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## **First Evaluation Round**

### **Evaluation Report on Finland**

Adopted by the GRECO  
at its 5<sup>th</sup> Plenary Meeting  
(Strasbourg, 11-15 June 2001)

## **I. INTRODUCTION**

1. Finland was the third GRECO member to be examined in the first Evaluation round. The GRECO evaluation team (hereafter, "GET") was composed of Mr. Arpad EÖRDÖGH, Lieutenant Colonel of the Police, Ministry of the Interior (Hungary, police expert), Herr Oberstaatsanwalt Wolfgang SCHMID, Public Prosecutor in Baden-Württemberg (Germany, prosecution expert) and Mr. Kazimir ÄBERG, Director of International Affairs, Economic Crime Bureau, (Sweden, policy expert). This GET, accompanied by a member of the Council of Europe Secretariat, visited Helsinki from 2 to 6 October 2000. Prior to the visit the GET experts were provided with a very comprehensive reply to the Evaluation questionnaire (document GRECO Eval I (2000) 12) as well as with copies of the relevant legislation.
2. The GET met with officials from the following Finnish Governmental organisations: Ministry of Interior, Police Department, Office of the Prosecutor General, Ministry of Justice, Ministry of Foreign Affairs, Chancellor of Justice, Parliamentary Ombudsman, National Bureau of Investigations, National Board of Customs, Ministry of Commerce and Industry, Ministry of Finance and Finnish Competition Authorities.
3. Moreover, the GET met with representatives of the Research Institute Optula, Helsinki Institute for Crime prevention and Control (HEUNI), "Helsingin Sanomat" and MTV3 journalists, Central Chamber of Commerce of Finland, Central Organisation of Finnish Trade Unions, Confederation of Finnish Industry and Employers and Association of Finnish Local and Regional Authorities.
4. It is recalled that GRECO agreed, at its 2<sup>nd</sup> Plenary meeting (December 1999) that the 1<sup>st</sup> Evaluation round would run from 1 January 2000 to 31 December 2001, and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would be based on the following provisions:
  - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
  - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
  - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).
5. Following the meetings indicated in paragraph 2 above, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned and proposals for recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the Finnish authorities, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in Finland, the general anti-corruption policy, the institutions and authorities in charge of combating it -their functioning, structures, powers, expertise, means and specialisation- and the system of immunities preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in Finland is fully compatible with the undertakings resulting from GPC s 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to Finland in order for this country to improve its level of compliance with the GPC s under consideration.

## II. GENERAL DESCRIPTION OF THE SITUATION

### a. **The phenomenon of corruption and its perception in Finland**

6. The Republic of Finland, independent since 1917, has a surface of 337,009 Km<sup>2</sup>, and a total population of 5,200,000 inhabitants. It neighbours the Russian Federation, Sweden and Norway. In 1998, Finland had a GDP per capita, according to OECD sources, of 25,099 \$, 13% higher than the European Union average.
7. Corruption is criminalised, in the Finnish legal system, in different, separate provisions: active and passive bribery of domestic, foreign and international officials, aggravated active and passive bribery of the same officials, active and passive bribery in the private sector, aggravated active and passive bribery in the private sector, accounting offences, laundering of proceeds from all offences, including failure to report suspicious transactions, misuse (and aggravated misuse) of public office and violation (including negligent violation) of official duties. Moreover, the Finnish legislation provides for the criminal liability of corporations for bribery and aggravated bribery, both in the public and in the private sector and for money laundering. According to the Criminal Code, active and passive bribery are subject to a statutory limitation of five years, whereas this limitation is of ten years for aggravated bribery (active and passive).
8. Trading in influence is not a criminal offence in Finland, although the general provisions on aiding and abetting could cover the behaviour covered by such an offence, at least partially.
9. Finland has signed the Council of Europe Criminal and Civil Law Conventions and is preparing legislation enabling the ratification of these instruments. Finnish legislation does not require a treaty to grant mutual legal assistance in criminal matters, which is conducted as extensively and informally as possible on the basis of national legislation. No refusal of a request for assistance has ever been opposed in a bribery case. Finland does not extradite its own nationals, except to EU and Nordic countries. However, charges can be brought in Finland against a Finnish citizen, even if the deed was committed abroad, provided that the Prosecutor General grants an order for prosecution.
10. Finland has ratified the OECD Convention on active bribery of foreign public officials in international business transactions and has already adopted the legislation implementing that Convention.
11. According to the statistics provided to the GET, 8 persons were sentenced by the District courts for bribery offences in 1996, 10 in 1997 and 3 in 1998. According to the Criminal Complaints Index, 15 corruption cases were reported in 1997 to the authorities, 14 in 1998 and 13 in 1999. Since 1993, there have been 99 cases of bribery. Moreover, 66 cases of abuse (and aggravated abuse) of public office were reported to the Police in 1999, according to the "Situation report on corruption in the Baltic Sea Region" (Task Force On Organised Crime of the Baltic Sea Region, March 2000).
12. Rather than payment of a sum of money or the giving of a gift, cases in Finland often relate to the offering of entertainment or travel to public officials, or acceptance thereof, in order to influence the exercise of his/her public functions. Most of the few existing cases have been subject to extensive media coverage. Street-level corruption is considered to be non-existent in Finland.

