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**Public**  
**Greco Eval III Rep (2007) 2E**  
**Theme I**

## **Third Evaluation Round**

### **Evaluation Report on Finland on Incriminations (ETS 173 and 191, GPC 2) (Theme I)**

Adopted by GRECO  
at its 35<sup>th</sup> Plenary Meeting  
(Strasbourg, 3-7 December 2007)

## I. INTRODUCTION

1. Finland joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2000) 4E) in respect of Finland at its 5<sup>th</sup> Plenary Meeting (11-15 June 2001) and the Second Round Evaluation Report (Greco Eval II Rep (2003) 3E) at its 19<sup>th</sup> Plenary Meeting (28 June - 2 July 2004). The afore-mentioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of Party Funding:** Articles 11, 12, 13b, 14 and 16 of Recommendation Rec (2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme I (hereafter referred to as the "GET"), which carried out an on-site visit to Finland on 11 and 12 June 2007, was composed of Mr Flemming DENKER, Deputy Director, The Public Prosecutor for Serious Economic Crime (Denmark) and Mr Henry MATTHEWS, Senior prosecutor at the Office of the Director of Public Prosecutions (Ireland). The GET was supported by Mr Björn JANSON, Deputy to the Executive Secretary and Ms Laura SANZ-LEVIA from GRECO's Secretariat. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2007) 4E, Theme I), as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: the Ministry of Justice (the Crime Policy Department, the Law Drafting Department and the Department of Judicial Administration) and the Ministry of the Interior. The GET also met with representatives of the National Bureau of Investigation (NBI), the Office of the Prosecutor General, Courts and the National Research Institute of Legal Policy. Moreover, the GET met with Transparency International and the media.
5. The present report on Theme I of GRECO's 3<sup>rd</sup> Evaluation Round – "Incriminations" – was prepared on the basis of the replies to the questionnaire and information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Finnish authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Finland in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme II – "Transparency of party funding", is set out in Greco Eval III Rep (2007) 2E, Theme II.

## II. INCRIMINATIONS

### Description of the situation

7. Finland ratified the Criminal Law Convention on Corruption (ETS 173) on 3 October 2002 and the Convention entered into force in respect of Finland on 1 February 2003. Finland has made reservations in respect of Article 12 (trading in influence) and Article 17 (jurisdiction).
8. Finland has not signed or ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191). The GET was informed by officials of the Ministry of Justice that the intention is to sign and ratify the Protocol before the end of 2007, without any reservation or declaration.

### Bribery of domestic public officials (Articles 1-3 and 19.1 of ETS 173)

9. Active bribery<sup>1</sup> of domestic public officials is criminalised by virtue of the provisions contained in Chapter 16, sections 13 and 14 of the Penal Code (PC), while those concerning passive bribery of public officials appear in Chapter 40, sections 1–3 of the PC which read (in the official translation):

#### **Active bribery**

#### **Chapter 16 - Offences against the public authorities (563/1998)**

##### *Section 13 – Bribery (604/2002)*

*(1) A person who promises, offers or gives to a public official or gives a public official in exchange for his/her actions in service a gift or other benefit intended for him/her or for another, that influences or is intended to influence or is conducive to influencing the actions in service of the public official, shall be sentenced for bribery to a fine or to imprisonment for at most two years.*

*(2) Also a person who, in exchange for the actions in service of a public official, promises, offers or gives the gift or benefit referred to in subsection 1 shall be sentenced for bribery.*

##### *Section 14 - Aggravated bribery (563/1998)*

*If in the bribery:*

*(1) the gift or benefit is intended to make the person act in service contrary to his/her duties with the result of considerable benefit to the briber or to another person or of considerable loss or detriment to another person; or*

*(2) the value of the gift or benefit is considerable*

*and the bribery is aggravated also when assessed as whole, the offender shall be sentenced for aggravated bribery to imprisonment for at least four months and at most four years.*

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<sup>1</sup> The provisions on bribery in the public sector apply to both physical and legal persons, as appropriate.

