative tasks, where the Confederation has control thereover;
- persons who represent the Confederation in organisations or entities under public or private law that do not form part of the Federal Administration but are entrusted with administrative tasks, where the Confederation has control thereover.

51. On the last two points the Bureaux of the Councils have adopted interpretative principles¹⁸. These principles indicate that the rules on incompatibility serve primarily to prevent conflicts of loyalty or interest and to guarantee the effective personal separation of powers. The GET notes, however, that immediately afterwards they specify that "in the event of mere doubt as to the compatibility of parliamentary office with the exercise of any other office or function, because this dual responsibility might lead to a conflict of interests or loyalties, a flexible interpretation of section 14. e and f will be privileged in order to authorise the combination concerned". Even bearing in mind the specificities of the militia system and the idea that the Federal Assembly should represent the diversity and the interests of Swiss society in the broadest possible way, the GET is of the opinion that this flexible interpretation is questionable and contributes to the confusion, noted earlier, between personal connections and conflicts of interest. It invites the authorities to re-examine this question in the context of recommendation ii on the development of rules of professional conduct.

¹⁷ <https://www.parlament.ch/centers/documents/fr/information-korruptionsstrafrecht-2015-12-01-f.pdf>

¹⁸ www.admin.ch/opc/fr/federal-gazette/2014/3093.pdf

52. In each Council the Bureau regularly checks that the rules on incompatibility are observed. There is no mention, however, of the frequency and manner of these checks in the texts that regulate parliamentary work. The examination of incompatibilities is based on the declarations made by the MPs, which the Bureau does not verify.

Accessory activities, financial interests, employment on leaving office

53. Under the "militia" system MPs are free to engage in other activities and have financial interests, subject to the incompatibilities described above and to the obligation to declare their personal connections (see paragraph 44) and interests (see below). There are no restrictions on what they do after they leave office.

Contracts signed with public authorities

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

Improper use of confidential information

55. Assembly members "are bound by official secrecy where, through their official activities, they acquire knowledge of information that must be kept secret or confidential in order to safeguard overriding public or private interests, and in particular in order to protect personal privacy or to avoid prejudicing pending court proceedings" (section 8 ParlA; section 47 provides for the confidentiality of discussions in committees). Violation of official secrecy is punishable under article 320 CrC (up to three years' imprisonment or a fine), subject to the competent committees of the two Councils authorising prosecution.

Improper use of public funds

56. There is no special provision in Swiss law to punish offences related to public resources, or committed by MPs; the normal legal provisions apply (offences against property – articles 137 et seq. CrC, offences against official and professional duties – articles 312 et seq.). For example, article 314 CrC punishes "the improper management of public interests": "Members of an authority and public officials who, in a legal act and with a view to obtaining an improper benefit for themselves or for a third party, harm the public interests it is their duty to defend shall be punished by up to five years' imprisonment or a fine. In the event of imprisonment, a fine shall also be imposed."

Contacts with third parties

57. Assembly members may have entry passes issued for a specified period to any two persons – lobbyists, co-workers or guests – who wish to have access to parts of the Parliament building that are not open to the public. The details of these persons and their functions must be recorded in a register that is published on the Internet¹⁹ (section 69.2 ParlA).

58. At the end of 2015 a number of parliamentary initiatives were proposed with a view to increasing transparency and regulating lobbying. The Council of States and the Parliamentary Institutions Committee (CPI) of the National Council followed up an initiative to introduce a system of accreditation based on uniform criteria that remain to be determined, and to add to the information contained in the public register details of all the mandates under which lobbyists operate in the Assembly²⁰. The GET supports this initiative, which can only increase transparency.

¹⁹ National Council: <https://www.parlament.ch/centers/documents/de/zutrittsberechtigte-nr.pdf>; Council of States: <https://www.parlament.ch/centers/documents/de/zutrittsberechtigte-sr.pdf>

²⁰ <https://www.parlament.ch/press-releases/Pages/mm-spk-n-2016-04-15.aspx>

59. The Bureau of the National Council has also supported these initiatives by calling for a general in-depth debate with a view to amending parliamentary law, not only regarding the definition of lobbying and access to the Parliament building for lobbyists, but also with regard to relations between parliamentarians and lobbyists and the accepting of benefits, greater transparency as to the exact nature of the MPs' work, activities incompatible with parliamentary office, the remuneration received for activities that have to be declared, gifts received and withdrawal²¹. The CPIs of the two Councils were tasked with examining the amendments to the Parliament Act.

60. The GET can only encourage this appeal, which addresses a number of points raised in this report, and support the Federal Assembly's deliberations on the matter. In the GET's view, there is no doubt at all that the interaction between Assembly members and lobbyists must gain in transparency and that regulations and advice must be formulated in the framework of the principles of professional conduct recommended in paragraph 39. This is particularly true of Switzerland, bearing in mind the limited means and advantages MPs enjoy compared with those in other countries, and the lack of rules on the transparency of election campaign funding, a subject addressed in GRECO's Third Evaluation Round. Examination of the interests and connections declared by MPs also reveals that lobbying is on the increase with each new Parliament²², although this phenomenon is not specific to Switzerland. There is a risk of parliamentary assistants – or parliamentarians themselves²³ – being paid by lobbyists who participate indirectly in the drafting of parliamentary initiatives. The independence of certain MPs could be threatened if they accept invitations from persons defending particular interests to attend seminars or conferences for a fee²⁴.

Declaration of assets, income, debts and financial interests

61. MPs are under no obligation to disclose their assets, income or debts, or the gifts they receive. Section 11 ParIA does, however, require MPs to enter any personal interests or connections in a public register. As stated above, this obligation concerns MPs but not their close relations or associates.

Section 11 ParIA

¹ On assuming office and at the start of every year, each Assembly member must inform his or her office in writing of his or her:

- a. professional activities;
- b. activities in management or supervisory committees as well as advisory committees and similar bodies of Swiss and foreign business undertakings, institutions and foundations under private and public law;
- c. activities as a consultant or as a specialist adviser to federal agencies;
- d. permanent management or consultancy activities on behalf of Swiss or foreign interest groups;
- e. participation in committees or other organs of the Confederation.

² The Parliamentary Services maintain a public register containing the information provided by Assembly members.

³ Assembly members whose personal interests are directly affected by any matter being considered must indicate their personal interest when making a statement in the Council or in a committee.

⁴ Professional secrecy in terms of the Swiss Criminal Code is reserved.

62. Each Assembly member is responsible for the exhaustive nature of the information supplied. They inform the Bureau of the Council of any personal interests and connections on taking up office, then each year at the beginning of the calendar year. In practice they report any changes as and when they occur. The register of interests is

²¹ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20153453>

²² <https://www.letemps.ch/suisse/2015/08/23/lobbies-marche-parlement>

²³ http://www.swissinfo.ch/fre/remous-au-parliament_une-histoire-de-lobbying-kazakh-qui-secoue-la-politique-suisse/41439424

²⁴ <http://www.hebdo.ch/les-blogs/bellini-quillaume-pas-perdus-pour-tout-le-monde/quand-le-greco-enqu%C3%AAte-en-suisse>

published on the Internet²⁵ and updated every month. The biographical data sheet on each member, which is regularly updated, also shows these interests and connections.

63. According to the authorities, this publishing of MPs' interests is intended to provide greater transparency with regard to any conflicts of interest that may arise between the State, the economy and society; citizens are thus able to judge whether an activity might influence an MP in his or her decisions.

64. Note also that the Law on money laundering (LML) was amended on 1 January 2016. The notion of "politically exposed persons" (PEP) was extended to include people who hold or have held high-level public office at the national level in Switzerland in politics, the administration, the army or the judicial system, as well as board members of State corporations of national importance (politically exposed persons in Switzerland, national PEPs, section 2a.b LML). The message accompanying the law states that members of the Federal Parliament are considered national PEPs. Close relations of national PEPs are natural persons who are clearly close to them because of family or personal ties or business connections (section 2a.2 LML). National PEP status expires 18 months after the MP leaves office. The status implies a stricter due diligence requirement for financial intermediaries where certain risk criteria are present.

65. Like the question of the transparency of lobbying, that of the transparency of MPs' interests and connections regularly resurfaces in the political and public debate. Several parliamentary initiatives to increase this transparency have been tabled recently and two of them were approved in committee: the CPI of the Council of States decided in November 2015 to follow up an initiative to oblige MPs to disclose not only their profession but also the name of their employer and the type of work involved, in order to avoid vague entries such as "consultant" or "administrator"²⁶. And in February 2016 the CPI of the National Council decided to follow up a parliamentary initiative to disclose whether or not the occupations mentioned in the register of interests are remunerated²⁷. Parliamentary law will therefore be amended accordingly. However, initiatives to oblige MPs to state the actual income received for activities declared in the register of interests, or the value of gifts received in connection with their political activities were rejected.

66. Calls for greater transparency also concern MPs' travel. An initiative for the law to oblige MPs to disclose to journalists and any other interested party who so requests full details of any journeys they make at the taxpayer's expense was adopted by the CPI of the National Council but rejected by that of the Council of States. The CPI of the National Council having upheld its initial decision, the matter must now be referred once more to the CPI of the Council of States, then to the two Councils in plenary²⁸. The law will only be amended if the two Councils agree.

67. The GET approves the projects in progress to increase the transparency of MPs' interests and connections, but it considers that in a system that has chosen to regulate conflicts of interest through transparency and mutual trust rather than by imposing restrictions, things must be taken a step further. As GRECO has pointed out on numerous occasions in its reports on the subject, significant debts and claims are an important aspect of MPs' interests, as are details of the approximate value of their main assets. Furthermore, in the absence of information about the interests of their spouses and dependent family members, there is a distinct risk of certain MPs circumventing the obligation of disclosure by transferring their assets to their close relations. In this area the GET is perfectly aware of the challenges inherent in such a system from the point of view of the danger of interference in the private life of family members and believes that the solution is not necessarily to make this additional information available to the general

²⁵ National Council: <https://www.parlament.ch/centers/documents/de/interessen-nr.pdf>; Council of States: <https://www.parlament.ch/centers/documents/de/interessen-sr.pdf>

²⁶ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/legislaturueckblick?AffairId=20140472>

²⁷ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/legislaturueckblick?AffairId=20150437>

²⁸ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/legislaturueckblick?AffairId=20150442>

public. Consequently, **GRECO recommends (i) including quantitative data concerning MPs' financial and economic interests, and details of their main liabilities in the existing disclosure system; and (ii) considering broadening the scope of their declarations to include information on their spouses and dependent family members (it being understood that this information would not necessarily be made public).**

Supervision and enforcement

Supervision

68. Incompatibilities are regularly checked by the Bureaux of the Councils, based on the declarations made by the MPs – the accuracy of which the Bureaux do not check. Following the full renewal of the Council or when a new MP takes up office, the Council examines, at the request of the Bureau, whether any incompatibility exists. If the question arises in the course of the parliamentary term, the Bureau may at any time carry out checks and submit a proposal to its Council. Section 15 ParIA lays down the procedure: "1. Any person required to choose between parliamentary office and a position incompatible with that office under section 14.a shall state which of the two functions he or she decides to exercise. 2. Any person required to choose between parliamentary office and a position incompatible with that office under section 14.b to f shall automatically be removed from office within six months of the date on which the incompatibility was established if they have not given up the function concerned in the interim." In practice there has never been a case of incompatibility.

69. Declarations of interests are not verified as such, but the Bureaux of the Councils have the power to call to order any MPs who fail to fulfil their obligations (section 13 ParIA).

Sanctions

70. The disciplinary measures provided for are:

<p>Section 13 ParIA</p> <p>¹ Where an Assembly member, having been issued with a formal warning, once again infringes the administrative and procedural regulations of the Councils, the President may:</p> <ul style="list-style-type: none">a. remove the Assembly member's right to speak; orb. exclude the Assembly member from the meeting for all or part of its remaining duration. <p>² Where an Assembly member commits a serious infringement of administrative or procedural regulations or breaches official secrecy, the Bureau of the Council concerned may:</p> <ul style="list-style-type: none">c. officially reprimand the Assembly member; ord. suspend the Assembly member from participation in the committees for up to six months. <p>³ The Council shall decide on any objections raised by the Council member in question.</p>

71. The replies to the questionnaire indicate that this section of the ParIA applies in the event of failure by MPs to honour their obligations of disclosure, but the GET was not informed of any cases where it had been applied.

72. As stated above, the general provisions of the Criminal Code, particularly those relating to corruption, accepting benefits, the violation of official secrecy and offences against property and against official or professional duties apply to MPs, subject to the authorisation of proceedings by the relevant committees of the two Councils.

73. Failure to abide by the rules on incompatibility brings about the automatic removal from office of the member concerned within six months of the date on which the incompatibility was established (section 15 ParIA). This is the only case in which an MP may be removed from office.

74. The GET notes that in the absence of machinery in the Federal Assembly for ensuring that members fulfil their obligations, particularly concerning the declaration of their interests, this scrutiny is outsourced at present to the media and civil society. Affairs implicating MPs are few and far between, but some MPs have been known to neglect to disclose all their interests or to declare them in terms too general to be meaningful. Other cases were reported to the GET, like that of an MP who had been offered an expenses-paid journey, which his party had asked him to reimburse²⁹, or the case mentioned above of an MP who was approached by a lobbying agency to defend its interests³⁰.

75. The GET further notes that as their election is seen as the expression of the confidence of the electoral body in their MPs, the onus is placed on their individual sense of responsibility to behave in an ethical manner, and it is the electorate, when they vote, who decide what to do about any misconduct. All in all, then, the Swiss people have a lot of faith in their elected representatives, but they also have strong expectations in terms of ethical conduct and are gradually demanding greater transparency. In view of this trust-based approach, but also of the specificities of the non-professional parliament, where MPs are exposed to the influence of numerous interest groups, the GET is convinced that the scrutiny provided by the public would be more effective if it was supported by administrative guarantees – designed above all to give the public access to more information. Bearing in mind the recommendations made above concerning the adoption of a code of professional conduct and the strengthening of the obligations of disclosure for MPs, the GET considers it perfectly logical, for the application of these rules, to demand a degree of scrutiny and enforcement by a competent body within the Federal Assembly. It is of course for the Swiss authorities themselves to decide how to organise the necessary machinery, while upholding the culture of trust and the widely shared desire to avoid unnecessary red tape or expense. Such an initiative would also have the merit of demonstrating to the public the Federal Assembly's desire to adopt a more determined approach when it comes to ensuring the integrity of its members. In the light of the above, **GRECO recommends the adoption of appropriate measures to improve the scrutiny and the application of the obligations concerning disclosure and the standards of conduct applicable to members of the Federal Assembly.**

Immunity

76. MPs enjoy full immunity (non-accountability) for statements they make before the Councils and their organs (art. 162.1 Cst., section 16 ParlA): no civil, criminal or disciplinary action (outside Parliament) may be taken against them. Their immunity cannot be lifted.

77. MPs enjoy relative immunity from criminal proceedings: "Criminal proceedings may be brought against an Assembly member for an offence that is directly related to his or her official position or activity only if authorised by the competent committees of both Councils." (section 17.1 ParlA; for the procedure, see section 17a et seq. ParlA). These provisions were revised in 2011 in order, *inter alia*, to restrict the scope of the relative immunity and transfer responsibility for the decision from the Councils to their respective committees, so that the decisions are taken on a legal rather than a political basis.

78. The lifting of an MP's immunity must be approved by the Immunities Committee of the National Council, composed of nine members, and by the Legal Affairs Committee of the Council of States, composed of thirteen members. The committees give written reasons for their decisions, which are published on the Internet. In the event of disagreement between the two committees, an attempt is made to resolve their

²⁹ See footnote 31.

³⁰ See footnote 23.

differences. The second refusal by a committee of an application to lift immunity is final and not open to appeal.

79. Urgent interim measures, even of a coercive nature, may be taken, however, before the authorisation is granted (art. 303.2 CCrP). In addition, surveillance or other investigative or prosecution measures to proceed with an initial examination of the facts or the conservation of evidence prior to the formal request to lift the immunity may be taken by authorisation of the presiding College of the two Councils. A majority of five of the six members of the College is required (section 17.a et seq. ParIA). As soon as such measures have been taken, a formal authorisation to lift the immunity must be requested.