13. According to the Finnish authorities, organised crime is not a matter of significant concern as only a small number of criminal groups have been detected, most of them of a very limited size. There is no evidence of connections between bribery and the activities of organised criminal groups. Perpetrators of corruption offences were not members of criminal groups. No trace of a connection between money laundering and corruption has been found in Finland
14. The figures quoted above point out to a very low level of corruption in Finland. The common view in this country is that corruption is not a problem for society. This would seem to apply both to the public and the private sectors. According to the Corruption Perception Index for 2000, issued by Transparency International, Finland was the least corrupt country in the world, with a score of 10 out of 10, improving the 1999 ranking, where Finland was listed as number 2 with a score of 9.8 out of 10. This perception of a very low level of corruption was confirmed to the GET by the representatives of the civil society met during the visit, such as the media, the Central Chamber of Commerce, Employers and Worker's Association.
15. The explanations provided to the GET about this almost corruption-free situation stressed the high moral standard of Finnish Civil Servants, their independence in the exercise of their duties, the monitoring systems built into public administrations and, above all, the transparency of Finnish society and institutions. Another factor that was said to play a role in this context is the active involvement of citizens in local life and their close scrutiny of the management of municipalities. Besides, the media are very active in searching and disseminating information about mismanagement, irregularities and suspicious activities in society. Although, the municipal area was mentioned as more vulnerable to corruption the GET evaluators did not find any evidence to support this suspicion.
16. Transparency in society was often mentioned as a key factor to explain why corruption seems to be a rather exceptional event in Finland. Article 12, par. 2 of the Constitution of Finland provides for a system of free access to information, stating that: *"Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings."* This means that the general rule is transparency and restrictions to it must be considered as an exception, which requires an express decision taken in accordance with an Act.
17. The idea of an open and transparent society and administration is a very important idea in Finland. Transparency seems to be everywhere. The whole Finnish society and the public sector are exceptionally open and transparent in their operation. Every citizen has the right to ask for data or details filed or registered in the system. The availability of data stored in the system or information on the operation of the public sector in general and in single cases in particular is almost total. A very limited list of classified or confidential information exists, listing data not readily available to the public. The following examples may illustrate this idea: anyone can find out the identity of the owner of a vehicle simply by making a telephone call to the competent service. Only limited tax secrecy exists and every citizen is entitled to make inquiries about his/her neighbour's tax return and receive this information from the tax authorities. Everyone can go to the administration and make inquiries. Equity holding of more than 5% in a firm is also public. The media are considered as guarantors of transparency.
18. In Finland there is no special national programme against corruption. Corruption is not considered a priority at governmental or ministerial level. Consequently, there is no anti-corruption strategy and no legislation in force on lobbying. There are no special prevention programmes. No separate arrangements have been made for the investigation and prosecution

of corruption. Corruption offences are dealt with like any other criminal offence. There is no profiling of corruption cases. The public sector is considered corruption free. No special course is organised for law enforcement officers on corruption. No specialised staff has been appointed and no gathering of expertise is organised in multidisciplinary anti-corruption teams. There is no special authority dealing with corruption or co-ordinating anti-corruption efforts of different authorities or agencies. No awareness campaign has ever been organised.

19. The definition of economic crime (or white-collar crime) would also cover corruption. The basic concept is that corruption is part of or ancillary to economic crime and should be handled in this context. In this sense, it can be considered that the Programme against economic crime and the grey economy adopted by the Finnish Government in 1996 would also cover corruption.

## **b. Bodies and institutions in charge of the fight against corruption**

### **b1. The Police**

20. There is only one national police in Finland. The Police are responsible for maintaining public order and security and for ensuring respect of the legal and social order. The Police have both preventive and investigative responsibilities in the criminal field, preparing criminal cases for prosecution. Therefore, the Police is the general criminal investigative authority and it is for the Police to detect and investigate corruption offences committed in Finland.
21. The Finnish Police Force is primarily organised in three levels. The Police is one of the Departments of the Ministry of the Interior acting as the Supreme Police Command, consisting of operational and non-operational National Units. The operational national units are the National Bureau of Investigation, the Mobile Police and the Security Police. The Provincial Police Commands are situated in the territory of the five Provincial Governments and are subordinated to the Supreme Police Command. Finland is divided into 90 state local districts. Every one of them has its own Police Department, which is subordinate to the appropriate Provincial Police Command. The autonomous province of Åland has its own Police department. The separated Helsinki Police Department is working under the direct supervision of the Ministry of the Interior. Approximately 10.000 employees work in the Police Administration, 8.500 of which are police officers. The ratio is approximately 1 police officer per 600 inhabitants.
22. The Police Department is placed under the jurisdiction of the Ministry of the Interior, responsible for the preparation of legislation, budget and organisation of the Police Force. The Head of the Police is the National Police Commissioner, an independent authority appointed, until retirement, by the President of the Republic. The National Police Commissioner is a professional policeman and a lawyer.
23. There is no set chain of command or reporting system in criminal investigations. All police forces, even at local level, are independent in the pursuit of their criminal investigations. Neither the Minister of the Interior nor any other authority can give instructions to the police officer in charge of the investigation of a specific criminal case. The Minister of the Interior may order the Police to investigate a criminal offence but may not instruct it to close one. None of the persons interviewed by the GET were aware of any case of pressure on a police officer investigating a case of corruption, nor of any retaliatory measures adopted against such a police officer after the conclusion of the investigation.

24. The National Bureau of Investigation (hereafter, 'NBI') is the national central authority in charge of the investigation of criminal cases having wide national significance or coverage or criminal cases with links abroad. The NBI is headed by a Chief, assisted by two Deputies. One of the Deputies is responsible for supervising the work of the Chief of the Criminal Intelligence Division (hereafter 'CID'). The NBI has a Main Division, acting also as a territorial division for Southern Finland, and three other territorial divisions: Northern, Western and Eastern. As a national police unit the NBI prevents, detects and investigates professional, organised, international, financial and other serious forms of crime. Investigation in serious bribery cases is usually entrusted upon experienced NBI police officers. The whole NBI is 550 strong, out of which 135 belong to the CID.
25. The CID acts – at the same time – as the National Focal Point for all law enforcement agencies in international contact and co-operation. It handles and develops approximately 2000 requests a year. Other law enforcement agencies, such as Customs, are represented in the CID by dedicated liaison officers. (2 from Customs). The CID consists of 5 units which includes the Financial Intelligence Unit, acting as National Money Laundering Clearing House –set up in 1998-, the Intelligence Unit (handling international cases, too), the Communications Centre (INTERPOL, EUROPOL, SIRENE, Baltic and Nordic Task Forces), the Criminal Analysis Unit, and the Technical Supply Unit.
26. There is no special anti-corruption unit in the NBI or elsewhere in the Finnish Police. However, the NBI's Territorial Divisions and the Helsinki Police Department have specialised economic crime units, which deal also with corruption cases.
27. Law enforcement agencies other than the Police are the Customs and the Border Guard. They are responsible for investigating customs offences and offences related to alien control respectively. The Tax Authority also has some investigative power.

