
GRECO : THIRTEENTH GENERAL ACTIVITY REPORT (2012)

Thematic article Lobbying and corruption

Adopted by GRECO 59 (18-22 March 2013)



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



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GRECO: Treizième Rapport Général d'Activités

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Foreword

This thirteenth edition of the General Activity Report of the Group of States against Corruption (GRECO) marks the completion of the first year of our Fourth Evaluation Round on the Prevention of corruption in respect of members of parliament, judges and prosecutors. The first evaluation reports drawn up in that round were adopted by the end of 2012 following sometimes tough, but always informative and constructive, discussions within the plenary. I hope the results of this work will provide food for thought to national parliaments and the professional bodies of the judiciary within our membership as their experience and participation in the implementation of our recommendations will be essential to ensuring the success of our endeavours.

It goes without saying that visibility of GRECO's anti-corruption work is crucial in a world where numerous international organisations and other institutional stakeholders are struggling for attention. Member States repeatedly emphasise the credibility and professionalism of the GRECO mechanism. Both individual States (including non-member States) and other organisations/bodies frequently turn to us for advice or feedback on lessons learned. Efforts to draw attention to our work also have a clear policy purpose, namely to mobilise domestic actors, including civil society, for the practical implementation of Council of Europe standards in general and GRECO recommendations in particular. These are all good reasons for us to be more proactive with the media.

For the first time, we are publishing this year a set of quantified indicators of the overall follow-up given by member States to the recommendations issued by GRECO during the first two evaluation rounds. The figures are impressive. I am aware that once figures can be published related to implementation of our recommendations from the third evaluation round, particularly those on the transparency of political financing, they might not reflect such high levels of compliance. But it has to be acknowledged that in that field, GRECO monitoring was extended to areas beyond direct governmental control and within the remit of political parties and parliaments. We count on them to lend a constructive ear to our message.

In 2012, GRECO also initiated a reflection process, inspired by the gender equality policies of the Council of Europe (notably as regards gender mainstreaming in policy development) to look into possible gender dimensions of corruption. A first report and a data collection framework for monitoring the issue as part of our anti-corruption agenda were presented to GRECO's plenary. More information on this innovative work, which is overseen by GRECO's Gender Rapporteur, is available below.

I sincerely welcome the recent statement by Thorbjørn JAGLAND, Secretary General of the Council of Europe (2013 Winter Session of the Parliamentary Assembly of the Council of Europe) that the fight against corruption and other forms of misuse of power should be among the focal points and political priorities of the Organisation. He rightly pointed out that countries that thought they were clean have had some unpleasant surprises.

The soundness of GRECO's peer-to-peer review methodology and the clear direction provided by its authoritative conclusions engenders significant commitment by its member States. Their efforts can contribute in no small way to developing the extent to which citizens feel they can trust the institutions that are there to represent and protect them.

You will see that we co-operate quite extensively with other anti-corruption initiatives both within and outside the Council of Europe. The prospect of formal participation of the European Union in GRECO was high on the agenda in 2012 and will continue to be in 2013. I hope to see concrete steps in that direction in the months to come.

Last but definitely not least I would like to direct you to our thematic article that looks into the complex world of lobbying and corruption. As already stressed at the high-level conference held on the occasion of GRECO's 10th Anniversary in 2009, this topic clearly merits more attention in the future.

Marin Mrčela, President of GRECO
Justice at the Supreme Court, Croatia

Mission and Working Framework

1. GRECO monitors the compliance of its member states with the Council of Europe's anti-corruption instruments.¹ 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. Teams of evaluators collect information through questionnaires and during on-site country visits during which they solicit further information through discussions with domestic key players. The country-specific reports that are drawn up following the visits and examined in detail and adopted by the GRECO plenary identify shortcomings in national legislation, regulations, policies and institutional set-ups and contain recommendations tailored to prompt the reforms needed to improve the capacity of states to fight corruption.

2. **Evaluation procedures** organised in rounds provide the structure for GRECO's monitoring work. Each round makes reference to the Council of Europe's treaty-based anti-corruption standards and further "soft law" standard-setting texts established within the Organisation and is designed to respond to topical concerns of its member states, civil society and the citizens of its broad membership.

Fourth Evaluation Round – Prevention of corruption in respect of members of parliament, judges and prosecutors (underway since 1 January 2012):

- ethical principles and rules of conduct
- conflicts of interest
- prohibition or restriction of certain activities
- declaration of assets, income, liabilities and interests
- enforcement of rules and regulations
- awareness-raising

Third Evaluation Round (1 January 2007-31 December 2011):

Theme I: Incriminations

- essential concepts to be captured in the definition of passive and active bribery as well as trading in influence
- limitation periods
- jurisdiction
- special defences

Theme II: Political funding

- transparency of books and accounts of political parties and election campaigns
- monitoring of party and campaign funding
- enforcement of the relevant funding rules

1. * Criminal Law Convention on Corruption (ETS No. 173)
* Civil Law Convention on Corruption (ETS No. 174)
* Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191)
* Twenty Guiding Principles against Corruption (Resolution (97) 24)
* Recommendation on Codes of Conduct for Public Officials (Recommendation No. R (2000) 10)
* Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (Recommendation Rec(2003)4).

Second Evaluation Round (1 January 2003-31 December 2006):

- identification, seizure and confiscation of corruption proceeds
- public administration and corruption (auditing systems, conflicts of interest)
- prevention of legal persons being used as shields for corruption
- fiscal and financial legislation to counter corruption
- links between corruption, organised crime and money laundering.

First Evaluation Round (1 January 2000-31 December 2002)

- independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption
- extent and scope of immunities from criminal liability.

3. Members that join GRECO after the close of an evaluation round are subject to evaluation on the themes of previous rounds before joining the current one, starting with the first two rounds that are covered in **Joint First and Second Round Evaluations**.

4. Measures taken in response to GRECO recommendations are subject to a specific impact assessment – **compliance procedure** – that provides meaningful follow-up to GRECO evaluations. It consists of two phases. The first is the adoption of a compliance report which assesses measures taken by each state to implement recommendations within the 18 months following an evaluation. Assessments are pursued – as necessary – following a further implementation period of 18 months in an addendum to the compliance report (First and Second Round compliance procedures) or a second compliance report (Third and Fourth Round compliance procedures). Intermediate or additional assessment phases occur if GRECO concludes that the response to recommendations must be considered as “globally unsatisfactory”. In addition to further reporting duties in cases of non-compliance, GRECO can turn to a number of other measures such as the organisation of a high-level mission to the country concerned, to reinforce the importance of implementing the relevant recommendations.

5. All evaluation and compliance reports adopted by GRECO are available at: www.coe.int/greco.

Composition

6. Membership in GRECO is open, on an equal footing, to the 47 Council of Europe member states and non-member states having participated in the work leading to its establishment (of the latter, Canada, the Holy See, Japan and Mexico have not yet joined). Ratification by those states of the Criminal or Civil Law Conventions on Corruption (ETS Nos. 173 and 174) leads to automatic accession to GRECO. The Committee of Ministers of the Council of Europe may invite other non-member states to accede to the conventions and/or GRECO. Other countries from a variety of regions across the globe have shown a well-informed interest in the Council of Europe’s standard-setting instruments and in the GRECO model and, in the case of Kazakhstan, a strong interest in joining GRECO.

Member States

7. GRECO’s membership spans the whole of Europe and includes also the United States of America. The dates of accession of its 49 members are as follows: Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, Luxembourg, Romania, Slovak Republic, Slovenia, Spain and Sweden (founding states – 1 May 1999), Poland (date of accession: 20 May 1999), Hungary (9 July 1999), Georgia (16 September 1999), the United Kingdom (18 September 1999), Bosnia and Herzegovina (25 February 2000), Latvia (27 July 2000), Denmark (3 August 2000), the United States of America (20 September 2000), “the former Yugoslav Republic of Macedonia” (7 October 2000), Croatia (2 December 2000), Norway (6 January 2001), Albania (27 April 2001), Malta (11 May 2001), the Republic of Moldova (28 June 2001), the Netherlands (18 December 2001), Portugal (1 January 2002), the Czech Republic (9 February 2002), Serbia (1 April 2003), Turkey (1 January 2004), Armenia (20 January 2004), Azerbaijan (1 June 2004), Andorra (28 January 2005), Ukraine (1 January 2006), Montenegro (6 June 2006),² Switzerland (1 July 2006), Austria (1 December 2006), the Russian Federation (1 February 2007), Italy (30 June 2007), Monaco (1 July 2007), Liechtenstein (1 January 2010), San Marino (13 August 2010) and Belarus (1 July 2006 – effective participation as of 13 January 2011).

Observers

8. The following international organisations have a specific observer status within GRECO which gives them access to the work of the plenary :

- International Anti-Corruption Academy (IACA)
- Organisation for Economic Co-operation and Development (OECD)
- Organization of American States (OAS)
- United Nations, represented by the United Nations Office on Drugs and Crime (UNODC)

Council of Europe bodies represented

9. The following bodies of the Council of Europe are also invited to designate a representative with access to the work of the plenary :

- Parliamentary Assembly of the Council of Europe (PACE)
- European Committee on Legal Co-operation (CDCJ)

2. Following independence, Montenegro succeeded to all treaties to which the State Union of Serbia and Montenegro was a party, including the Criminal Law Convention on Corruption (ETS No. 173) making it *ipso facto* a member of GRECO.

- European Committee on Crime Problems (CDPC)
- Council of Europe Development Bank (CEB)

Results and Impact

Evaluation procedures

On-site visits carried out by evaluation teams in 2012:

Fourth Evaluation Round: Slovenia, United Kingdom, Poland (16-20 April); Finland, Estonia, Latvia (4-8 June); Luxembourg, Netherlands, Iceland (1-5 October)

Evaluation reports adopted by the plenary in 2012:

Joint First and Second Evaluation Rounds: Belarus

Third Evaluation Round: Italy, Monaco, Russian Federation

Fourth Evaluation Round: Estonia, Latvia, Poland, Slovenia, United Kingdom,

(Further reading: Thematic Reviews *Incriminations*, *Political Funding*)

A New Evaluation Round

10. GRECO launched its Fourth Evaluation Round – the **Prevention of Corruption in respect of Members of Parliament, Judges and Prosecutors** – on 1 January. Following elections in December 2011, Mr Marin Mrčela, Justice at the Supreme Court of Croatia took up the position of President, and Mr Christian Manquet, Head of Department, Directorate for Penal Legislation, Ministry of Justice of Austria as Vice-President for the duration of the round. During the first half of the year, the plenary was provided with contextual information and guidance to assist it in defining its position in respect of the themes of the new round during two expert roundtables. The first, focused on members of parliament, the second, on judges and prosecutors and on both occasions, three keynote speakers drew on the characteristics of the preventive mechanisms they had personal knowledge and experience of to broaden the reflection process within the plenary (further reading: summary reports *GRECO 54*, *GRECO 55*).

