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Fighting corruption – General principles of political responsibility

Report[1]
Committee on Legal Affairs and Human Rights
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Summary

The "Panama papers", "Paradise papers", "Laundromats", and "Pandora papers" scandals have involved allegations that politicians used offshore schemes to evade taxes and conceal assets, raising suspicions of corruption and money laundering.

The Committee on Legal Affairs and Human Rights considers that fighting corruption, money laundering and tax-related offences is an obligation for all member States of the Council of Europe. Any suspicion against a politician of being involved in such offences requires a prompt response from the criminal justice system. Political responsibility should be also engaged in this context.

The committee believes that political responsibility implies an ethical duty to bear the consequences for breaching public trust. Where the alleged misconduct and the allegations are sufficiently serious and credible, politicians should resign from elected public office. It also considers that political parties, parliaments, and governments must contribute to preserving public trust in democratic institutions when confronted with these allegations. They should take appropriate action against politicians following these or similar scandals.

The Assembly should call on member States to take specific measures to engage political responsibility.

1. Reference to committee: Doc. 14639, Reference 4412 of 23 November 2018.

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A. Draft resolution[2]

1. The fight against corruption is one of the priorities of the Council of Europe. The Parliamentary Assembly, the Committee of Ministers, and Council of Europe monitoring bodies such as the Group of States against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money laundering Measures and the Financing of Terrorism (MONEYVAL) have underlined the negative effects of corruption, money laundering and offshore schemes on democratic institutions, the rule of law and human rights.

2. Large scale scandals such as the "Panama papers", "Paradise papers", "Laundromats", and, most recently, the "Pandora papers" have involved allegations that politicians and other politically exposed persons used offshore schemes to evade taxes and conceal assets, raising suspicions of involvement in corruption and money laundering. In its Resolution 1881 (2012) "Promoting an appropriate policy on tax havens", the Assembly had already expressed its concerns about the extent of the offshore financial system and its negative impact on economy and society at large. It expressed further concerns in Resolution 2130 (2016) "Lessons from the 'Panama Papers' to ensure fiscal and social justice", about the involvement of public personalities in such offshore schemes, noting that such persons should display the highest standards of ethical behaviour.

3. The Assembly considers that fighting corruption, money laundering and tax-related offences is an obligation for all member States of the Council of Europe. Any suspicion against a politician of being involved in such offences requires a prompt response from the criminal justice system, whatever the rank of perpetrator or the gravity of accusations – everyone should be equal before the law. Indeed, high-level corruption and offshore scandals, in particular the risk of bringing the very system of democracy into disrepute, require a particularly effective and expeditious investigation. Criminal and administrative procedures for preventing corruption and addressing allegations of corruption should correspond fully to international standards and be applied rigorously, regardless of an individual's status. The systems in place should reduce to a minimum the margin within which acceptance of responsibility depends on the individual discretion of the person concerned.

4. The Assembly considers that even in member States that allow assets to be legally held offshore, politicians should always include such assets in their declarations of interest. Failure to do so should immediately engage political responsibility, since it may raise suspicions of concealment of unlawful activity and undermine popular trust in democratic institutions.

5. The Assembly, recalling its Resolution 1950 (2013) "Keeping political and criminal responsibility separate", and Resolution 2216 (2018) "Follow-up to the report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly", believes that political responsibility implies an ethical duty to bear the consequences for breaching public trust. Where the alleged misconduct is sufficiently serious and the allegations are sufficiently credible, politicians should resign from elected public office, at least until the investigations against them are completed. It is their duty to refrain from using offshore schemes in order to conceal revenues abroad and evade paying taxes in the country where they were elected. This would help to avoid loss of public trust in democratic institutions.

6. The Assembly considers that political parties and national parliaments must also contribute to preserving public trust in the democratic system when confronted with credible allegations of corruption. Following the large-scale offshore scandals raising serious suspicions of corruption, money laundering and tax-related offences, political parties and national parliaments must not remain silent and should take appropriate action against politicians who are credibly accused of having been involved in these or similar scandals.

7. The Assembly therefore considers that the fight against corruption, money laundering and tax-related offences involving high-ranking politicians and other politically exposed persons should be intensified, recalling also its Resolution 1746 (2010) and Recommendation 1928 (2010) "Democracy in Europe, crisis and perspectives", Resolution 1943 (2013) and Recommendation 2019 (2013) "Corruption as a threat to the rule of law", Resolution 2170 (2017) and Recommendation 2105 (2017) "Promoting integrity in governance to tackle political corruption".

2. Draft resolution adopted by the committee on 5 November 2021.

8. In this context, the Assembly calls on:

8.1. the member States of the Council of Europe to ensure that:

8.1.1. the criminal justice system responds promptly, independently, and effectively to the allegations of high-level corruption, money laundering, and tax evasion, including through the use of offshore schemes, and that any trials are concluded in a reasonable period of time;

8.1.2. bodies responsible for the investigation and prevention of corruption, money laundering, and tax evasion are protected against political interference;

8.1.3. measures for preventing corruption, money laundering, and tax evasion include provisions requiring all public officials to declare their income and assets, including those held offshore, with mechanisms for verifying such declarations;

8.1.4. national governments adopt and/or update codes of ethics for all holders of public office, whatever the rank, with mechanisms for sanctioning and/or impeachment;

8.1.5. the prosecution and courts make use of any available legal means to suspend promptly politicians accused of corruption and related offences from holding public functions, pending investigations of these allegations;

8.1.6. whistle-blowers who play a key role in the revelation of corruption scandals are protected in law and in practice against any form of reprisals in line with Resolution 2300 (2019) and Recommendation 2162 (2019) “Improving the protection of whistle-blowers all over Europe”;

8.1.7. the recommendations and standards of the relevant bodies of the Council of Europe, such as GRECO and MONEYVAL, are fully implemented;

8.1.8. measures to raise awareness of the harms of corruption are implemented through training, workshops and other information and education measures with the participation of civil society;

8.1.9. fighting corruption at the national level is performed according to international standards and to relevant national legal and constitutional norms, with full respect for the rule of law;

8.2. national parliaments to update or adopt new codes of ethics for their members and to establish effective mechanisms to sanction politicians credibly suspected of involvement in corruption, tax evasion, asset concealment, or money laundering, with automatic dismissals, lifting of immunity, or impeachment on grounds of breach of public trust, as appropriate;

8.3. political parties to exert internal pressure on politicians suspected of involvement in corruption, tax evasion, asset concealment, or money laundering, with the aim of inducing them to step down from their public functions when credible allegations become known.

9. The Assembly also invites the GRECO and MONEYVAL to encourage examples of good practice amongst the member States concerning sanctions available against politicians and public officials who are suspected of breaching public trust through involvement in corruption, tax evasion, asset concealment, or money laundering.

10. For its part, the Assembly could envisage appointing a General Rapporteur on fighting corruption, money laundering, and offshore schemes, in line with its relevant rules.