80. Five requests to lift immunity were dealt with from the 2011 revision up to October 2015, one of which concerned an MP's fact-finding journey to Kazakhstan, which was paid for by a private individual³¹. In one case the competent committee considered that the facts concerned were not covered by immunity; in the other four cases the committees decided not to lift the immunity, mainly on the grounds that the facts were not serious enough to warrant criminal proceedings. The GET found no evidence, however, that immunity was being abused to protect MPs from ordinary judicial proceedings.

Advice, training and awareness

81. MPs are all given a copy of the Federal Assembly Handbook containing the relevant legislation³². Before taking up office they receive various memoranda and recommendations concerning incompatibilities, disclosure of interests and so on, with the contact details of the Legal Service of the Federal Assembly. These memoranda, although not confidential, are not published on the Internet. The information is also available for consultation on the extranet network accessible only to MPs. Members can also seek information from the secretariats of the Councils and from committee secretariats. On this subject the GET refers to its recommendation ii on the adoption of awareness-raising and advisory measures on professional conduct.

82. All the information on the above-mentioned rules and regulations and the conduct expected of Assembly members is published on the Internet³³ and also accessible to the general public.

³¹ Excerpt from the report of the Committee on Immunities of 2 July 2015: "The National Council member (...) participated in May 2014 in a four-day visit to Astana in Kazakhstan, with all expenses paid. As soon as this information became known, he was asked by his party to refund the cost of the journey. At his hearing before the committee Councillor (...) explained that it was in his capacity as a member of the Switzerland-Kazakhstan interparliamentary group that he had travelled to Astana. It was true that he had not looked properly into the nature of the journey, the cost of which had been paid by a Kazakh businessman. He had informed the committee of the programme for the journey, explaining that nobody on the Kazakh side had contacted him, either prior or subsequent to his journey. In the meantime he had reimbursed the cost of the journey, approximately 3,000 francs."

³² <https://www.parlament.ch/fr/über-das-parlament/fonctionnement-du-parlement/droit-parlementaire>

³³ Swiss federal law can be consulted in full on the Internet:

<https://www.admin.ch/gov/fr/accueil/droit-federal/recueil-systematique.html>.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the of the judicial system

83. The Swiss judicial system is strongly marked by federalism. Dispensing justice is still largely a matter for the cantons. Even if criminal and civil law and procedure are laid down at the federal level, it is mainly the cantons which are responsible for the organisation of the courts and the administration of justice (articles 122.2 and 123.2 of the Constitution (Cst.)). Moreover, while the cantonal courts are naturally competent for the judicial application of cantonal administrative law, they are also competent to hear federal administrative law disputes when the law was implemented by the cantonal or communal authorities. So law enforcement in Switzerland is marked by federalism: the cantons are responsible for implementing federal law (art. 46 Cst.).

84. The Swiss Constitution nevertheless provides for exceptions to this principle of cantonal jurisdiction, and a federal justice system therefore also exists. On the one hand, the Federal Supreme Court (FSC) is Switzerland's supreme judicial authority (art. 188.1 Cst.). It guarantees the uniform application of federal law and the protection of the fundamental rights of the citizens (constitutional jurisdiction). On the other hand, courts of first instance were set up following a popular vote held in 2000: the Federal Criminal Court (FCC) was founded in 2004, the Federal Administrative Court (FAC) in 2007 and the Federal Patent Court (FPC) in 2012. The FAC deals with decisions taken by the federal administration, while the FCC hears criminal cases that fall under federal jurisdiction (genocide, financing of terrorism, corruption, organised white-collar crime, counterfeit money). As to the FPC, it hears civil law cases in the specific field of patents. *In keeping with GRECO practice, this report and the replies to the questionnaire on which it is based will focus on federal justice³⁴. However, some GRECO recommendations of a general character could also be useful for cantonal authorities. Therefore, the GET considers that cantons ought to be invited to draw inspiration from this report in order to adapt their own provisions where necessary.*

85. Switzerland has no single body of judges, first of all because of its federal system. Each canton has the power to organise its court system and determine the status of its judges (see, *inter alia*, art. 191b. 1 Cst.). Even at the federal level each judge is elected to a given court (FSC, FAC, FCC or FPC), which has its own rules on the status of its judges.

86. The FSC has 38 judges, 11 of whom are women, spread over seven courts. Five of these courts are in Lausanne, and two, which are specialised in social law, are located in Lucerne. TF judges are considered as "magistrats" for labour law purposes. The FAC, in St-Gall, has 65 full-time judges' posts, but many judges work part-time. 72 judges currently work there; 44 of them are men and 28 women. It is composed of six divisions organised according to the type of litigation. The FCC is located in Bellinzona and has 18 ordinary judges and three substitute judges. Five of the judges are women. It comprises a criminal division and an appellate division, each with nine judges. Most of the judges work part-time. The FPC, also in St-Gall, has 40 judges, but only one of them works full-time and another half-time. The other judges were selected for their technical skills – 28 are technicians and 12 lawyers – and for their working languages, and they work part-time depending on the type of case.

87. They share certain rules in common, however, such as the principle of the independence of the judiciary, which is enshrined in article 191c of the Constitution and supplemented by a constitutional provision on incompatibility.

³⁴ Military justice also falls under federal jurisdiction, but in keeping with GRECO practice, this report will not address that aspect.

Art. 191c Cst.: Independence of the judiciary

The judicial authorities are independent in the exercise of their judicial powers and are bound only by the law.

Art. 144 Cst.: Incompatibility

¹ No member of the National Council, of the Council of States, of the Federal Council or judge of the Federal Supreme Court may at the same time be a member of any other of these bodies.

² No member of the Federal Council or full-time judge of the Federal Supreme Court may hold any other federal or cantonal office or undertake any other gainful economic activity.

³ The law may provide for further forms of incompatibility.

88. The principle of the independence of the judiciary is reiterated in the same terms in the laws which govern the status and functioning of the federal courts (section 2 of the LFSC³⁵; section 2 of the LFAC³⁶; section 2 of the LFPC³⁷). As to the FCC, it is a criminal authority within the meaning of the Code of Criminal Procedure (CCrP³⁸), article 4.1 of which reads: "the criminal authorities are independent in the application of the law and are bound only by the rules of law".

89. This principle of the independence of the judiciary is also enshrined in other laws, such as the Parliament Act (section 26.4 ParIA), which states that the high supervisory role played by the Federal Assembly does not include control over the content of judicial decisions or the rules on the removal of judges.

Recruitment, career and conditions of service

90. The judges of the FSC, the FAC, the FCC and the FPC are elected by Parliament (Federal Assembly) for a six-year term of office (art. 145 Cst., section 9 LFSC, section 9 LFAC, section 48.2 LOAP³⁹ and section 13 LFPC). The term of office is renewable. Judges can be re-elected until they reach retirement age, at the end of the calendar year in which they reach the age of 68.

Recruitment

91. The Federal Assembly elects the judges of the federal courts, on the proposal of the Judiciary Committee. The Federal Assembly, sitting in joint Chambers, is composed of all the members of the federal parliament, that is the 200 members of the National Council and the 46 members of the Council of States. It is chaired by the president (currently a woman) of the National Council (art. 157.1 Cst.). The Judiciary Committee is composed of 12 members of the National Council and five members of the Council of States. Each parliamentary group has the right to at least one seat on the committee (section 40a.5 ParIA). The seats are distributed in proportion with the forces present in the Federal Assembly. The members are Assembly members selected respectively by each party. The Judiciary Committee is chaired alternately every two years by a member of the National Council and a member of the Council of States, with a rotation between the parties.

³⁵ Law on the Federal Supreme Court, of 17 June 2005, RS 173.110.

³⁶ Law on the Federal Administrative Court, of 17 June 2005, RS. 173.32.

³⁷ Law on the Federal Patent Court, of 20 March 2009, RS. 173.41.

³⁸ Swiss Code of Criminal Procedure of 5 October 2007, RS 312.0.

³⁹ Law on the organisation of the criminal authorities, of 19 March 2010, RS 173.71

92. The legal foundations for the different courts are as follows:

<p>Federal Supreme Court</p> <p>Art. 143 Cst.: Eligibility for election Any person eligible to vote may be elected to the National Council, the Federal Council or the Federal Supreme Court.</p> <p>Art. 145 Cst.: Term of office The members of the National Council and of the Federal Council as well as the Federal Chancellor are elected for a term of office of four years. Judges of the Federal Supreme Court have a term of office of six years.</p> <p>Art. 168.1 Cst.: Appointments ¹ The Federal Assembly elects the members of the Federal Council, the Federal Chancellor, the judges of the Federal Supreme Court and, in times of war, the Commander-in-Chief of the armed forces ("the General").</p> <p>Section 5 LFSC: Election ¹ The Federal Assembly elects the judges. ² Any person eligible to vote in federal matters may stand for election.</p>
<p>Federal Administrative Court</p> <p>Section 5.1 LFAC: Election ¹ The Federal Assembly elects the judges. ² Any person eligible to vote in federal matters may stand for election.</p>
<p>Federal Criminal Court</p> <p>Section 42.1 LOAP: Election ¹ The Federal Assembly elects the judges. ² Any person eligible to vote in federal matters may stand for election.</p>
<p>Federal Patent Court</p> <p>Section 8 LFPC: Composition of the court ¹ The Federal Patent Court is composed of judges with legal training and judges with technical training. The judges must have confirmed knowledge of patent law. ² The Federal Patent Court is composed of two ordinary judges and a sufficient number of substitute judges. Most of the substitute judges must have a technical background.</p> <p>Section 9 LFPC: Election ¹ The Federal Assembly elects the judges. ² Any person eligible to vote in federal matters may stand for election. ³ The Federal Assembly and the Judiciary Committee ensure that technical fields and official languages are evenly represented. ⁴ The IPI (Swiss Federal Intellectual Property Institute), specialist organisations and other experts active in the patent field may be consulted during the preparation of the election.</p>

93. Vacant posts are advertised by the Judiciary Committee for competitive examination. In so far as the law allows judges to work part-time, the vacancy notice indicates whether it is a full or part-time post. A sub-committee of the Judiciary Committee composed of seven members – one per political group – examines the applications and decides which applicants will be interviewed by the full Committee. Candidates who are not invited to be interviewed are informed by a letter which mentions the number of candidates shortlisted. Once the candidates have been interviewed, the Judiciary Committee submits a recommendation to the parliamentary groups and requests their opinion; it then reaches a final decision on the proposals to make to the Federal Assembly, taking that opinion into account. To date, the candidates proposed by the Judiciary Committee have always been elected by the Federal Assembly.

94. In practice applications must comprise a curriculum vitae, a copy of any diplomas and work certificates, the contact details of reference persons (including at least two professional references), a list of publications, a certificate as to debt history and criminal record and a passport photo. The Judiciary Committee contacts the candidates' reference persons of the candidates it invites to be heard.

95. As to selection criteria, the law requires only that candidates be Swiss nationals. In practice, however, professional criteria (legal training and professional experience) and personal criteria (personality, working methods, certificate as to debt history and criminal record) and language criteria are also taken into account. In addition, the Judiciary Committee seeks to maintain balanced representation of the sexes and the political forces (the parties under-represented at the time of the election are mentioned

in the vacancy notice), except for the FPC, where political affiliation is not a selection criterion. This balanced representation of the political forces, which does not rule out the election of judges with no political affinities, is based on an unwritten principle of Swiss democracy.

96. At the end of their six-year mandate the judges are re-elected by the Federal Assembly. The Judiciary Committee also helps prepare the re-elections. It asks the courts concerned which judges are standing for a new term of office. It also checks with the Control Committees (parliamentary committees exercising supreme supervisory authority) and the Finance Delegation (delegation of the parliamentary committees responsible for financial supervision) if they have noted anything that sheds serious doubt on the professional aptitude of a judge (section 40.a. ParIA). At the end of each administrative term, the Federal Assembly thus fully renews the court concerned for the new administrative term, based on the proposal of the Judiciary Committee.

97. A proposal not to re-elect a judge is dealt with by the Judiciary Committee following the same procedure as for a removal (see below). Concerning the financial consequences of non-re-election or removal, an allowance of up to one year's salary may be awarded by the competent body of the court concerned. No such allowance is awarded where the non-re-election or the removal is the result of a serious breach of duty (section 15a OJudges⁴⁰, which applies only to the first instance federal courts).

98. During its visit the GET discussed at length the system of election of judges by the Federal Assembly. Judges used to be elected by the people and are still seen as representatives of the people and of its languages, cultures and political forces. The philosophy of the system, which everyone the GET spoke to referred to, is also that, as there is no way of preventing judges' personal or political opinions from affecting their decisions to a certain degree in the application and interpretation of the laws, it is important to balance these influences and make sure they are transparent for all to see. This system of electing judges appears to be accepted by the public and by the legal establishment. The political history and tradition of Swiss democracy thus explain this system of election of judges by the political forces represented in the Parliament and brought together in the Judiciary Committee, in keeping with the unwritten principle of balance between the parties.

99. The system still leaves room for improvement in the opinion of the GET. The Judiciary Committee itself admits that while it tries to make sure that competent candidates are proposed for election, the choice is always the result of a balance where a decisive criterion is the political affiliation of the candidates. The degree of competence of judges might therefore suffer as a result. The system also makes it very difficult, if not impossible, to elect judges whose political affiliation is unknown, no matter how qualified they may be⁴¹. This constraint seems to have been accepted by the legal community, and candidates interested in a career as a judge generally join a political party early on, or at the latest after being elected⁴². Certain candidates even appear to change their political allegiances in order to increase their chances of being elected. A link with political power may thus be forged, regardless of the candidates' personal opinions. In the opinion of the GET, it is necessary, because it is more compatible with the demands of a modern democratic society, to formalise the principles of recruitment of judges in writing and to clarify them: first of all to facilitate access of the most competent candidates rather than the most highly recommended ones to the judicial function. However, also to make the courts more open to highly qualified candidates who have no political support, it is necessary to encourage them to apply by creating the conditions for a more balanced representation in the federal courts between those with ties to political parties and those with none. Accordingly, **GRECO recommends that measures be taken to strengthen**

⁴⁰ Order on judges of 13 December 2002, RS 173.711.2

⁴¹ <http://www.nzz.ch/problematische-kuer-der-richter-in-der-schweiz-1.4405029>

⁴² Katrin Marti, La commission judiciaire de l'Assemblée fédérale, Richterzeitung 2010/1.

and improve the effectiveness in terms of quality and objectivity of the recruitment of judges to the federal courts.

100. Many of the people the GET spoke to said that, after election, the judges' political label no longer played any part in the performance of their duties or their subsequent career. In the GET's view this claim needs to be put into perspective. Although judges of the federal courts do not appear to be subjected to direct political pressure in the performance of their duties, they do maintain ties with the political forces through their re-election, as well as the widespread practice in the federal courts of judges paying a part or a percentage of their salary to the party that supported them. While the judges the GET met stressed that this was done on a voluntary basis, it is a form of retrocession that is clearly contrary to the principles of independence and impartiality. These payments, which some of the people interviewed referred to as "union fees" or a "salary tax", are in fact a subject of debate in civil society and among legal theorists.