11. When drawing up and finalising the first Fourth Round Evaluation Reports, considerable effort was invested by individual member states, evaluators and the plenary to maintain rigorously high technical standards and to achieve a balance between defining policies that might be applied to all members and designing meaningful recommendations tailored to individual national profiles and shortcomings – all trademarks of the GRECO model. Of particular significance to the success of the Fourth Round will be securing support from national parliaments and the professional bodies of the judiciary for the implementation of recommendations issued by GRECO. Associating representatives of both branches with its work – through their participation in evaluation teams – goes some way to fostering such collaboration. Furthermore, the Council of Europe's Parliamentary Assembly (PACE), European Commission for the Efficiency of Justice (CEPEJ), Consultative Council of European Judges (CCJE) and Consultative Council of European Prosecutors (CCPE) can be called on for support and advice.

12. A full set of reference and working materials related to the Fourth Evaluation Round is available at: www.coe.int/greco.

Fourth Evaluation Round – Highlights

Snapshot of horizontal review

Members of Parliament	Judges	Prosecutors
Overview	Overview	Overview
Transparency of Legislative Process	Recruitment, Career & Conditions of Service	Recruitment, Career & Conditions of Service
Remuneration & Economic Benefits	Case Management & Procedure	Case Management & Procedure
Ethical Principles & Rules of Conduct	Ethical Principles & Rules of Conduct	Ethical Principles & Rules of Conduct
Conflicts of Interest	Conflicts of Interest	Conflicts of Interest
*Prohibition or Restriction of Certain Activities	Prohibition or Restriction of Certain Activities	Prohibition or Restriction of Certain Activities
Declaration of Assets, Income, Liabilities & Interests	Declaration of Assets, Income, Liabilities and Interests	Declaration of Assets, Income, Liabilities and Interests
Supervision & Enforcement	Supervision & Enforcement	Supervision & Enforcement
Advice, Training & Awareness	Advice, Training & Awareness	Advice, Training & Awareness

* Subheadings under this category are tailored to the professional groups but include for all: gifts, financial interests, post-employment restrictions, recusal & routine withdrawal, incompatibilities & accessory activities, third parties and confidential information, etc.

Introduction

13. The first peer evaluations in the context of GRECO's Fourth Round were carried out in 2012 and included: the United Kingdom, Poland, Slovenia, Latvia and Estonia. While these reports focus on issues which will recur in the evaluations to come – e.g. codes of conduct; public/private interests; sanctions; public awareness – they also demonstrate how GRECO's case-by-case approach reveals problems or challenges and potential solutions that are different for each country, even for those with similar legal and political systems. It is also important to note that each report describes and analyses the current situation from data provided, collected and tested in and outside the country, and as such is a useful reference document.

14. The evaluations examine corruption prevention horizontally within each profession – MPs, judges and prosecutors - and place these within a wider country and democratic context. They reveal the necessary tension and difficult balance that must be struck and maintained between fundamental principles: between promoting transparency and protecting privacy; between earning trust and taking responsibility; and between encouraging good conduct and enforcing rules. Further, while the institutions in which these groups function complement one another in a democratic sense, each fulfils a separate purpose and must act as a check one to the other. This brief overview sets out some of the highlights from these first five reports.

Members of Parliament (MPs)

15. In the five countries evaluated – as in many other European jurisdictions – public trust in MPs to deal with corruption tends to be low. In fact, political parties and elected representatives are one of the least trusted public institutions and this appears to be a generalised trend.³ There have also been scandals involving the misconduct of parliamentarians at national and European levels.

16. The first evaluations reveal that corruption prevention measures have been taken in certain areas, for instance with respect to increasing the transparency of the parliamentary process, making use of new technology to ensure greater public access to draft laws, and to parliamentary business in general (Slovenia, Estonia) and abolishing the practice of secret votes in parliament for appointments to key positions of public office (Latvia). However other areas of parliamentary conduct and decision-making

3. Special Eurobarometer 374 Report on Corruption, 2012
http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf

were identified as problematic, marked by a lack of transparency or accountability and thus resulted in recommendations. For example, a concern about the access of “guests” and not registered lobbyists to sub-committee meetings (Poland) and the need for standards or guidance for dealing with lobbyists and third parties appropriately (UK).

17. The tools to prevent and/or regulate conflicts of interests as they apply to MPs (as well as the other target groups – judges and prosecutors) were also evaluated. These include declarations of assets, income, liabilities, outside interest or activities, and registering gifts, etc. In countries where there are few restrictions on MPs holding financial interests, the approach tends towards transparency rather than regulation (for example, in the UK). GRECO identified some specific gaps or weaknesses in specific contexts, and recommended that consideration be given, for example, to lowering the thresholds for reporting financial holdings and registering accepted gifts (UK); to remove the legal exception for contracts won through open competition from the general prohibition on specified public officials (including MPs) from entering into contracts with state authorities (Latvia); and to ensure a more defined mechanism for MPs to declare potential conflicts of interests as they arise in relation to their work on specific bills or laws (Poland). While protecting freedom of speech in parliament is fundamental, administrative immunity for MPs was not considered justifiable by GRECO and only added to the public impression that MPs are above the law (Latvia). In another instance GRECO recommended to consider widening the scope of asset declarations to include close relatives to minimise the risk of the declaration system being subverted, with publication limits to take account of the privacy and data protection rights of those family members (Poland).

18. The reports make it clear that public trust must be earned and that it will not increase solely by ensuring better public access to information about the work of parliamentarians, or by externally monitoring or controlling the activities of MPs, important though these may be. Instead, MPs need to be proactive, to demonstrate their commitment to corruption prevention as a matter of individual conduct as well as public duty, and ensure that an ethos of prevention and dealing with conflicts of interest takes root within parliament itself. That said, a lack of understanding about what is expected, particularly as regards conflicts beyond those of a financial interest, was found to fuel MPs' reticence to address these issues themselves. Thus, GRECO has recommended that parliamentarians themselves elaborate codes of conduct, including a credible mechanism of supervision or sanction (Estonia, Slovenia); that they complement principles of ethics or indeed legal obligations with clearer guidance on particular areas such as gifts or declarations (Poland, Estonia, Slovenia); that it be made clear that MPs can be responsible for the conduct of their staff when carrying out official duties (UK), and that codes are regularly updated with regards to ethical and corruption-prevention related provisions (Latvia).

Judges

19. Public surveys show that attitudes toward the judiciary are not uniform across the five countries evaluated so far. The judiciary may be the most trusted institution in one jurisdiction but in others the picture is more mixed with signs either of improvement or deterioration in recent years. Any corruption scandal involving a judge – however limited in number – has a strong and negative impact on public confidence in the judiciary as a whole. In all five reports GRECO has made recommendations to encourage and support the judiciary to take the initiative in addressing corruption prevention, to fill specific gaps, and importantly and where necessary, to demonstrate its capacity to govern itself more effectively.

20. Judicial independence and impartiality are fundamental principles in a state governed by the rule of law and GRECO recommendations in these country specific reports include restricting the political influence in judicial appointments (Latvia, Slovenia); ensuring security of tenure for all judicial officer holders (UK); strengthening the decisive influence of judicial self-governing bodies in the appointment and career progression of judges (Latvia); and ensuring clear and objective criteria for the selection and evaluation of judges (Slovenia) or their career advancement (Estonia).

21. The reports also describe how steps have been taken to modernise the court system (Latvia, Slovenia, Estonia); restrict the executive power vis-à-vis individual cases (Poland), strengthen the operational independence of the judiciary, including improvements to the procedures for selecting and appointing judges (Poland, Slovenia), increasing diversity on the bench (UK) and ensuring all court judgements are publicly accessible (Latvia). In some instances it seems that judicial backlogs and weak internal management of courts with little attempt to communicate improvements to the public, rather

than systemic corruption, has fuelled public scepticism and undermined judicial self-confidence (Latvia, Slovenia).

22. The irremovability of judges is another key element of judicial independence and thus the manner in which a judge is disciplined or indeed held administratively or criminally liable is a sensitive area generally and in corruption prevention. On the one hand judicial activity must be properly protected from undue influence and on the other hand, individual judges must not be, or be seen to be, above the law. In this respect and in light of specific circumstances, GRECO has recommended changes to statutes of limitation in the discipline of judges to ensure that cases of individual misconduct proceed in a fair and effective manner (Poland, Latvia) and that administrative immunity be abolished for judges (Latvia).

23. In the five countries reviewed, most judges are reported to be well-versed in the rules on conflicts of interest as they govern their ability to preside in individual cases, i.e. the necessity to recuse oneself where a party is a family member, or where one has a personal or financial interest in a case. In some instances there are prohibitions on judges from participating in extra-judicial activities (academic work is most typically permitted) and from membership in political parties. In other instances judges seem less aware of conflicts that arise from choices or decisions taken outside of court and appear to rarely discuss ethical issues or dilemmas amongst themselves. Further, a narrow view of conflicts of interests may be reinforced by a strict system of asset declarations which is not clearly scrutinised for conflicts of interests in the wider sense.

24. In response to some of these specific issues, GRECO has recommended enhancing the corruption prevention dimension of the asset declaration system (Poland), strengthening the capacity of the self-governing judicial bodies to be more proactive (Latvia), establishing a code of standards with practical examples (Slovenia), as well as a deliberate policy for preventing and managing conflicts of interest (Estonia). On-going and systematic training for judges was recommended in each of the five reports, and specific training for court chairs to lead on ethics and other corruption prevention matters within their courts (Latvia).

Prosecutors

25. As is the case with judges in these five reports, levels of public trust vary with respect to prosecutors. In some instances they enjoy high levels of public trust, and in others, trust is lower than the European average. While there are different models in GRECO member states regarding the independence of the prosecution service vis-à-vis other state organs, there is a widespread tendency to move toward more independent prosecution services, rather than ones subordinated to the executive.⁴ These reports show that in some instances the independence and impartiality of the prosecution service now seems well established (UK) or that steps have been taken to strengthen it, at least formally (Poland); but in others independence is more clearly an issue. In one instance, the purpose of moving responsibility for the prosecution service from one ministry to another resulted in a recommendation to ensure that executive authority is exercised in such as way so as not to undermine the integrity of the service or create risks of improper influence (Slovenia).