## **b2. Criminal Investigation of corruption**

28. The investigation of criminal offences, including corruption offences, is normally set in motion by the complainant, i.e. the injured party in the case who reports the incident for investigation. The investigation can also be initiated at the request of the prosecutor or other institutions – Parliamentary Ombudsman, Chancellor of Justice, monitoring systems within ministries and official bodies- coming in possession of knowledge about a possible criminal activity. An investigation can also be opened as a reaction by the Prosecutor General or the Police to media reports. Ministries and civil service departments have their own internal monitoring system. According to the Pre-trial Investigation Act, an investigation must be conducted if there is reason to believe that a criminal offence may have been committed.
29. Investigation of criminal offences is governed by the Criminal Procedure, Police, Pre-trial Investigation and Coercive Means Acts. The "investigator in charge" of a case will be responsible for deciding on all matters relating to the pre-trial investigation, with the exception of those falling under the jurisdiction of the courts. The pre-trial investigation is confidential but the investigator in charge may decide to release some information to the media, particularly if this would be useful for the investigation.
30. Corruption is investigated like any other criminal offence, basically with the same methods as those applied for other economic crimes. In the context of an open investigation the suspect may be taken into custody or arrested, his freedom of movement otherwise restricted. The suspect

placed under arrest has to be brought before the judge without delay and, at the latest, before 12 a.m. of the third day following the arrest. Searches can be carried out and assets can be seized to secure forfeiture or payment of damages.

31. On the basis of Article 36 of the police Act, the police have the right to receive information necessary for the prevention or disclosure of any criminal offence. No business, bank, tax or insurance secrecy can be opposed to a police request for information in the context of a criminal investigation. The respective obligation to disclose information is prescribed in the legislation on financial institutions.
32. Some special investigative techniques may be used in pre-trial investigations of serious crimes: informants, interception of communications and technical surveillance. The use of the latter two would require, however, a prior court authorisation. The GET was informed, however, that no authorisation of wire-tapping could be granted in the context of an investigation on corruption. Moreover, although undercover operations were used on some occasions, there is no appropriate legal basis for it. New legislation is under preparation in this field.
33. There is neither a special programme for the protection of witnesses, nor a specific authority dealing with this matter. However, Finnish legislation already provides for a number of protection measures that could be applied to protect witnesses and other collaborators of justice. In any case, the improvement of witness protection is in the legislative agenda of the Ministry of Justice.

### **b3. The Prosecution Service**

34. According to the Finnish legislation, the Prosecution Service has the duty to see to the implementation of liability in criminal cases, both by evaluating the case brought to its attention and later by pressing charges against the suspected perpetrator before the courts. This means that it is for prosecutors to make sure that suspects bear the responsibility for their deeds, as provided by the law. Prosecutors are independent, as they alone make the decision on cases brought to them. They are required to act in an unbiased manner, promptly and economically, with due regard to the rights of the parties and the interest of the community.
35. The Prosecution service is not, *stricto sensu*, a law enforcement body. It is an independent institution attached to the different levels of the Court system. The main function of prosecutors is to present criminal cases before the Court. Article 15 of the Pre-trial Investigation Act provides that the police shall inform the prosecutor about a criminal case when a person is suspected of having committed it. There is no obligation to inform in simple cases. Article 15 of the Pre-trial Investigation Act empowers the prosecutor to order the police to perform certain acts of investigation. However, even if the prosecutor does so, the police officer in charge of the case will remain the leader of the investigation. In practice, except in serious crimes, prosecutors do not play an active role in the investigation of criminal offences, task basically conducted by the Police. Prosecutors do play a pivotal role in deciding whether or not the case should be brought to the Courts in the light of the evidence available. The role of the prosecutor in the trial is also very strong, as the Finnish criminal procedure is purely adversarial, with the Courts remaining in a totally passive role.
36. According to the Constitution, the Prosecutor General (hereafter, the "PG"), Supreme Prosecutor of Finland, heads the Prosecution Service. The PG (and Deputy PG), is appointed by the President of the Republic upon a proposal by the Government. The appointment is made until retirement, and the PG cannot be removed for political reasons (the PG could be removed for

serious misconduct in office or for having committed a criminal offence). The PG is independent in the exercise of his/her duties, as neither Government nor any Minister or authority are entitled to give the PG instructions, suggestions or to put pressure on him/her. The Ministry of Justice manages the financial resources of the Prosecution service. The PG is submitted to the control of the Ombudsman and the Chancellor of Justice (see below).

37. The Finnish Prosecution Service has a total staff of 500 persons, including 300 prosecutors. Following a reform of 1997, the organisation of the prosecution changed from three tiers to a two-tier system: Prosecutor General - District prosecutors. The State Prosecution Unit is part of the Office of the PG. It is staffed with 12 Prosecutors, competent to operate everywhere in the country, dealing with cases that are difficult, of a national or international dimension or having attracted considerable public attention. They also handle cases examined at first instance by the Court of Appeal, including cases relating to offences in office committed by high-ranking officials. Two additional posts of State Prosecutors have been created to deal with economic crime, including corruption.
38. The district prosecution service consists of 78 local units (77+Åland Prosecution Bureau), serviced by 288 district prosecutors. The organisational structure does not affect the independence of prosecutors. Each unit negotiates annually with the Office of the PG its budgetary allocation and the results to be achieved. Most prosecution units belong to a joint operational area, within which they provide each other with support and assistance. 24 district prosecutors specialise in economic crime, including corruption: ten of them in Helsinki and the others in different districts around Finland. The Office of the PG is responsible for the selection, career and training of district prosecutors.
39. Investigations of serious crime cases having wider national significance or coverage or connections abroad, fall under the competence of the NBI. Aggravated bribery would fall under these categories. The NBI is also under the obligation to inform the prosecutor about cases under investigation so as to enable him/her to give indications on additional investigative measures for the prosecution. In cases where the suspect is a police officer the prosecutor will be in charge of the investigation.
40. The competent (district or State) prosecutor will be responsible for deciding whether or not the inquiries are sufficient and whether the evidence found is enough to press charges or not. Once the preliminary investigation is completed the prosecutor has to opt between bringing charges or abandoning the process but prosecutorial discretion is not unlimited. Indeed, the prosecutor is under the obligation to continue with the case unless the evidence appears insufficient or some elements of the offence are missing. The prosecutor must determine at that stage whether there is a *prima facie* case in the light of all the evidence available, regardless of whether the evidence is for or against the suspect. If the prosecutor comes to the conclusion that the suspect is innocent he/she must decline prosecution.
41. Finnish prosecutors are not entitled to conduct plea-bargaining or equivalent arrangements with the defendant. However, in 1991 they were empowered to dispose of the case without trial in cases of minor significance, of young offenders, of unreasonableness of prosecution or because the existence of other charges or conviction against the suspect would deprive a new prosecution of any meaningful purpose.
42. The PG is entitled to take over the prosecution of any criminal case. However, in practice he/she will only do so in very significant cases. The PG also has the right to control over the decisions



made by individual public prosecutors. Everyone has the right of appeal to the PG against the decisions taken by any prosecutor. If the prosecutor decides not to pursue a case the plaintiff has a subsidiary right to press charges.