**Passive bribery**  
**Chapter 40 - Offences in office (604/2002)**

*Section 1 – Acceptance of a bribe (604/2002)*

*If a public official, for his/her actions while in service, for himself/herself or for another,*

*(1) asks for a gift or other unjustified benefit or otherwise takes an initiative in order to receive such a benefit,*

*(2) accepts a gift or other benefit which influences, which is intended to influence or which is conducive to influencing him/her in said actions, or*

*(3) agrees to the gift or other benefit referred to in paragraph 2 or to a promise or offer thereof, he/she shall be sentenced for acceptance of a bribe to a fine or to imprisonment for at most two years. A public official shall be sentenced for acceptance of a bribe also if for his/her actions while in service agrees to the giving of the gift or other benefit referred to in subsection 1(2) to another or to a promise or offer thereof. A public official may also be sentenced to dismissal if the offence demonstrates that he/she is manifestly unfit for his/her duties.*

*Section 2 - Aggravated acceptance of a bribe (604/2002)*

*If in the acceptance of a bribe*

*(1) the public official stipulates the bribe as a condition for his/her actions or it is his/her intention, because of the gift or benefit, to act in a manner contrary to his/her duties to the considerable benefit of the party giving the gift or of another, or to the considerable loss or detriment of another, or*

*(2) the gift or benefit is of significant value*

*and the acceptance of a bribe is aggravated also when assessed as a whole, the public official shall be sentenced for aggravated acceptance of a bribe to imprisonment for at least four months and at most four years and in addition to dismissal from office.*

*Section 3 – Bribery violation (604/2002)*

*If a public official, for himself/herself or for another*

*(1) asks for a gift or other unlawful benefit or otherwise takes an initiative in order to receive such a benefit, or*

*(2) accepts or agrees to a gift or other benefit or agrees to a promise or offer of such a gift or other benefit so that the actions are conducive to weakening confidence in the impartiality of the actions of authorities, he/she shall be sentenced, if the act is not punishable as the acceptance of a bribe or aggravated acceptance of a bribe, for a bribery violation to a fine or to imprisonment for at most six months.*

Elements/concepts of the offence

*“Domestic public official”*

10. The concept of “public official” is defined in Chapter 40, section 11(1) of the Penal Code, as “...a person who serves in an office or in a comparable position of service in respect of the state, a municipality or an association of municipalities or of a co-operative body under public law of municipalities, Parliament, a state-owned company or the Evangelical Lutheran Church or the Orthodox Church or its parish or a co-operative body among parishes, the province of Åland, the Bank of Finland, the Social Insurance Institution, the Institute of Occupational Health, a municipal pension institution, the Municipal Surety Centre or a municipal labour market office”.

11. According to Chapter 16, Section 20 (3 and 5) and Chapter 40, Section 12 (1-3 and 5) and Section 13 of the Penal Code, the concept of public official covers persons elected to public office, employees of a public corporation, foreign public officials, persons exercising public authority and soldiers. Furthermore, the GET understood that the notion “public official” in Finland covers mayors, ministers, judges, lay judges, prosecutors and similar holders of judicial office.

*“Promising, offering or giving”(active bribery)*

12. The elements of “promising”, “offering” and “giving” are expressly contained in the penal provisions concerning active bribery (Chapter 16, section 13 (1) of the Penal Code).

*“Request or receipt, acceptance of an offer or promise” (passive bribery)*

13. Passive bribery is covered in three distinct situations, i.e. when a public official asks for a gift/benefit, accepts a gift/benefit or agrees to a gift/benefit (Chapter 40, section 1 of the Penal Code).

*“Undue advantage”*

14. The relevant provisions concerning *active bribery* of domestic public officials do not specify that the advantage (i.e. the “gift or other benefit”) must be undue. Any gift/benefit may come under the scope of the offence if its purpose is to influence a public official’s action in service.

15. In respect of *passive bribery* of domestic public officials, the law specifies that the benefit is to be *undue* in order to be covered by the offence. The English translation of the Penal Code submitted to the GET uses different expressions: “*unjustified benefit*” (passive bribery, Chapter 40, section 1) and “*unlawful benefit*” (passive bribery violation, Chapter 40, Section 3). Having also examined the original texts in Finnish/Swedish, the GET noted that the original wording of the law (“*oikeudettoman edun*” / “*orättmätig förmån*”) in all forms of passive bribery of a public official should, more correctly, be translated as “*undue benefit*”.

16. Concerning the interpretation of undue benefits, the GET was made aware of a handbook issued by the Ministry of Finance “Values in the daily job – civil servants’ ethics” which *inter alia* states that “*a civil servant does not accept a financial or other benefit, if it might weaken the trust in the civil servant or the authority. Trust may be put at risk, even if the financial or other benefit does not actually affect the official function if it may, in outsiders’ eyes, look as if it might influence it. The monetary value of the prohibited benefit has not been defined. In individual cases, the issue is resolved taking into consideration the official’s position in the organisation, his or her duties, the kind of benefit in question, whether it is repeated, and other circumstances surrounding the act*”.