26. The five reports also highlight how prosecutorial independence and impartiality is safeguarded in other ways. These include prohibitions against anyone outside the prosecution service giving instructions in individual cases (Estonia, Latvia, Poland, Slovenia) or that where it is envisaged it is restricted to exceptional circumstances (UK). The reports also show the difference in the relationship between prosecutors and judges in common-law countries from that of their counterparts in continental Europe: in the former there is a clear division between judges and prosecutors and in the latter prosecutors and judges may be both considered to be part of the judicial corps.

27. The issue of transparency features in all five reports. In some instances the need to maintain or increase transparency within the prosecution service resulted in recommendations, for example to introduce objective and transparent criteria with respect to promotions (Estonia) or to ensure the public as well as prosecutors had access to the codes of ethical principles (Poland). In one instance the lack of transparency with respect to prosecutorial decisions resulted in a recommendation to further develop instructions to guide prosecutors particularly with respect to their discretionary powers, as well as to make such instructions public and monitor their implementation (Slovenia). It should be noted that as

4. Venice Commission Report on European Standards as regards the independence of the judicial system, Part II – the Prosecution Service adopted on 17-18 December 2010.

well as transparency, the rules and practice governing duties of confidentiality were evaluated – an important aspect of corruption prevention – and the necessity for vigilance in this regard was remarked in one instance, particularly when information in the public domain could threaten the ability to prosecute cases of corruption (Latvia).

28. As was the case for the other target groups, recommendations were also made to fill specific gaps, such as ensuring that prosecutors, like judges, have clear standards to guide them with respect to accepting gifts (Estonia) and that self-governing bodies within the prosecution service work with the anti-corruption agency to develop guidelines on conflicts of interest particularly with respect to the conduct expected of prosecutors outside their office (Slovenia).

MPs, judges and prosecutors

29. In some cases GRECO has made recommendations that apply or impact on all three professional groups in specific circumstances. For example, abolishing the system of administrative immunities for MPs, judges and prosecutors (Latvia); considering expanding the scope of asset declarations for all three professions; providing dedicated and confidential counselling for each group (Poland); securing the independence of the anti-corruption agency whose remit covers all three groups (Latvia) or adequately equipping the anti-corruption agency so as to better prioritise specific aspects of their work (Slovenia); implementing additional measures to effectively supervise the economic interest declarations of MPs, judges and prosecutors (Estonia).

Conclusion

30. While this brief overview offers highlights from the first five country reports in this new round of peer evaluations, it is too early to identify any particular trends. Clearly the Fourth Round sets out a systematic review of corruption prevention measures for each group in each country and inevitably some of GRECO's recommendations will look similar. The reports also show that while some corruption prevention measures work well across all three professional groups, others need to be tailored to better suit the needs of each. Importantly, preventing corruption needs to be better internalised by the professions themselves so that it sits more naturally as part of their job. Finally, it is important to understand the context in which GRECO recommendations are made. By describing the achievements, issues and problems that are unique to each state, these reports are designed to help us understand the challenges that corruption prevention presents to those working within the democratic institutions of GRECO member states.

Compliance procedures

Compliance reports adopted in 2012:

Third Round: Compliance Reports on Azerbaijan, Armenia, Bulgaria, Greece, Hungary, Montenegro, Portugal, Romania, “the former Yugoslav Republic of Macedonia”, Serbia, Turkey; Second Compliance Reports⁵ on Estonia, Iceland, Latvia Netherlands, Poland, Slovakia, Slovenia; Luxembourg, United Kingdom – closing the procedure

Third Round, Rule 32 procedure:⁶ Interim Compliance Reports on Belgium, Denmark, Germany; Second *Interim* Compliance Report on Sweden

Joint First and Second Rounds: Addenda to the Compliance Reports on Austria, Monaco, Russian Federation, Switzerland – closing the procedure; 2nd Addendum to the Compliance Report on Ukraine

31. In the course of 2012, GRECO continued to assess the action taken by member States in response to its recommendations. The various stages of these compliance procedures are designed to maintain the momentum of on-going reforms initiated as a result of GRECO's findings.

5. Rules of Procedure, Rule 31 revised in March 2010, reinforced the compliance procedures to be applied to Third Round and subsequent compliance procedures by transforming the “addendum stage” into a full “second compliance report stage”.

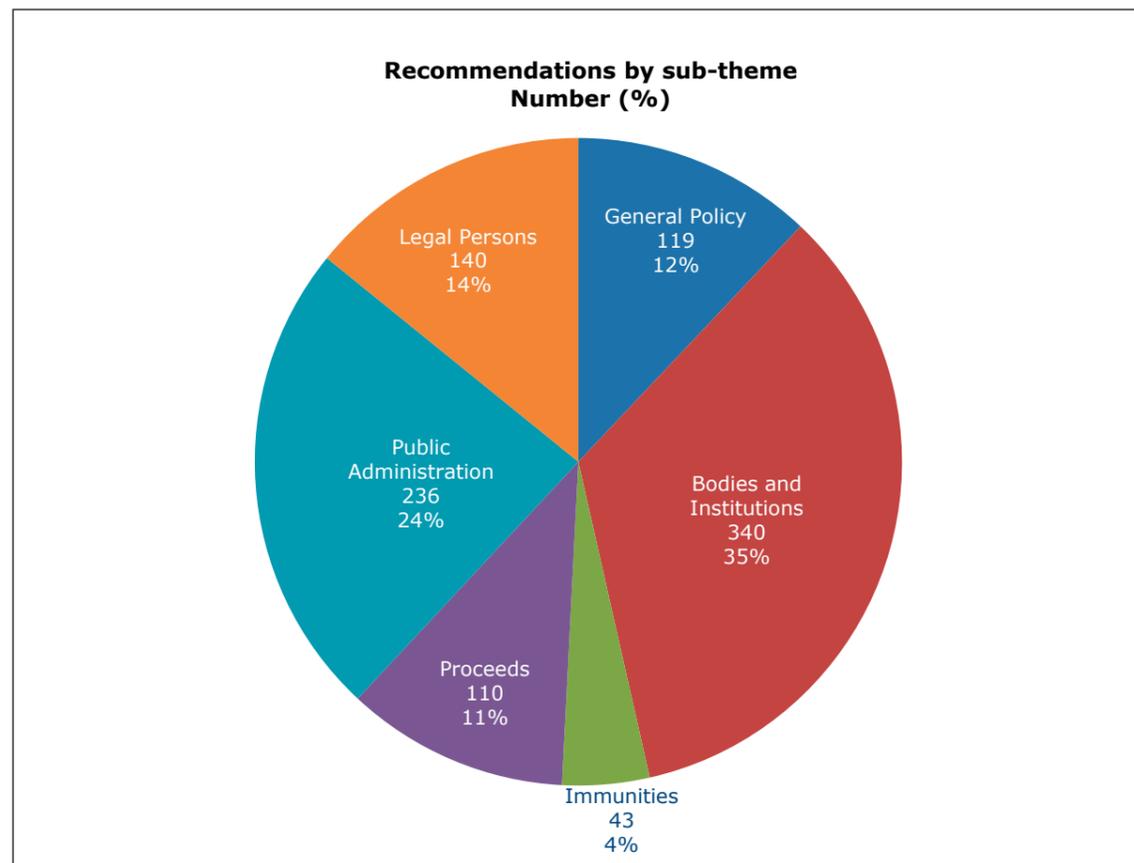
6. Applied when performance has been qualified as globally unsatisfactory.

32. As evidenced by the information gathered, the impact of GRECO has been substantial and has prompted a **broad range of policy, legal and institutional reforms**, as well as a variety of capacity-building, training and awareness-raising measures.

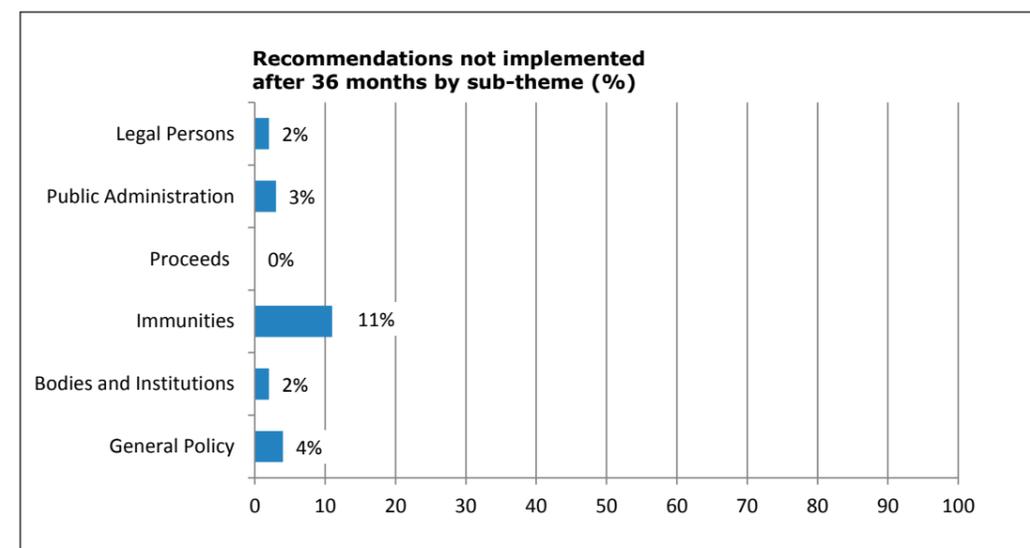
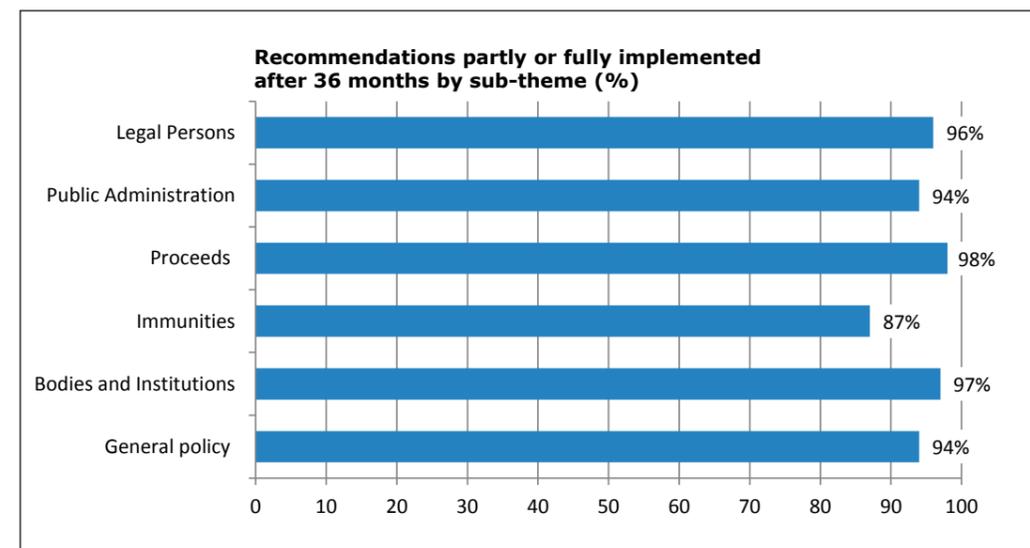
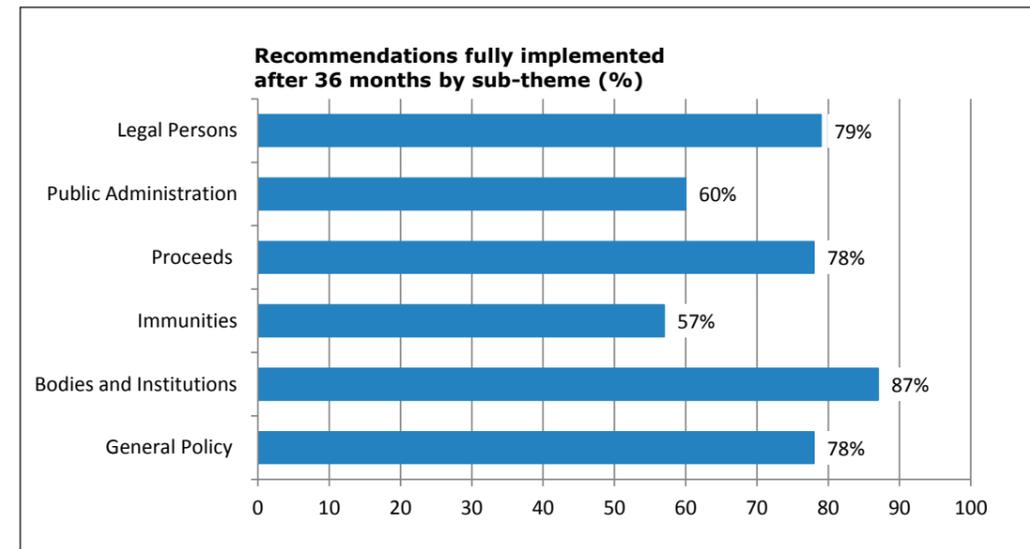
Levels of Compliance