43. In the prosecution service there are no special prosecutors in charge of corruption offences, although corruption cases will normally fall under the jurisdiction of special prosecutors dealing with economic crime. No regular meetings between prosecutors and police concerning corruption or corruption offences are held. Prosecutors do not receive the State Auditor's reports or the reports drawn up by local auditors. Complaints on tendering procedures are not submitted to the prosecutor.
44. The Prosecutor General is responsible for the training of prosecutors. There are no special training courses on corruption or the typologies of corruption in Finland for prosecutors. However, a two-day seminar was organised in 2000 dealing with issues concerning corruption. Normally corruption is dealt with in the context of economic crime in general. Some training courses are arranged jointly within customs, police and prosecution. The training of judges falls under the competence of the Ministry of Justice.

#### **b4. Other bodies and institutions**

45. There are other authorities in Finland, which, although not directly involved in the criminal law area, play an important role in the prevention and disclosure of corruption. Similar institutions exist, obviously, in every State but the role they play in the combat against corruption differs from one country to another. In Finland it is essential to refer, in this respect, to the Parliamentary Ombudsman and to the Chancellor of Justice. In addition reference is made below to the Personnel Commission of the Ministry of Finance, Auditing and Competition authorities

##### *i) Parliamentary Ombudsman*

46. The Parliamentary Ombudsman (hereafter referred to as the "PO") is an independent authority established in Finland in 1919, responsible for overseeing the observance of the law as well as the implementation of constitutional and international human rights in the exercise of official and public functions. The PO can investigate complaints submitted to him or intervene in a matter of concern on his own initiative. The GET was told that this latter possibility is seldom used because of a heavy workload (2,700 complaints in 1999). The PO can also conduct on-site inspections of any public office or institution.
47. The PO has jurisdiction over public authorities, including ministers, judges, police officers, military officers, civil servants, public prosecutors, members of municipal councils, social welfare workers, tax commissioners and other civil servants. He/she will also have jurisdiction over managers of state-owned companies or corporations performing public functions, ecclesiastical bodies.
48. The PO is elected by Parliament for a four year term that can be renewed. He/she is assisted by two Deputy PO's also elected by the Finnish Parliament. The PO and his Deputies are required to have outstanding knowledge of law. The PO is served by a staff of 40, who specialise in the different branches of administration. The PO also has at his disposal some investigative officers with police training to assist him/her in investigations, although he can also request the assistance of the NBI. In fact, all public officials are bound to assist the PO. The PO is funded

through an autonomous budget voted by Parliament, which, according to the indications given to the GET, is considered sufficient for the performance of the duties entrusted upon him/her.

49. The PO can press charges before the courts if he/she finds evidence that a public authority or an official committed an offence in the exercise of his/her duties. More frequently, however, the PO will request the executive assistance of the Police. It will be for the Prosecution Service subsequently to press the charges. The PO is generally competent to examine complaints relating to prosecutor's activities although in practice the complaints are examined by the Prosecutor General. If a prosecutor decides not to prosecute in a specific case the PO is empowered to order the reopening of the case or to prosecute himself.
50. More often, if the PO finds a complaint founded, he/she will address a reprimand to the public authority or official responsible for improper conduct or proceedings. According to the indications given to the GET, a reprimand made by the PO in public, criticising the manner in which a public official exercised his/her powers, is generally considered as a very serious sanction.

*ii) The Chancellor of Justice*

51. The office of the Chancellor of Justice (hereafter "CoJ") dates back to the 18<sup>th</sup> century, when Finland was part of the Kingdom of Sweden. The duties of the CoJ have remained much the same, although his duties as former Head of the Finnish Prosecution Service were transferred in December 1997 to the newly established office of the PG.
52. Nowadays, the CoJ has a constitutionally guaranteed position as an independent overseer of governmental legality in Finland. It is the CoJ's duty to monitor the legality of operations of the Government and other public authorities and officials. According to the Constitution, the CoJ is responsible for ensuring that public authorities, employees of public corporations and other persons performing public functions comply with the law and fulfil their obligations in the performance of their duties. This includes overseeing the legality of the actions of the prosecutors and the courts. The CoJ attends the sessions of the Government to supervise the strict observance of legal procedure and the legislation in force. Supervising the legality of public authorities includes monitoring the legality of the acts of the President of the Republic and the Government and the different ministries and reviewing the sentences imposed by the courts of law. According to the Advocates Act, the CoJ watches over the activities of advocates.
53. The CoJ is attached to the office of the Prime Minister. He is appointed until retirement by the President of the Republic and is assisted by a Deputy CoJ. He or she shall have outstanding knowledge of law (the Finnish Constitution Section 69). 34 officials work in the Office of the CoJ. The CoJ negotiates his office's annual budget with the ministry of Finance.
54. The CoJ and the PO have a very similar role of ensuring that public authorities, officials and employees of public corporations and other persons performing public functions comply with the law and fulfil their obligations in the performance of their duties. There are historical reasons for the existence of two bodies having very similar, almost identical, functions in some respects. The division of duties between the CoJ and the PO is described in the Act on the Division of Duties Between the CoJ and the PO. It was explained to the GET that also in practice, there is an agreed division of labour between both institutions.
55. The CoJ and the PO act as special prosecutors in cases where authorities or officials are accused of corruption or other forms of misconduct in office. He will also be competent to review

the work of public prosecutors, including the exercise of prosecutorial discretion. Since the 1997 reform, however, many of the complaints received by the CoJ against prosecutors are transferred to the PG. The CoJ is also empowered to issue a reprimand to the official or body having exercised their duties in an improper manner.