17. The GET was also made aware of a regulation issued by the Ministry of Finance (10/2001) concerning guidelines to public officials in respect of travel financed by external entities. In this regulation it is, stated, *inter alia*, that in Finland there are no rules or guidelines for how to assess whether a benefit is undue or not. It is stressed in the same regulation that it is not only the economic value of a benefit that is decisive when assessing to what extent the benefit might jeopardise the trust in a public official or an authority and that there is not sufficient court practice in order to draw any conclusions in this respect. This situation, which, according to the Ministry of Finance regulation, calls for a case by case approach, was confirmed by public officials met by the GET, who indicated that in the absence of sufficient guidelines, one must use “common sense” when considering what constitutes an undue advantage.

18. Moreover, a gift or benefit which is *considerable*, may give rise to aggravated bribery, both in its active and passive forms (Penal Code, Chapter 16, section 14 and Chapter 40 section 2). The GET was informed that a gift or a benefit would be “considerable” if the monetary value was around 10 000 Euros or more.

*“Directly or indirectly”*

19. The wording “directly or indirectly” is not expressly used in the law. The GET was nevertheless informed that this would not be an obstacle to prosecuting bribery offences involving intermediaries. The Finnish authorities referred in this respect to Chapter 5, Section 6 of the Penal Code which contains general provisions on participation (aiding and abetting) in criminal offences, including bribery offences. In particular, *“a person who, before or during the commission of an offence, intentionally furthers the commission by another of an intentional act or of its punishable attempt, through advice, action or otherwise, shall be sentenced for abetting on the basis of the same legal provision as the offender”*.

*“For himself or herself or for anyone else”*

20. The wording *“for himself or herself or for another”* provided in the law implies that the gift/benefit may be intended also in respect of a third party.

*“To act or refrain from acting in the exercise of his or her functions”*

21. The bribery legislation contains the expression “actions in service” and does not explicitly refer to omissions. However, according to information provided to the GET during the visit, actions are to be understood as decisions of a public official to act or refrain from acting.

*“Committed intentionally”*

22. A basic principle of the Penal Code is that an action is punishable only when committed intentionally, subject to provisions to the contrary. Intent is defined as follows in Chapter 3, section 6 of the Penal Code: *“An offender should be considered to have caused the consequence described in the statutory definition intentionally if the causing of the consequence was the offender's purpose or s/he had considered the consequence as a certain or quite probable result of his/her actions. A consequence is also to be considered as caused intentionally in case the offender has considered the cause as certainly connected with the consequence that s/he had aimed at”*. Bribery offences are criminalised only when committed intentionally. Furthermore, the offender must be aware of all the facts required to fulfil all elements of the offence. If the offender is not aware of these or is mistaken in some respect, the act cannot be considered intentional.
23. Moreover, the acceptability or non-acceptability of the benefit in a bribery situation is assessed depending on whether the benefit was intended to influence or to seek to influence the actions in service of a public official. In other words, the benefit need not have had any influence in reality on the service.

Sanctions

24. There are two levels of active bribery of public officials and the sanctions range from a fine to two years imprisonment and, in case the offence is considered aggravated, the sanctions foreseen range from four months to four years' imprisonment.

25. There are three levels of passive bribery of public officials and, consequently, three levels of sanctions: "Bribery violation", which is the least serious form, may be sanctioned with a fine or up to six months imprisonment, "bribery" may be sanctioned with a fine or up to two years imprisonment and "aggravated bribery" carries a sanction of imprisonment, between four months and four years.
26. Moreover, passive bribery may, in addition, lead to dismissal of the (domestic) public official in case the offence committed demonstrates that s/he is manifestly unfit for his/her duties (PC, Chapter 40, section 1). In cases of aggravated passive bribery, dismissal from office is an obligatory sanction, in addition to imprisonment.
27. Similar sanctions are provided for offences, such as fraud and abuse of public office.