101. The relative short term of office of the judges of the federal courts – six years – and the need to be re-elected by the Federal Assembly, with the help of the Judiciary Committee, also place judges already in post in a court which is due for renewal in a relation with the political powers which is highly questionable in terms of its compatibility with the guarantees that must go with the exercise of judicial functions. It should also be noted that while the judges of the federal courts have always been re-elected *en bloc* thus far, some judges of the FSC and of the FAC recently failed to win the unanimous support of the Federal Assembly. As the scores of re-elections are public, it appears that one of the political groups decided to voice their disapproval of some of the decisions reached by these judges while in office, on the subject of asylum, for example. The GET is of the view that this challenging of the substance of judicial decisions is clearly contrary to judicial independence. Moreover, if the political debate were to become more polarised in the future, there could be a risk of such practices spreading and posing a threat to the re-election of judges. Yet, the system's stability, the principle of concordance and the election of parliament by proportional vote have so far been offering important and effective safeguards against this risk. In short, while there might be some legitimacy to the principle of the appointment of judges by parliament, according to the political forces in presence, because of Switzerland's history and tradition marked by the "concordance spirit", it is nevertheless difficult to accept that judges' career prospects should be linked – notwithstanding the exercise of the liberties to which every citizen is entitled, including that of being a member of a party – to the life or decisions of the political formation to which they are affiliated. **The GRECO thus recommends (i) eliminating the practice of judges of the federal courts paying a fixed or proportional part of their salary to political parties; (ii) ensuring that no non-re-election of judges of the federal courts by the Federal Assembly is motivated by these judges' decisions and (iii) considering eliminating or revising the procedure for the re-election of these judges by the Federal Assembly.**

Career

102. As judges are elected to a specific function in a court, there is no career plan as such for judges in Switzerland, and no system of promotion in the federal judicial system. However, election to the presidency or the vice-presidency of a court or appointment as president of a division (subdivision of a court) or a chamber (subdivision of a division) could be considered as a form of promotion.

103. The Federal Assembly is responsible for electing the president and vice-president of the FSC and of the FCC from among the ordinary judges of those courts (not the substitute judges). It also elects the president and vice-president of the FAC from among the judges of that court (which has no substitute judges). The presidents and vice-presidents are elected for two years and may be renewed in post once.

104. The plenary of each court, composed of all the ordinary judges of each court nominates candidates to the Federal Assembly for election to the presidency and the vice-presidency. The candidates thus nominated are first examined by the Judiciary Committee, which forwards its own recommendation to the Federal Assembly. As far as the GET was able to establish, the choice of the plenary court is generally followed, although not in every case.

105. The president of the FPC is elected by the Federal Assembly from one of the two ordinary judges for a full six-year term. The mandate is renewable indefinitely. The vice-president of the FPC and, where applicable, the third member of the management team are appointed by the plenary court (sections 19 and 20 LFPC).

106. In the federal courts the presidents of divisions are appointed for a period of two years by the plenary of each court, on the recommendation of the Administrative Committee of the court concerned (the administrative committee is composed of the president, the vice-president and a maximum of three judges, nominated by the plenary court). The post of president of a division may not be held for more than six years.

107. In the FAC there are also chambers in the different divisions. The president of the division acts as president of one of the chambers. The judges of the division together appoint the presidents of the other chambers (rule 25.3 RFAC⁴³).

108. On the subject of mobility, the plenary of each court forms the divisions (except at the FPC, which is not subdivided into permanent divisions). The judges of the FSC mentioned that the political sympathies of the judges were taken into account on this occasion in order to make sure that judges of the same political leaning did not make up a majority in the divisions. The GET did not manage to ascertain whether this practice was also followed in the other federal courts, and invites them to take example if applicable. The divisions are formed for two years. The plenary court publishes the names of the judges concerned. At the FSC and the FAC, when a judge's post falls vacant the judges generally have the possibility of moving to another division before the post is advertised.

Conditions of service

109. The gross annual salary of the ordinary judges of the FSC is 356,130 francs (327,868 euros), which corresponds to 80% of the salary of the members of the Federal Council (government). This amount does not change over the course of the career of the judge, but it is adjusted for inflation, as are the salaries of all the employees of the Confederation⁴⁴. The president of the FSC receives a presiding judge's allowance (section 1.3 of the federal Law on the salaries and pensions of judges, RS 172.121) in the amount of 30,000 francs (27,619 euros) per annum. Judges of the FSC receive no additional benefits.

110. The gross annual salary of the judges of the FAC, FCC and FPC corresponds to Confederation staff category 33. The initial salary is at least 70% of the maximum salary for the category. It is accordingly 166,141 francs (152,956 euros) at the start of the career (age 36 or less) and increases by 7,120 francs (6,555 euros) a year for ten years (3% of the maximum) until it reaches the maximum for the category, which is 237,344 francs (218,509 euros) (section 5 OJudges). Presiding judges and certain of their colleagues receive allowances in the amount of 30,000 francs per year for presiding judges at the courts concerned, 20,000 francs (18,413 euros) for the vice-presidents and 10,000 francs (9,206 euros) for the other members of the Administrative Committees. Presidents of divisions receive an allowance of 10,000 francs a year and presidents of

⁴³ Rules of Procedure of the Federal Administrative Court of 17 April 2008, RS 173.320.1

⁴⁴ Art. 1 and 1a of the Order of the Federal Assembly on the remuneration and pension scheme of judges (RS 172.121.1)

chambers 5,000 francs (4,603 euros). These allowances are not cumulative and a judge who presides over several bodies only receives the highest of the corresponding allowances.

111. Like the staff of the Confederation, the judges of the FAC, of the FCC and the FPC receive a residence allowance and, where applicable, a dependent's or family allowance. The purpose of the residence allowance is to compensate for regional disparities in the cost of living and it varies with the place of work. It amounts to between 424 and 5,507 francs (390 and 5,070 euros) a year. The family allowance is paid until the child reaches the age of 18. For children in further education and those incapable of gainful employment it is paid until the child reaches the maximum age of 25. It varies between 2,834 and 4,388 francs (2,609 and 4,040 euros) per year and per child. As regards overtime (for which there is no compensation), professional expenses and pension contributions, the rules applicable to employees of the Confederation also apply to the judges of the FAC, the FCC and the FPC.

112. The sums received by judges are fixed by law and the laws are published. They are paid only as long as the judges of the federal courts of first instance remain in post. The rules applicable to staff of the Confederation to determine entitlement to an allowance and the amount payable also apply to judges of these courts.

Removal

113. The judges of the FSC cannot be removed. However, the Federal Assembly can remove a judge of the FCC, the FAC or the FPC before the end of his term of office, but only in two cases, provided for by law (section 10 LFAC, section 49 LOAP, section 14 LFPC):

- if he has seriously breached his professional duties intentionally or through gross negligence, or
- if he has lastingly lost the ability to do his job.

114. These decisions are prepared by the Judiciary Committee (section 40a ParIA). In order to regulate the procedure in detail, in 2011 the Judiciary Committee produced "principles of action concerning the procedure to be followed with a view to removal and non-re-election, of 3 March 2011". These rules were published in the Federal Gazette (FF 2012 1091) and on the Internet⁴⁵. They explain, *inter alia*, that the removal procedure must not undermine the independence and the reputation of the judiciary and the prosecuting authorities, and that the person concerned must be given a fair hearing in conformity with the rule of law and guaranteeing the following constitutional rights in particular:

- the right of the person concerned to have their case dealt with fairly (art. 29.1 Cst.);
- the right to have their case decided within a reasonable time (art. 29.1 Cst.);
- the right to be heard (art. 29.2 Cst.);
- the right to be treated in a non-arbitrary manner (art. 9 Cst.);
- the right to privacy (art. 13.1 Cst.).

115. These principles of action also define the different stages of the procedure and the possibilities for the person concerned to exercise their right to be heard, as well as the rules on withdrawal applicable to the members of the Judiciary Committee (see paragraph 41). At the end of the procedure, if the Judiciary Committee finds that the conditions required for removal are all present it submits a written proposal of removal to the Federal Assembly, stating reasons, which must include:

- a presentation of the work of the Judiciary Committee;
- an exhaustive presentation of the facts;

⁴⁵ <https://www.admin.ch/opc/fr/federal-gazette/2012/1091.pdf>

- a presentation by order of importance of the considerations that led the Judiciary Committee to submit its proposal;
- a faithful account of the position adopted by the person concerned.

116. This proposal is distributed and published around two weeks before the vote of the Federal Assembly.

117. The law does not provide for any possibility of appeal against a removal decision taken by the Federal Assembly. No removal or non-renewal procedure has been initiated since these rules came into force.

118. As mentioned above, a proposal not to re-elect a judge – a situation that has never actually arisen in practice – would be dealt with by the Judiciary Committee just like a removal procedure. The GET also refers to its considerations concerning the lack of a disciplinary procedure and the recommendation made in paragraph 180.

Case management and court procedure

Assignment of cases

119. By virtue of section 22 LFSC, the FSC lays down rules on how cases are shared between the divisions depending on the legal field, the composition of the divisions concerned and whether substitute judges are used. The president of the court directs the procedure in person or may designate another judge to do so, in the capacity of investigating judge, until judgment is pronounced (section 32 LFSC). Under rule 40.2 RFSC⁴⁶, the following criteria are taken into account when appointing the judge rapporteur and the other judges on the panel handling the case:

- balancing the judges' workload;
- language (if possible the language of the judge rapporteur must be that used in the case);
- participation of members of both sexes where the nature of the dispute appears to justify this;
- specialised knowledge of a judge in a given field;
- whether a judge had a hand in previous decisions in the same matter;
- absences for sickness, holidays, etc.

The third judge forming the panel, as well as the fourth and fifth judges in cases adjudicated by panels of five judges, are assigned in an impartial manner by a computer programme incorporating the above-mentioned criteria of rule 40.2 RFSC.

120. Any change in the composition of the panel of judges responsible for the case, including the investigating judge, must be duly recorded, and reasons given. The presiding judge has the power to make such changes for the reasons listed in rule 40.2 RFSC. The composition automatically designated was only modified in 5.1% of cases in 2015, mainly for the following reasons: withdrawal of a judge, participation in previous decisions and absence.

121. On arrival at the FAC cases are first assigned to a division based on the subject. Some divisions may be subdivided into two chambers, each with its own specialised field. One of the divisions (Division II) is organised into eight specialised fields; each judge in that division is competent in several specialised fields. Incoming cases are then assigned by the president of the division or the president of a chamber to the judges of the competent division or chamber, or to specialised judges. Division rules lay down the rules applicable in each division. In order to optimise the assignment of cases to the different available judges according to their specialities, language and work schedule, the FAC uses a specially designed software application called Bandlimat, which guarantees the impartial distribution of work among the available judges with the help of a random

⁴⁶ Rules of the Federal Supreme Court, of 20 November 2006, RS 173.110.131

generation algorithm. The system names the investigating judge responsible for processing the evidence and investigating the case, and the other two members of the panel. The distribution of cases automatically generated by Bandlimat is altered only in about 5% of cases, for reasons of efficiency (for example to group similar or related cases together under the same panel of judges), in urgent cases or because of language skills. A panel of judges may also be modified so that it includes judges of different political colours, especially in sensitive cases. Workload may also be taken into account in particular cases. Changes made by the presiding judge to the panel of judges are generally made for good reason, such as long-term absence. The presiding judge may appoint a different investigating judge or replace another member of the panel. The change may also be made of a common accord, with the consent of the judge concerned, in order to lighten his workload.

122. At the FCC, cases are assigned to the different formations by the president of the division concerned – Criminal Affairs Division or Appeals Division – according to sections 35 et seq. and 58 LOAP and rule 15.1 and 15.3 ROFCC⁴⁷. Under section 15.2 ROFCC, when assigning cases and forming the panels to hear them the presidents of the divisions take the following criteria into account *inter alia*: the language of the case, whether the judges work full- or part-time and their current workload for the court, their professional knowledge, whether they took part in previous decisions in the same field, connections with other cases, absences. The presidents of the divisions may remove a judge from a case in the event of *force majeure*, such as prolonged absence or resignation. The judges of the FCC told the GET during its visit that the plenary court had discussed adopting a random case assignment system similar to the Bandlimat used by the FAC. The idea was rejected because of the highly variable volume of incoming cases. The GET notes on this subject that GRECO's experience in other countries has shown that certain random case assignment systems take that factor into account. It encourages the FCC to give further thought to the subject.

123. At the FPC the president determines the composition of the panel of judges. Judges with a technical background are appointed according to their field of expertise (section 21 LFPC, rule 3.e and 7 RFPC⁴⁸). The president may replace a judge in the event of *force majeure*, such as ill health.

Reasonable time

124. Every person has the right to equal and fair treatment in judicial and administrative proceedings and to have their case decided within a reasonable time. This is a right guaranteed by the Constitution (art. 29.1 Cst.) and may be relied upon in an appeal to a higher court. People whose cases are heard by the FAC, the FPC or the Appeals Division of the FCC are thus able to appeal to the Federal Supreme Court for denial of justice or undue delay (section 94 LFSC). For cases before the Criminal Affairs Division of the FCC, appeals for denial of justice or undue delay may be lodged with the Appeals Division of the FCC (section 37.1 LOAP and art. 393.2.a CCrP).

125. In addition to this judicial guarantee there are internal safeguards within the courts, as described below. Also, case through-put in the FAC, the FCC and the FPC is kept under administrative review and under the high supervision of the parliament.

126. As the supervisory authority, the Federal Supreme Court (through its Administrative Committee) is responsible for the administrative oversight of the running of the FAC, the FCC and the FPC. This includes examining the rate at which cases are dealt with and the general conduct of the courts' business.

⁴⁷ Rules on the organisation of the FCC, of 31 August 2010, RS 173.713.161

⁴⁸ Rules of procedure of the FPC, of 28 September 2011, RS 173.413.1

127. The Federal Assembly is the high supervisory authority, particularly through its Control Committees (CCs). Based on information submitted by citizens (submissions within the meaning of section 129 ParlA), the CCs can verify allegations of delays in the dispensing of justice by the courts. They are nevertheless bound by the principle of the separation of powers. Supervisory control does not include the power to annul or alter decisions. Nor does it include control over the content of judicial decisions (section 26.4 ParlA).

128. The FSC has statistics which allow it to check the duration of proceedings and to intervene when there is a risk of undue delay. A written report is requested whenever a case has not been settled within two years. The average length of a procedure is four months. In recent years, less than ten cases had been registered for more than two years out of an annual volume of 8 000 cases; these few cases had either been suspended or were particularly complex.

129. At the FAC there is an internal control system, using statistics, to ensure that pending cases are processed and avoid backlogs. Objectives are fixed for each division. Monthly progress reports are made and the figures are reviewed with the Administrative Committee of the FAC and the presidents of divisions. The FAC has also recently revised its rules of procedure, so that the presidents of divisions are now responsible for ensuring that cases are processed with due diligence.

130. In the event of chronic overload or a backlog of cases a whole series of measures can be taken at the organisational level to alleviate the pressure, such as having one or more judges from another division take on a certain number of cases on a temporary or permanent basis, or temporarily or permanently transferring staff.

131. For the FCC, ensuring respect for the reasonable time principle provided for in art. 5 CCrP is part of the administrative vigilance for which the president of the division concerned is responsible.

132. Lastly, at the FPC the president or the investigating judge is in charge of the proceedings and responsible for making sure that cases are handled diligently.

Transparency

133. FSC: the debates, deliberations and votes in hearings are public. The FSC may order a case to be heard *in camera*, in full or in part, if there is a threat to security, public order or morality, or if the interest of one of the persons involved justifies it. The FSC makes the operative provisions of judgments not pronounced in a public hearing available to the public for 30 days following their notification (section 59 LFSC). Moreover, the FSC publishes all its judgments – save rare exceptions for personal data protection reasons – on its Internet site, generally in an anonymised manner. The FSC can also pass judgment by the (written) “circulation” procedure where the decision is unanimous, unless the president of the court orders, or a judge requests the deliberations to take place in a hearing (section 58 LFSC).

134. FAC: in principle investigative proceedings do not take place in public. However, public hearings must be held in cases concerning the application of Article 6 § 1 ECHR, if a party so requests or an important public interest so requires (section 40.1 LFAC). In cases which do not concern the application of Article 6 § 1 ECHR, a public hearing is optional. The decision is left to the president of division or, where applicable, the single judge in charge of the case (section 40.2 LFAC). The “circulation” procedure is usually used at the FAC for deliberations. Deliberations are held in public only if the panel is composed of five judges and there is no unanimity, and provided that the president of division so orders or a judge so requests (section 41 LFAC). The FAC publishes the operative part of its judgments for 30 days after their notification (section 42 LFAC). Furthermore, it publishes judgments themselves in a data base available on Internet.

Formal judgments are also published if they have an interest for the public⁴⁹. Judgments are published in their entirety and anonymised in principle (section 29.2 LFAC).