B. Explanatory memorandum by Mr Sergiy Vlasenko, rapporteur

1. Introduction

1.1. Procedure

1. On 23 November 2018, the motion for a resolution entitled "Fighting corruption – General principles of political responsibility" (Doc. 14639) was referred to the Committee on Legal Affairs and Human Rights for report. I was appointed rapporteur by the committee on 13 December 2018; following a hiatus in the participation of the Ukrainian delegation, I was reappointed by the committee on 30 January 2020. On 29 June 2020, the committee considered an introductory memorandum and on 17 May 2021, it declassified it. On the same day, the committee held a public hearing with the participation of three experts, Michael Hudson, Senior Editor, International Consortium of Investigative Journalists (ICIJ), Drago Kos, Chair of the OECD Working Group on Bribery, former Chairperson of the Group of States against Corruption (GRECO), and Paul Radu, co-founder, Organized Crime and Corruption Reporting (OCCRP). On 13 October 2021, I held on-line meetings with interlocutors in Iceland, including Katrín Jakobsdóttir, Prime Minister of Iceland; Birgir Ármannsson, Chairperson of the Independence Party; Þórhildur Sunna Ævarsdóttir of the Pirate Party (also a member of the Icelandic delegation to the Assembly); Bryndís Kristjánsdóttir, Directorate of Tax investigations; investigative journalists Helgi Seljan (RÚV), Þórður Snær Júlíusson (Kjarninn), Aðalsteinn Kjartansson (Stundin), Jóhannes Kr Kristjánsson (Reykjavík Media); academics Jón Ólafsson, Professor of Cultural Affairs and Russian, University of Iceland, Henry Alexander Henrysson, independent advisor on ethics and former Professor of philosophy, and Sigurbjörg Sigurgeirsdóttir, Professor of Public Policy, Administration and Governance, University of Iceland. The views and proposals of these various interlocutors are reflected in this explanatory memorandum.

1.2. Scope

2. As the Assembly has previously stressed, corruption is usually deeply embedded in a social, cultural, and political environment. Altering attitudes and promoting integrity, accountability, and transparency at all levels of public life are central to reinforcing societies' resilience to corruption. These values are fundamental to ensuring the success of democratic institutional reforms and anti-corruption initiatives. Thus in 2010, the Assembly underlined that "representation can no longer be the only expression of democracy; the latter has also to be developed beyond representation, in particular by … renewal of politics [requiring] the development of a new culture of civic and political responsibility."[3] This report aims at analysing examples of corruption, tax evasion and fraudulent misuse of public funds amongst politicians, in addition to money laundering mechanisms facilitating high-ranking corruption and abuse of office for personal gain. It seeks to develop an understanding of political responsibility in such situations and what would be the most appropriate reaction by politicians to high-profile corruption and offshore scandals.

2. Examples of concern in member States

3. Corruption in all Council of Europe member States remains widespread. Recent corruption scandals, as described in the following paragraphs, may just be the tip of the iceberg. The number, scale and gravity of these and other money laundering-related scandals in Council of Europe member States, including those known as "laundromats", illustrate that they can no longer be considered as isolated incidents but rather as a pattern that requires firm action in response. In my opinion, the time has come for politicians to be expected always to take full responsibility for this type of misconduct, which undermines public trust in our democratic institutions.

2.1. "Panama papers"

4. The "Panama Papers" involved 11.5 million confidential files from one of the world's biggest offshore service providers, Mossack Fonseca (Panama) that were obtained from an anonymous source by the German newspaper *Süddeutsche Zeitung* and later shared with the International Consortium of Investigative Journalists (ICIJ).[4] Numerous European political figures appeared in the "Panama papers".

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3. Resolution 1746 (2010) "Democracy in Europe: crisis and perspectives".
4. ICIJ, "Panama Papers: The Power Players"; *The Guardian*, "What are the Panama Papers? A guide to history's biggest data leak", April 2016; ICIJ, "Who uses the offshore world". See also, Assembly Resolution 2130 (2016) "Lessons from the 'Panama Papers' to ensure fiscal and social justice".

5. For instance, in **Andorra**, the "Panama Papers" confirmed the former Minister of finance, Jordi Cinca owned offshore interests. He had previously admitted to owning an offshore company in Panama between 1999-2002; he did not resign. In **Azerbaijan**, the family of President Ilham Aliyev owned an offshore complex which held interests in gold mining, real estate and a business conglomerate. In **France**, the "Panama Papers" confirmed that Jérôme Cahuzac, former member of Parliament and former French budget minister owned a Seychelles company in 2009. He had previously waged a campaign against tax evasion and was forced to admit he lied to President François Hollande, former colleagues in parliament and the French people when he repeatedly denied owning foreign bank accounts. He had in 2013 been expelled from the Socialist Party and resigned from his ministerial post. In 2018, he was sentenced to two years in prison and five years of electoral ineligibility.

6. In **Georgia**, billionaire and former Prime Minister, Bidzina Ivanishvili owned a company in the British Virgin Islands. "For the reporting period of 2011-2012 Prime Minister Ivanishvili had no interest in the company […] and therefore there was no obligation to report it in his declaration," a spokesman said. In **Greece**, Stavros Papastavrou, Deputy Chief of Staff for European and International Affairs for the Prime Minister, was found to be involved in multiple offshore foundations, from which he has now resigned. In **Hungary**, while then National Assembly member Zsolt Horváth became director of an offshore company in 2013 but did not declare his financial interests to the Hungarian Parliament in 2014.

7. In **Iceland**, Prime Minister Sigmundur Davíð Gunnlaugsson resigned on 5 April 2016, after it became known that he owned a British Virgin Islands shell company which held nearly US$4 million in bonds in the three major Icelandic banks that collapsed. Additionally, it was reported that Bjarni Benediktsson, former Prime Minister and currently Minister for finance and economic affairs, purchased shares in a Seychelles shell company through the Luxembourg branch of an Icelandic bank during Iceland's banking crisis. The leak also revealed that Ólöf Nordal, former Interior Minister of Iceland, now deceased, created an offshore company to hold proceeds of her husband's stock options. In **Italy**, former Prime Minister and, since 2019, member of the European Parliament, Silvio Berlusconi was listed in the "Panama Papers".[5] In **Malta**, the "Panama Papers" linked energy Minister Konrad Mizzi to a shell company in Panama. Mr Mizzi did not resign, refuting the illegality of the structure, and Prime Minister Muscat responded to widespread public outrage by merely transferring him between portfolios.

8. In **Poland**, in 2012, Paweł Piskorski, current Chairperson of the Democratic Party, acquired a Panamanian company to "buy bonds of a Singapore company" which was dissolved in 2015. Previously, mayor of Warsaw, and a member of the European Parliament, he had been forced to leave his party in 2006 when he misrepresented the value of assets he declared as a member of the European Parliament. In **Spain**, the Spanish Minister of industry, energy and tourism, José Manuel Soria, resigned in April 2016 after the "Panama Papers" linked him to offshore investments in the Bahamas, and news reports connected him to a company in the tax haven of Jersey. Despite his prior assurances that he did not own companies in tax havens, the "Panama Papers" indicated that Rodrigo de Rato y Figaredo, former Minister of Economy, vice president and director of the International Monetary Fund, had more than €3.6 million in two offshore companies. He had previously been arrested in 2015 for alleged fraud, embezzlement, and money laundering. In 2017, he was found guilty of embezzlement and sentenced to 4½ years' imprisonment.

9. In **Ukraine**, former President of Ukraine, Petro Poroshenko, had pledged to sell his confectionary business (Roshen) if elected, but the "Panama Papers" indicate that in 2014 he had instead transferred ownership to an offshore holding company in the British Virgin Islands, of which he was the ultimate beneficial owner. In the **United Kingdom**, Conservative life peer since 1973 Baroness Pamela Sharples was sole shareholder of a company based in the Bahamas that she used to make investments but had not declared to parliament. The law firm handling Baroness Sharples' affairs said that she became a director of the company in 2000 and that the company was registered in the United Kingdom in the same year and now pays taxes to the British Government. She retired from the House of Lords in December 2017 at the age of 94.