56. In 1998, the CoJ received 207 complaints concerning judicial procedures. As the judicial power must, constitutionally, be exercised by the courts of law, the scope of the review exercised by the CoJ is limited to taking action on clear procedural errors and on conduct infringing constitutional and human rights.
57. The CoJ can investigate matters on his own initiative or on the basis of complaints formulated by citizens. In 1999, 1200 complaints were introduced before the CoJ. No anonymous complaints are admitted. Any citizen who believes that his or her legal rights have been infringed may file a complaint either with the CoJ or the PO. There are no filing fees or other costs to the complainant. Many complaints concern access to public records and length of procedures.

*iii) Personnel Department – Ministry of Finance*

58. The centralised direction of personnel policy within State administration in Finland is the task of the Personnel Department of the Ministry of Finance. The Department is responsible, inter alia, for the development of legislation relating to State civil servants and thus also for ensuring that these regulations guarantee the confidence of citizens in the independence and objectivity of State administration. There is no separate body in Finland responsible for ethics. As indicated above, the legality of the actions of authorities and civil servants is supervised by the CoJ and the PO.
59. According to the Finnish Constitution respect for the rule of law must be guaranteed in public administration as well as good governance and the accountability of civil servants for the legality of their official actions. Access to public office is reserved to the best qualified persons. The State Civil Servants' Act (Chapter 4 Section 15) provides that an official may not demand, accept or receive any financial or other benefit if this may reduce confidence in him or in an authority. Highest civil servants are under the obligation to declare their interests (Section 8), conduct themselves in accordance with their status and duties (Section 14) and are submitted to restrictions on ancillary jobs (section 18). According to the information gathered by the GET, no regular inspections are made to check the accuracy of declarations of interests and no sanctions are imposed in case of failure to comply with this obligation. Statements are public except for the part concerning the financial situation of the high official.
60. The Civil Servants' Act contains provisions on the measures, which the authority may take when a civil servant violates or neglects his/her official duties. These are the following: written warning (section 24), termination of civil service relationship (sections 25 and 33) and suspension from office (Section 40). Staff management is decentralised in Finland. Even if the disciplinary procedure has disappeared, it is for each of the agencies to impose the sanctions. The administrative authorities are under no obligation to report corruption cases to the police or the prosecutor.
61. The Personnel Department of the Ministry of Finance has elaborated a study on Civil service ethics, released this year. On the basis of this study, some further measures will be adopted to promote high-level civil servant ethics in the State administration.

iv) *Auditing authorities*

62. In Finland Parliament adopts the budget and supervises the financial management of the State and the implementation of the State budget. In practice, this task is performed by the State auditors, who submit an annual report to Parliament on the management and situation of public funds. The State auditors have the right to obtain the necessary information and accounts from the authorities. The citizens can also file complaints before the State auditors on alleged misuse of State funds.
63. The State Audit Office (hereafter, "SAO") has the task of auditing and monitoring the Council of State and ministries and administrative units subordinate to them, funds outside the budget, state business enterprises, state-owned companies, recipients of state subsidies and parties administering the transfer of funds between Finland and the European Union and parties using these funds. The SAO is subordinated to the Ministry of Finance and will control the legality and appropriateness of the financial management of the State and its compliance with the budget. The SAO prepares an annual report transmitted to the Government, the State Auditors and the Ministry of Finance. The SAO is staffed by 150 persons and audits over 100 bodies or agencies every year. Although the main emphasis is on book-keeping it can also check some specific procedures, for example public tendering procedures. Should it detect important or significant irregularities in the management of the funds or in the procedures checked State auditors may report to the Police.
64. 30% of the Public authorities have also set up an internal audit, which supervises the functioning of the internal control system. The internal control system consists of all the policies and procedures adopted by the management of an entity to assist in achieving management's objective of ensuring, as far as practicable, the orderly and efficient conduct of its business, including adherence to management policies, the safeguard of assets, the prevention and detection of fraud and error, the accuracy and completeness of the accounting records and the timely preparation of reliable financial information. Internal auditors may report to the police important irregularities.

v) *Statutory Audit of private companies and entities*

65. According to the Auditing Act, all registered corporations and foundations must appoint an auditor to audit their annual accounts. Small companies are not exempted from this requirement. The main objectives of the audit, according to the law, are to confirm that the annual accounts are presented according to the law and to confirm that the administration has been legally conducted. According to the Auditing Act, an auditor has an obligation to observe good auditing practice. That means i.a. that the auditor must respect the law and other regulation. Where a partner, or a member, the Chairman or the vice Chairman of the Board of Directors or the Supervisory Board, the Managing Director or other accountable person is guilty of an act or negligence, which may result in liability for damages, or of any other liability for damages or of any other violation against a law, the articles of association, deed of partnership or by-laws governing the corporation or foundation, the auditor must make a remark thereof in the auditor's report. The auditor's report is a public document.

vi) *Authorisation and supervision of Auditors*

66. There are two kinds of authorised auditors in Finland, namely KHT-auditor (Authorised Public Accountant) i.e. an auditor authorised by the Central Chamber of Commerce of Finland and

HTM-auditor (Approved Auditor) i.e. an auditor authorised by one of the 21 Regional Chambers of Commerce existing in Finland. According to the Auditing Act, the Auditing Board of the Central Chamber of Commerce shall authorise auditors and firms of auditors and organise the auditor's examinations for both categories of auditors. The Auditing Board of the Central Chamber of Commerce shall supervise and take the appropriate measures to ensure that the auditors and firms of auditors authorised by it maintain their proficiency and other qualifications required for the authorisation and that they observe the Auditing Act and any provisions given by virtue thereof. The provisions concerning the tasks of the Auditing Board of the Central Chamber of Commerce also apply to the obligation of an Auditing Committee of the regional Chamber of Commerce to supervise, within its area of operation, auditors authorised by the Chamber of Commerce.