135. FCC: proceedings before the Criminal Affairs Division of the FCC are public (art. 69.1 CCrP). The court may partly restrict public access to the proceedings or order them to be held *in camera* where public security and public order so require or the interests of a party to the proceedings, particularly the victim, require protection, or to avoid overcrowding. In cases held *in camera*, the accused, the victim and the complainant may be accompanied by up to three persons of confidence. The court may, under certain conditions, authorise crime reporters and other persons with a legitimate interest to attend debates held in private (art. 70 CCrP). Proceedings before the Appeals Division of the FCC are not public, however (art. 69.3.c CCrP and section 57 LAP⁵⁰). The FCC publishes the operative part of its judgments for 30 days after their notification⁵¹. Furthermore, it publishes its final judgments in a data base available on Internet. Other decisions are also published if they are of public interest. Judgments are published in their entirety and anonymised in principle (section 63.2 LAP).

136. FPC: the proceedings are in principle public, with the exception of conciliation proceedings. Partial or full privacy of proceedings may be ordered when the public interest or an interest of one of the participants so requires (art. 54.1 and 54.3 Code of Civil Procedure). The judges' deliberations are not public (rule 12 RFPC). The FPC publishes its final decisions on Internet. Preparatory decisions may also be published⁵²

Ethical principles, rules of conduct and conflicts of interest

137. Generally speaking the authorities refer to the fundamental values mentioned in the Constitution, which also apply to judges, such as the independence of the judiciary, respect for the law, respect for and the protection of human dignity, equal rights and the right of citizens to be treated by the organs of the State in a non-arbitrary manner and in good faith. The Constitution also provides certain fundamental guarantees in judicial and administrative matters which affect the conduct of judges and how they deal with their cases. These fundamental guarantees are enshrined in laws which contain specific provisions on, *inter alia*, incompatibility, withdrawal and conflicts of interest (see below). Before they take up office judges undertake, by oath or solemn promise, to carry out their duties conscientiously.

138. As to the rules of conduct applicable to judges of the federal courts, the FSC refers to the LFSC, which contains rules on incompatibility in the chapter on judges.

139. The FAC has a Charter of Ethics⁵³ drawn up by a working group composed of a panel of judges and adopted by the plenary court on 26 May 2011. All the judges of the court were consulted to identify shared values. The Charter is not a code and contains no binding rules whose violation would lead to sanctions. It is intended more to promote shared values and foster legal, management and behavioural skills, in particular through dialogue, information and training.

140. The FCC has "Guidelines" of the Federal Criminal Court, drawn up and adopted by the plenary court on 25 January 2005. The guidelines, which are also intended to promote certain values, are not directly applicable or legally binding.

141. There are no rules of conduct as such for the FPC, but the court does have guidelines concerning independence, with particular focus on conflicts of interest (see below).

⁴⁹ Section 4 et seq. of the Rules of the FAC on information, of 21 February 2008, RS. 173.320.4

⁵⁰ Federal law on administrative procedure, of 20 December 1968, RS 172.021

⁵¹ Section 3.3 of the Rules of the FCC on the principles of information, of 24 January 2012, RS. 173.711.33.

⁵² Section 3.1 of the Rules of the FPC on information, of 28 September 2011 (Rinfo-FPC), RS 173.413.4.

⁵³ Available on the Internet via the court's home page: <http://www.bvger.ch/index.html?lang=en>

142. Generally speaking the GET found that there was a fairly low level of awareness among the federal judges it met regarding questions of ethics and professional conduct, which was confirmed by representatives of civil society and by certain judges themselves. Only the FAC has a substantial Charter of Ethics , and it was a good idea to consult the judges when it was being drafted. But even this document should be further developed and supplemented by explanatory comments and/or concrete examples. The representatives of the FAC interviewed by the GET were open to further development of the Charter and felt the need for additional advice on relations between justice and the media, following a recent incident. They also stressed that this exercise could not be imposed "from above". The GET agrees, GRECO having pointed out in many of its reports on other member States that consultations on ethical standards and the preparation of such standards should involve the people to whom those standards are to apply, as this is a driving force in improving awareness of these issues.

143. The judges of the other federal courts were more dubious about the usefulness of developing standards of conduct, in which they saw no added benefits. One of the judges interviewed during the visit summed up this attitude by saying "we know what a good judge who does his job well is". The GET believes, on the contrary, that such attitudes demonstrate the need to increase awareness of the importance of standards of conduct and of the specific challenges facing the profession, especially in Switzerland, where judges come from different backgrounds and do not necessarily undergo specific training, and it is quite usual for judges to have outside activities other than voluntary work⁵⁴, teaching or research which can easily expose them to the risk of conflicts of interest. In addition to developing standards of professional conduct by and for the judges of the federal courts, the GET highlights the usefulness of additional measures, such as special practical training, preferably at regular intervals, and dispensing confidential personalised advice in the event of ethical dilemmas. The Swiss Judges' Association already offers its members the possibility of contacting it anonymously for advice, but not many judges know about it and some of the judges interviewed felt that professional secrecy prevented them from seeking such advice. It is important, therefore, to clarify this question and/or to set in place a similar arrangement in the federal courts themselves. Accordingly, **GRECO recommends (i) that the rules of conduct applicable to federal court judges be developed and be accompanied by explanatory comments and/or concrete examples on conflicts of interest and other questions related to integrity, such as gifts, invitations, relations with third parties and so on, and that the rules be brought to the attention of the public, and (ii) that additional practical measures be taken for their implementation, such as offering confidential counselling and practical training for federal court judges.**

144. There is no legal definition and/or typology of conflicts of interest, but the Swiss authorities explain that the rules on incompatibility, withdrawal and accessory activities are intended to prevent conflicts of interest. These rules are detailed in the relevant sections of the report below.

145. The GET noted with interest the attention paid by the judges of the FPC to the problem of conflicts of interest, which they said was the greatest challenge facing the court, considering its composition. Most of the judges are experts in their particular field and/or lawyers who continue to work as such, as their main activity, and are subject to professional secrecy. The judges themselves look out for possible conflicts of interest based on Directives concerning independence dating from 2011, updated when necessary, and in the light of the guarantees of Article 6 of the European Convention on Human Rights. The Directives contain a series of grounds for withdrawal and disclosure, the procedure to follow and a lapse of time of one year, following the end of a dispute, during which the judges are not allowed to represent a party. The judges of the FPC

⁵⁴ This is not true for the FSC, however, which has no part-time judges and which as a restrictive practice as regards authorisation of accessory activities (see paragraph 153).

expressed concern about a tendency for certain firms to place small cases in the hands of law firms run by judges they want to avoid in a dispute, so that the judges concerned have to stand down. The GET encourages the authorities to look into this trend and draw the necessary conclusions, while stressing the need not to dilute the rules on conflicts of interest.

Prohibition or restriction of certain activities

Gifts

146. In Swiss criminal law judges are considered as public officials, subject to the criminal law provisions on bribery (art. 322ter to 322octies of the Criminal Code (CrC)). As explained in the section of this report on members of Parliament, the offence of accepting benefits (art. 322sexies CrC) is broad in scope⁵⁵, as no direct link is required to exist between the improper benefit and a specific concrete act by the public official. It is sufficient for the benefit to have been solicited or accepted in order for the official to perform his duty. This includes progressive incitation, for example (from the first improper benefit received). This also covers low value gifts and donations, as highlighted by GRECO in its Third Round Evaluation Report. Under Swiss criminal law only small benefits in keeping with social custom (two cumulative conditions) and those authorised by the regulations are not punishable.

147. But the constitutional principles of independence and impartiality (art. 30.1 Cst.) further limit the possibilities of accepting gifts in practice. Judges must thus decline any invitation likely to limit their independence and freedom of action. For that reason practice is very restrictive when it comes to accepting gifts or benefits. Whether or not, and to what extent, invitations to meals or to free training courses may be considered acceptable, must be examined case by case. Some of the judges the GET spoke with during the visit were uncertain what attitude they should adopt in practice in the face of such invitations. The GET considers that more precise guidelines on this subject would be welcome and refers to the recommendation to develop rules of conduct made in paragraph 143.

Incompatibility

148. The Constitution and the law declare certain activities incompatible with public office (art. 144.1 and 2 Cst., section 6 LFSC, section 44 LOAP, art. 10 LFPC). The judges of the FSC, the FAC, the FCC and the FPC, whether they work full-time or part-time, cannot be members of the federal parliament or the federal government. Nor are they allowed to engage in any activity that might be detrimental to the exercise of their duties as judges, the independence of the court or its reputation. They are also prohibited from exercising official functions for a foreign State.

149. The judges of the FSC, the FAC and the FCC are also not allowed to accept titles or decorations bestowed by foreign authorities, or to exercise any other functions within the Confederation.

150. The judges of the FAC and the FCC and the ordinary judges of the FPC cannot represent third parties before the courts in a professional capacity. In the case of substitute judges at the FSC, this ban is restricted to the FSC. The ban does not apply, however, to the substitute judges of the FPC, some of whom represent clients as their main activity. The possible conflicts of interest that may arise are covered by the rules on withdrawal contained in the Directives on independence mentioned above.

⁵⁵ As explained in the part of the report on parliamentarians, its scope was further extended, from 1 July 2016, by a legislative amendment adopted by Parliament.

151. The law also provides for certain restrictions which apply only to full-time judges. For example, the full-time judges of the FSC, the FAC, the FCC and the FPC are not allowed to work at the service of a canton, or engage in any other gainful activity. Nor may they be members of the board of directors or administrators, or the supervisory or review body of a commercial enterprise.

152. Lastly, the law provides for incompatibility *ratione personae* (section 8 LFSC, section 8 LFAC, section 43 LOAP, section 12 LFPC), preventing spouses, family members and allies of judges of the FSC, FAC, FCC and FPC from being judges in the same court at the same time.

Accessory activities

153. Full-time judges of the FSC (section 7 LFSC, sections 18 to 23 RFSC): certain accessory activities may be authorised by the court's Administrative Committee, but the practice is highly restricted and authorisation is given only for very short-term mandates. The following activities are authorised: a. arbitrator, collaboration with judicial bodies and committees of experts, mediation and expertise, provided there is a public interest; b. occasional teaching, publication of comments, series and specialised reviews; c. taking part in associations, foundations or other not-for-profit organisations. No authorisation is required for writing books or articles, giving lectures or attending conferences and legal events. The Administrative Committee can ask judges for details of the time spent and the remuneration received. If the total received, including expenses, for these accessory activities exceeds 10,000 francs per year, the surplus must be paid into the FSC's fund.

154. The principal accessory activities exercised at the end of 2015 were:

- 14 periodical teaching activities, mostly less than 5 hours per year;
- 17 participations in drafting or editorial boards of legal publications;
- 25 participations as committee members of not-for-profit associations or foundations, mostly in the legal, judicial or academic fields.

155. Part-time or full-time judges of the FAC (section 7 LFAC, section 28 RFAC and internal Directives issued by the plenary court): the exercise of accessory activities is subject to authorisation by the Administrative Committee and must not prevent the judge from devoting himself fully to his job. A register is kept by the General Secretariat, accessible on the court's intranet site, but not on the Internet. The court management can ask the judges at any time for information about their accessory activities.

156. On 11 December 2015, out of a total of 72 judges (including 36 part-time judges), 19 had one or more accessory activities or public duties. That represents 19 authorisation procedures since 1 January 2013.

157. Part-time or full-time judges of the FCC (section 45 LOAP and special rules on accessory activities (RAAFCC)⁵⁶ adopted by the court in plenary): accessory activities are subject to the authorisation of the Administrative Committee. The General Secretariat keeps a record of accessory activities. Any violation of the rules may give rise to an intervention of the Administrative Committee, or be reported to the supervisory authority.

158. Rule 2 RAAFCC lays down the principle that the accessory activities and functions of judges must not interfere with their work for the court, or adversely affect the independence, impartiality or reputation of the court or of the member concerned. Among the accessory activities which do not meet these requirements, rule 2 RAAFCC mentions activities linked to commercial work done for the court or which the court is likely to want done in the near future. It even cites any activity which gives the judge concerned the appearance of partiality.

⁵⁶ Rules of the Federal Criminal Court on accessory activities, of 28 September 2010, RS 173.713.151

159. The rules also distinguish between full- and part-time judges. The former may be authorised to engage, for example, in gainful accessory activities and public functions listed in the rules, such as participation in arbitration tribunals set up in the public interest, judicial institutions or committees and work as mediators or experts, or membership of non-profit societies, foundations or other such bodies. They may also be authorised to work for the communal authorities, do occasional teaching, publish comments, series of works or specialist periodicals. Judges engaged in gainful accessory activities may only earn 10,000 francs for themselves in a given year.

160. The rules authorise more activities for part-time judges than for full-time judges. Examples of activities part-time judges may be authorised to engage in under rule 4 RAAFCC include: participation in arbitration tribunals, work as mediators or experts, work for companies, foundations or other business organisations. They may also do part-time judicial or other work for the cantonal authorities, work for private firms, engage in gainful freelance activities or work as legal advisors. Lastly, rule 6 RAAFCC allows the Administrative Committee to grant conditional authorisations, comprising certain obligations or limited in time.

161. At the end of 2015, six of the 18 judges of the FCC engaged in occasional teaching activities and two were board members of associations or other organisations in the legal domain.

162. Ordinary part-time judges of the FPC (section 11 LFPC): gainful accessory activities require the authorisation of the court. At the end of 2015 one ordinary judge was doing some teaching and was a board member of an association of judges.

Withdrawal

163. The rules on withdrawal implement the relevant constitutional and international guarantees (in particular art. 30 Cst. on judicial proceedings and art. 6 ECHR). They also cover private or personal interests and family ties. They contain a general clause on withdrawal, the obligation for a judge in such a position to inform the court and a procedure for deciding on applications for withdrawal made by a party (sections 34 to 38 LFSC, which apply to judges and registrars of the FSC, and by analogy to judges of the FAC; art. 56 to 60 CCrP and section 10 LAP⁵⁷ for the judges of the FCC). The withdrawal of judges of the FPC is regulated by the Code of Civil Procedure, with a special rule for substitute judges (art. 28 LFPC). The FPC has also adopted "Directives concerning independence", as already mentioned in this report in connection with withdrawal.

Financial interests

164. There are no specific restrictions on the holding of financial interests.

Restrictions applicable when judges leave office

165. The only restriction applicable when a judge leaves office concerns judges of the FPC, who cannot counsel a party to proceedings until at least a year after the end of the dispute, including the end of any appeal proceedings (section 10 of the Directives concerning independence). However, no sanction is provided for in the event of failure to observe this rule.

Contacts with third parties, confidential information

166. Information concerning cases and files in the judges' purview is protected by professional secrecy (section 15 Ojudges). Divulging such information to a third party is a criminal offence under art. 320 CrC on violation of professional secrecy. It can

⁵⁷ Federal law on administrative procedure of 20 December 1968, RS 172.021

undermine the impartiality of the judge. The obligation of confidentiality may be lifted only by the relevant high authority, namely the Administrative Committee or the management of the court. Confidentiality cannot be relied upon vis-à-vis parliamentary committees exercising a high supervisory role. The FSC, FAC, FCC and FPC have also adopted written rules on official communication.

167. FSC: The judges are not allowed to discuss cases in progress according to section 14.3 LFSC, which states that the president of the FSC represents the court vis-à-vis the outside world and as such is responsible for the external communication of the FSC. Requests for information about proceedings in progress are in principle dealt with by the chanceries or the general secretariat of the FSC. The FSC also has detailed Directives on making information available to the public⁵⁸.

168. FAC: The Charter of Ethics of the FAC addresses this subject in section 7, under which, in principle, judges do not comment on cases in progress and refrain from any conduct that might influence the fairness of the proceedings or give the impression of partiality. In practice the judges of the FAC simply refrain from all communication. Requests from the media are channelled through the court's communication officer. In principle, be it in respect of cases in progress or more general matters, only the president of the court and the communication officer talk to the media. In exceptional cases the investigating judge may also do so. The FAC also has detailed rules on making information available to the public⁵⁹.

169. FCC: Rules 8 and 10 ROFCC establish the powers of the president of the court and the general secretary in their dealings with third parties. For pending cases the presidents of the different divisions are also involved. Other than that, judges should not communicate directly with third parties. The FCC also has detailed rules on making information available to the public⁶⁰.