2.2. "Paradise papers"

10. The "Paradise Papers" were a set of 13.4 million confidential electronic documents relating to offshore investments that were leaked again to the newspaper *Süddeutsche Zeitung*, shared with the ICIJ and made public in 2017.[6] This scandal revealed offshore interests and activities of more than 120 politicians and world leaders. The list included **Lithuanian** member of the European Parliament, Antanas Guoga, who held a stake

5. In 2013, Mr Berlusconi was convicted of tax-fraud, expelled from the Senate and prohibited from taking part in any general election for 6 years.
6. ICIJ, "Explore the politicians in the Paradise Papers".

in an Isle of Man company which was not revealed in his parliamentary disclosures. Current **Russian** member of the State Duma, Alexey Ezubov was identified as the director of a Bermuda company and former member of the State Duma, Aleksandr Skorobogatko was the ultimate beneficial owner of a company incorporated in 2010. He resigned from the parliament in 2016. Former **Spanish** Mayor of Majadahonda, Guillermo Ortega Alonso, who was also implicated in the Gürtel case; resigned following the scandal. Former member of the Parliament of Galicia, Pablo Crespo was found guilty in the Gürtel case of bribery, money laundering and fraud and sentenced to more than 37 years in prison. Former Mayor of Barcelona and current President of the Convergence and Union parliamentary group in the Barcelona City Council, Xavier Trias had his name on a family trust in Switzerland allegedly to conceal money during most of his political career. In **Ukraine,** former Vice Prime Minister Valeriy Voshchevsky was listed in Malta's register of companies in 2013 and Anton Prigodsky, former member of the Verkhovna Rhada, owned a company registered in Malta in 2013.

2.3. "Pandora papers"

11. The third and most recent scandal, known as the "Pandora Papers", emerged from nearly 12 million leaked documents that were published by the ICIJ and OCCRP on 3 October 2021. The scale of this leak is said to set it apart from the previous two scandals; it "gives an unprecedented insight into the offshore industry, showing once and for all that cases of tax evasion, money laundering, and other malfeasance exposed by previous investigations are not down to a few rogue operators, but are an essential part of how this secretive industry works."[7] The initial reports included references to almost 336 "politically exposed persons", including many politicians from Council of Europe member States: two from Azerbaijan, three from France, four from Italy, four from Serbia, four from the Czech Republic, five from Spain, three from Portugal, one from the Republic of Moldova, two from Romania, sixteen from Russian, thirty eight from Ukraine, and nine from the United Kingdom.

12. For example, according to the OCCRP, the **Azerbaijani** President's family acquired dozens of prime London properties worth nearly US$700 million and the family of Oktay Asadov, former Speaker of the Azerbaijani Parliament, owns millions of dollars-worth of luxury real estate in London, Dubai, and Moscow, along with a villa near Baku, the real value of which is far beyond his and his family's declared revenues. The **Czech** Prime Minister, Andrej Babiš, loaned millions of euros via offshore companies and acquired luxury French real estate, including a chateau, by transactions said to bear the hallmarks of money laundering. It is alleged that the **Ukrainian** President, Volodymyr Zelensky, owned offshore companies before becoming President of Ukraine. Mr Zelensky transferred the ownership of these companies to his allies before he was inaugurated as the President of Ukraine. The "Pandora papers" provided new evidence supporting reports in 2015 that Siniša Mali, a prominent **Serbian** politician, owned 24 luxury properties on Bulgaria's coast, registered in the names of two offshore companies of which he was the sole shareholder. In 2017, former **United Kingdom** Prime Minister, Tony Blair and his wife avoided paying tax on a £6.5 million office building by acquiring it through an offshore company.[8] Other prominent European politicians appear in the papers, such as Silvio Berlusconi, former Prime Minister of **Italy**; Wopke Hoekstra, Minister of Finance of **the Netherlands**; Delyan Peevski, **Bulgarian** politician former member of the National Assembly; Alexander Mamut, **Russian** billionaire and former advisor to President Boris Yeltsin and another Russian politician, Alexei Chepa, Member of the Federal Assembly; Ben Elliot, co-chairman of the Conservative Party, Lord Deighton, member of the House of Lords, and Patrick Robertson, political advisor in **United Kingdom**; Jürg Wissmann, **Swiss** politician for the Christian Democratic People's Party; Aymeric Chauprade, former member of the European Parliament and Nicolas Perruchot, former mayor of Blois and former member of the National Assembly, and Sylvain Maillard, member of the National Assembly, all **French** politicians.[9] The scale of political involvement in these offshore schemes is still to be assessed.

2.4. "Laundromats"

13. The Assembly's report on "Laundromats" – large-scale international money laundering schemes – illustrates the extent of money laundering involving member States. The "Global Laundromat" enabled the illegal transfer of at least US$21 billion, and perhaps as much as US$80 billion, from the Russian Federation

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7. "FAQ: About the Pandora Papers", OCCRP.
8. Ibid.; see also "Massive Leak Exposes the Hidden Fortunes of World's Elite and Crooks", OCCRP, "Azerbaijan's Ruling Aliyev Family and Their Associates Acquired Dozens of Prime London Properties Worth Nearly $700 Million", OCCRP; "Family of Top Azerbaijani Politician Owns Millions in Luxury Real Estate", OCCRP; "Anti-Graft Czech Prime Minister Used Offshores to Disguise Funds for French Chateau", OCCRP; "Pandora Papers Reveal Offshore Holdings of Ukrainian President and his Inner Circle", OCCRP; "Despite Denials, Serbian Finance Minister Owned Luxury Apartments After All", OCCRP; "Tony and Cherie Blair bought property via offshore firm and saved £300,000 in tax", The Guardian.
9. "Where are the 336 politicians in the Pandora papers from?", tbsnews.net.

to recipients around the world; the "Azerbaijani Laundromat" enabled the transfer of US$2.9 billion out of Azerbaijan; and the "Troika Laundromat" was used to transfer another US$4.6 billion out of Russia.[10] The rapporteur for the "Laundromats" report, our former colleague Mr Mart van de Ven (Netherlands, ALDE), had explained that the laundered money reached a wide range of beneficiaries, including family members of several high officials. These included Yaqub Eyyubov, Azerbaijan's first deputy prime minister since 2003, the sons of the deputy chief of the Azerbaijani anti-corruption authority, Ali Nagiyev, the daughters of Fizuli Alakbarov, Minister for Labour and Social Protection and Azer Gasimov, President Aliyev's press secretary. Several of these names appeared also in the "Panama Papers".

14. The "Azerbaijani Laundromat" also provided money that contributed to corruptive activities within the Assembly, as was established in the report of the Independent Investigative Body (IBAC).[11] Five former Assembly members most clearly seem to have received some of this money, all of whom have been sanctioned by the Assembly for breaches of its ethical rules. Luca Volontè's prosecution by the Italian authorities for bribery and money laundering remains pending. The German Parliament has found that Karin Strenz violated its ethical rules and fined her a record €20 000. Transparency International Germany also filed criminal complaints against both Ms Strenz and another former member, Eduard Lintner for the offence of corruption of public officials. Mr Lintner is accused of having received €4 million from Azerbaijan through British shell companies between 2008 and 2016. In January 2020, the public prosecutor's office in Frankfurt am Main launched a criminal investigation into Ms Strenz and Mr Lintner.[12] It is, however, not known thus far whether any action has been taken against Slovenian politician Zmago Jelinčič Plemeniti, the last of the five.