#### Statistics/case law

28. Statistics show that, during the period of 1996-2005, 78 cases of active bribery of a public official (Penal Code 16:13) were reported to the police. During the same period 47 cases were prosecuted and in 33 cases there were convictions by courts in respect of this offence. Fourteen cases were rejected by the courts. The large majority of the offenders concerned were sentenced to day fines, which vary on average between 25-80 day fines. In three cases between 1996 and 2005 offenders were sentenced to suspended imprisonment; in 1997 to four months in 2001 to two months and in 2004 to three months. In 2005 there was one conviction resulting in 45 hours community service. In respect of aggravated active bribery of public officials (PC, Chapter 16, section 14) there have been five cases between 1996 and 2005. These resulted in day fines (two cases in 1996), seven months suspended sentence (one case in 1999) and in two cases sanctions were waived (1999). In two cases offenders were sentenced to seven months suspended imprisonment (one case in 1996 and another in 1999), in one case to seven months unconditional imprisonment (1996) and in two cases no sanctions were imposed (1999).
29. In respect of passive bribery of public officials, statistics show that 56 cases were reported to the police in the period 1996-2005. During the same period 14 cases lead to prosecution and there were 9 convictions by courts. Five cases were rejected by the courts. The majority of these convictions resulted in day fines, varying on average between 45 and 90 day fines. In three cases offenders were sentenced to suspended imprisonment; in 1996 and 1997 to four months respectively, and in 1998 to two months. In respect of aggravated passive bribery of public officials (PC, Chapter 40, section 2) there have been three cases in the period between 1996 and 2005; in 1996 one case resulted in 20 months unconditional imprisonment and the other in 10 months suspended imprisonment. In 2005, one case resulted in a nine month suspended prison sentence. Finally, in respect of the least serious form of this offence, bribery violation (PC, Chapter 40, section 3), there have been nine convictions resulting in day fines (between 6 and 23 on average). Sanctions were not imposed in two cases (2001).

#### **Bribery of members of domestic public assemblies (Article 4 of ETS 173)**

30. The Penal Code makes a distinction between members of Parliament and members of other public assemblies. Whereas active and passive bribery of a member of Parliament is regulated separately, the offence of bribery of public officials also covers members of domestic assemblies, other than parliamentarians.

i) Members of Parliament

31. Active and passive bribery of a member of Parliament are criminal offences under the Penal Code, Chapter 16, section 14 a and Chapter 40, section 4. Members of Parliament are not covered by the notion “public officials” in the Penal Code. Special provisions applicable to members of Parliament have instead been tailored in the light of the specific nature and functions of parliamentarians.

**Chapter 16, Section 14 a – Bribery of a member of Parliament (604/2002)**

*A person who promises, offers or gives a member of Parliament a gift or other unlawful benefit intended for him/her or for another, so that said member of Parliament would, in exchange for the benefit and in his/her parliamentary mandate, act so that a matter being considered or to be considered by Parliament would be decided in a certain way, shall be sentenced for bribery of a member of Parliament to a fine or to imprisonment for at most four years.*

**Chapter 40, Section 4 – Acceptance of a bribe as a member of Parliament (604/2002)**

*If a member of Parliament, for himself/herself or for another*  
*(1) requests a gift or other unlawful benefit or otherwise takes an initiative in order to receive such a benefit, or*  
*(2) accepts or agrees to accept a gift or other unlawful benefit or agrees to a promise or offer of such a gift or other benefit and promises, in exchange for the benefit, to act in his/her parliamentary mandate so that a matter being considered or to be considered by Parliament would be decided in a certain way, he/she shall be sentenced for acceptance of a bribe as a member of Parliament to a fine or to imprisonment for at most four years.*

Elements/concepts of the offence

*“Promising, offering or giving” (active bribery)*

32. The elements of “promising”, “offering” and “giving” are expressly contained in the penal provisions (Chapter 16, section 14a of the Penal Code).

*“Request or receipt, acceptance of an offer or promise” (passive bribery)*

33. Passive bribery is at stake when a parliamentarian requests a benefit, accepts or agrees to accept a gift/benefit or agrees to a promise or offer of a gift/benefit (Chapter 40, section 4 of the Penal Code).

*“To act or refrain from acting in the exercise of his or her functions”*

34. The responsibility for passive bribery by members of Parliament has in relation to passive bribery of public officials, been further specified in law through the use of the expression *“and promises, in exchange for the benefit, to act in his/her parliamentary mandate so that a matter being considered or to be considered by Parliament would be decided in a certain way”*. The law mentions action of a parliamentarian but does not refer expressly to omissions. The GET was informed, however, that decisions of a member of Parliament to act or refrain from acting are covered by the law.