67. The Auditing Board of the Central Chamber of Commerce examines annually the reports and documents given to it by the authorised auditors and authorised firms of auditors in order to supervise the auditors and firms of auditors and firms of auditors authorised by it still maintain their proficiency and other qualifications required for authorisation. The objective of supervision is also to control that the authorised auditors and authorised firms of auditors observe the Auditing Act and any provisions given by virtue thereof.
68. Within the Ministry of Trade and Industry there is the Auditing Board of the State which gives instructions and statements of the Auditing Act and the ordinance given on the basis thereof. The Auditing Board of the State also makes proposals and motions regarding the development of audit regulations and tends to the general guidance, development and supervision of the audit function. The Auditing Board of the State gives its decision, if an auditor makes an appeal against a decision made by the Auditing Board of the Central Chamber of Commerce.
69. All these bodies are independent and their members and secretaries have, in many respects, the same responsibilities and liabilities as civil servants.

*vii) Competition Authorities*

70. In Finland there is a Competition Authority, established by Act n° 711 of 1988, responsible for investigating competitive conditions and restrictions, eliminating the harmful effects of competition restrictions and taking initiatives to promote competition and dismantle any restrictive regulations and orders. The Finnish Competition Authority operates under the Ministry of Trade and Industry. If the Authority finds prohibited practices the Competition Council shall, upon the proposal of the Competition Authority, impose sanctions of up to 10 % of the annual turnover of the company concerned.
71. There are always at least two civil servants from the Competition Authority present during contacts and meetings with entities that are undergoing an investigation from the Authority. This is due, at least in part, to the need to avoid any suspicion of corruption. Furthermore, the Competition Authority's decisions are always signed by two civil servants to avoid any suspicion of undue influence.
72. The Finnish Competition Council handles and decides issues which fall under its jurisdiction under the Act on Competition Restrictions and the Act on Public Procurements, in particular appeals against the decisions of the Competition Authority. Act n° 481 of 1992 and Decree 485 of the same year provide the rules governing the introduction of case before the Competition Council and the subsequent procedure before this body. Yearly the Competition Council

examines around 200 cases. According to the indications given to the GET, the Competition Council has not had the occasion to examine cases involving corruption.

73. No specific guidelines have been elaborated in Finland for public officials dealing with staff matters, public procurement, subsidies, tax matters and other sectors particularly vulnerable to corruption or for auditing and competition authorities and officials on the detection of corruption phenomena or on the procedure to follow in the event of finding a corrupt practice. There is no general obligation to report suspicions of corruption to the police or the prosecutor.

**c. Immunities from investigation, prosecution and adjudication for corruption offences**

74. The following authorities benefit in Finland from immunity:
75. The President of the Republic can be prosecuted only for high treason or crimes against humanity. Charges against the President can only be pressed if the CoJ, the PO or the Government consider that the President is guilty of one of the above-mentioned offences. In addition, the Prosecutor General will press the charges only if Parliament so agrees by a three-fourths majority.
76. Members of the Government (hereafter "MG") can be prosecuted for unlawful conduct in office, including corruption, following a decision of Parliament. An inquiry may be initiated in the Constitutional Law Committee at the Committee's own initiative or on the basis of a notification emanating from the CoJ or the PO, or a petition signed by 10 members of parliament or at the request of another Parliamentary Committee. A decision to bring charges may only be made if the Member of Government intentionally or through gross negligence, essentially contravened his/her duties as a Minister or otherwise acted clearly unlawfully in office. It will be for the PG to press charges before the High Court of Impeachment. MGs can be prosecuted like any other citizen before the ordinary courts for offences committed outside office.
77. The CoJ and the PO. The procedure is, *mutatis mutandis*, the same as the one applicable to members of the Government, as described above. However, there is no special threshold to press charges against them, as there is in the case of Ministers.
78. Members of Parliament (MPs) are not criminally liable for their opinions in Parliament or their conduct in the consideration of a matter. Parliament may authorise, by a majority of five-sixths, the prosecution of a member for their opinions in Parliament or their conduct in the consideration of a matter (Section 30 of the constitution).
79. MPs do not enjoy immunity from prosecution for criminal offences they may commit. However, MPs cannot, without the authorisation of the Parliament, be detained or arrested before trial unless suspected of having committed an offence to which a penalty of at least 6 months imprisonment is attached. In this latter case the Speaker of the Parliament has to be notified of the arrest or detention without delay.
80. Corruption of MPs is not a criminal offence in Finland. However, the criminalisation of this behaviour is under preparation in the context of the implementation of the Council of Europe's Criminal Law Convention on corruption, signed by Finland.

81. Foreign Diplomats in Finland enjoy diplomatic immunity. If a foreign diplomat is suspected of having committed a corruption offence in Finland the Finnish authorities would raise the matter with the authorities of the foreign State concerned. No such case has ever arisen.
82. If a Finnish diplomat is suspected of bribery in the State where he/she was posted the Finnish authorities would consider the possibility of lifting his/her diplomatic immunity. Such a diplomat could also be prosecuted in Finland for the offences committed abroad, although an Order for prosecution from the PG would be required in such a case.

### III. ANALYSIS

#### a. **A policy for the prevention of corruption**

83. Very few cases of corruption have been reported, detected or found in the last years in Finland. It was not surprising, therefore, for the GET that no specific arrangements were in place for the purpose of investigating and prosecuting corruption offences. The GET realised that although it is considered a serious offence, corruption is not an important subject of concern for Finnish society. This seems to be mainly due to the configuration of Finnish society as a largely transparent one. The Constitution and the law grant to every citizen the right to have access, in principle, to every file handled by any public authority, municipality and public owned business. This right makes it possible for individual citizens and the media to examine public files, correspondence and registers and to check every decision taken by any public authority. Furthermore, all auditing reports of private companies are also made public.
84. In addition to ordinary police and prosecution services in charge of detecting, investigating and prosecuting corruption offences, the PO and the CoJ play, in the GET's eyes, an essential role in Finland when it comes to supervise and monitor the activities of public authorities. Citizens can have free access to any of both institutions to complain about any irregularity or mismanagement in the handling of public affairs. This enables the CoJ and the PO to remain in permanent contact with the everyday reality of public administration and receive immediate reports of any irregularity, abuse or illegality committed by public officials. The GET noted with satisfaction that such a system, coupled with generalised transparency, provided for the possibility of an effective, close and immediate scrutiny of the actions and omissions of all public authorities and constituted, therefore, a powerful deterrent of corruption.
85. In the GET's view another safeguard to prevent and disclose corrupt activities is found in a very developed auditing system, present on several levels, in the public sector as well as in the business sector.
86. At the same time, the GET considered that the high level of confidence of the Finnish authorities and society in their public administration and in the ethical behaviour of authorities and officials may have weakened public awareness about corruption, which could prevent the reporting of suspicions of corrupt acts. It may also prevent the police and other law enforcement agencies or supervisory bodies from looking deliberately for traces of corrupt practices in the private or business sector, especially when it has dealings with public officials.
87. The GET recalled the difficulty to detect corruption because this form of criminality is, by definition, a very secret and silent one. The report about the offence can hardly come from the victim because often there is no individually identifiable victim or because those having specifically suffered damage are likely to ignore the existence of underlying corruption. On the