2.5. Other country-based examples

15. Apart from these large-scale media revelations, numerous individual cases have emerged in recent years.

16. In 2019, the European Commission ordered the **Czech Republic** to repay €17 million in EU subsidies received by a company owned by the incumbent Prime Minister, Andrej Babiš.[13] This was the result of investigations by the Czech Police and the European Anti-Fraud Office (OLAF) from 2015 to 2019 in the case known as the "Storks Nest". The Prime Minister's immunity was lifted on several occasions during these investigations and the prosecution was eventually discontinued on the grounds of absence of the elements of a crime. In April 2019, following repeated police requests to charge the Prime Minister with fraud, the latter replaced the then Czech Minister of Justice, which according to some commentators was intended to obstruct the investigation. This led to large protests across the country demanding his resignation, but he declined.[14] The charges against him were eventually dropped in September 2019 and he remained in office. Now he is again subject to journalist investigation in the context of the "Pandora papers" scandal[15].

17. In October 2019, the **Republic of Moldova's** National Anti-Corruption Centre and special prosecutor declared that Vladimir Plahotniuc, a former member of parliament and Chairperson of the ruling Democratic Party of Moldova, was wanted for money laundering on an exceptionally large scale. Other persons, including public officials and MPs involved in massive illegal transfers of money from the Moldovan banking system in 2014 (the so-called "theft of the century"), have not yet been brought to justice.[16] In 2019, the Assembly regretted that, five years later, the investigations have remained inconclusive. Only recently, Mr Vladimir Andronachi, an ex-MP affiliated to the former ruling Democratic Party, was officially charged with arranging offshore transfers of almost €1 million from that banking fraud[17]. Ilan Șor, another MP connected to this fraud, despite being under criminal investigation since 2014 and having been convicted in 2017 by the first instance

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10. Assembly Resolution 2279 (2019) "Laundromats: responding to new challenges in the international fight against organised crime, corruption and money laundering".
11. Report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly, 15 April 2018. See also, Assembly Resolution 2216 (2018) "Follow-up to the report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly" and Committee on Rules of Procedure, Immunities and Institutional Affairs, webpage on follow-up to the investigation into allegations of corruption in 2017.
12. Transparency International, "Transparency Germany welcomes corruption investigation into Karin Strenz and Eduard Lintner", 30 January 2020. The Rostock public prosecutor had decided in May 2019 not to launch an investigation.
13. Transparency International, "European Commission confirms Czech Prime Minister Andrej Babiš has conflict of interest", 5 June 2019.
14. "Czechs demand PM Babis quit in biggest protest since communist era", Reuters.
15. "République tchèque: visé par les «Pandora Papers», Andrej Babiš joue sa réélection", la-croix.com.
16. Global Voices, "Can Moldova ever win its gruelling fight against corruption? ", 3 February 2020. See also, Assembly Resolution 2308 (2019) "The functioning of democratic institutions in the Republic of Moldova".
17. "Final de mandat. Milionul", Rise Moldova" and "Former MP Vladimir Andronachi charged", IPN.

court, has been able to use legal loopholes to get elected first as a mayor in local elections of 2015 and then as a MP in two subsequent parliamentarian elections, including this year's. He still holds his status as a Moldovan MP[18] at the same time as being a fugitive from justice.[19]

18. In **Romania**, the leader of the ruling Social Democratic Party, Liviu Dragnea, was in May 2019 ordered to begin serving a 3½ year prison sentence for corruption and abuse of power.[20] Mr Dragnea joined a long list of politicians convicted between 2014 to 2018: seven ministers, one deputy prime minister and three MPs were sentenced for bribery, money laundering, tax evasion, selling public goods, influence-peddling, embezzlements, and other corruption-related offences. These convictions had resulted from an unduly long and tenuous process of investigation and prosecution which had been harshly criticised by European institutions. The European Commission, for example, in 2013 expressed serious concerns about the level of corruption in the country, underlining that the "National Integrity Agency (ANI) reports relating to ministers and senior officials did not lead to their resignation" as would normally be expected when their integrity was questioned.[21] Even worse, the significant progress in fighting corruption that had been achieved by Romania was overshadowed in 2018 by dismissal of the anti-corruption chief prosecutor, who had opposed to decriminalisation of certain corruption related offences back in 2016 by the then newly elected parliament. She was subsequently appointed as the EU's chief prosecutor.

19. In **Spain**, the ongoing "Gürtel case" helped "shatter the nation's two-party system, transform how the public viewed the people running the country and, eventually, [brought] down a government".[22] This case involves Francisco Correa, a powerful business magnate, who conspired with local politicians to rig lucrative public contracts. In May 2018, 27 defendants – including two former People's Party mayors, one former parliamentarian – were given more than 300 years jail time in total. The Prime Minister, Mariano Rajoy, had to step down after a vote of non-confidence.

3. Examples of situations in which politicians were held politically responsible

3.1. Impeachments

20. In the following paragraphs I will cover only examples from the members States of the Council of Europe, but it could be useful to draw inspiration from other non-European democracies where impeachments have proved to be effective in fighting high-level corruption.[23]

21. The case of the former **Lithuanian** President Rolandas Paksas is probably the first and the most well-known example of impeachment for corrupt behaviour attributed to a Head of State. He was dismissed from office for gross violations of the Constitution and banned from running for parliament.

22. In the **Republic of Moldova**, after a series of corruption scandals in 2013, Vladimir Filat resigned as Prime Minister following a motion of no confidence on the basis of allegations of corruption. He was again proposed as a candidate for the office of Prime Minister by the ruling party of which he was the leader. The parliamentary opposition, however, contested this nomination before the Moldovan Constitutional Court, which dismissed him as a candidate and as a prime minister ad interim pending the nomination of a new head of the government. It ruled that a politician dismissed from high-ranking office on the basis of allegations of corruption, even without criminal investigation, can stand neither as a candidate for the same office nor as ad interim new nomination[24]. Two years later, Mr Filat's party lost many of its seats in Parliament and he was stripped of his parliamentarian immunity, charged in the context of the "theft of the century", and convicted for corruption.

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18. Members of the Parliament, parlament.md.
19. "Seven letdowns from Prosecutor General Stoianoglo one year into his term", sic.md.
20. See also, GRECO, "Fourth evaluation round, Interim compliance report for Romania", June 2019; OCCRP, "Romanian PM 'Disappointed' with EU Threats over Corruption", 16 May 2019; European Commission, "Progress report on Romania under the Cooperation and Verification Mechanism", 13 November 2018.
21. Report from the Commission to the European Parliament and the Council on progress in Romania under the Co-operation and verification Mechanism (COM(2013) 47 final Brussels, 30 January 2013 .)
22. "Spain's Watergate: inside the corruption scandal that changed a nation", *The Guardian*, March 2019.
23. For example, Brazil's successful impeachment of Dilma Rousseff for corruption scandals related to the Petrobras affair and unsuccessful impeachment proposals against Michel Temer made in the same context, or the two impeachments of the Peruvian President Pedro Pablo Kuczynski, following which he eventually resigned.

23. In 2013, the Senate of the **Czech Republic** voted to impeach the then President Václav Klaus for his controversial amnesty law, which among other effects ended many on-going high-profile corruption cases. The impeachment occurred shortly before the end of his second term of office, after which he could not seek re-election, and thus had little practical effect. The Czech Constitutional Court ruled that it cannot impeach the President whose mandate had already expired.