### *“Undue advantage”*

35. The law (Penal Code, 16 Chapter, section 14a) as translated requires the benefit to be “unlawful” both in respect of active and passive bribery. Having also examined the original text in Finnish/Swedish, the GET noted that in the original Finnish/Swedish wording the term “*oikeudettoman edun*” / “*orättmätig förmån*” is used in both situations which should, more correctly, be translated as “*undue benefit*”.

### *Other elements*

36. What is described concerning other specific elements/concepts “*directly or indirectly*”, “*for himself or herself or for anyone else*” and “*committed intentionally*” in respect of bribery of domestic public officials (above) applies also in respect of bribery of members of Parliament.

### ii) Members of public assemblies, other than parliamentarians

37. In respect of members of domestic public assemblies, other than parliamentarians (such as members of a local council), the provisions concerning active and passive bribery of domestic public officials are applicable in accordance with Chapter 16, section 20(3) and Chapter 40, section 12(1,3) of the Penal Code, which refers to *persons elected to a public office*. A person elected to a public office is defined in Chapter 40, section 11(2) of the Penal Code as “*a member of a municipal council and any other member of a popularly elected representative body of a public body referred to in paragraph 1 other than a member of Parliament acting in his/her Parliamentary mandate, and a member of a public body or institution referred to in paragraph 1, such as the Government, municipal executive board, board, board of directors, committee, commission and advisory board and any other elected official of said public body or institution;*”. As the regulations concerning bribery of domestic public officials are applicable, the specific elements/concepts described under such bribery (above) also apply to bribery of members of domestic public assemblies, other than parliamentarians.

### Sanctions

38. Bribery of *members of Parliament* is sanctioned with a fine or imprisonment for at most four years in respect of its active as well as passive forms. Consequently, the maximum penalty of four years’ imprisonment provided for in the penal provisions concerning bribery of a member of Parliament covers the same range of penalties that applies to bribery and aggravated bribery of a public official in conjunction, i.e. up to 4 years’ imprisonment. The law does not, however, provide for an aggravated form of bribery in respect of members of Parliament.
39. Bribery of *members of public assemblies other than parliamentarians*, carries the same sanctions as those of bribery of public officials (including bribery violation), i.e. a fine or up to two years imprisonment or, if aggravated, four months’ to four years’ imprisonment.
40. The authorities informed the GET that there were no statistics or case law available in respect of these offences.

### **Bribery of foreign public officials (Article 5 of ETS 173)**

41. The provisions concerning active and passive bribery of domestic public officials are applicable also in respect of *bribery of foreign public officials* in accordance with Chapter 16, section 20(3) and Chapter 40, section 12(1,3) of the Penal Code. The concept “foreign public official” is defined in Chapter 40, section 11(4) of the Penal Code as “... a person who has been appointed or elected to an administrative or judicial office or position in a body or court of a foreign state or public international organisation, or who otherwise attends to a public function on behalf of a body or court of a foreign state or public international organisation”. As the provisions concerning bribery of domestic public officials are also applicable in this respect, the specific elements/concepts described in respect of such bribery (above) also apply in respect of bribery of foreign public officials.
42. The sanctions described under bribery of domestic officials (above) apply also to bribery of foreign public officials, with the exception of dismissal from office.
43. The authorities informed the GET that there were no statistics or case law available in respect of these offences.

### **Bribery of members of foreign public assemblies (Article 6 of ETS 173)**

#### Elements/concepts of the offence

44. Active and passive bribery of members of foreign public assemblies are criminal offences under the Penal Code, either as bribery of members of foreign parliaments or as bribery of members of foreign public assemblies other than parliamentarians.
45. The provisions on bribery of members of parliament also apply to *members of foreign parliaments*. This follows from Chapter 16, section 20(4) of the Penal Code (active bribery), which reads: “For the purposes of section 14 a of this chapter, a member of a foreign Parliament referred to in chapter 40, section 11 is equated with a member of Parliament as the object of the criminal act” and from Chapter 40, section 12(4) of the Penal Code (passive bribery). Moreover, a member of a foreign parliament covers not only parliamentarians of a foreign state, but also members of international parliamentary assemblies (Chapter 40, Section 11(6) of the Penal code). *Members of foreign public assemblies who are not parliamentarians*, are considered as foreign public officials and are covered, consequently, by the same provisions above.
46. The elements/concepts described under bribery of members of Parliament / members of public domestic assemblies other than parliamentarians also apply to bribery of members of foreign Parliaments / members of foreign public assemblies other than parliamentarians.
47. The sanctions under bribery of members of Parliament / members of public domestic assemblies (above) apply in respect of bribery of members of foreign Parliaments / foreign public assemblies other than parliamentarians, with the exception of removal from office.
48. The authorities informed the GET that there were no statistics or case law available in respect of these offences.