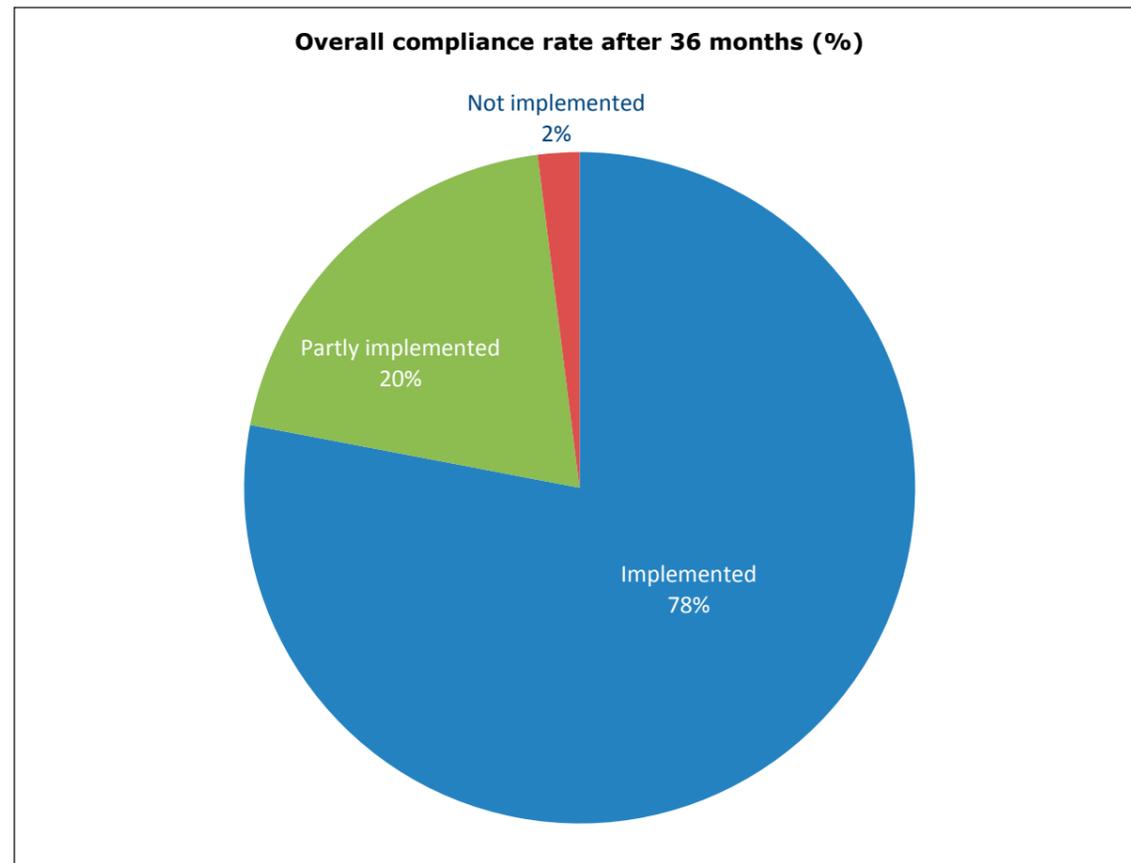
33. The following graphics provide an eloquent snapshot of the level of compliance with GRECO recommendations issued during the First and Second Evaluation Rounds – a good measure of the sense of ownership and commitment of member States to the process of reflection and reform advocated by GRECO.

34. In particular, these six charts offer, in picture form, a statistical measure of member states’ compliance with recommendations issued during GRECO’s First and Second Evaluation Rounds. It should be noted that the data set is for 45 of GRECO’s 49 member states as four member states have not yet completed both evaluation rounds. There is no ranking or comparison between individual member states’ performance. The first chart sets out the numbers of recommendations by sub-theme and demonstrates that while the same themes are examined across all member states, GRECO recommendations are tailored to the specific circumstances of each individual state. The subsequent three charts show member states’ compliance three years (36 months)⁷ after the recommendations were issued and according to whether the recommendations were: i) fully implemented; ii) partly and fully implemented and c) not implemented. The final two charts show that the vast majority of recommendations issued by GRECO in the First and Second Evaluation Rounds were fully implemented by member states by the end of each of the two rounds.



7. GRECO member states are required to report back on the action taken in response to its recommendations within an 18 month implementation period. In cases where not all recommendations have been complied with, a report on the outstanding recommendations has to be submitted within another 18 month implementation period. In practice, owing to the need for GRECO to fully assess the information provided by member states, the total duration of the compliance process is generally in the range of 4 to 5 years.





Special Project – Gender Mainstreaming

35. GRECO took time in 2012 to consider why and how a gender perspective could or should be incorporated into its work. As an inter-governmental *monitoring* body GRECO's "recommendations" are to national governments and the focus is on identifying gaps and weaknesses in institutions and processes that are meant to or could help prevent, detect and sanction corruption. However, at its heart, this work is to prevent corruption and to improve and strengthen democracy for the benefit of all citizens, men and women.

36. While gender neutrality has been the approach taken by most intergovernmental institutions including GRECO, the idea of neutrality has more recently been challenged as a potential form of blindness; that it can fail to acknowledge how important aspects of an organisation's work have a particular or even disproportionate impact on individuals based on their gender.

37. GRECO noted in January 2012 the Committee of Ministers' decision with regards to gender equality (1040th meeting – item 4.5) and in particular, its invitation to the committees and organs of the Council of Europe to include a gender perspective in their terms of reference and ensure a balanced participation of women and men in their selection processes. The Secretary General has also made important statements on gender equality. While GRECO acknowledges that the proportion of women nominated to act as evaluators has significantly increased in recent years, it decided to explore further the issue of gender in the field of corruption.

38. GRECO's preliminary findings were discussed at a Tour de Table at the plenary meeting in June 2012. In the international field, the issue of gender and corruption is being taken seriously in the context of development and aid, and particularly within the context of women's rights, freedom and equality. The two main themes are: a) the impact of corruption on women; and b) the relationship between levels of corruption and women's participation/representation. However, gender includes men and women of all ages and there may be circumstances in which issues facing men or boys need to be better recognised.

39. In June 2012, GRECO took the initiative to appoint a gender rapporteur – Helena LIŠUCHOVÁ, Head of delegation, Czech Republic. GRECO believes this role is important for on-going co-operation/communication between it and other organs of the Council of Europe, gender equality issues and gender mainstreaming. It also helps ensure that gender issues are highlighted at the various stages of GRECO's work and will help GRECO share its expertise more widely.

40. In October 2012, GRECO's gender rapporteur presented a paper "Gender Dimensions of Corruption" to the plenary summarising the available research and data in the field, and the initial responses provided by member states. It is clear from this work that gender aspects of corruption are starting to get more attention at national level in Europe. GRECO members agreed to a more systematic collection of gender specific data in the framework of the Fourth Evaluation Round where available.

41. In November 2012, the gender rapporteur was invited for an "exchange of views" with the newly created Gender Equality Commission of the Council of Europe and, separately, met the Deputy Chair of the PACE Committee on Equality and Non-Discrimination. GRECO's approach to gender in the context of corruption was well received by the Gender Equality Commission and was praised as a good example of promoting co-operation on gender dimensions at national level. The Deputy Chair of the PACE Committee concluded that the topic of gender and corruption was a novel issue deserving of further research and greater visibility at the Council of Europe level.

42. GRECO is committed to ensuring that the gender perspective is better understood and incorporated into its work, and to work co-operatively with other parts of the Council of Europe and in the international arena where and when it can. It will continue to gather gender related data from its member states, to reflect on it, and to share it where possible. GRECO's gender rapporteur has already contributed to GRECO's work and GRECO looks forward to continuing to contribute to this important aspect of corruption prevention work in Europe.

Visibility

43. Considerable efforts are made by member States to ensure maximum visibility of the anti-corruption work undertaken within GRECO. It has been their long-standing practice to authorise publication of all evaluation and compliance reports which, given the fact that, however constructive the reports aim to

be, they will by definition be, in part, of an openly critical nature, shows a considerable degree of political will to put reforms into effect. Moreover, they are asked to provide national language versions of adopted reports and to ensure that they are easily accessible on appropriate national websites. Cross references are included on GRECO's website: www.coe.int/greco.