24. There have been two attempts to impeach **Romanian** President Traian Băsescu, on the basis of public accusations about his alleged tolerance of corruption. In 2007, the Romanian Parliament voted in favour of his dismissal, after which he was suspended and his dismissal was put to popular vote in a referendum. The impeachment procedures failed in the referendum with participation of less than required proportion of eligible voters. Mr Băsescu remained in office and later was elected as President for the second time. In 2012, the parliament initiated another impeachment proceedings for various forms of serious misconduct. He was again suspended and a majority of Romanians voted to impeach him. However, the Romanian Constitutional Court invalidated the whole referendum on procedural grounds. This verdict led to protests unsuccessfully calling on the president to resign. Nevertheless, the various impeachment proceedings against him having failed, Mr Băsescu was able to continue standing for elected office despite the persistent suspicions and allegations against him.

3.2. Political customs

25. In **France**, the so-called "jurisprudence Bérégovoy-Balladur" or the "Balladur rule" involves the tacit removal or automatic resignation of indicted politicians from their government positions. In 1992, French Prime Minister Pierre Bérégovoy asked Bernard Tapie, a government minister, to resign after he was formally charged with abuse of corporate assets for personal gain. Seven months later he returned to government after having been acquitted of these charges. This example served as a precedent for Prime Minister Edouard Balladur to oblige various ministers of his cabinet to resign after they were charged with corruption. The "Balladur rule" establishes the moral duty to resign only if a minister is formally accused, even without such an obligation under the French Constitution. Prime Ministers Jacques Chirac, Lionel Jospin, and François Fillon also applied this rule to ministers from their governments, sometimes even before formal charges were brought. Application of the rule has since been extended to local authorities and low-ranking public officials,[25] underlining the importance of preserving public trust and ethical political conduct.

26. There has been also criticism of this practice, however, as some commentators and politicians have claimed that it could be easily manipulated by bringing ill-founded criminal charges for political purposes. It is said that recently opened criminal cases "have gradually led some of the political staff to distance themselves from the tacit rule of automatic resignation in the event of an indictment, which is far from being synonymous with conviction."[26] In addition, this practice does not apply to high-ranking officials under the functional immunities, such as the President of the Republic.

3.3. Individual resignations

27. It seems that in European countries only two resignations followed the "Panama papers". The first was in **Iceland** where the former Prime Minister Sigmundur Davíð Gunnlaugsson eventually resigned after being urged to do so by his Party colleagues and under the pressure of large anti-government protests in front of the parliament building[27] (see paragraph 7 above). During my meetings with Icelandic politicians, academicians, and investigative journalists, all considered that the former Prime Minister should have resigned as a matter of ethical obligation because he was not able to disprove the allegations against him of using offshore companies for tax evasion. They also confirmed that the code of ethics for the Icelandic MPs was silent in this regard and ineffective in practice. According to the incumbent Prime Minister Katrín Jakobsdóttir, since the "Panama papers" scandal, the Icelandic authorities have become more committed to reviewing fiscal regulations and rules on conflicts of interests requiring politicians to declare their offshore possessions and all

24. Constitutional Court of the Republic of Moldova, Judgement of 22 April 2013 on constitutional review of the Decrees of the President of the Republic of Moldova No. 534-VII of 8 March 2013 on the dismissal of the government, in the part concerning the staying in office of the Prime Minister dismissed by a motion of no confidence (on allegations of corruption) of 8 March 2013 until the formation of the new government and No. 584-VII of 10 April 2013 on the nomination of the candidate for the office of Prime Minister (Complaint No. 10a/2013).
25. See for example http://www1.rfi.fr/actufr/articles/049/article_26173.asp.
26. "Si Dupond-Moretti est mis en examen, la jurisprudence Balladur s'appliquera-t-elle?", huffingtonpost.fr.
27. "Icelandic Prime Minister Had Stake In Failed Banks, Leaks Suggest", HuffPost Impact.

other relevant financial interests. In the same context, Mr Ármannsson, Chairperson of the Independence Party's parliamentary group, the majority party in the Icelandic Parliament, agreed that the MPs' code of conduct may need revision to compel politicians to bear consequences for unethical conduct.

28. The second resignation following the "Panama Papers" revelations took place in **Spain**, where José Manuel Soria, Minister of Industry, Energy and Tourism at the time, resigned after the disclosure of his and his family's ownership of companies in offshore.

29. Other political scandals and corruption-related accusations have led politicians to present their resignation. **Moldova**'s justice minister, Alexandru Tănase, resigned after a leaked recording of a telephone conversation revealed him chatting, at the time that he was president of the Constitutional Court, with a well-known criminal who was later convicted in the context of the "theft of the century". **Lithuania**'s Minister of Justice, Milda Vainiute, resigned following revelations of opaque public procurement dealings in the prison administration. **Spain**'s Minister of Culture, Maxim Huerta, resigned after less than a week in office over media revelations that he had evaded thousands of euros in taxes. **Bulgarian** Energy Minister Temenuzhka Petkova resigned after confirming undeclared conflict of interests relating to negotiations over a big energy contract. Aleksandar Andrija Pejovic, Minister of Foreign Affairs of **Montenegro**, resigned after the country's anti-corruption agency discovered that he was holding two positions and receiving an additional income. **Ukrainian** Interior Minister Arsen Avakov resigned amidst growing speculation over a conflict with President Volodymyr Zelenskiy, as well as public accusations of corruption. Recently, **Austria**'s Chancellor Sebastian Kurz has stepped down, after political and public pressure triggered by accusations of corrupt behaviour, namely using public funds to obtain political coverage in mass-media.

30. In comparison with the above examples, other political resignations happen which do not involve corruption-related accusations. For example, the resignation of **United Kingdom** Health Secretary Matt Hancock, who resigned after being accused of breaching restrictions he imposed on the rest of the population to curb the spread of the coronavirus. A number of **German** public officials resigned over the plagiarism scandals, such as Franziska Giffey from the office of Minister of Family, Annette Schavan from the post of Education Minister, Karl-Theodor zu Guttenberg resigned from Minister of Defence position. **Hungarian** President Pal Schmitt resigned after having his PhD title revoked for plagiarism. In the **Slovak Republic**, after criticism for mishandling the Covid-19 crisis, four government ministers stepped down from their posts.

4. Council of Europe standards on fighting corruption, money laundering and related offences

31. The strategic importance of the fight against corruption to the Council of Europe as a whole was underlined by the Secretary General of the Council of Europe, who, in a speech to the Assembly, warned against the "rampant corruption, ineffective public administration and efforts to undermine the checks and balances required in any healthy democracy"; an area where member States, including parliaments, have a "responsibility to act".[28]

4.1. Parliamentary Assembly

32. The Assembly has frequently stated that corruption threatens the rule of law, democracy and human rights, undermines public trust and endangers the stability of public institutions. In recent years, it has adopted resolutions and recommendations on, for instance, "Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges" (Resolution 2293 (2019)); "Promoting integrity in governance to tackle political corruption" (Resolution 2170 (2017) and Recommendation 2105 (2017)); "Corruption as a threat to the rule of law" (Resolution 1943 (2013) and Recommendation 2019 (2013)); "Transparency and openness in European institutions" (Resolution 2125 (2016) and Recommendation 2094 (2016)); "Keeping political and criminal responsibility separate" (Resolution 1950 (2013)); "Democracy in Europe: crisis and perspectives" (Resolution 1746 (2010) and Recommendation 1928 (2010)).