170. The FPC also has detailed rules on making information available to the public⁶¹.

171. There are no specific rules on the misuse of confidential information by judges. The provisions of the Criminal Code apply, and in particular art. 320 on the violation of professional secrecy.

Declaration of assets, income, debts and interests

172. There are no measures in place for declarations in these areas, other than the rules mentioned above on incompatibility, withdrawal and accessory activities and the declaration of income, assets and liabilities which applies to all taxpayers.

173. In addition, as mentioned in the chapter on members of Parliament, the Law on money laundering (LML) was amended on 1 January 2016. The notion of "politically exposed persons" (PEP) was extended to include people who hold or have held high-level public office at the national level in Switzerland in politics, the administration, the army or the judicial system, as well as board members of State corporations of national importance (politically exposed persons in Switzerland, national PEPs, section 2.a.b LML). The memorandum accompanying the law states that federal court judges are considered national PEPs. Close relations of national PEPs are natural persons who are clearly close to them because of family or personal ties or business connections (section 2.a.2 LML). National PEP status expires 18 months after the judge leaves office. The status implies a stricter due diligence requirement for financial intermediaries where certain risk criteria are present.

⁵⁸ Directives concerning press coverage of the Federal Supreme Court of 6 November 2006, RS 173.110.133

⁵⁹ Rules of the FAC on information, of 21 February 2008, RS. 173.320.4

⁶⁰ Rules of the FCC on the principles of information, of 24 January 2012, RS. 173.711.33

⁶¹ Rules of the FPC on information, of 28 September 2011 (Rinfo-FPC), RS 173.413.4

Supervision and enforcement

Supervision

174. Accessory activities are managed by the courts themselves, which authorise the activities, supervise them, ask for additional information if necessary and withdraw authorisations. The list of accessory activities is transmitted to the FSC as the administrative supervisory authority and is also examined by Parliament as part of its high supervisory role.

175. More generally, the FSC is responsible for the administrative supervision of the management of the FCC, the FAC and the FPC (section 34.1 LOAP, section 3.1 LFAC and section 3.1 LFPC). Regulations⁶² (RSFSC) cover this supervision. According to the information collected by the GET, meetings are held twice a year on this subject, one that brings together all the federal courts of first instance in the FSC and the other in each of the courts individually. Among the points examined on these occasions are the general conduct of the courts' business and the "reasonable time" requirement. If the supervisory authority considers that proceedings need to be initiated to remove a judge, the Administrative Committee of the FSC informs the Judiciary Committee of the Parliament.

176. Parliament has a supreme supervisory role in respect of the FSC, the FAC, the FCC and the FPC through its Control Committees (CCs) and its Finance Delegation. The parliamentary scrutiny does not include the systematic examination of the personal integrity of the judges; it focuses on the legal, efficient and effective running of the courts and in particular questions of budget, management and practical matters. If a case of corruption concerning a judge is reported, the CCs do have the power to investigate. If they make any findings that shed serious doubt on the professional or personal aptitude of a judge, they inform the Judiciary Committee (section 40a.6 ParlA).

177. This procedure was applied in a case in 2012-2013, when a lawyer with the Judiciary Committee lodged a complaint against eight judges of the FAC. The Judiciary Committee forwarded the complaint to the CCs, which forwarded it on to the FSC. The Supervisory Committee of the FSC⁶³ examined the complaint in its administrative supervisory capacity. The judges concerned were heard and were able to explain their position. The FSC sent a reasoned report to the CCs, who found that there were no grounds to open a removal procedure against the judges. Other organisational measures requested by the complainant were also examined by the Supervisory Committee of the FSC.

Sanctions

178. Concerning the criminal liability of judges of the Confederation, the general provisions of the Criminal Code, particularly those on corruption, accepting benefits and the violation of professional secrecy, as well as breaches of their professional duties, all apply to judges, subject to the authorisation of proceedings against them.

179. There is no disciplinary machinery applicable to judges of the Confederation, however. The only formal sanction that exists is the removal by Parliament of judges of the FAC, the FCC and the FPC, under very strict conditions. Staff issues are, nevertheless, examined by the FSC when it supervises the federal courts of first instance (section 2 RSFSC). In particular, it can launch an investigation to clarify the facts. Members and staff of the investigated courts must provide the information requested. A

⁶² Rules on surveillance by the Federal Supreme Court, of 11 September 2006, RS 173.110.132

⁶³ Supervision is exercised by the FSC's administrative commission, composed of the President of the FSC, the Vice-President and a third member who is an ordinary judge.

report is drawn up on the results of the investigation; the court and any persons affected may provide comments on this report (section 7 RSFSC).

180. The lack of specific means for punishing breaches of professional ethics – to be developed as recommended in paragraph 143 – or duties which are not serious enough to warrant removal is a problem in the eyes of the GET⁶⁴. According to the information collected during the visit, for the time being such problems are dealt with in an informal manner by the president of the court concerned, or in more serious cases by the Judiciary Committee, whose members, as one of them put it, “provide the after-sales service” for judges of their own political leaning. The judges concerned are encouraged not to stand for a new term of office. This system is marked by its opacity, does not guarantee respect for the rights of the judges concerned and may give the impression that the federal courts are unable to enforce the rules among their own ranks for lack of any disciplinary procedure in the event of improper conduct. In the case mentioned above of the complaint against eight judges of the FAC, while it was established that the alleged misconduct was not serious enough to merit removal, one can only wonder whether it could or should have resulted in less serious sanctions. Consequently, **GRECO recommends (i) the setting in place of a disciplinary system to sanction any breaches by federal court judges of their professional duties by means other than removal and (ii) that measures be taken to ensure that reliable and sufficiently detailed information and data are kept on disciplinary proceedings concerning these judges, including the possible publication of the relevant case-law, while respecting the anonymity of the persons concerned.** The GET points out that the purpose of this measure is not to question the power of Parliament to remove judges of the first instance federal courts in the event of serious misconduct or inaptitude for the job.

Immunity

181. Judges are subject to the same criminal proceedings as any other citizen. However, the judges of the FSC, the FAC, the FCC and the FPC enjoy relative immunity for acts directly related to their official functions or activities. Prior authorisation is thus needed to institute criminal proceedings against them for offences related to their official activity or situation, in the same manner as already described in respect of members of parliament (see paragraph 78).

182. Urgent interim measures, even of a coercive nature, may however be taken before any authorisation has been given (art. 303.2 CCrP). In addition, surveillance or other investigative or prosecution measures may be taken with the authorisation of the presiding Colleges of the two Councils with a view to an initial examination of the facts or the protection of evidence prior to the formal request for the lifting of immunity. A majority of five of the six members of the Colleges is needed (sections 14 et seq. Liability Act⁶⁵ (LResp)). As soon as such measures are taken, formal authorisation to lift immunity must be requested.

183. Also, if it appears justified in view of the circumstances of the case, the competent committees may assign the prosecution and adjudication of an offence subject to cantonal jurisdiction to the prosecution authorities of the Confederation. Lastly, the

⁶⁴ See opinion no. 3 of the Consultative Council of European Judges (CCJE) on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality. According to this opinion “all legal systems need some form of disciplinary system” which defines in detail what conduct should render a judge liable to disciplinary proceedings, what the sanctions are and the procedure to be followed. This procedure should be under a supervisory authority or an independent court before which the rights of the defence are fully guaranteed, and the procedure should include the possibility to appeal the decision pronounced by the first disciplinary body.

⁶⁵ Federal law on the responsibility of the Confederation, members of its authorities and its public officials, of 14 March 1958 (Law on responsibility, LRCF, RS. 170.32)

Federal Assembly sitting in joint chambers may appoint a Special Attorney General (section 17 ParlA).

Advice, training and awareness

184. There is no compulsory initial or in-service training for judges at the federal level in Switzerland. Some cantons, however, do impose in-service post-graduate training on aspiring judges. Generally speaking judges in office are expected to know the legal theory and the case-law relating to the ethical obligations inherent in the judge's profession, in particular those embodied in procedural law.

185. For some years now there has been a post-graduate diploma for judges. It is an optional training course and not at all a prerequisite in order to be a judge. Judges may also undergo this training after their election. The course includes a special module on ethics and the judge's role.

186. Judges also have the possibility to attend in-service training seminars on specific themes proposed, for example, by university faculties of law, the Foundation for in-service training of Swiss judges or the Swiss *Académie de la Magistrature* (Academy of Judges and Prosecutors).

187. Since 1 October 2015 the FAC has been running an induction programme for newly elected judges, one compulsory module of which concerns "conduct befitting the role" and addresses the issues raised in this report. The Charter of Ethics is also presented in this programme.

188. There is no special provision for judges to be able to seek advice on the rules mentioned above. They can, however, seek advice from their peers, the presidents of division to begin with, but also, if necessary, the president or members of their court's Administrative Committee.

189. As mentioned earlier, the Swiss Judges' Association set up an ethics committee in 2014 to foster discussion of professional ethics for judges and encourage open debate on the ethical principles linked to judicial office. The committee intends to give opinions, on request, concerning concrete cases that raise questions of judicial ethics. It can be contacted by e-mail. During the visit the members of the association indicated that an opinion on accessory activities was in preparation.

190. The GET considers that further steps should be taken to introduce a means of providing judges with advice and develop suitable practical training in the notions of ethics and integrity. It refers in this respect to the recommendation made in paragraph 143.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the Office of the Attorney General of the Confederation

191. The Office of the Attorney General of the Confederation (OAG) is an independent criminal prosecution authority not attached to any court (art. 16 of the Code of Criminal Procedure (CCrP) and sections 1 and 2.1.b LOAP⁶⁶). Until 2011 the federal prosecutors were elected by the Federal Council, but the election system changed with the entry into force of the unified CCrP on 1 January 2011 and all ties with the executive were severed. The purpose of the change was to guarantee the full independence of the institution. In addition, a supervisory authority specific to the OAG was instituted.

192. In criminal proceedings the OAG, like the courts, is independent in the application of the law and subject only to the law (art. 4.1 of the CCrP). That being so, there is no question at all of the political authorities interfering in the activities of the Attorney General's Office in matters of criminal prosecution proceedings⁶⁷.

193. The OAG is a self-governing body, organises its services, recruits the necessary staff and keeps its own accounts. At present it employs between 220 and 240 employees on four sites, including 42 prosecutors, 10 of whom are women. Each year the Attorney General's Office submits its budget, which is approximately 60 million francs (about 55 million euros), its accounts and an activity report to its supervisory authority, for the intention of the Federal Assembly. It is the Federal Department of Finance (FDF) that provides the OAG with the buildings it needs and manages and maintains them. Cooperation between the OAG and the FDF is based on the same rules as for the Federal Supreme Court. The OAG has to provide for its own needs, however, in terms of logistical goods and services (sections 16 to 18 LOAP).

194. The Attorney General of the Confederation runs the OAG. His role, which is exercised together with his two deputies and other management, includes guaranteeing the professionalism and the efficacy of the criminal prosecution process in cases under federal jurisdiction, the rational organisation and running of the prosecution service and the efficient use of human resources, financial means and infrastructure (section 9 LOAP). The organisation of the OAG was reformed on 1 February 2016, to make it simpler and more efficient. The divisions which handle proceedings were reduced to four:

- Protection of the State, terrorism and criminal organisations: operational unit specialised in proceedings involving federal employees (including national corruption), or affecting the Confederation and its security, or linked to terrorism and criminal organisations;
- Economic crime: operational unit specialised in proceedings involving money laundering, international corruption, large-scale economic crime, stock market crime and cybercrime;
- Mutual legal assistance, international criminal law: operational unit specialised in proceedings involving passive mutual legal assistance in criminal matters, in cases under federal jurisdiction and proceedings concerning crimes against humanity and war crimes;
- Forensic financial analysis: unit of financial specialists which supports the operational teams in the fight against money laundering, the funding of terrorism and related offences.

195. The first three divisions, which are tasked with running the proceedings, are each run by a chief prosecutor and have prosecutors responsible for particular fields tasked with guiding the prosecutors in their proceedings, ensuring consistency of the case-law and serving as reference persons.

⁶⁶ Law on the organisation of the criminal authorities, of 19 March 2010, RS 173.71

⁶⁷ Message CCrP, FF 2006 1057, p.1105 and art. 26 al. 4 ParIA

196. Four administrative units contribute to the efficiency of the investigations:

- The operational command of the Attorney General (OAB): unit responsible for examining federal jurisdiction in money-laundering cases, the funding of terrorism and related offences, in the event of doubt as to the jurisdiction of the cantonal judicial authorities;
- The resource management command (SAR): unit of representatives of the OAG and the federal police force which makes sure that the necessary police resources are available for the accomplishment of satisfactory investigations in the framework of the national policies on money laundering and the funding of terrorism;
- Centralised processing of reports of suspicion of money laundering (ZAG): operational unit to optimise the uniform handling of cases and follow up information communicated by the Money Laundering Reporting Office (MROS - Swiss FIU);
- "Judgment execution and property management" Department: support unit to assist prosecutors with seizure and confiscation measures.

197. Two deputy attorney generals assist the Attorney General in running the OAG. Notably, they oversee the proceedings conducted by the prosecutors and conduct proceedings themselves when so instructed by the Attorney General. As part of this oversight role, the deputy attorney generals, assisted by the chief prosecutors, regularly meet the prosecutors to take stock of the situation, not only in terms of strategy, planning and deadlines, but also of the prosecutors' workload. The frequency of these meetings, at least three times per year and per prosecutor, is generally increased where the complexity of the case so requires. Particularly delicate cases may also be overseen by the Attorney General in person. Decisions to discontinue proceedings, not to examine a case, or to suspend proceedings are submitted to the chief prosecutor for authorisation when they are issued by a prosecutor, and to the Attorney General when they are issued by a chief prosecutor (sections 13 and 14 LOAP). Indictments must be approved by the chief prosecutor and by one of the deputy attorney generals, who verify the consistency of the case-law. In the event of disagreement a prosecutor can consult the Attorney General. He may also address the supervisory authority, a delegation from which he meets on the occasion of the annual inspection. Furthermore, parties to proceedings, including the plaintiff, can appeal to the Federal Criminal Court against a decision to discontinue a case.

198. The Attorney General, his two deputies and the chief prosecutors alone have authority to issue instructions concerning the opening, the conduct or the closing of proceedings, the pursuit of charges or the use of avenues of appeal (sections 13 LOAP and 17 ROA-OAG⁶⁸). The Attorney General also has the power to issue more specific instructions necessary for the administration and conduct of proceedings (sections 13 LOAP and 17 ROA-OAG). As a matter of principle, the Attorney General issues his operational directives in writing in individual cases (instructions on procedure, changes of hand). In urgent cases and with the agreement of the prosecutor concerned, the Attorney General may transmit his operational instructions orally. All organisational or personal directives or instructions which do not affect the operational activities of the OAG are transmitted in writing, without exception.

199. The OAG is an authority which enjoys a great deal of independence, but is nevertheless the object of oversight from three different quarters. First, the high supervision of the OAG, like that of the federal courts, is provided by the Federal Assembly. Next, Parliament has appointed a special supervisory authority for the OAG. And lastly, parties to proceedings can appeal to the courts against orders of the OAG or any denials of justice.

⁶⁸ Rules on the organisation and administration of the Attorney General's Office of the Confederation, of 11 December 2012, RS 173.712.22

200. The Federal Assembly exercises high supervisory authority over the OAG and its supervisory body. It ensures that the OAG observes the criteria of legality, validity, appropriateness, effectiveness and economic efficiency. Its supervisory power does not give it the right to annul or alter decisions, or to question the substance of judicial decisions or decisions of the OAG (section 26 ParIA). The Parliament Act organises this supervisory control through two committees: the finance committee and the control committee. The finance committee is responsible for the financial management of the Confederation; it conducts a preliminary examination of the financial planning, the draft budget and its supplements and the state accounts (section 50.1 ParIA). The supervisory activities of the control committee focus on the criteria of lawfulness, expediency and effectiveness (section 52.2 ParIA). The committees appoint special delegations for each federal institution, including the OAG.