Ratification of Council of Europe legal Instruments

44. Very few GRECO member States have not yet ratified the Criminal Law Convention on Corruption (ETS 173) – Austria, Germany, Liechtenstein, San Marino and the United States of America and by end 2012, ratification by Austria and Italy was imminent. The Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) was ratified by two more member states (Iceland and Lithuania) and signed – though not yet ratified – by a further three (Andorra, Austria and Turkey). In total, this legal instrument has now been ratified by 30 GRECO member states. Even if States are strongly encouraged to become parties to the Council of Europe anti-corruption treaties, it should be noted that within GRECO, the same evaluation criteria and level of detailed scrutiny apply to states whether they have ratified or not.

Partnerships

45. Given the multidisciplinary span of GRECO's work, solicitations for input to other activities are frequent and potential for co-operation is regularly brought to the attention of the plenary. Some long-standing contacts are maintained, others result from the specific thematic focus of a current evaluation round. A list of events attended and other meetings of relevance to GRECO's role in the international anti-corruption community is available in Appendix III – it gives an idea of this dynamic co-operation. Some examples are developed on below.

External partners

Observers

46. Sharing of expertise and co-ordination of planning is facilitated through the close relations maintained with the **Organisation for Economic Co-operation and Development (OECD)** and the **United Nations**, represented by the **United Nations Office on Drugs and Crime (UNODC)** which have had observer status in GRECO since 2002 and 2006 respectively. GRECO follows the work of the OECD Working Group on Bribery in International Business Transactions and of the Conference of States Parties to the United Nations Convention against Corruption and the related work of the Implementation Review Group. GRECO broadened this form of co-operation more recently (2011) by granting observer status to the **Organization of American States (OAS)** and the **International Anti-Corruption Academy (IACA)**.

European Union

47. Participation of the European Union (EU) in GRECO (which is provided for in GRECO's statute) was outlined as a key element of EU anti-corruption policy in an early Communication of 2003 by the European Commission. It explored different possibilities for participation bearing in mind the legal competences of the Union under the Treaty on the European Union and the Treaty establishing the European Community. Given the then limited Community competence with regard to the Council of Europe's anti-corruption conventions, there had been little progress in this area until the adoption of the Lisbon Treaty (December 2007).

48. A Memorandum of Understanding was concluded, in May 2007, between the Council of Europe and the EU, establishing that legal co-operation covering the rule of law, including the fight against corruption, should be further developed to ensure coherence between EU law and Council of Europe conventions. The Treaty on the Functioning of the European Union (TFEU) provided for a more streamlined EU competence on anti-corruption and paved the way for a possible participation in the work of GRECO. The 2010 Stockholm Programme was well received by GRECO, which formally expressed its willingness to contribute to the development of a comprehensive EU anti-corruption policy and welcomed, in particular, the invitation addressed by the European Council to the Commission to submit a report on the modalities for the Union to accede to GRECO. This report is one of four components of the so-called "Anti-corruption package" which was adopted by the European Commission on 6 June 2011. Full membership is one of the options contemplated in the report.

49. In October 2012, the European Commission issued a Communication on Participation of the European Union in GRECO which, *inter alia*, outlines a two-phase approach to participation, involving first a 'full participant' status and, no later than four years after, and subject to an analysis by the Commission of its prerequisites and (legal) implications, full membership. As a consequence of a series of concerns expressed at EU level in relation to this Communication, GRECO agreed in December 2012 that it was premature for it to take a formal position on the proposals it contained. There was however a clear expectation that the concerns would be resolved swiftly and that concrete talks on the precise format and content of EU participation would start in 2013. It was still felt that EU participation in GRECO

could contribute to more co-ordinated anti-corruption policies in Europe and strengthen the impact of the EU's and GRECO's respective anti-corruption endeavours.

50. Within already well-established EU/Council of Europe consultation frameworks, the results of GRECO's evaluation and compliance procedures continued to serve as a source of input to European Commission progress reports for candidate and potential candidate countries and European External Action Service progress reports on the implementation of the European Neighbourhood Policy Action Plans.

Organization for Security and Co-operation in Europe (OSCE)

51. OSCE/Office for Democratic Institutions and Human Rights (ODIHR) interest in anti-corruption policies and practices has grown, primarily in the area of political financing, a principle theme of GRECO's Third Evaluation Round. GRECO reports adopted in that round serve as roadmaps for further reform in the preparation of OSCE country opinions on political party legislation. Since February 2012, GRECO has observer status in the OSCE/ODIHR Core Group of Experts on Political Parties in order to facilitate the transfer of information and expert advice on developments and trends relating to GRECO standards and national practices on party financing and help to better co-ordinate the activities of both bodies. Interest in further co-operation – in particular on the development of professional and ethical standards for parliamentarians, a key component of GRECO's Fourth Evaluation Round – has been expressed by the OSCE/ODIHR secretariat. Input by GRECO's secretariat was sought throughout the drafting process of a review report, designed to inform future OSCE work, on Strategic approaches to corruption prevention in the OSCE region, that was presented to the 20th OSCE Economic and Environmental Forum (September 2012).

Transparency International (TI)

52. This leading global non-governmental organisation in the fight against corruption, provided valuable support to GRECO by including in its 2012 Report "Money, politics, power: Corruption risks in Europe" ample references to GRECO findings and calling on governments to "implement the GRECO recommendations issued for each country under the third round of evaluation on political party funding". GRECO's President made a keynote speech at a TI Anti-corruption Day event held in Zagreb and the Executive Secretary spoke at a TI Roundtable discussion and press conference organised on the occasion of the release of the report – both were excellent awareness-raising events. Extending this co-operation to the fields of action of the Fourth Evaluation Round, GRECO evaluation teams were able to include meetings with national chapters of TI in the programmes of the evaluation visits carried out in 2012.

Internal Partners

53. The results of GRECO's monitoring are used to provide input to the work of other sectors of the Council of Europe. More particularly, they serve to signal priority areas to be included in the design of **technical assistance and capacity building** programmes implemented by the Action against Crime Department. These programmes complete the three cornered approach of the Council of Europe to fighting corruption and other abuses: the setting of norms and standards, monitoring and technical assistance. They receive significant funding from sources such as the European Union, Norway Grants, individual Council of Europe member States and the United States Agency for International Development (USAID). Examples from 2012 in the anti-corruption field include the drawing up of elements for a Draft assessment report on Kosovo⁸ aimed at providing a qualified and balanced judgement on compliance of legislation and institutions with international anti-corruption standards; support to constitutional changes aimed at reforming the system of immunities enjoyed by high-level officials in Albania; finalisation of a curriculum manual "Education against corruption" for primary and secondary school teachers in Albania; start-up activities in Tunisia and Morocco in the framework of component 2 of the "Strengthening democratic reform in the Southern Neighbourhood (South Programme)". (Further reading: www.coe.int/corruption).

8. All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

54. GRECO pays attention to other Council of Europe activities that have the potential to complement its work or broaden the field of anti-corruption action of the Organisation. Examples include work by the **Parliamentary Assembly** of the Council of Europe (PACE) Committee on Rules of Procedure, Immunities and Institutional Affairs on developing a Code of conduct of members of PACE. The plenary provided the **Ministers' Deputies** with comments on two Parliamentary Assembly Recommendations. On the first, Recommendation 1988 (2011) on the underground economy: a threat to democracy, development and the rule of law, its comments focused on opportunities for co-operation with other international organisations. As regards the second, Recommendation 1997 (2012) on the need to combat match-fixing – it noted that the scope of Council of Europe membership represented a suitable platform for promoting the integrity of sport and that the Organisation was well placed to play a leading role in that area and could also offer the possibility of even broader geographical involvement.

55. GRECO was consulted on work in progress within the **Enlarged Partial Agreement on Sport** (EPAS) and the **European Committee on Crime Problems** (CDPC) on a draft convention to combat the manipulation of sports results and a study on the feasibility of drawing up an Additional Protocol to the Criminal Law Convention on Corruption (ETS 173) to expand the scope of application of its provisions to the private non-profit sector (notably sport). Finally, in 2012, the viewpoint of the Council of Europe's Commissioner for Human Rights was sought on the question of Human Rights and corruption and published in a thematic article included in GRECO's Twelfth General Activity Report for 2011.

Governing Structures and Management

56. The permanent, specific bodies constituting GRECO are the Plenary, the Bureau and the Statutory Committee. The Statute also provides for *ad hoc* bodies, principally evaluation teams but also working parties.

Plenary and Bureau

57. The plenary is composed of representatives of member states appointed on a “permanent” basis (Rule 3 of the Rules of Procedure). The intention is to allow for consistency in GRECO’s monitoring work – representatives are directly involved in the peer review process during the examination and adoption of evaluation and compliance reports – and to facilitate respect of confidentiality rules. The main part of plenary meetings is devoted to GRECO’s monitoring work and the multidisciplinary nature of that work requires the representation within country delegations of a range of expertise.

58. The Bureau is composed of the President, Vice-President and its elected members. It prepares the draft agendas for meetings of the plenary, and makes proposals to the plenary regarding policy and planning. GRECO elects a new President, Vice-President and Bureau for each new evaluation round.

Programme and Budget

59. The **Statutory Committee** is composed of the Permanent Representatives to the Council of Europe of GRECO member States, its principle task is to adopt GRECO’s budget. In 2012, in line with the biennial programme and budget method implemented by the Organisation, the Statutory Committee, chaired by Ambassador Petter WILLE, Permanent Representative of Norway to the Council of Europe, approved GRECO’s budget for 2013.

60. The fact that GRECO can rely on the support of its member states in providing the expertise of evaluators and national representatives whose work is un-remunerated is key in this context. The Secretariat’s effective management of the budget and programme – validated in an external audit conducted in 2012 – and its analytical and technical input are also a valuable asset.

Secretariat

61. A chart showing the responsibilities within GRECO’s Secretariat, which is headed by Wolfgang RAU, Executive Secretary, can be consulted in Appendix III.

Thematic article

Lobbying and Corruption

Yves-Marie DOUBLET – Deputy Director, National Assembly, France

When it comes to assessing the scale of lobbying, the figures speak for themselves. At the end of October 2012, there were 5 431 registrants in the European Commission/European Parliament Joint Transparency Register of interest representatives. On average, five people are represented by each registrant, meaning 27 000 interest representatives had signed up to the Code of Conduct governing their activities in Brussels. In the US Congress, the number of lobbyists reportedly stands at 34 000.