33. The Assembly stressed that "corruption jeopardises the good functioning of public institutions and diverts public action from its purpose, which is to serve the public interest. It disrupts the legislative process, affects the principles of legality and legal certainty, introduces a degree of arbitrariness in the decision-making process and has a devastating effect on human rights."[29] It recognised that "frequent corruption scandals, both in national and European institutions, have led populist leaders to exploit the disenchantment of the people with the 'corrupt elite'."[30] One must note with concern that corruption has a toll on democracy, and

28. Address to the Assembly, Strasbourg, 29 January 2020.
29. Assembly Resolution 1943 (2013) "Corruption as a threat to the rule of law".

threatens the rule of law and public institutions. Tax evasion and the association of political figures with offshore accounts also cause public disappointment with democratic institutions and these public figures. Even in member States where there are legitimate, legal uses for offshore companies, the mere association of a public figure with an offshore company has an extensive effect on the public perception of the *politicum* as a whole. It is an established practice that most offshore accounts are used for tax evasion or avoidance. Top politicians involved in such practices, display reluctance to ensure the State's economic stability, distrust towards the national banking system and stability of the national currency by not keeping their own money in banks, as well as establish a precedent of tax evasion for other politicians to follow and create uncertainty and instability in the country. Consequently, the radicalisation of politics, derogation from democratic values, misconduct of public figures and advent of the populist parties consisting mainly of opinion leaders with no professional background rather than competent politicians, are a few of the apparent repercussions of public disillusionment towards politics. In the midst of the "Panama Papers" scandal for instance, the Assembly expressed its concern "about the scope of tax avoidance, tax evasion, and even tax fraud in modern societies, which nowadays involves public personalities, who should be role models of ethical behaviour". The Assembly considered that a "higher standard of ethics in politics and in the business world is essential to uphold our economic, social and democratic systems". It called "for measures to ensure transparency in the business activities of politicians, since opaque relationships between business and politics undermine people's trust in democratic structures".[31]

34. The Assembly's ethical standards for members are set out in its Rules of procedure, with its appended Code of Conduct for members. Pursuant to paragraph 17 of the Code of Conduct, members are required to declare every year any remunerated professional activities, offices, and positions, in the public or private sector, regular or occasional, whether as an employee, liberal professional or as a self-employed person, including the parliamentary mandate and local elective offices, and any other interests. At the request of the Committee on Rules of Procedure, Immunities and Institutional Affairs of the Assembly the GRECO assessed the Assembly's Code of Conduct, notably as regards the issues related to conflict of interest; declaration of assets, income, liabilities, and interests; prohibition or restriction of certain activities; effectiveness of supervision and enforcement mechanisms; and advice, training and awareness. In its assessment,[32] GRECO found that as a regulatory framework, the 2015 compendium on the Code of Conduct needed improvement. In 2017, the Assembly addressed GRECO's concerns by providing for new rules of conduct and declaratory requirements to prevent possible future corruption in the Assembly.[33]

35. In response to the IBAC report and conclusions concerning the individual conduct of members or former members, the Committee on Rules of Procedure convened several hearings in order to hear the Assembly members and former members concerned and decided to take action (namely stripping titles of Honorary Associate of the Assembly, and depriving of the right to access the Council of Europe and the Assembly premises for life), within the strict framework of the Assembly's ethical regulations. The Assembly recalled in 2018 the "principle of individual political responsibility, including the possibility for those elected to relinquish their mandate". The Assembly also invited "political groups of the Assembly, as well as the political groups within the national parliaments, to each draw the consequences of any allegations against their members".[34] Also noteworthy, is the Assembly's anti-corruption platform launched on 8 April 2014 in Strasbourg, to create a space for dialogue on how to deal with new forms of corruption, and help promote transparency and honesty in public life. A series of seminars and workshops – with a regional or national focus – were already organised on topics such as: mechanisms available to national parliaments to counter corruption, code of conduct for parliamentarians, the integrity of parliamentary staff. This platform is currently dormant for lack of adequate resources.[35]

36. Last but not least, the Assembly distinguished earlier between political and legal responsibility, underlining the importance of politicians being "effectively protected from criminal prosecutions based on their political decisions, [which] ... shall be subject to political responsibility." Still, the Assembly recognised that 'politicians shall be held to account for criminal acts or omissions they commit both in their private capacity and in the exercise of their public office'.[36] Fighting impunity remains the guiding principle to hold any person

30. Assembly Resolution 2170 (2017) "Promoting integrity in governance to tackle political corruption".
31. Resolution 2130 (2016), op. cit.
32. GRECO, "Assessment of the Code of Conduct for Members of the Parliamentary Assembly of the Council of Europe", June 2017.
33. Assembly Resolution 2182 (2017) "Follow-up to Resolution 1903 (2012): promoting and strengthening transparency, accountability and integrity of Parliamentary Assembly members".
34. Resolution 2216 (2018), op. cit.
35. See the Platform's webpage. See also, the «Handbook for Parliamentarians – Introduction to the activities of the PACE anti-corruption platform», 2014.

accountable for a breach of the law, irrespective of his or her status or political affiliation. In this later sense, the Assembly recognised that the need to eradicate impunity also concerns corruption, both in the public and in the private sectors, which is widespread and remains largely unpunished, undermining the rule of law and presenting a serious risk for the prosperity of countries and their democratic institutions.[37]

4.2. Legal instruments

37. Three treaties developed by the Council of Europe deal with corruption from the point of view of criminal, civil and administrative law. The Criminal Law Convention on Corruption (ETS No. 173) of 27 January 1999 and an Additional Protocol (ETS No. 191) provide for measures to be taken at national level for active and passive bribery of domestic public officials, members of domestic public assemblies, and international parliamentary assemblies and officials of international organisations. Its preamble emphasizes that "corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society." The Civil Law Convention on Corruption (ETS No. 174) of 4 November 1999 requires each Party to "provide in its internal law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage". It deals in particular with liability (including State liability for acts of corruption committed by public officials) and international co-operation.

38. Another relevant treaty is the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS No. 198), which provides that States Parties "shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law. (Article 3 (3))". This Convention obliges States parties to 'adopt such legislative and other measures as may be necessary to ensure that the measures to freeze, seize and confiscate also encompass: (a) the property into which the proceeds have been transformed or converted; (b) property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds; (c) income or other benefits derived from proceeds, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds. (Article 5)".

4.3. Committee of Ministers

39. The core Council of Europe treaties are complemented by certain legal instruments adopted by the Committee of Ministers. In its Resolution (97) 24 setting out Twenty Guiding Principles for the fight against Corruption, the Committee of Ministers invited the member States, *inter alia*: "to provide appropriate measures to prevent using legal persons being used to shield corruption offences; to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society; …to ensure that the fiscal legislation and the authorities in charge of implementing it contribute to combating corruption in an effective and co-ordinated manner, in particular by denying tax deductibility, under the law or in practice, for bribes or other expenses linked to corruption offences; …to ensure that the rules relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary measures; promote further specification of the behaviour expected from public officials by appropriate means, such as codes of conduct; …to ensure that the system of public liability or accountability takes account of the consequences of corrupt behaviour of public officials". The Model Code of Conduct for Public Officials (Committee of Ministers' Recommendation No. R(2000) 10) also emphasises the requirement for a public official to "take care that none of his or her political activities … impairs the confidence of the public and his or her employers in his or her ability to perform his or her duties impartially and loyally". The Committee of Ministers Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns states that the funding of political parties should be transparent and accountable.