201. Elected by the Federal Assembly, the supervisory authority of the OAG (SA-OAG) is composed of seven members, including a judge of the Federal Supreme Court and a judge of the Federal Criminal Court, two lawyers registered in a cantonal register of lawyers and three specialists who do not belong to a federal court and are not on a cantonal register of lawyers. The SA-OAG cannot be composed of members of the Federal Assembly or the Federal Council or of anyone exercising a function in the service of the Confederation. If they are on a cantonal register of lawyers they cannot represent a party before the criminal authorities of the Confederation (sections 23 and 24 LOAP).

202. The supervisory authority can issue general directives on how the OAG should work. It cannot, however, give instructions on a particular case (section 29 LOAP). The supervisory authority can require the OAG to submit additional information or reports on its activity, and also carry out inspections. In order to be able to do their job, its representatives can also have access to case files. However, they may use the information thus obtained only in a general and anonymous form, when drafting reports or recommendations (section 30 LOAP).

203. In the event of breach of duty by the Attorney General or the deputy attorney generals the supervisory authority may take disciplinary measures against them (see below under supervision and enforcement). The provisions of the CCrP concerning withdrawal apply by analogy to the members of the supervisory authority (section 28 LOAP).

Recruitment, career and conditions of service

Attorney General of the Confederation and deputy attorney generals

204. The Federal Assembly (combined chambers) elects the Attorney General of the Confederation and the two deputy attorney generals for a four-year term, on the proposal of the Judiciary Committee (the composition of which is described in paragraph 91). They may be re-elected until they reach retirement age (the end of the calendar year in which the prosecutor reaches the age of 65 for men and 64 for women).

205. The Judiciary Committee of the Federal Assembly is responsible for preparing the re-elections. It asks the individuals concerned if they are standing for a new term and asks the Control Committees (supervisory committees) and the Finance Delegation whether they have noticed anything that sheds serious doubt on the candidates' fitness for the job. At the end of each administrative term, the Federal Assembly (combined chambers) proceeds to re-elect the Attorney General and his two deputies for the new administrative term, on the proposal of the Judiciary Committee.

206. A proposal not to re-elect the Attorney General or the deputy attorney generals is dealt with by the Judiciary Committee in the same way as a removal. The procedure and conditions of removal or non-renewal of the management of the OAG are the same

as for judges of the Confederation (see chapter IV). As to the financial consequences of non-renewal or removal, compensation of up to one year's salary may be granted by the supervisory authority. No such compensation is granted, however, when the non-re-election or the removal is the result of a serious breach of official duties (section 14a OProsecutors⁶⁹).

207. As regards the election procedure, the Judiciary Committee advertises vacant posts for recruitment by public competitive examination. After having selected the candidates and heard a number of them, it makes a recommendation to the parliamentary groups; it makes its final decision on which proposals to submit to the Federal Assembly after having heard the opinions of the parliamentary groups.

208. Candidatures must include a curriculum vitae, copies of diplomas and work certificates, the contact details of reference persons (at least two of whom must be professional references), a list of publications, a certificate as to debt history and criminal record and a passport photo. The Judiciary Committee contacts the reference persons of the candidates it invites to a hearing.

209. On the subject of selection criteria, the law requires candidates to be Swiss nationals. In practice, professional criteria (legal training, professional experience, management and negotiation skills), personal criteria (working method, debt history and criminal record) and language skills are all taken into account. Where the Attorney General's Office is concerned, political criteria play no part in the choice of the candidates⁷⁰.

210. The GET appreciates the steps taken in 2011 to strengthen the independence of the OAG, in particular the change in the way the Attorney General and his deputies are elected and the creation of a special supervisory authority. Any link with the executive has been severed. As to its relations with the legislative branch, the OAG is in a situation comparable to that of the federal courts, its management being elected and re-elected by Parliament on the proposal of the Judiciary Committee. The selection criteria, while generally not provided for by law, are nevertheless transparent and known to the candidates and the public. Their political affiliations, unlike those of the judges, play no part, as confirmed by the people the GET interviewed. This is a good thing and in principle shelters the OAG from any political pressure in the event of prosecutions for corruption or other politico-financial cases involving politicians. Thus far, however, no such cases have been adjudicated in Switzerland. The fixed-term mandate and the periodical re-election of the Attorney General and his deputies can, in theory, threaten their independence, candidates for re-election possibly being tempted to restrain themselves in order not to embarrass the political authorities. The GET heard of no controversy on this subject, however. As an example, the OAG submitted in May 2015 two requests to lift MPs' immunity. This did not prevent the Attorney General then in office from being re-elected by the Federal Assembly in June 2015 with a high score (195 votes out of 216). He is therefore carrying out his second term of office. On the other hand, his predecessor⁷¹ had not been re-elected in spite of the proposal by the Judiciary Committee, but his non-re-election did not appear to have been based on considerations of a political nature.

⁶⁹ Order of the Federal Assembly concerning the labour relations and salary of the Attorney General of the Confederation and the deputy attorney generals, of 1 October 2010, RS 173.712.23

⁷⁰ Cf. the general information on vacancies to be filled by competitive examination, on the Internet site of the Judiciary Committee: <https://www.parlament.ch/fr/organe/commissions/autres-commissions/commission-cj/postes-gk>

⁷¹ Who had been appointed by the Federal Council (government) under the previous system, and not by Parliament

Federal prosecutors

211. The federal prosecutors are appointed by the Attorney General for a renewable period of four years, starting on 1 January following the beginning of the legislative term of the National Council (section 20.3 LOAP). There is no limit to how many terms they may serve; they may be confirmed in office until they reach retirement age. Their mandate is tacitly renewed unless the Attorney General decides otherwise six months at the latest before the end of their term of office (section 22.2 LOAP in conjunction with section 14.2.c LPers⁷²). Renewal in office, therefore, does not require a formal decision. In keeping with the practice set in place by the OAG, prosecutors whose term of office is renewed receive a written confirmation. Non-renewal may be decided when there are objectively sufficient grounds, for example in the event of serious violation of legal or contractual obligations, poor service or conduct, insufficient aptitude, capability or will to do the job described in the contract (a non-exhaustive list of grounds for non-renewal is given in section 10.3 LPers). The Attorney General acts as the federal prosecutors' employer under the law governing the staff of the Confederation (section 3.1.f LPers). In that capacity he is also responsible for the promotion and transfer of the prosecutors appointed.

212. Vacant posts of prosecutor are generally advertised for competitive examination (section 7 LPers). Exceptions to this principle are possible, for example when a post is filled internally (section 22.2 OPers⁷³). The qualifications required for the post of prosecutor are described in detail in the vacancy notice. The selection procedure is the same for initial recruitment and for promotion, staff of the OAG being able to apply for vacant posts in the same way as external candidates.

213. The Attorney General, the prosecutor in charge of a division and the human resources department participate in the selection process for federal prosecutors, for example by interviewing candidates to assess their aptitude for the job. The selection criteria include: professional experience and capability, training and diplomas, in-service training, performance (qualitative and quantitative), social and managerial skills, suitability and competence of the candidates and language skills. The candidates also undergo assessment to establish a psychological profile, conducted by psychologists from a specialised outside firm, to make sure the candidates are suitable for the job. The results of the assessments are taken into consideration in the recruitment procedure and are always communicated to the candidate. Lastly, for internal candidates, the results of the permanent monitoring of proceedings by the two deputy attorney generals and the chief prosecutors and the results of the annual appraisal interview they undergo are also taken into account (section 15 OPers).

214. Candidates for managerial posts in the OAG undergo special behavioural assessment. This is done by an outside firm and helps the Attorney General to determine whether the candidates have the necessary leadership skills.

215. In order to verify their integrity, candidates for the post of prosecutor are subjected to extensive personal security checks which include a hearing (section 12.1 OCSP⁷⁴). These checks are carried out by the service in charge of security at the Federal Department of Defence, the Protection of the Population and Sport (CSP DDPS). The CSP DDPS collects data from the following sources (section 20 LMSI⁷⁵):

- the registers of the security and criminal prosecution bodies of the Confederation and the cantons, as well as criminal records;

⁷² Law on the staff of the Confederation, of 24 March 2000, RS 172.220.1

⁷³ Order on the staff of the Confederation, of 3 July 2001, RS 172.220.111.3

⁷⁴ Order on security checks on persons, of 4 March 2011, RS 120.4

⁷⁵ Federal Law introducing homeland security measures, of 21 March 1997, RS 120

- the registers of the cantonal prosecution and bankruptcy offices, and checks carried out on inhabitants;
- investigations into individuals under judicial supervision, carried out by the competent cantonal police at the request of the supervisory authorities;
- information from the competent criminal prosecution authorities on current or past criminal proceedings, as well as the judicial and investigative files from these proceedings;
- interviews with the person concerned and, with the latter's consent, hearing of third parties.

216. These background checks are designed to provide security-related data about the lifestyle of the person concerned, including information on their close personal relationships and family relations, financial situation, relations with other countries or other activities that might present a threat for the recruiting authority. Attention is paid in particular to the existence of relationships of negative dependence, or risks that might expose the person to a problem of corruption. The security check is repeated every five years and concerns all staff of the OAG, except the Attorney General and his deputies, who may also request a check on a particular staff member.

217. The prosecutors undergo an annual appraisal carried out by the chief prosecutors, based on written criteria. Questions relating to the conduct of proceedings, swiftness and behaviour (which may also be taken up during oversight) are discussed on these occasions. The appraisees may make observations and/or challenge the content of their appraisal before the Attorney General.

218. It is also the Attorney General who decides – after consulting the chief prosecutor and management and hearing the prosecutor concerned – on transfers from one place of work or operational unit to another, by virtue of his responsibility for running a rational organisation, guaranteeing its smooth operation and making efficient use of human and financial resources and infrastructure (section 9.2 LOAP).

219. Just as he can order non-renewal in post, the Attorney General, in his capacity as the appointing authority, has the power to order removal. He can thus remove a federal prosecutor before the end of his term of office if he has committed a serious breach of his official duties, intentionally or by gross negligence, or if he has become incapable of doing the job (art. 21 LOAP).

220. In the event of labour disputes, where no agreement can be reached the Attorney General decides (section 34.1 LPers). The employer's decision may be challenged before the Federal Administrative Court (section 36.1 LPers).

221. It is clear from the above description that the Attorney General, as employer of the staff of the OAG, takes the final decision concerning the appointment, the career, the non-renewal in post or the removal of federal prosecutors. Some of the people the GET spoke to expressed the concern that making a single person responsible for decisions concerning the prosecutors' careers threatened to create a closed system, with risks of abuse. Even if the Attorney General is responsible by law for these decisions, in practice the non-renewal process is triggered by proposals by the chief prosecutors, on the basis of their assessment during the annual appraisal meeting and of the findings by the deputy attorney generals or the chief prosecutors during oversight. Even if it has not yet been the case, such a decision could also stem from background check findings. Furthermore, the decision is collegial and is taken by management. During the GET's visit the non-renewal in post of five federal prosecutors in 2015 was discussed. The decision had been taken for reasons linked to performance shortcomings (section 10.3 LPers). The case was examined by the SA-OAG in the context of its supervisory role and by the Federal Administrative Court (FAC), to which one of the prosecutors concerned appealed. Although the procedure provided for by law had been respected, the SA-OAG noted that the non-renewal had "not always been understood" and had "generated uncertainties and

fears among staff at every level of the OAG⁷⁶. The FAC, for its part, considered the applicant's non-renewal justified in view of the shortcomings held against her, but nevertheless found against the OAG because it had not given her prior notice and her right to be heard in the non-renewal procedure had been observed merely for the form, the decision having already been taken⁷⁷. As evidenced by this judgment of the FAC, a judicial remedy is available against the non-renewal decision and the court reviews not only formal grounds, but also the material validity of the non-renewal decision.

Conditions of service

222. Like that of the judges of the federal courts of first instance, prosecutors' salaries are based on the Confederation staff category system (sections 15 LPers and 36 OPers). The salary of the Attorney General corresponds to Confederation staff category 36 and that of his deputies to category 33. For the federal prosecutors, the salary is that of categories 29 to 31. When they are recruited prosecutors are not automatically paid the maximum for their salary category. Their salary is fixed according to their training, their professional and extra-professional experience, and the employment market (section 37 OPers).

223. The minimum gross annual salary of a freshly recruited prosecutor is 160,000 francs (147,302 euros). The maximum for category 29 is 187,008 francs (172,167 euros) and for category 31, 209,800 francs (193,150 euros). The maximum salary of the Attorney General is 293,717 francs (270,408 euros), and 237,344 francs (218,509 euros) for the deputy attorney generals.

224. Employees of the Confederation working full time work a 41.5 hour week (section 64 OPers). Overtime is made up for by the same amount of free time and, where that is not possible, overtime pay up to a maximum of 150 hours per calendar year (section 65 OPers). For staff in salary categories 30 to 38 a flexible timetable, based on trust, has been introduced. These employees no longer have to record their overtime and are no longer entitled to time off in compensation. Instead, they receive extra pay to the tune of 6% of their annual salary, or, in exceptional cases and with the agreement of their hierarchical superior, either ten days' additional leave or 100 hours towards sabbatical leave (section 64a OPers). Staff in categories 24 to 29 can, with the agreement of their hierarchical superior, apply the trust-based flexible timetable with the same conditions of compensation.

225. The salary changes according to the prosecutor's appraisal, based on one interview per year, conducted by their chief prosecutor (section 15 OPers). It is OAG practice to raise salaries by up to 2.5% of the maximum for the salary category every year (section 39 OPers). For the Attorney General and his deputies a special rule applies and the annual increase is 3%, as it is for judges of the federal courts of first instance.

226. The federal prosecutors and the Attorney General and his deputies enjoy the same benefits as the judges of the federal courts of first instance, which correspond to the legal benefits afforded to all federal employees. They also receive a residence allowance and, where applicable, a dependent's or family allowance⁷⁸. The purpose of the residence allowance is to compensate for regional disparities in the cost of living and it varies with the place of work. It amounts to between 424 and 5,507 francs (390 and 5,070 euros) a year. The dependent's (or family) allowance is paid until the child reaches the age of 18. For children in further education and those incapable of gainful employment, it is paid until the child reaches the maximum age of 25.

⁷⁶ 2015 management report of the SA-OAG

⁷⁷ Judgment of the FAC of 15 February 2016

⁷⁸ Section 6 of the Order of the Federal Assembly concerning the working conditions and salaries of the Attorney General of the Confederation and the deputy attorney generals, of 1 October 2010, RS 173.712.23

227. In addition, special bonuses of between 1,500 and 4,000 francs (1,381 and 3,683 euros) in the OAG may be awarded to prosecutors for special engagements or above-average performance, or one-off bonuses of up to 500 francs (460 euros), for occasional engagements. The decision to award a bonus lies with the chief prosecutor.

228. A length-of-service bonus is awarded to employees of the OAG after 10 years' work, then every 5 years, until the employee has worked 45 years. It amounts to half the monthly salary after 10 years and 15 years, then a full month's salary every five years after that. This bonus may, exceptionally, be exchanged for paid leave with the agreement of the hierarchical superior. It may also be reduced or withdrawn by the Attorney General where the employee's performance or conduct are not fully satisfactory.

229. Like all the employees of the Confederation, federal prosecutors have the right to a half-price Swiss railway pass which entitles them to travel for half the normal price on public transport, for work or otherwise.

230. These different perks are provided for by law and are public. They are paid only while the prosecutors are in office. The usual rules applicable to employees of the Confederation for determining eligibility for an allowance and its quantum also apply to prosecutors. Prosecutors are not provided with official accommodation and do not enjoy any special tax or other benefits.

Case management and court procedure

Case assignment

231. The principles governing the assignment of cases are to be found in section 12 of the ROA-OAG. In substance, the Attorney General receives new cases and assigns them to the different units. All the information concerning the cases is recorded in the OAG's database. For improved efficiency two specialised units assist the Attorney General in assigning the cases. Firstly, in the event of doubt about the (federal) jurisdiction of the OAG, the operational command of the Attorney General decides who has jurisdiction; if there is disagreement between OAG and the cantonal judicial authorities, the Federal Criminal Court decides (art. 28 CCrP).