other hand, none of the persons involved in a pact of corruption have the slightest interest in revealing it as they would be in danger of prosecution and punishment.

88. The weakened public awareness, guidelines or training on corruption issues among officials in certain key areas may hamper the reporting of suspicions of corruption, leaving undetected complex and sophisticated corrupt practices, particularly those used in the context of certain international business transactions. With Finland fully integrated in the international economy, the GET considered that the Finnish system was exposed to corrupt practices, particularly in the private sector especially when dealing with shady business companies from other countries. The risk of such practices affecting also Finland could not be excluded.
89. Therefore, the GET recommended to raise the awareness of public officials, particularly among those more likely to be in contact with corrupt practices, about the need to remain vigilant, report serious suspicions of corruption in accordance with agreed procedures and contribute to the efforts of law enforcement authorities aimed at the detection of corruption offences.

**b. Institutions, bodies and services dealing with the prevention, investigation, prosecution and adjudication of corruption offences**

90. The GET noted the absence of special units within the Police and Prosecution services to deal with corruption cases. The limited extent of corruption in Finland would not justify the setting up of complex and costly new special structures. However, the GET recalled that, without bodies or persons equipped with sufficient knowledge, training and expertise, there could be no efficient protection of society against this dangerous and hidden form of crime. With this in mind, the GET was pleased to learn that the trend towards specialisation of prosecutors was being favoured and that soon key-prosecutors would be appointed to deal with specific forms of criminality, including a key-prosecutor on corruption. It noted, in this respect, that 22 additional prosecutors specialising in economic crime, including corruption, were to be appointed, two of them to deal with corruption cases in the State Prosecution Service. The GET considered that this was in line with the requirements deriving from GPC 6 and from the Criminal law Convention on corruption. It recommended, therefore, pursuing and intensifying this process, with the early appointment of prosecutors specialised in economic crime, including corruption, and a key prosecutor to deal specifically with corruption.
91. The experience gained by prosecutors in conducting economic crime cases before the courts should be duly taken into account already during the investigations of corruption cases. In Finland it is the prosecutor's responsibility to decide whether or not to press charges in the light of the evidence available. It is also his/her responsibility to prove the case against the defendant before the court beyond reasonable doubt. Besides, the investigation of certain corruption offences can be a complex and difficult process. The prosecutor can bring into the investigation not only an overall experience before the courts but also detailed knowledge of all the branches of the law: civil, commercial, corporate, tax and public law, facilitating the conduction of the investigation. In view of the aforesaid, the GET considered that, although the Police is able to perform its tasks independently and without outside pressure, prosecutors should be, in practice, more deeply involved in the direction of investigations, giving concrete and direct instructions to the police on the investigative measures required in order to ensure a successful prosecution.
92. The GET recommended organising appropriate training for prosecutors dealing with corruption and connected offences, in particular on the typologies of this form of criminality, planning



legislation and public procurement procedures. Regional training events reuniting State and local authorities and officials and prosecutors should also be undertaken.

93. The administrative authorities, the police and the prosecutors should establish mechanisms for co-operating in the fight against corruption. The GET recommended the establishment of a light structure of exchange of information and practice with the participation of Prosecutor General's Office, the Police, the State Auditor's Office, the auditors of local authorities, public procurement services and tax authorities. Such a mechanism could identify procedures and activities most vulnerable to corruption, criteria to detect corrupt practices and preventive measures, which could be disseminated throughout the Finnish public administration.

**c. Sources of information**

94. The GET observed that the Finnish system relied on the reports made by citizens, the media and actors of the public system. In the GET's view, the Finnish system is well organised and equipped to handle corruption cases when a corrupt behaviour is disclosed or reported. However, law enforcement agencies do not make often use of pro-active measures to detect corrupt practices by themselves without a previous report. The GET recalled, in this respect, that corruption is a phenomenon that does not exist as long it is not disclosed. It would be reasonable to think that more corrupt activities would come to the surface if the law-enforcement authorities followed more systematically a pro-active approach to the detection and investigation of this type of criminality.
95. The GET recalled that the experience in other countries had shown that certain forms of criminality will largely remain unnoticed until a deliberate effort is made to look for suspicious acts connected with it. In this context, the GET took note that the recent establishment of the Money-Laundering Clearing House in Finland had increased the number of reports on suspicious transactions. At the same time the GET noted that there were no specialised units or police officers specialised on corruption matters.
96. Therefore the GET recommended generally including corruption cases among those cases of "wide national significance" for the purpose of entrusting the investigation thereon to the NBI (see paragraph 18 above). It also recommended that one or several CID police officers specialise in the pro-active investigation of corruption cases and receive special training on typologies, profiling and risk assessment.
97. The GET also considered that it would be important to organise a system according to which information from different sources that could lead to the detection of corruption would be centralised and treated. Special prosecution or police units should be empowered to receive reports on suspicions of bidding cartels, complaints about irregularities in tendering procedures, reports of the State Auditor and local auditors before their publication, reports from tax authorities on suspicious declarations of expenses, reports from competition authorities.
98. The GET also noted with satisfaction that legislation was in preparation to improve the protection of witnesses. Although reported cases of corruption in Finland did not seem linked to organised crime, the GET recalled the importance of adequately protecting the sources of evidence and information in the fight against corruption, a secret form of crime difficult to detect. It recommended, therefore, the pursuance of the efforts leading to the setting up of an appropriate system for the protection of witnesses and collaborators with justice.