The term “lobby” refers to the hallways of the UK Houses of Parliament, where in the 19th century representatives of various groups would gather to meet with members of parliament. The existence of such channels in the Anglo-Saxon world is doubtless an acknowledgement of the importance of civil society and its major contribution to the decision-making process. Alexis de Tocqueville invoked the tyranny of the majority to confer legitimacy on the groups: “in aristocratic nations, secondary bodies form natural associations that hold abuses of power in check.”⁹

The practice of lobbying has grown considerably over the past twenty years. Any decision involving the community has ever more complex ramifications. Governments and elected representatives can no longer ignore the impact of globalisation on national policy, nor conceal the health and environmental aspects of numerous capital spending projects. Regulatory proliferation and an unstable legal environment have served to bolster the influence of intermediary groups. At the same time, citizens’ disaffection with the electoral process and a relative decline in public confidence in the political class are helping to increase the role of lobbying in public debate.

In Europe, the growing influence of European institutions in relation to national authorities and competition between member states to assert their interests over wider Community policies are conducive to the activities of interest groups. Such groups may protect the interests of companies or of a particular economic sector, in which case the lobbying is done directly by employees of these companies or by middlemen, usually consultancies. Or their activities may take the form of public events organised by associations, NGOs, etc. In essence, there can be said to be three types of lobbying: professional or economic lobbying, the “citizen” lobbying practised by associations and NGOs, and the practice of lobbying for certain ideas, as personified by think tanks.

To express concern about the role of interest groups is not, however, to advocate for an inaccessible democracy where decisions would be made in an ivory tower and where economic operators and civil society would play a negligible role. As observed in the report on lobbying in a democratic society produced in 2009 for the Parliamentary Assembly of the Council of Europe, “lobbying that takes place in accordance with clear, transparent rules is a legitimate part of the democratic system and is one way of allowing citizens to express their concerns. Moreover, lobbying viewed as a channel to expertise and feedback is helpful for informed and balanced conduct of public affairs”.¹⁰ The challenge, however, is two-fold: firstly, to ensure that lobbyists do not turn the decision-makers themselves into lobbyists, when the information that is supplied to them is presented under a veneer of objectivity, and secondly to ensure that promoting the particular interests in question does not conflict with the interest of the community at large. In effect, the dividing line between information and pressure can be a tenuous one and this ambiguity tends to give lobbying a negative connotation in the mind of the public, which

9. Alexis de Tocqueville, *De la démocratie en Amérique*, Gallimard, éditions la Pléiade, p.216, 1992.

10. Lobbying in a democratic society (European Code of conduct on lobbying), Parliamentary Assembly of the Council of Europe, Doc.11937, 5 June 2009, § 12.

equates it with corruption. Particularly as attempts at undue influence often fall into a grey area that might include, say, invitations, study trips, symposia, and so forth.

If we allow that these activities must abide by two principles, namely transparency and equality, it will be observed that some moves have been made since the 1990s to regulate them. They remain rather tentative and incomplete, however, and could stand to be reinforced.

1. Current rules

A survey of the legislation on lobbying in 32 member states of the Council of Europe shows that only five have laws in place that regulate lobbying in Parliament.¹¹ These rather meagre results should not distract us from the fact, however, that there also codes of ethics, criminal sanctions and rules enshrined in international conventions.¹²

Whatever their form, the rules governing lobbying have so far tended to take one of three routes: inclusion in a register of lobbyists, application of a code of conduct for lobbyists and development of a code of conduct for public officials.

1.1. Inclusion in a register

Such registers are either voluntary or mandatory, as the case may be.

The rules applicable to interest representatives at the European Commission and Parliament fall into the first category. Since 23 June 2011, all organisations and self-employed individuals engaged in “activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and decision-making processes of the EU institutions” are expected to register. The activities in question include contacting members or officials of the EU institutions, preparing, circulating and communicating letters, information material or argumentation and position papers, and organising events, meetings or promotional activities (in the offices or in other venues). Activities that are part of formal consultations on legislative proposals and other open consultations are also included. 48% of these groups are registered as “in-house lobbyists and trade/professional associations” and 28% as “NGOs”. Professional consultancies, law firms and independent consultants account for 11%, think tanks, research and academic institutions 7%, organisations representing local, regional and municipal authorities 5% and organisations representing churches and religious communities 1%.¹³

All the information contained in the register is provided by the registered organisations and is the sole responsibility of those organisations, which are bound by the obligations set out in the code of conduct. When registering, interest representatives must indicate their field of interest so that they can receive e-mail alerts about any public consultations launched by the Commission in these areas. The Commission undertakes to publish all contributions received in connection with such consultations. In the case of the European Parliament, badges affording access to the European Parliament’s buildings are issued only to individuals representing, or working for, organisations falling within the scope of the register where those organisations or individuals have registered. Registration does not confer an automatic entitlement to a badge, however. The register is available for public inspection.

The legal basis for the register of lobbyists registered with Germany’s Bundestag is an appendix to the Bundestag rules of procedure which was introduced in 1972. It covers interest groups accredited to the Bundestag and the federal government. There were 2 100 such groups in October 2012. Registrants can attend hearings of parliamentary committees and the information relating to them is published. The list includes professional organisations and trade unions, but not independent lobbyists, companies or foundations governed by public law. Moves to make inclusion in the register mandatory by giving it a statutory underpinning have so far failed.

11. European Centre for Parliamentary Research & Documentation, December 2012. States which have legislation on parliamentary lobbying: Austria, Lithuania, “the former Yugoslav Republic of Macedonia”, Montenegro, Poland and Slovenia. Germany, Andorra, Belgium, Bosnia and Herzegovina, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Iceland, Italy, Latvia, Luxembourg, Norway, the Netherlands, Portugal, the Czech Republic, Romania, the United Kingdom, Russia, Serbia, Slovakia, Sweden and Switzerland have no legislation in this area.

12. Council of Europe Criminal Law Convention on Corruption (ETS No. 173) of 27 January 1999 and United Nations Convention against Corruption of 31 October 2003.

13. <http://europa.eu/transparency-rister>

In France, parliamentary lobbying is governed by a decision of each Assembly’s Bureau. Interest representatives operating in one or other assembly can enter their names in a public list. The National Assembly list comprises 175 representatives, with some representing more than one organisation. Accreditation is decided by the Bureau and, once granted, gives the holder access to certain chambers. On 7 October 2012, the Bureau decided to withdraw 7 accreditations. The same rules apply in the Senate, where the number of interest groups is put at 104. In the Senate, moreover, representatives of these groups must declare any invitations to travel abroad which they may issue to Senators or their staff or to Senate officials or bodies.

Another option is to make registration mandatory. That is the approach that has been taken in Poland where the Legislative and Regulatory Lobbying Act of 7 July 2005 opened up the law-making process to lobbying activities. Professional lobbying can be carried out by an entrepreneur or by a natural person other than an entrepreneur, under a contract, provided that such entities are entered in a register kept by the minister in charge of public administration. This register contains the following data: name, registered office and address of the entrepreneur involved in professional lobbying or first name, surname and address of a natural person other than an entrepreneur involved in professional lobbying, and – in the case of entrepreneurs involved in professional lobbying – the identification number from the national business and commerce register or the number from the economic activity register. The register is available for public inspection and the information included in it is published in the Public Information Bulletin. These rules, however, do not apply to individual deputies or senators¹⁴ who are not required to declare any contacts they may have had with lobbyists.

Canada has had legislation on lobbying applicable to both houses of Parliament and to the federal government since 1985. The Act in question takes the view that freedom of access to governmental institutions is in the public interest and that lobbying is a legitimate activity. Two types of lobbyist are required to register: *consultant lobbyists* who lobby on behalf of a client and *in-house lobbyists* who are employees of commercial enterprises or not-for-profit organisations.¹⁵ The register is maintained by an independent agent of Parliament, appointed by both houses of Parliament for a term of seven years.

Mention should also be made of the US legislation which defines lobbyists as any person or entity engaged in lobbying activity. Every six months registered lobbyists are required to file detailed reports on their activities, including a “good faith” estimate of their total expenses relating to lobbying during that period. Any cases of ill-compliance with the law should trigger investigation.¹⁶ They must file a separate declaration for each client and report their income if it exceeds 3 000 dollars in the case of an individual and 10 000 dollars in the case of an organisation, in any one quarter. Travel by members of Congress must be authorised by the Ethics Committee and former Senators must wait two years before becoming registered lobbyists.

1.2. The principles of codes of conduct applicable to lobbyists

In addition to this registration procedure, lobbyists may also be subject to a code of conduct, laying down various principles. Representatives of interest groups in the European Parliament, for example, must state the interests they represent in contacts with MEPs, their staff or European Parliament officials. The same applies in France’s National Assembly and in Canada. In both of these systems, lobbyists are required to supply accurate information to those they speak to. In the European Parliament, failure to comply with the code of conduct can lead to the persons concerned having their passes withdrawn.

1.3. Codes of conduct for public officials

When it comes to this kind of regulation, some states appear to be more demanding than others.

In the United Kingdom, the “Guidance for civil servants” states that it is unacceptable to supply confidential or privileged information, or to help a lobbyist by arranging privileged access to a member of the government. Under the code, accepting too much hospitality from the same source is prohibited, save

14. GRECO, Fourth Evaluation Round, Poland, Corruption prevention in respect of members of parliament, judges and prosecutors, 57th plenary meeting, 15-19 October 2012.

15. As at 31 March 2012, there were 814 consultant lobbyists, 1 786 in-house lobbyists (commercial) and 2 582 in-house lobbyists (organisations), i.e. 5182 lobbyists in total.

16. Lobbying in a democratic society (European Code of conduct on lobbying), Parliamentary Assembly of the Council of Europe, Doc.11937, 5 June 2009, §§ 15 to 18.

where there is a major public interest at stake, gifts that could place the recipient under an obligation to the donor should not be accepted, and staff are obliged to inform their line manager of any contacts they have with lobbyists. They are further encouraged to consult their line managers if in doubt about what is proper.

As regards legislative authorities, the rules applied in Germany, the United Kingdom and the Parliamentary Assembly of the Council of Europe are worth mentioning. Two sections of the code of conduct for members of the Bundestag, appended to the Rules of Procedure, are of particular note: the provisions on donations and those which deal with conflicts of interest.

Any donation to a member of the Bundestag in an amount greater than €5 000 per calendar year must be reported to the president of the Bundestag, together with the name and address of the donor and the total value. Any donation in an amount greater than €10 000 per calendar year, in the form of one or more donations from the same source, must be made public by the president, together with an indication of the value of the donation and where it came from. Any member of the Bundestag who, professionally or in return for a fee, is working on a matter that is being discussed in a parliamentary committee must, if he or she is a member of that committee, disclose any interests he or she may have in this area before the committee discussions begin.