40. The Committee of Ministers Guidelines on public ethics, adopted in March 2020, set out a series of recommendations applicable to all public officials, including elected representatives, based on the principles of legality, integrity, accountability, transparency and honesty. The guidelines recommend to set up standards of

36. Assembly Resolution 1950 (2013) "Keeping political and criminal responsibility separate".
37. Assembly Resolution 1675 (2009) "State of human rights in Europe: the need to eradicate impunity".

conduct in the areas of "public officials' individual interests and those of connected persons, the declaration of such interests and the handling of conflicts of interest [and] public officials' activities which are outside their function or mandate, the declaration of these outside activities, the classification of permissible and prohibited outside activities for different categories of public officials, and the arrangements and conditions for participation in outside activities". They further state that: "In the performance of their duties, all public officials should: … avoid any situation where there could be a conflict of interest for them, and remove themselves immediately from any potentially problematic situation, while complying with relevant rules for handling conflicts of interest including rules of disclosure". The guidelines provide that public officials who are members of national governments should "make themselves accountable to their respective legislature for their actions and decisions, and for the actions and decisions taken by the ministries and entities for which they are responsible" and "give accurate and truthful information to their legislature, and be open and transparent to that legislature and to the general public…". Referring to public officials who are members of national parliaments, the Guidelines require them to "ensure [that] their actions and decisions are open, transparent and accountable to their electorate" and "attach importance to acting in conformity with the rules and obligations on their declarations of assets, income, liabilities and other interests".

4.4. European Commission for Democracy through Law (Venice Commission)

41. The Rule of Law Checklist adopted in 2016 was elaborated by the Venice Commission as an operational tool for assessing the level of Rule of Law compliance in member States. It covers issues such as the prevention of abuse or the misuse of powers, corruption and conflict of interest. The Venice Commission has also adopted reports on the "scope and lifting of parliamentary immunities" (2014) and the "exclusion of offenders from parliament" (2018). Its Code of Good Practice in Electoral Matters further states that "provision may be made for depriving individuals of their right to […] be elected, but only subject to the following cumulative conditions [inter alia] it must be provided for by law; the proportionality principle must be observed […];" such deprivation may be based on a criminal conviction for a serious offence, potentially including corruption or money laundering.

42. The Venice Commission issued a report on the "Relationship between Political and Criminal Ministerial Responsibility"[38], where it noted that: "…government ministers should not be exempt from legal punishment, unless covered by clearly defined and limited rules on immunity. A minister who commits a criminal offence should be subject to criminal sanctions. It may be that the problem in some countries is not the government ministers are held criminally responsible too often, but the opposite – that it is too difficult to hold them responsible in such a way". This report recognised the legitimacy of two models of holding high-ranking public officials accountable – one involving the ordinary criminal system and the other involving special impeachment procedures – both of which could be applied together and not necessarily they should have a preference one over the other. The principal requirement in this regard is to avoid abusing the criminal procedures, in particular the crimes of *ultra vires* acts for the purpose of political persecution of opponents. The report however does not preclude fighting corruption by both criminal means and by inducing public officials to assume political responsibility, including through legal constitutional impeachment procedures or by lifting immunities.

4.5. Group of States against Corruption (GRECO)

43. GRECO's fourth Evaluation Round on the Prevention of corruption in respect of*, inter alia*, members of parliament and its fifth round on Preventing corruption and promoting integrity in central governments (top executive functions) are particularly relevant and have led to detailed guidance on the implementation of the relevant legal standards.[39] In both evaluation rounds, GRECO's country-specific reports often provided guidance on issues including procedural transparency, remuneration and benefits, codes of conduct, conflicts of interest, declarations of assets, prohibited or restricted activities, and oversight and enforcement mechanisms.

44. In its October 2017 report on "Corruption Prevention: Members of Parliament, Judges and Prosecutors – Conclusions and Trends", GRECO noted that "The overwhelming conclusion with respect to the 4th Round is that while solid foundations have been laid in most jurisdictions to tackle corruption, including examples of good (even excellent) practices, there is an overall lack of regard to effective implementation. One in every five recommendations refers to supervision and enforcement of the legislative framework in place. This is a

38. See the "Report on the Relationship between Political and Criminal Ministerial Responsibility", adopted by the Venice Commission at Its 94th Plenary Session (Venice, 8-9 March 2013) (CDL-AD(2013)001-e).
39. GRECO, webpage on Evaluations.

clear sign that the actual implementation of the existing rules and regulations is an area of concern for each group under GRECO's review." This report found that "the great bulk of recommendations for MPs refer to three main areas: supervision and enforcement, incompatibilities and rules of conduct." GRECO underlined that "the vast majority of member States received a recommendation with respect to adopting, elaborating or implementing a Code of Conduct for MPs … [and] many had yet to develop clear guidance to help MPs apply the codes in practice". It considered that "the codes of conduct and complimentary guidelines provide an important framework for MPs to grapple effectively with some of the complexities of their roles and functions". Even if such "[a] code of conduct does not guarantee high ethical conduct, … it does set the standards of behaviour and helps clarify the limits of parliamentary discretion… [and it needs] to be effectively implemented in practice". GRECO then concluded that "the aim must be to ensure that a code of conduct is a living document… [a] part of a broader integrity framework with an institutional framework for implementation, awareness-raising and advice, as well as strong enforcement".[40] GRECO did not, however, in this document address the issue of resignation, as a matter of ethical duty, or a legal obligation to suspend politicians suspected of corruption.

45. GRECO has published a study containing its findings and recommendations relating to the development of codes of conduct for public officials (including, in some cases, elected and/or appointed officials)[41]. It explains that "codes of conduct are not meant to replace existing legislation"; rather thy are compilations of standards for public officials that GRECO recommends as "model codes for the development of consistent standards of ethical behaviour throughout public administration". The document says that "With regard to Codes of Conduct applicable to persons entrusted with top executive functions (in particular, ministers, civil servants involved in decision-making and political advisers), they should describe the conduct expected of them during the government decision-making process, and deal with topical issues such as: conflicts of interest; gifts and contacts with third parties/lobbyists aimed at influencing government policies or bills; post-employment restrictions with a view to avoiding that the prospect of future employment in the private sector taints the taking of decisions, etc. It is also important to ensure the effectiveness of these standards through adequate monitoring and enforcement. In one case, with regard to members of parliament, GRECO noted that, "while publicity of eventual breaches is a valuable measure, it can prove to be insufficient, in terms of not only its dissuasiveness vis-à-vis potential infringers, but also the perception given to the public as to the effectiveness of the enforcement regime of the integrity policy in- house, particularly, in relation to more serious cases of parliamentary misconduct (including regarding financial disclosure obligations)". Against this background, it recommended that "an effective enforcement and accountability regime of the Code … can only be accomplished through the formalisation of the Code of Conduct in the Rules of Procedures of the Chamber of Deputies".

46. This compilation is also relevant because it implicitly deals with the issue of political and legal responsibility. It reads that "One of the points that has been most frequently emphasised by GRECO concerns the necessity to developing within the government an organisational strategy and practices to improve, both with regard to public officials and persons entrusted with top executive functions, the management of conflicts of interest, including through responsive advisory, monitoring and compliance mechanisms". Amongst the most specific recommendations, reference should be made to enforcement mechanisms "that intentionally false statements made on the reports [should] be actionable under the criminal code, that information required to be reported is related to restrictions of office including any new conflict of interest standard, and if reports are required, that they provide a basis for counselling in ways to avoid potential conflicts of interest". In one case, GRECO observed that the information provided by the official "should also be used by the Commission for the Resolution of Conflicts of Interest in a preventive manner by helping to identify potential conflicts of interest and then counsel the official on the steps that must be taken to avoid the conflicts. Such steps could include recusal or resignation from a conflicting but not prohibited outside position".