99. The GET was informed that in Finland wire-tapping could be used, with a judicial authorisation and under certain conditions, for the investigation of serious offences. However, corruption is not included in the list of such offences. It also noted that the lack of an appropriate legal basis hampered the use of undercover operations, which can be particularly useful for detecting corruption offences. Therefore the GET recommended including corruption in the list of serious offences enabling the use of wire-tapping and other special investigative means.

**d. Immunities**

100. The GET noted with satisfaction that new legislation was being prepared and was likely to be adopted shortly establishing a new criminal offence of bribery of Members of Parliament (hereafter "MP").
101. The GET observed that MPs were not criminally liable for their opinions or conduct in the consideration of a matter, although Parliament could authorise by a five-sixths majority the prosecution of a MP for such opinions or conduct. MPs suspected of having committed a criminal offence do not benefit from immunity and can be prosecuted like any other citizen, even if they cannot be arrested or detained for less serious offences, unless Parliament so authorises. The GET noted with satisfaction, however, that in the case of MPs committing more serious offences – those involving a penalty of more than six month's imprisonment – there were no restrictions to MPs' arrest or detention, except the obligation to inform the Speaker of the Parliament. In these circumstances the GET was of the opinion that the situation was in line with the requirements of GPC 6.
102. On the other hand, the GET noted that Members of Government (hereafter "MG") could be prosecuted before the High Court of Impeachment for unlawful conduct in office, including corruption, following a decision of Parliament to that effect, after an enquiry by the Constitutional Law Committee. Only parliamentary committees, including the Constitutional law one, the CoJ, the PO, or ten MPs were entitled to set into motion the inquiry. For the GET, this implied that bringing charges of corruption against a MG would be an extremely difficult task. Depriving the prosecutor in charge of the case of the power to request the opening of an inquiry could be an obstacle for the proper functioning of the criminal justice system. Besides, a Parliamentary Committee, by definition a political body, could be influenced in its work by political considerations. Accordingly, the GET observed that Finland should consider the possibility of excluding acts of corruption from the scope of the immunity granted to MGs or alternatively simplifying the procedure for lifting their immunity, facilitating the course of criminal justice when MGs are suspected of having committed a corruption offence in office. When making this observation, the GET took into account the low-level of corruption in Finland and the fact that there were no indications that the system described above would have prevented any Minister from being investigated or charged with corruption offences.

**IV. CONCLUSIONS**

103. Finland is one of the members of GRECO least affected by corruption. The transparency and openness of the Finnish society, the control exercised by citizens and the media over the management of public affairs constitutes a powerful deterrent to corruption. High public ethics and an adequate system of internal and external controls also explain the very low-level of corruption cases found in Finland. The GET was favourably impressed by the role played by the PO and the CoJ in effectively monitoring the lawfulness of the acts performed by public administration and state-owned companies. The easy, free of charge access to the PO and the

CoJ facilitates the involvement of the general public in the control of the exercise of public functions.

104. The Police and the Prosecution services are, in the GET's opinion, well organised, equipped and staffed to deal with normal corruption cases coming to their knowledge. The GET noted with satisfaction, in particular, that criminal investigations are conducted with full independence and impartiality by police officers, free from outside or hierarchical pressure. It also observed that prosecutors were fully responsible for deciding whether to press charges in the light of the evidence available and the merits of the case. The GET came to the conclusion that as a whole, the Finnish system is working properly and efficiently against corruption.
105. In spite of this generally favourable conclusion, the GET observed that the general confidence in the Finnish system could weaken the general awareness about the danger of corruption, which could also affect a country like Finland fully integrated in the global economy. Officials employed in sectors vulnerable or likely to be in contact with corrupt acts, are neither warned nor trained to the need to actively look for corrupt practices, detect acts of corruption, report suspicions and co-operate with law-enforcement authorities. Neither the Police nor the Prosecution Service dispose of specialised units or persons to deal with complex cases of corruption. The system relies very much on reporting and pro-active investigations are not often conducted. Moreover, a better integration, in practice, of the work of the Police and the Prosecutor in the pre-trial procedure would improve the quality of the evidence gathered and the effectiveness of the procedure.
106. In view of the above, the GRECO addressed the following recommendations to Finland:
  - i) to raise the awareness of public officials, particularly among those more likely to be in contact with corrupt practices, about the need to remain vigilant, report serious suspicions of corruption in accordance with agreed procedures and contribute to the efforts of law enforcement authorities aimed at the detection of corruption offences ;
  - ii) pursuing and intensifying the process of specialisation of prosecutors, with the early appointment of prosecutors specialised in economic crime, including corruption, and a key prosecutor to deal specifically with corruption related offences, in whichever context it may arise;
  - iii) to systematically treat corruption cases as cases of "wide national significance" for the purpose of entrusting the investigation thereon to the NBI, specialising one or several CID police officers in the pro-active investigation of corruption cases and providing them with special training on typologies, profiling and risk assessment of corruption offences;
  - iv) organising a system according to which information from different sources that could lead to the detection of corruption would be centralised and treated, in particular reports on suspicions of bidding cartels, complaints about irregularities in tendering procedures, reports of the State Auditor and local auditors, reports from tax authorities on suspicious declarations of expenses, reports from competition authorities;
  - v) the establishment of a light structure of exchange of information and practice with the participation of the Prosecutor General's Office, the Police, the State Auditor's Office, the auditors of local authorities, public procurement services and tax authorities; such a mechanism could identify procedures and activities most vulnerable to corruption, criteria

to detect corrupt practices and preventive measures, which could be disseminated throughout the Finnish public administration;

- vi) organising appropriate training for prosecutors dealing with corruption and connected offences, in particular on the typologies of this form of criminality, planning legislation and public procurement procedures as well as regional training events reuniting local authorities and officials and prosecutors should be undertaken;
  - vii) improving the measures already in place for the protection of witnesses and collaborators of justice;
  - viii) including corruption in the list of serious offences enabling the use of wire-tapping and other special investigative means;
107. Moreover, the GRECO invites the authorities of Finland to take account of the observations made by the experts in the analytical part of this report.
108. Finally, in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of Finland to present a report on the implementation of the above-mentioned recommendations before 31 December 2002.