In the United Kingdom, each of the two houses of Parliament has a code of conduct setting out the principles identified by the Committee on Standards in Public Life, namely “selflessness”, “integrity”, “objectivity”, “accountability”, “openness”, “honesty” and “leadership”. Any gifts to MPs must be registered if their value exceeds a certain threshold. The code of conduct adopted on 4 October 2012 by the Parliamentary Assembly of the Council of Europe likewise now provides a reference framework for its members.¹⁷

2. Prospects for improving the current rules

If these various provisions introducing greater transparency into the decision-making process are of value, it is because we cannot rely on repressive measures alone. For one thing, possible corrupt deals between lobbyists and policy-makers are always difficult to prove and, for another, the way in which corruption is defined in criminal law can vary. For example, Article 12 of the Council of Europe’s Criminal Law Convention on Corruption, which deals with trading in influence, makes no secret of the fact that active trading in influence is in many respects similar to active bribery, and that passive trading in influence resembles passive bribery. In French criminal law, moreover, the same article identifies passive bribery and trading in influence as criminal offences and imposes identical penalties, even though the two offences are defined differently. Trading in influence is the act whereby a person abuses the influence which he or she possesses or is supposed to possess on account of his or her position to obtain from a public authority or government department posts, contracts, distinctions or other favourable decisions. While more than three quarters of Council of Europe member states recognise the offence of trading in influence, a few do not, however.¹⁸ Passive bribery is the act whereby a person holding a particular office demands or accepts a donation, an offer or a promise, a gift or other advantage, for himself or herself or for another person, in return for performing or refraining from performing an act that falls directly or indirectly within the scope of his or her official duties.

Choosing to classify the conduct in question as “criminal” does not necessarily solve the problem, however: the public official also needs to have real decision-making power and the offence must not be covered by the statute of limitation. Both of these have traditionally posed obstacles in the fight against corruption. Sometimes, too, only national abuse of influence is classified as an offence and the legislation deliberately refrains from punishing such abuses if they are committed by foreign public officials in order to avoid a distortion of competition with nationals of states which have no equivalent offence. That said, Article 12 of the Council of Europe’s Criminal Law Convention on Corruption (ETS 173) also covers trading in influence involving foreign public officials and members of foreign public assemblies (while granting contracting states the right to enter reservations, however).

The introduction of ethical principles instituting transparency in dealings between lobbyists and public decision-makers and of supervisory rules by Council of Europe member states is one of the components

17. Resolution 1903 (2012), Code of conduct of members of the Parliamentary Assembly: good practice or a core duty?

18. Tenth General Activity Report of GRECO (2009), 26 March 2010, p.19.

of the Fourth Evaluation Round launched by GRECO in 2012, which focuses on a closely related theme, namely conflicts of interest. Inherent in this rulemaking is the concept that the ethics of lobbying is not solely a matter of individual conscience but has implications for the community as a whole. The need for such rules is particularly great since, as has been observed, very few states have legislation in this area. And where attempts *have* been made to provide a framework for lobbying, the provisions put in place have in some instances been repealed. This is the case in Hungary, for example, which in 2011 scrapped the very comprehensive rules that had been introduced five years earlier.

Moving effectively down this path in order to change behaviour and instil a new culture of ethics means removing ambiguities, imposing rules of conduct not only on lobbyists but also on public decision-makers and, lastly, setting up supervisory authorities.

Two notable examples of ambiguities in the rules as they stand at present are the status of law firms and the problem of sponsorship of events. The 2012 report on the European Transparency Register¹⁹ highlights the difficulty of dealing with law firms and consultancies in this register. Such firms claim a need for client confidentiality and want ad hoc status, as a derogation from the ordinary rules governing interest groups. By definition, however, the influence of these interest groups, which are part of international networks, is apt to be considerable. Another area that ought to be examined is the legal treatment of sponsorship of events, a growing phenomenon which has the potential to create conflicts of interest. Such practices can have considerable significance in cases where they benefit from a favourable tax regime²⁰ and where services for elected representatives or political parties, in exchange for cash payments or decisions, are provided at events that attract sponsorship.

Enhancing the transparency of interest groups’ lobbying activities also requires companies to develop the same mentality and to themselves adopt charters of good conduct. The international group Lafarge is something of an exception here.²¹ In order to achieve this goal of transparency, legislation also needs to not only regulate the activities of lobbyists but also to specify the duties of elected representatives, members of the executive, public servants and judges. This is still very much uncharted territory in Europe, however, with the related issue of conflicts of interest being addressed only from a criminal law or disciplinary perspective and rarely from the point of view of prevention, involving codes of conduct and early warning systems.

Handing responsibility for enforcing these rules, whether derived from statutes or codes of conduct, to a supervisory authority is an extension of this process of regulation and should make for a more coherent set of arrangements. The functions assigned to Canada’s Commissioner of Lobbying probably go the furthest in this respect. He or she can look into any allegations of breaches of the law that are referred to him or her, by conducting administrative reviews and, if necessary, investigations.²² Breaches of the code do not carry penalties in the form of fines or prison sentences but public disclosure of the offence by tabling reports in Parliament serves as a deterrent.

Regulating conflicts of interest is essentially about ensuring that public decision-makers are not influenced by their own interests. The purpose of regulating lobbying is to prevent public decision-makers from being influenced by third parties, who are not related to them. Judging by the small number of convictions for bribery, trading in influence and illegal acquisitions of interest, regimes that rely purely on criminal law measures, vital though these are, have their limits. At the same time, no amount of preventive legislation will stop individual contacts from being made, off the official record. Democracy would benefit, however, from having mandatory registration rules for interest groups and codes of conduct for lobbyists and public officials alike. Such transparency would lead to disclosure, which would in turn encourage argument and in so doing generate a debate in which decision-makers would act as arbitrators. Other areas which call for regulation are sponsorship and supervision of the transition from the public to the private sector. These are all issues which are likely to receive attention in GRECO’s Fourth Evaluation Round²³ and which more than justify its decision to investigate this topic.

19. <http://europa.eu/transparency-register>

20. Fighting corruption. Political funding. Thematic Review of GRECO’s Third Evaluation Round, § 34, GRECO 2012 and Compliance Report on Germany, Greco RC-III (2011) 9 E, § 51 et seq.

21. http://www.lafarge.fr/OTHER_FILES/04272010-sustainable_development-lobbying_charter-fr.pdf

22. As at 31 March 2012 the number of investigations pending stood at eight.

23. Lobbying in a democratic society, Parliamentary Assembly of the Council of Europe, Recommendation 1908 (2010), Doc.12438, 23 November 2010.

Appendices

Appendix I – Representatives in GRECO

Au 19/12/2012

Albania/Albanie

Mr Ivi KASO (Head of delegation)
Director
Department of Internal Administrative
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Council of Ministers

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Council of Europe Office in Pristina

Substitute

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Council of Ministers

Andorra/Andorre

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Head of International Relations
Ministry of Finance

Ms Meritxell SALVAT PERARNAU
Specialist in International Relations
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Armenia/Arménie

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Deputy Head of Police

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Faculty of Law

Substitute

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Austria/Autriche

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**Vice-President of GRECO/Vice-président du
GRECO**
Head of Department
Directorate for Penal Legislation
Ministry of Justice

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Chancellery

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Department for Int^{al} Co-operation and Projects
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Administration of the President of the Republic
Secretary of the Commission for Combating
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of Reinforcing Law and Order of the General
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Prosecutors Office

Belgium/Belgique

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Particulières
Service Public Fédéral Justice (SPF Justice)

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Service Public Fédéral Justice (SPF Justice)

Bosnia and Herzegovina/Bosnie-Herzégovine

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Sector for Fight against Terrorism, Organised
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Ministry of Security

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Ministry of the Interior

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Parlement fédéral

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Council of Ministers

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Ministry of Justice

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Ministry of Justice

Croatia/Croatie

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President of GRECO – Président du GRECO
Justice at the Supreme Court

Substitute
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Magistrate
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Substitute

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Ministère des Affaires étrangères et européennes

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Investigative Judge
Court of First Instance of Chania

Substitute

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Chairman of the Court of First Instance of Mytilini
Presiding Judge of the District Court of Lesvos

Hungary/Hongrie

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Substitute

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Judge
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Substitute

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Ministry of Justice

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Substitute
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Head of Section of supervision over imple-
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Substitute
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Premier Secrétaire
Ministère des affaires Etrangères

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Serbia/Serbie

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Ministry of Justice

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Deputy Director
Ministry of Justice

Switzerland/Suisse

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Bureau Member / Membre du Bureau
Chef de l'unité du droit pénal international
Office fédéral de la Justice
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Substitute

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Ministère public de la Confédération

M. Jean-Christophe GEISER
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“The Former Yugoslav Republic of Macedonia”/« L'ex-République yougoslave de Macédoine »

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Director of the Academy for Judges and Public
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Turkey/Turquie

Mr Harun MERT (Head of delegation)
Judge / Deputy General Director
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Ministry of Justice

Mr Mete DEMIRCI
Chief Inspector
Prime Ministry Inspection Board

Substitute
Mrs Ayben İYİSOY
Judge
General Directorate of International Law and
Foreign Relations
Ministry of Justice

Substitute
Mr Bülent TÜRKMEN
Judge
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Ministry of Justice

Ukraine

Mr Dmytro VORONA (Head of delegation)
Deputy Minister of Justice
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Acting Head of the Anticorruption Legislation and
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Ministry of Justice

Substitute
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Professor

United Kingdom/Royaume-Uni

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Substitute
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Substitute
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Representative of the CDPC/Représentant du CDPC

Nomination pending/*en cours*

President of the Statutory Committee of GRECO/Président du Comité statutaire du GRECO

Mr Petter WILLE
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Permanent Representative of Norway to the Council of Europe

Council of Europe Development Bank (CEB)/Banque de développement du Conseil de l'Europe (CEB)

Mr Jan DE BEL
Chief Compliance Officer a.i
Council of Europe Development Bank

Observers/Observateurs**OECD/OCDE**

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Division de Lutte contre la Corruption
Direction des Affaires Financières, Fiscales
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Organisation de Coopération et de
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Ms Inese GAIKA
Anti-Corruption Division
Directorate for Financial, Fiscal and Enterprise
Affairs
Organisation for Economic Co-operation and
Development (OECD)

United Nations, represented by the UN Office on Drugs and Crime (UNODC)/Nations Unies, représentées par l'Office des Nations Unies contre la Drogue et le Crime (ONUDC)

Ms Brigitte STROBEL-SHAW Crime Prevention and Criminal Justice Officer Corruption & Economic Crime Section Treaty and Legal Assistance Branch United Nations Office on Drugs and Crime	Mr Dimitri VLASSIS Chief of the Crime Conventions Section United Nations Office on Drugs and Crime Division for Treaty Affairs
	Ms Annika WYTHES United Nations Office on Drugs and Crime

International anti-corruption academy (IACA)/Académie Internationale de Lutte Contre la Corruption (IACA)