232. Secondly, all communications of the MROS (the Swiss FIU), reports and complaints from private individuals and reports made by the police concerning matters within federal jurisdiction are systematically dealt with by the ZAG (*Zentrale Aufbereitung Geldwäschereiverdachtsmeldung* / central processing unit for reports of suspicion of economic crimes). The purpose of this unit is the uniform processing of reports and complaints concerning white-collar crime, the effective detection of offences and the assignment of the necessary resources in keeping with the priorities and aims of the investigation (seizures, confiscations and convictions). The decisions of the ZAG are taken following telephone conferences (in general twice weekly) conducted by the Attorney General or one of his deputies, with the participation of representatives of the various operational units of the OAG, including the mutual legal assistance division. For optimum efficiency decisions not to prosecute are taken directly by the ZAG. Where the opening of an investigation appears to be justified (sufficient suspicion), the report of the suspected offence is transmitted to a particular prosecutor, based on his experience, his speciality, his availability and the language of the proceedings.

233. The head of division of the competent organisational unit assigns the case, making sure that cases are evenly shared between the prosecutors. The head of division is in direct contact with the prosecutors and knows them well. When assigning a case he takes into account the prosecutors' workload, their experience in the particular specialised field, but also the need to avoid any conflict of interest and, as far as possible, to make sure that the place where the presumed offence took place is not too near the prosecutor's home. This is made easier by the obligation for prosecutors to

inform their hierarchical superior of any conflict of interest that might arise, failing which they could be considered to have violated their contractual obligations and expose themselves to disciplinary action (section 94a.3 OPers). As part of the monitoring process, possible questions of reassignment of cases are also reviewed. So if any grounds for withdrawal were to arise in the processing of a case, the prosecutor would be expected to report it to his direct superior so that the case could be reassigned.

234. The power to remove a prosecutor from a case lies first and foremost with the Attorney General (sections 9.2 and 13.1.a LOAP). The heads of division can also reassign a case within their division (section 13.1.b LOAP). Depending on how sensitive the case is, they may discuss it first with the Attorney General.

235. Grounds for removing a prosecutor or reassigning a case may be: to relieve the prosecutor of an excessive workload, or the prosecutor's lack of the requisite knowledge, which was not necessarily apparent when the proceedings were opened but became clear as the case progressed. Furthermore, any person working for the criminal justice authorities is required to withdraw if they have a personal interest in the case or they have already intervened in the case in another capacity, in particular as a member of an authority, legal counsel to a party, expert or witness (art. 56 CCrP). A change of hand remains the exception as it almost always makes the proceedings longer because of the time needed for the new prosecutor to familiarise himself with the case.

Reasonable time

236. The OAG has set a monitoring system in place at different levels to systematically monitor the proceedings conducted by prosecutors. It is an operational instrument designed to guarantee identical treatment (consistency) and improve quality and efficiency in the OAG. The main aims of the monitoring are to guarantee that cases are processed in conformity with the law and in particular with due respect for the reasonable time principle (art. 5 CCrP). Compliance with the rules concerning limitation is also monitored in this context. Considering that the OAG deals with many complex international cases, the success of which frequently depends on the swift authorisation and implementation of mutual legal assistance procedures with foreign authorities, it is not unusual for proceedings to go on for a number of years.

237. The monitoring of proceedings takes place on two levels: direct supervision by the chief prosecutor in the division and oversight by the deputy attorney generals, outside the framework of the divisions. The Attorney General ranks highest in the event of disagreement. Particularly complex cases are monitored directly by the Attorney General. This is to make sure the proceedings go ahead smoothly and without unnecessary delay. The prosecutors in charge of complex cases are invited to plan their proceedings, state when they intend to complete a particular stage of the investigation, explain any delays, report any excess workload that might hinder their progress and elaborate a veritable investigative strategy.

238. The supervisory authority (SA-OAG) also verifies the lawfulness and efficacy of the OAG's actions. This includes the issues of length of proceedings and limitation.

239. Lastly, in addition to the internal measures aimed at guaranteeing that cases are processed in a reasonable time, the parties to the proceedings can also help, as they have the right to complain to the appellate division of the Federal Criminal Court in the event of undue delay (art. 393.2.a CCrP).

Ethical principles, rules of conduct and conflicts of interest

240. The fundamental values enshrined in the rule of law, presented in chapter IV on judges, also apply to prosecutors. The CCrP also contains fundamental rules specific to criminal proceedings, such as respect for dignity and a fair trial (art. 3 CCrP).

241. Before they take up office the Attorney General and his deputies undertake, by oath or solemn promise, to do their duty conscientiously.

242. Prosecutors are also bound by the duties of all employees of the Confederation. Since 2012 additions have been made to those duties (sections 89 et seq. OPers). They now include the obligation to report also any unpaid activities if there is any risk of a possible conflict of interest, more detailed regulations on accepting gifts and other benefits, regulations governing invitations, additional rules on withdrawal and the imposition of waiting periods, as well as rules on personal financial transactions. These rules of conduct are set out, *inter alia*, in a new Code of conduct of the federal administration, in force since 15 September 2012⁷⁹, which replaced a previous code dating from 2000. The Federal Personnel Office sent it out to all employees of the OAG shortly after its adoption. The Attorney General reminded federal employees in an internal directive of 1 May 2013 on personal financial transactions, which was published on the OAG's intranet site, that the code of conduct applied to all prosecutors and other employees of the OAG.

243. A working group set up in 2013 is in the process of developing specific rules of ethics for the OAG, taking into account the particular nature of its activity. French- and Italian-speaking prosecutors were given a morning's training in September 2014, during the general assembly of the Latin Conference of prosecutors in Bellinzona, to increase their awareness of ethical issues. That led in 2015 to the creation of a working group composed of prosecutors from the OAG and different cantons, which is studying the subject of ethics with a view to harmonising the rules and adopter a minimum standard that would apply to the cantons as well as to the Confederation. The Conference of prosecutors, which brings together all the prosecutors of Switzerland with a view to harmonising practices, is waiting to see the result of the work of the Latin Conference before looking further into the subject itself. As mentioned in the section of this report on judges (see paragraph 189), the Swiss Association of Judges and Prosecutors set up an ethics committee in 2014 which gives opinions on matters of ethics. Prosecutors, who are also members of this association, can consult the committee on ethical issues.

244. The GET believes that more attention should be paid to familiarising prosecutors with questions of professional conduct and ethics. It welcomes the efforts in progress to develop specific rules of conduct for prosecutors and feels that the time has come for those efforts to bear fruit. The elaboration of rules of conduct aimed specifically at the OAG would definitely be a plus when it comes to guiding young prosecutors and their more experienced colleagues on ethical issues specific to their branch of activity, increasing their awareness and informing the public about the standards in force⁸⁰. It would be useful for such a reference document to include specific instructions and/or of examples concerning conflicts of interest and related issues, such as accessory activities, withdrawal, gifts, contacts with third parties and confidentiality. Moreover, alongside the development of specific rules of conduct, additional measures should be taken, such as offering personalised confidential advice and special practical training, preferably on a regular basis. In view of the above, **GRECO recommends (i) that the work in progress with a view to the adoption of rules of conduct for members of the Attorney General's Office of the Confederation be completed, that the resulting rules be accompanied by explanatory comments and/or practical examples and**

⁷⁹ Code of conduct of federal administration staff aimed at preventing conflicts of interest and improper use of confidential information (Code of conduct of the federal administration), of the 15 August 2012 ([FF 2012 7307](#)). Also published as a brochure on the Internet site of the federal administration:

<https://www.epa.admin.ch/epa/fr/home/documentation/publications.html>

⁸⁰ On this subject, see principle 35 of Recommendation Rec(2000)19 of the Committee of Ministers to the member States of the Council of Europe on the role of public prosecution in the criminal justice system, which asks the States to "ensure that in carrying out their duties, public prosecutors are bound by "codes of conduct"". The explanatory memorandum explains that a code of conduct should not be a static, formal 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".

that they be brought to the attention of the public, and (ii) that additional implementing measures be taken, such as offering confidential advice and practical training for federal prosecutors.

245. There is no legal definition and/or typology of conflicts of interest, but the Swiss authorities indicate that the rules on withdrawal, accessory activities, accepting gifts and invitations, misuse of insider information and the imposition of waiting periods are designed to prevent conflicts of interest. Details of these rules will be given in the relevant sections of this report below.

246. The GET wishes to consider the particular case of the members of the supervisory authority of the OAG, the SA-OAG. As mentioned earlier, the supervisory authority is composed of seven members, including a Federal Supreme Court judge and a judge of the Federal Criminal Court, two lawyers registered in a cantonal register of lawyers and three specialists who do not belong to a federal court and are not on a cantonal register of lawyers. To make sure that the supervision provided by that body is effective, its members are specialists very close to the sphere of competence of the OAG who have access, in the performance of their supervisory role, to proceedings in progress and may give instructions of a general nature to the OAG concerning, *inter alia*, the organisation of its work, internal management and the conduct of proceedings. It is therefore essential to avoid any conflict of interest of these members, and the LOAP actually specifies that a member registered in a cantonal register of lawyers cannot represent a party before the criminal authorities of the Confederation (sections 23 and 24). Unfortunately, in practice this rule appears to mean that lawyers who qualified to join the SA-OAG might not be interested because of the limitations it imposes on their principal professional activity. On the basis of an opinion by the SA-OAG, the Legal Affairs committees of the two chambers of the federal Parliament have therefore respectively proposed and adopted the principle of an amendment to that requirement of the LOAP⁸¹. While aware that this rule on incompatibility prevents the SA-OAG in practice from recruiting some criminal lawyers, whose expertise could be useful to its work, the GET emphasises the potential risk of revising or removing it in terms of conflicts of interest and the impartiality of justice. Accordingly, **GRECO recommends, if revised, ensuring that the rules and procedures governing the supervisory authority of the Attorney General's Office of the Confederation make proper allowance for the potential conflicts of interest where its members are involved in proceedings before the criminal authorities of the Confederation.**

Prohibition or limitation of certain activities

Gifts

247. Like judges, prosecutors are considered as public officials under Swiss criminal law and are subject, as such, to the criminal provisions on bribery (art. 322ter to 322octies of the Criminal Code (CrC)). As explained in the part of this report on members of Parliament, the offence of accepting benefits is broad in scope (art. 322sexies CrC)⁸², as it does not require there to be any link between the improper benefit and a specific concrete act by the public official. It is sufficient for the benefit to have been solicited or accepted in order for the official to do his duty. This covers progressive incitation, for example (from the first improper benefit received). This also covers low value gifts and donations, as highlighted by GRECO in its Third Round Evaluation Report. Under Swiss criminal law only small benefits in keeping with social custom (two cumulative conditions) and those authorised by the regulations are not punishable. Under the staff regulations, however, prosecutors must not, in principle, accept gifts or benefits, as they are involved

⁸¹ [Initiative 15.473](#)

⁸² As explained in the part of the report on members of Parliament, its scope was extended as of 1 July 2016 by an amendment adopted by the Parliament.

in a decision-making process (section 93.2 OPers), and they must decline invitations related to that process.

248. Outside the framework of criminal proceedings small benefits in keeping with social custom (two cumulative conditions) are authorised. Small benefits include any gift in kind the value of which does not exceed 200 francs (184 euros; section 93.1 OPers). Gifts which do not fall into the category of small benefits in keeping with social custom but which cannot be refused for reasons of politeness (in consular or diplomatic affairs, for example) must be handed over by the employee to the competent authority. Accepting benefits or invitations must not restrict the independence, the objectivity and the freedom of action of employees in the performance of their professional activities, or raise any suspicion of venality or partiality on the part of an employee. In general, invitations to travel abroad must be declined unless authorised in writing by the employee's superior (section 93a.1 OPers).

249. If there is any doubt as to the lawfulness of a present or benefit of any kind (section 93 OPers) or an invitation (section 93a OPers), the federal prosecutor concerned must refer the matter to his superiors.

Incompatibilities and accessory activities

250. In general, prosecutors cannot engage in a gainful activity for a third party that would breach their duty of loyalty towards the Confederation (section 20.2 LPers). They are prohibited from exercising an official function for a foreign State and from accepting titles or decorations from foreign authorities (section 21.4 LPers).

251. Prosecutors are also bound by the detailed rules on accessory activities. The professional duties of federal prosecutors require them to declare any public office and gainful activities they are involved in outside their work as prosecutors (section 91 OPers). Unpaid activities must also be declared if there is any possibility whatsoever of a conflict of interests.

252. According to section 92 OPers, employees of the Confederation must in principle hand over to the Confederation the product of any activity carried out for a third party in their capacity as employees of the Confederation if the sum concerned, added to the salary for the year concerned exceeds 110% of the maximum step on the salary scale payable under the employment contract. They must provide all the information necessary to evidence such a situation. The reference income and the procedure for relinquishing it are set out in section 60 O-OPers.

253. In its internal directives on the application of the principles set out in section 91 OPers, the Attorney General also required all prosecutors to submit their accessory activities, paid or unpaid, to him for authorisation. In November 2016, six prosecutors out of 43 were exercising an accessory activity. Those activities were all very minor teaching tasks, as prosecutors are required to focus on their principal activity.

Withdrawal

254. In criminal proceedings prosecutors are bound by the rules of the CCrP on withdrawal, which give concrete form to constitutional and international guarantees (in particular art. 30 Cst. on the guarantees relating to judicial proceedings and art. 6 ECHR). They also cover private or personal interests and family ties. In addition they include a general clause on withdrawal, the obligation for a prosecutor who finds himself in a situation that would normally require him to stand down to state as much, and a procedure for dealing with requests for withdrawal emanating from a party.

255. Prosecutors are also bound by the rules on withdrawal contained in section 94a OPers, which require employees to stand down if they have a personal interest in a case

or risk being partial for other reasons. The appearance of partiality is sufficient grounds for withdrawal. Reasons for partiality include:

- any particularly close relationship, friendship or enmity between the employee and a person or legal entity involved in or concerned by a case or decision-making process;
- the existence of an offer of employment from a person or legal entity involved in or concerned by a case or decision-making process.

256. Employees must inform their superior in good time of any unavoidable grounds of partiality. Where there is any doubt, the superior decides whether or not the employee should withdraw. Furthermore, employees are required to inform their superior of any public office and gainful activities they are involved in outside their work. Unpaid activities must also be declared if there is any possibility whatsoever of a conflict of interests (sections 91 et seq. OPers).

257. Lastly, the Code of conduct of the federal administration also explains that in the performance of their professional activities employees defend the interests of the Confederation. They must therefore do their duty with complete disregard for their personal interests. They must avoid any conflict between their private interests and those of the Confederation and do nothing that might restrict their independence or their freedom of action. If a conflict of interest or the appearance of one is inevitable, they must alert their superior. If there is partiality or the appearance of partiality of an employee in a case (personal interests, kinship, friendship or enmity, or dependency), the employee must withdraw from the case.

Financial interests

258. There is no rule that prohibits prosecutors from holding financial interests. However, section 94c OPers regulates the issue of personal financial transactions. It prohibits the use of confidential information received in the course of their duties for their own personal gain or for that of a third party. It also covers insider trading in shares or currencies.

259. On 1 May 2013 the Attorney General issued an organisational directive on misuse of insider information, specifically to draw the attention of OAG staff to the importance of that provision.

Restrictions applicable after prosecutors leave office

260. Section 94b OPers provides for the possibility of agreeing with certain types of employees on a waiting period once they leave office if there is any danger that their future activity, whether paid or unpaid, might give rise to a conflict of interest.

261. Prosecutors are also required to give three to four months' notice when they resign. As soon as they have announced their resignation the Attorney General can remove them from any proceedings under their direction if he feels that their new activity could give rise to a conflict of interest. That actually happened in one case in 2013.

262. Prosecutors of the OAG are bound by professional secrecy, the confidentiality of their cases, and official secrecy in the terms described below. The obligation not to divulge confidential information continues after they leave office (art. 320.2 CrC and section 94 OPers).