47. GRECO recommended in this sense, "to clearly define and illustrate what shapes and forms conflicts of interest may take specifically in the government context in a code of conduct intended for these functions. In addition, a formal system, or systems for review of declarations of ministers and disclosures of other persons entrusted with top executive functions should be established or enhanced, and the reports filed be used by trained reviewers as a basis for individual counselling regarding the application of rules dealing with disqualification, outside activities and positions, and gifts."

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40. GRECO, "Corruption Prevention. Members of Parliament, Judges and Prosecutors. Conclusions and trends", 4th Evaluation Round, 2017, page 15
41. "Codes of conduct for public officials: findings & recommendations", Greco(2019)5, 20 March 2019.

4.6. Committee of Experts on the Evaluation of Anti-Money laundering Measures and the Financing of Terrorism (MONEYVAL) and Financial Action Task Force (FATF)

48. MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Its evaluations are undertaken, inter alia, on the basis of the FATF 2012 Recommendations. In so far as it is relevant for the present memorandum, FATF has recommended adoption of special measures against money laundering, such as provisional non-conviction-based confiscation, which would "allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction, or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law" (Recommendation 4).

49. In order to strengthen the fight against corruption and money laundering, the Assembly, in Resolution 2218 (2018), has also recommended that member States consider reversing the burden of proof for the confiscation of illegal assets, in line with the Irish and Italian examples that the European Court of Human Rights has found compatible with the presumption of innocence and the protection of property.

5. Fighting corruption, money laundering and related offences as a question of political and ethical responsibility

50. The fight against corruption is one of the priorities of the Council of Europe. The Assembly, the Committee of Ministers, and Council of Europe monitoring bodies such as GRECO and MONEYVAL have underlined the negative effects of corruption and money laundering on democratic institutions, the rule of law and human rights. Council of Europe member States must take action to prevent such nefarious activities, including – especially – when committed by public servants, including elected politicians.

51. The "Panama papers", "Paradise papers", "Laundromats", and, most recently, the "Pandora papers" scandals have revealed allegations of politicians and politically exposed persons using offshores schemes for tax evasion and asset concealment, raising public outrage about possible corruption and money laundering. Even if tax optimisation *per se* does not necessarily involve illicit activities, low avoidance through offshore schemes is increasingly criticised.[42] Moreover, offshore schemes offer many possibilities for politicians and high-ranking officials to hide illicit assets, including the proceeds of corruption.

52. Some member States allow offshore operations to be carried out with legitimate purposes, for example for tax optimisation or facilitation of banking operations, to secure privacy and to reduce bureaucratic burden. Still, the use of undeclared offshore accounts by politicians raises credible suspicions of tax evasion, money laundering or asset concealment. Public ethics and the fight against corruption therefore require measures such as declarations of interests and codes of ethics with effective monitoring and enforceable sanctions.[43] Failure to implement such measures may undermine public trust in democratic institutions.

53. Any credible suspicion of a politician being involved in such offences requires a prompt response from the criminal justice system, whatever the individual's status or the gravity of accusations – everyone should be equal before the law. Indeed, high-level corruption and offshore scandals, in particular the risk of bringing the very system of democracy into disrepute, require particularly effective and expeditious investigation.

54. Whilst there is no legal or universal definition of political responsibility, it is clearly distinguishable from criminal liability. Both the Assembly and the Venice Commission have confirmed this principle, noting that political responsibility implies "the ultimate judges being the voters".[44] However, I think that the political responsibility should be understood also as an ethical duty resting on a politician, whatever their rank, to suffer the consequences of breaching public trust. This accountability could be engaged either by resignation, suspension during criminal investigation, effective application of codes of conduct, or even their political parties exerting pressure on suspected politicians to resign.

55. The examples described above illustrate that there is no general standard amongst European countries for when politicians suspected of corruption, money laundering or tax evasion should resign as a matter of political responsibility. Legal standards concerning the fight against corruption provide rules on declarations of assets, conflicts of interests, gifts, and property ownership. There are special tools to prevent and fight

42. Resolution 2130 (2016), op. cit.
43. See the Committee of Ministers "Guidelines of on public ethics" (CM(2020)27, adopted on 11 March 2020).
44. Resolution 1950 (2013), op. cit. and CDL-AD(2013)001-e.

corruption and money laundering such as shifting the burden of proof in the cases of unlawful enrichment.[45] In addition, there are clear recommendations to set up of rules on ethical conduct of a public official and MPs requiring them to report on corruption and to self-restrain from corrupted behaviour.

56. However, all these principles do not require a resignation or a suspension from the public office. With few exceptions, politicians step down either under the pressure of their political parties (like in Iceland) or following a political custom (like in France), or amid corruption-related suspicions (like in the examples from the Republic of Moldova, Lithuania, Sweden) or as a result of significant loss of reputation (like in Germany and Hungary as a result of the plagiarism scandals). Also, there are no clear legal rules to guarantee that a politician who is being investigated or has been charged with corruption, money laundering, or tax-related offences is suspended or removed from office.

57. Normally a politician should not be elected or appointed to a public office if he or she does not have criminal records cleared. Equally, a serving politician should behave ethically and maintain public trust. Yet, here is the paradox: a politician suspected of serious offences, such as corruption, money laundering or tax-evasion, can continue to occupy a public position despite having breached what should be a clear ethical duty to respond to public accusations. Some examples of politicians resigning when confronted with corruption and similar scandals, such as those above, illustrate sound ethical conduct and political customs. Unfortunately, history shows that politicians are rarely willing to resign unless forced to do so by political circumstances.

6. Conclusions

58. Political life in Council of Europe member States remains prone to corruption. The recent scandals mentioned in this document are certainly far from exhaustive. They demonstrate the need to reform whole systems, and to analyse the adequacy of national anti-corruption mechanisms and procedures.

59. The Assembly has long been committed to “restoring trust in the efficiency and effectiveness of democratic institutions [as] a priority for all European democracies, including European institutions”,[46] encouraging member States to “remain at the forefront of the fight against corruption”.[47]

60. The Assembly has also recalled that politicians should be accountable for ordinary criminal acts in the same way as ordinary citizens. Any distinction between political decision making and criminal acts or omissions must be based on national law. Legal mechanisms should be used, such as impeachments, improvement of ethical standards in codes of conduct, suspensions from public positions pending criminal accusations, disciplinary sanctions for undeclared assets and unresolved conflicts of interest, etc.

61. Criminal liability and political responsibility are not the same and should be engaged both in relation to corruption, money laundering, and tax-related offences. In the same context, effective preventive mechanisms must be also put in place. This has again become evident in the context of the recent offshore scandals.

62. Resignation seems to be an ideal solution but is too rarely the case in practice. We cannot always rely on politicians’ sense of public duty to ensure resignations in the face of corruption or similar scandals. Banning or suspending those concerned from holding office, through impeachment procedures or judicial decision pending criminal investigations, are legal avenues for enforcing political responsibility. Internal pressure from political parties and effective implementation of codes of conduct for elected politicians could also be a way to sanction a politician for breaching public trust.

45. See FATF recommendation No 4 and Gogitidze and Others v. Georgia.
46. Resolution 2170 (2017), op. cit.
47. Resolution 1943 (2013), op. cit.