Mr Martin KREUTNER Chair, International Transition Team Executive Secretary IACA Provisional Commission International Anti-Corruption Academy	Mr Ernst SCHMID Head of External Relations & Protocol International Anti-Corruption Academy
	Ms Christiane POHN-HUFNAGL Chief of Staff International Anti-Corruption Academy

Organisation of American States (OAS)/Organisation des Etats Américains (OEA)

Mr Jorge GARCIA-GONZALES
Director
Department of Legal Co-operation
Secretariat for Legal Affairs
Organisation of American States

Appendix II – Meetings**Bodies constituting GRECO****Plenary Meetings**

GRECO 54 (20-23 March)
GRECO 55 (14-16 May)
GRECO 56 (20-22 June)
GRECO 57 (15-19 October)
GRECO 58 (3-7 December)

Bureau Meetings

Bureau 58 (24 February)
Bureau 59 (13 April)
Bureau 60 (14 May)
Bureau 61 (14 September)
Bureau 62 (7 November)

Statutory Committee

17th Meeting – Approval budget 2013 (24 October)

Exchanges of views

Exchanges of views were held between the plenary and the following:

- Mr Yerlan TUYAKBAEV, Head of the Legal Support and International Co-operation Department and Ms Aizhan BERIKBOLOVA, Senior Inspector of the Financial Police of Kazakhstan – GRECO 55
- Mr Stanislas FROSSARD, Executive Secretary of the Enlarged Partial Agreement on Sport (EPAS) of the Council of Europe – GRECO 55
- Mr Finn HEINRICH, Research Director, Research Department and Ms Marie TERRACOL, Programme Co-ordinator, Global Outreach and Campaigns Department, Transparency International (TI) – GRECO 56
- Mr Abdesselam ABOUDRAR, Chairman of the Central Authority for Corruption Prevention (ICPC) of Morocco – GRECO 58

External Partners

GRECO – represented by the President, his representative or by the Secretariat – provided input at the following meetings:

Organisation for Economic Co-operation and Development (OECD) – Observer in GRECO

- Anti-Corruption Network for Eastern Europe and Central Asia (ACN) – 11th monitoring meeting of the Istanbul Action Plan (IAP) and 13th ACN Steering Group meeting (Paris, 22-24 February) – secretariat
- OECD/ACN Expert seminar – Independence and Integrity of the Judiciary (Istanbul, 28-19 June) – Marin MRČELA, President of GRECO
- ACN – High-level meeting “Reinforcing political will to fight corruption in Eastern Europe and Central Asia” and 14th Steering Group Meeting (Paris, 10 and 11 December) – secretariat

United Nations Office on Drugs and Crime (UNODC) – Observer in GRECO

- Implementation Review Group of the United Nations Convention against Corruption – Third Session (Vienna, 18-20 June; 14-16 November) – secretariat
- Third Intersessional Meeting of the Open-ended Intergovernmental Working Group on the Prevention of Corruption (Vienna, 27-29 August) – secretariat
- Sixth Intersessional Meeting of the Open-ended Intergovernmental Working Group on Asset Recovery (Vienna, 30-31 August) – secretariat

European Union

- Academy of European Law (in co-operation with OLAF) – Annual Forum on Combating Corruption in the EU 2012 (Trier, 16-17 February) – secretariat
- Meeting between the European Union’s Troika of the Article 36 Committee (CATS) and the Council of Europe (Strasbourg, 27 June) – secretariat

- Third and fourth meetings of the Group of Experts on Corruption set up by the European Commission (Brussels, 17 July; 18 September) – secretariat
- European Parliament Special Committee on organised crime, corruption and money laundering (CRIM) – hearing on the European approach to anti-corruption (Brussels, 18 September) – secretariat
- Consultations with the European Commission (DG External Relations) on EU progress reports on the implementation of European Neighbourhood Policy (ENP) Action Plans (Strasbourg, 6 November) – secretariat

Organization for Security and Co-operation in Europe (OSCE)

- Second preparatory meeting for the 20th OSCE Economic and Environmental Forum – Promoting good governance and combating corruption in support of socio-economic development (Dublin, 23-24 April) – secretariat
- OSCE/ODIHR Core Group of Experts on Political Parties (Warsaw, 17 May) – secretariat
- OSCE Presence in Albania – Conference on standards of parliamentary ethics and codes (Tirana, 16-17 July) – Zorana MARKOVIC, Bureau member
- 20th OSCE Economic and Environmental Forum “Promoting Security and Stability through Good Governance (Prague, 12-13 September) – President
- Office of the Co-ordinator of Economic and Environmental Activities (OCEEA) – working party to discuss updated draft manual on anti-corruption policies – best practices (Vienna, 13 December) – secretariat

Others

- Meeting with the European Network of Councils for the Judiciary (ENCJ) (Brussels, 23 January) – President
- Transparency International Croatia Roundtable – How to make financing political activities more transparent (Zagreb, 9 March) – President
- Summer School for Junior Magistrates from South-Eastern Europe – International standards and co-operation in the fight against corruption (Opatija, 29 May) – secretariat
- Transparency International (TI) Press Conference and Roundtable Discussion – release of TI report on corruption in 25 European countries (Brussels, 6 June) – secretariat
- Austrian chapter of Transparency International – conference on the European fight against corruption (Vienna, 15 June) – Christian MANQUET, Vice-President
- *Ecole Nationale de l'Administration* training seminar (Paris, 27 June) – secretariat
- Polish Institute of International Affairs (PISM) / T.M.C. Asser Instituut conference – Preventing fraud, corruption and bribery committed by and through legal entities (Warsaw, 13 July) – Helena LIŠUCHOVA, Bureau member
- International IDEA/ISDP/The Marshall Center – Regional panel discussion: supporting democratic political processes in the Baltic States (Garmisch, 22-23 August) – Elena KONCEVICIUTE, representative of Lithuania
- High-level working meeting organised by the Presidential administration of the Russian Federation – Activity of non-governmental organisations for the promotion of non-acceptance of corruption within society: main results and trends of development (Moscow, 19 September) – secretariat
- Financial Action Task Force (FATF) – Expert meeting on corruption (Paris, 13 October) – secretariat
- *Ecole Nationale de la Magistrature* (ENM) training seminar (Paris, 12 November) – secretariat
- Meetings with officials from Swiss federal agencies/ministries – GRECO's work on political financing (Bern, 13 November) – secretariat
- 12th EPAC/EACN Annual Professional Conference and General Assembly (Barcelona, 21-23 November) – Vice-President
- *Service Central de la Prévention de la Corruption* (SCPC)/*Ecole Nationale de la Magistrature* (ENM) training seminar on fighting corruption (Paris, 11 December) – secretariat

Internal Council of Europe Partners

GRECO – represented by the President, his representative or by the Secretariat – provided input at the following meetings:

- Exchange of views with the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly (Paris, 12 March) – President
- Exchange of views with the 1142nd meeting of the Ministers' Deputies (Strasbourg, 9 May) – President
- European Commission for Democracy through Law (Venice Commission) conference on Political parties in a democratic society (St Petersburg, 27-28 September) – Yves-Marie DOUBLET, Evaluator
- Strasbourg World Forum for Democracy (Strasbourg, 8-11 October) – President
- Meeting with José MENDES-BOTA, PACE Committee on Equality and Non-Discrimination (Strasbourg, 15 November) – Helena LIŠUCHOVA, Bureau member, Gender Rapporteur
- Exchange of views with the Gender Equality Commission (GEC) (Strasbourg, 15 November) – Helena LIŠUCHOVA, Bureau member, Gender Rapporteur
- Joint Council of Europe/Switzerland Conference – Georgia: the 2012 Parliamentary Elections lessons learned and steps ahead (Tbilisi, 30 November) – Helena LIŠUCHOVA, Bureau member
- Informal talks between the Presidents of Council of Europe monitoring bodies and the Secretary General (Strasbourg, 3 December) – President

Individual meetings and study visitors

The Secretariat held individual meetings with: Mrs Pascale Vanneaux, Honorary Consul of the Republic of Guinea in Lyon (16 February); Mr Gabriel Leonte, Head of the Economic and Environmental Forum Unit, Office of the Co-ordinator of OSCE, Economic and Environmental Activities (7 March); Mr Michel Hunault, member of parliament, France (29 March); Mr Hassane Cissé, Deputy General Counsel for Research and Knowledge, World Bank (14 May).

The Secretariat met the following groups of study visitors: Association of Law Students, Avignon (2 February); European Doctoral College, Strasbourg (23 February); Ukrainian journalists (6 March); Judges of the Supreme Court and High Specialised Court on Civil and Criminal Cases, Ukraine (4 April); Central and Regional electoral commissions, Kazakhstan (4 April); Supreme Administrative Court, Sweden (11 May); judges and officials from the Federal Administrative Court, Germany (11 May); judges, *Ecole nationale de la Magistrature*, France (26 June); senior officials, *Ecole nationale de l'Administration* – ENA, France (27 June); senior officials, Auditor General's Office and Supervisory Commission, Guangdong province, China (13 July); judges, Poland (10 October); senior officials, Morocco (17 October); senior officials, Supervision and Inspection Institute, China (26 October).

Appendix III – GRECO Secretariat

(within Directorate General I – Human Rights and Rule of Law)

Wolfgang Rau, **Executive Secretary**

Elsbeth Reilly, Personal assistant

Penelope Prebensen, Administrative assistant

Central Office

Logistics of evaluation procedures

Marie-Rose Prevost

Penelope Prebensen, Head

Laure Pincemaille

Section I

Laura Sanz-Levia, Head *ad interim*

Sophie Meudal-Leenders

Yüksel Yilmaz

Suranga Soysa

Marie-Rose Prevost, Assistant

Evaluation and compliance procedures in respect of:

Albania

Belarus

Bosnia and Herzegovina

Croatia

Denmark

Estonia

Finland

Hungary

Iceland

Ireland

Italy

Malta

Montenegro

Poland

Russian Federation

San Marino

Serbia

Slovenia

Spain

Sweden

“The former Yugoslav Republic of Macedonia”

Turkey

Ukraine

United Kingdom

United States of America

Section II

Christophe Speckbacher, Head

Michael Janssen

Liubov Samokhina

Anna Myers

Laure Pincemaille, Assistant

Evaluation and compliance procedures in respect of:

Andorra

Armenia

Austria

Azerbaijan

Belgium

Bulgaria

Cyprus

Czech Republic

France

Georgia

Germany

Greece

Latvia

Liechtenstein

Lithuania

Luxembourg

Republic of Moldova

Monaco

Netherlands

Norway

Portugal

Romania

Slovak Republic

Switzerland

For further information,

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