Contacts with third parties, confidential information

263. The CCrP imposes an obligation on the members of the criminal prosecution authorities and their staff, as well as any experts they commission, not to divulge any confidential information that might come to their attention in the exercise of their duties

(art. 73 CCrP). This obligation is somewhat qualified by the possibility of informing the public, in the context of criminal proceedings and under certain conditions (art. 74 CCrP). Failure to abide by these rules may constitute a breach of official secrecy (art. 320 CrC) or misuse of insider information (art. 154 LIMF⁸³) and give rise to criminal proceedings and disciplinary action.

264. As stated above, employees of the OAG are also bound by professional secrecy, the confidentiality of their cases, and official secrecy, as provided for in the staff regulations (section 94 OPers). They must not divulge information on the cases in their department which has not been made public unless and in so far as the performance of their duties permits and requires them to do so. They are obliged to observe this secrecy even after they stop working for the federal administration. It is prohibited for employees of the Confederation to use confidential information for their own personal gain or that of a third party. They are also prohibited from divulging such information or making recommendations based thereon to third parties. This rule applies in particular when divulging confidential information might influence the value of securities and currencies in a predictable manner (section 94c OPers).

265. Furthermore, the Attorney General has issued a special directive on informing the public about pending proceedings, which applies to all OAG employees and which entered into force on 1 January 2011 (section 19 LOAP). The OAG informs the media and the public in good time, objectively, bearing in mind the interests of the criminal proceedings, and with due regard for the principle of the presumption of innocence. The Attorney General is the high authority responsible for information in the OAG. In practice this job is done (in terms of conception, dissemination and coordination) by the Press and Communication Department of the OAG, in close collaboration with the Attorney General, his deputies and, if necessary, the people in charge of the proceedings. According to the information collected by the GET, 5000 requests for information are received from the media every three months.

266. There are no specific rules on the misuse of confidential information. The provisions of the Criminal Code apply, in particular art. 320 on violation of official secrecy, and the law on insider trading (section 154 LIMF).

Declaration of assets, income, liabilities and interests

267. There are no provisions for declarations in these fields, other than the rules referred to above on withdrawal, accessory activities and the accepting of gifts and invitations. Like all taxpayers, prosecutors are required to declare their incomes, assets and liabilities to the tax authorities.

268. In addition, as mentioned in the chapter on members of Parliament, the Law on money laundering (LML) was amended on 1 January 2016. The notion of “politically exposed persons” (PEPs) was extended to include people who hold or have held high-level public office at the national level in Switzerland in politics, the administration, the army or the judicial system, as well as board members of State corporations of national importance (politically exposed persons in Switzerland, national PEPs, section 2a.b LML). The memorandum accompanying the law explains that federal prosecutors are considered to be national PEPs. Close relations of national PEPs are natural persons who are clearly close to them because of family or personal ties or business connections (section 2a.2 LML). National PEP status expires 18 months after the prosecutor leaves office. The status implies a stricter due diligence requirement for financial intermediaries where certain risk criteria are present.

⁸³ Federal Act on financial market infrastructure, of 19 June 2015, RS 958.1

Supervision and enforcement

Supervision

269. The OAG itself oversees accessory activities and issues the requisite authorisations, carries out checks, asks for additional information if necessary and withdraws authorisations.

270. Generally speaking the Attorney General and the OAG are under the technical and administrative supervision of the SA-OAG, an independent authority whose seven members are elected by the Federal Assembly (sections 23 et seq. LOAP). As stated earlier, the SA-OAG verifies the legality, the regularity, the expediency, the effectiveness and the economic efficiency of the OAG's work. It carries out annual inspections, regularly addresses matters of surveillance with the Attorney General and can ask the AOG for information and reports on its activities at any time. In practice, twice a year the SA-OAG requests a report on all the proceedings pending and analyses them from the point of view of prosecution strategy, compliance with deadlines and how cases are dismissed. The members of the SA-OAG meet every month and the Attorney General and his deputies attend these meetings. If the SA-OAG spots a systemic problem it can issue directives of a general nature on how the OAG should do its work. It cannot issue instructions in a particular case concerning the opening, conduct or closing of the proceedings, the representation of the accusation before the court, or avenues of appeal. Members of the public may refer matters to the SA-OAG, and indeed they frequently do in practice.

271. The Federal Assembly, in its turn, has high supervisory authority over the OAG, in the person of the Attorney General and his deputies, through its Control Committees (CCs) and its Finance Delegation. These supervise the legality, the regularity, the expediency, the effectiveness and the economic efficiency of the OAG's management. In practice the Parliament looks into any operational problems not solved by the SA-OAG in its supervisory role, as well as into any projects, activities and reforms in progress. The scrutiny of the Federal Assembly does not include the power to change or annul decisions of the OAG or control their content. Where there is actual information concerning the corrupt conduct of a prosecutor, the CCs can, however, make investigations. If their findings shed serious doubt on the professional or personal aptitude of the Attorney General or his deputies, they refer the matter to the Judiciary Committee (section 40a.6 ParIA).

272. The Attorney General has disciplinary power over federal prosecutors under the law governing federal employees (sections 3.1.f LPers and 22.2 LOAP). If a prosecutor commits a breach of his professional obligations – which may be reported by someone inside or outside the Attorney General's Office – the Attorney General has the power – where a written warning in the personal file is not enough – to open disciplinary proceedings. He appoints the person in charge of the disciplinary proceedings, who is not necessarily an employee of the federal administration. The management of the OAG as a whole plays a part in the decision process.

273. Federal prosecutors also reveal details of their financial situation (assets, liabilities) in surveys and hearings held every five years as part of their security checks (see paragraphs 215-216). If the person is deemed to represent a security threat, the authority in charge of the check makes a risk report. It is then up to the Attorney General to take the necessary steps to remove the risk and, if necessary, decide to terminate the person's contract.

Sanctions

274. If necessary, the SA-OAG has the power to submit a proposal to the Federal Assembly to remove the Attorney General and his deputies from office (section 31.1 LOAP). If they violate the duties of their office it can warn or reprimand them or order

the reduction of their salary (section 31.2 LOAP). During the period from 2011 to 2015 the SA-OAG had no cause to take such action⁸⁴.

275. Among his disciplinary powers vis-à-vis the federal prosecutors, the Attorney General can take the following steps when the disciplinary procedure confirms the breach of duty (section 99 OPers):

- in the event of negligence: a warning or change of field of activity;
- in the event of gross negligence or intentional misconduct of a prosecutor: up to a 10% reduction in salary for one year, a fine of up to 3,000 francs (2,762 euros), a change of working hours or place of work.

276. If the proper performance of a prosecutor's duties is compromised, the Attorney General can order his suspension (section 103 OPers). In the event of a serious violation of official duties (intentional or by gross negligence), the Attorney General can have the prosecutor removed from office before the end of his term of office (section 21.a LOAP).

277. If the prosecutor has violated his professional duties and his conduct is also punishable under criminal law (violation of official secrecy within the meaning of art. 320 CrC, for example), the case is transferred to the supervisory authority (SA-OAG), which appoints a member of the OAG or an extraordinary (external) prosecutor, often from among the cantonal prosecutors, to conduct the criminal proceedings (section 67.1 LOAP). The latter is the most frequent case, the appointment of a staff member being reserved for cases where it is clear from the outset that the accusation is vexatious. If the same facts give rise to a disciplinary investigation and to criminal proceedings, the decision concerning disciplinary measures is adjourned pending the conclusion of the criminal proceedings (section 98.4 OPers). The criminal case is judged by the Federal Criminal Court, the authority competent for all offences committed by federal employees in the course of their duties. In a judgment pronounced on 24 September 2014, for example, the Federal Criminal Court convicted a former federal prosecutor⁸⁵.

278. In the event of suspicion of a criminal offence not connected with work, the conduct must be reported to the competent criminal authority, in keeping with the obligation to report criminal offences (art. 302 CCrP). The competent criminal authority may also be a competent authority under administrative criminal law, such as a tax authority.

279. The decisions of the Attorney General are open to appeal before the Federal Administrative Court.

280. Over the last three years there have been no violations of official duties by federal prosecutors that led to the opening of proceedings or disciplinary action.

281. The GET notes that disciplinary measures pronounced by the Attorney General are reported to the management of the OAG and to the direct superior of the person concerned. The rest of the OAG is not informed – unless the Attorney General considers that relevant conclusions for all OAG staff could be drawn from a disciplinary investigation – and nor is the public. This is a shortcoming; the GET is firmly convinced that transparency is an essential means of building public trust in the functioning of the prosecution service and making sure that the profession is not seen by the public as being more interested in protecting itself and furthering its own interests. Consequently, **GRECO recommends that measures be taken to ensure that reliable and sufficiently detailed information and data are kept on disciplinary proceedings concerning prosecutors, including the possible publication of the relevant case-law while respecting the anonymity of the persons concerned.**

⁸⁴ Cf. the activity reports of the SA-OAG, available at: <http://www.ab-ba.ch/fr/rapport.php>

⁸⁵ Judgment of the Criminal Affairs Division of the Federal Criminal Court, of 24 September 2014, SK.2014.16. The events occurred early in 2009.

Immunity

282. The same criminal proceedings apply to prosecutors as to any other citizen. However, the criminal prosecution of a prosecutor for conduct directly related to his official situation or activities (with the exception of road traffic offences) requires the authorisation of the Attorney General (section 15.1.d LRCF⁸⁶). The purpose of this requirement is to protect prosecutors from vexatious criminal actions. It is also to protect them from unfounded or inappropriate complaints. Urgent interim measures, even of a coercive nature, may however be taken before any authorisation is given (art. 303.2 CCrP). When the offence has been made out and the conditions for criminal prosecution are present, the authorisation can only be refused if the case is not serious and, in view of all the circumstances, a disciplinary measure appears sufficient (section 15.3 LResp). A decision by the Attorney General not to authorise prosecution may be challenged before the Federal Administrative Court⁸⁷. The decision must, according to practice, be communicated to the SA-OAG which, if it deems the refusal unjustified, can appoint an extraordinary prosecutor to appeal against the decision of the Attorney General.

283. The Attorney General and his deputies enjoy the same relative immunity as the judges of the FSC, the FAC, the FCC and the FPC for offences directly related to their official activity or their position (see paragraphs 181-183).

Advice, training and awareness

284. Under section 4 OPers the OAG organises internal training and refresher courses and encourages attendance of outside courses. The purpose of the classes is to develop the specialised skills of the staff members and their working methods and techniques, as well as their relational skills, their team spirit and their staff management skills.

285. Internal training for prosecutors is also provided at the Conference of Prosecutors, which brings together all the jurists of the OAG as well as experts and economic specialists. The Conference meets four times a year and attendance is compulsory.

286. Optional courses specially designed for prosecutors are dispensed in Switzerland by the "*Staatsanwaltsakademie*", at the University of Lucerne, and by the *Ecole romande de la magistrature pénale* (ERMP) at the Neuchâtel Management School, respectively in German and French. In addition to in-service training for the criminal prosecution authorities these two schools offer an in-service "*Certificate of Advanced forensic Studies*" course. The aim of this training is to enable newly appointed members of the criminal prosecution authorities to acquire the basic knowledge essential to the exercise of their profession. The subjects covered include classes on economic crime (corruption in the broad sense) and judicial mutual assistance. The ERMP offers a two-hour course on ethics. All new federal prosecutors and assistant federal prosecutors undergo this training. In addition, some prosecutors or staff members of the Forensic Financial Analysis Division have followed or are following a two-year in-service master's degree course in economic crime, dispensed by the University of Lucerne or the Neuchâtel Management School, which addresses various aspects corruption.

287. Every year numerous staff members thus undergo in-service training. The Attorney General and the prosecutors are also regularly invited to give lectures at training courses, among other things on subjects related to corruption in the broad sense, to familiarise AOG staff or business people with these issues.

⁸⁶ Law on liability of the Confederation and its staff, of 14 March 1958, RS 170.32

⁸⁷ In keeping with the case-law of the FAC (ATAF 2013/28, judgment of 26 March 2013, case A-4920/2011, c. 4.3)

288. Federal prosecutors also regularly follow training dispensed by the following organisations: *Zürcher Tagungen Zum Wirtschaftsstrafrecht*, *Europa Institut Uni Zürich*, the Training Days of the Swiss Judges' Association, the Swiss Criminal Law Society, the Swiss Criminology Group and the International Association of Anti-Corruption Authorities.

289. OAG staff in need of specific advice should first consult their direct superior (for prosecutors, the chief prosecutor). They may also go straight to the Attorney General or to the OAG's legal department.

290. The GET considers that additional measures can be taken to introduce a system of advice and develop special practical training in matters of ethics and integrity. It refers to the recommendation to that effect in paragraph 244.

VI. RECOMMENDATIONS AND FOLLOW-UP

291. In view of the findings of the present report, GRECO addresses the following recommendations to Switzerland:

Regarding members of parliament

- i. that consideration be given to increasing the degree of transparency (i) of debates and voting in both chambers' committees and (ii) of voting in the Council of States (paragraphe 27);**
- ii. (i) that a code of professional conduct, together with explanatory comments and/or concrete examples, be adopted for the members of the Federal Assembly and brought to the attention of the public, and that (ii) in addition, practical information and advisory measures be set in place (paragraphe 39);**
- iii. extending the obligation to declare personal interests to include any conflict between the specific private interests of an MP and the subject under examination in parliamentary proceedings, be it in the Councils or in committee, regardless of whether the conflict could also be identified by examining the register of interests (paragraphe 45);**
- iv. (i) including quantitative data concerning MPs' financial and economic interests, and details of their main liabilities in the existing disclosure system; and (ii) considering broadening the scope of their declarations to include information on their spouses and dependent family members (it being understood that this information would not necessarily be made public) (paragraphe 67);**
- v. the adoption of appropriate measures to improve the scrutiny and the application of the obligations concerning disclosure and the standards of conduct applicable to members of the Federal Assembly (paragraphe 75);**

Regarding judges

- vi. that measures be taken to strengthen and improve the effectiveness in terms of quality and objectivity of the recruitment of judges to the federal courts (paragraphe 99);**
- vii. (i) eliminating the practice of judges of the federal courts paying a fixed or proportional part of their salary to political parties; (ii) ensuring that no non-reelection of judges of the federal courts by the Federal Assembly is motivated by these judges' decisions and (iii) considering eliminating or revising the procedure for the re-election of these judges by the Federal Assembly (paragraphe 101);**
- viii. (i) that the rules of conduct applicable to federal court judges be developed and be accompanied by explanatory comments and/or concrete examples on conflicts of interest and other questions related to integrity, such as gifts, invitations, relations with third parties and so on, and that the rules be brought to the attention of the public, and (ii) that additional practical measures be taken for their implementation, such as offering confidential counselling and practical training for federal court judges (paragraphe 143);**

- ix. (i) the setting in place of a disciplinary system to sanction any breaches by federal court judges of their professional duties by means other than removal and (ii) that measures be taken to ensure that reliable and sufficiently detailed information and data are kept on disciplinary proceedings concerning these judges, including the possible publication of the relevant case-law, while respecting the anonymity of the persons concerned (paragraphe 180);**

Regarding prosecutors

- x. (i) that the work in progress with a view to the adoption of rules of conduct for members of the Attorney General's Office of the Confederation be completed, that the resulting rules be accompanied by explanatory comments and/or practical examples and that they be brought to the attention of the public, and (ii) that additional implementing measures be taken, such as offering confidential advice and practical training for federal prosecutors (paragraphe 244);**
- xi. if revised, ensuring that the rules and procedures governing the supervisory authority of the Attorney General's Office of the Confederation make proper allowance for the potential conflicts of interest where its members are involved in proceedings before the criminal authorities of the Confederation (paragraphe 246);**
- xii. that measures be taken to ensure that reliable and sufficiently detailed information and data are kept on disciplinary proceedings concerning prosecutors, including the possible publication of the relevant case-law while respecting the anonymity of the persons concerned (paragraphe 281).**

292. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Switzerland to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2018. These measures will be assessed by GRECO through its specific compliance procedure.

293. GRECO invites the authorities of Switzerland to authorise, at their earliest convenience, the publication of this report, to translate the report into the national languages and to make the translations publicly available.

About GRECO

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

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

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