## Bribery in the private sector (Articles 7 and 8 of ETS 173)<sup>2</sup>

49. Active and passive bribery in the private sector are criminal offences under Chapter 30 (Business offences), sections 7 and 8 of the Penal Code, which read as follows:

### **Section 7 - Bribery in business (769/1990)**

*A person who promises, offers or gives an unlawful benefit (bribe) to*

- (1) a person in the service of a business,*
- (2) a member of the administrative board or board of directors, the managing director, auditor or receiver of a corporation or of a foundation engaged in business, or*
- (3) a person carrying out a duty on behalf of a business, intended for the recipient or another, in order to have the bribed person, in his/her function or duties, favour the briber or another person, or to reward the bribed person for such favouring, shall be sentenced for bribery in business to a fine or to imprisonment for at most two years.*

### **Section 8 - Acceptance of a bribe in business (604/2002)**

*A person who in the service of a business, as a member of the administrative board or board of directors, the managing director, auditor or receiver of a corporation or of a foundation engaged in business or in carrying out a duty on behalf of a business demands, accepts or receives a bribe for himself/herself or another or otherwise takes an initiative towards receiving such a bribe, for favouring or as a reward for such favouring, in his/her function or duties, the briber or another, shall be sentenced for acceptance of a bribe in business to a fine or to imprisonment for at most two years.*

## Elements/concepts of the offence

*“Persons who direct or work for, in any capacity, private sector entities”*

50. With regard to the scope of perpetrators, the GET was informed that sections 7 and 8 should be understood in their broadest sense as covering any person who directs or works for a business, independent of his/her position in the business, from the top to the bottom, i.e., members of the board, persons in the service of a business and persons carrying out a duty on behalf of a business. The GET also examined the original text of the law, according to which Sections 7 (1) and 8(1) cover employees and Sections 7(3) and 8(3) persons commissioned for a particular task on behalf of the business other than employees.

*“In the course of business activity”; “...in breach of [their<sup>3</sup>] duties”*

51. The offence of bribery in the private sector applies to “business” wherein the operators are primarily companies and corporations under private law. Profit need not be sought through the activities in order for these to qualify as “business”. A breach of duty is not required.

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<sup>2</sup> Finland has made a reservation in respect of Articles 7 and 8 of the Criminal Law Convention on Corruption, establishing a dual criminality requirement in respect of offences committed abroad.

<sup>3</sup> By the persons who direct or work for, in any capacity, private sector entities.

*“Promising, offering or giving”(active bribery)*

52. The elements of “promising”, “offering” and “giving” are expressly contained in the provision concerning active bribery (Chapter 30, Section 7 of the Penal Code).

*“Request or receipt, acceptance of an offer or promise” (passive bribery)*

53. Passive bribery is covered in three distinct situations, i.e. when the bribee demands, accepts or agrees to a bribe (Chapter 30, section 8 (3) of the Penal Code).

*“Undue advantage”*

54. The English translation of the Penal Code submitted to the GET uses the expressions “*unlawful benefit*” (active bribery, Chapter 30, Section 7) and “*bribe*” (passive bribery, Chapter 30, Section 8). Having also examined the original texts in Finnish/Swedish, the GET noted that both active and passive bribery in the private sector require an “*undue benefit*”.

*“Directly or indirectly*

55. The wording “directly or indirectly” is not expressly covered by the law. The GET was informed that this would not be an obstacle to prosecuting bribery offences involving intermediaries. The Finnish authorities referred in this respect to Chapter 5, section 6 of the Penal Code which contains general provisions on participation (aiding and abetting) in criminal offences, including bribery offences (“*a person who, before or during the commission of an offence, intentionally furthers the commission by another of an intentional act or of its punishable attempt, through advice, action or otherwise, shall be sentenced for abetting on the basis of the same legal provision as the offender*”).

*“For themselves or for anyone else”*

56. The wording “*for himself/herself or another*” (third party) is provided for in law.

*“Committed intentionally”*

57. The requirement of intent is specific in that the purpose of the giving of the bribe must be to make the bribee favour the briber or reward him/her – directly or indirectly - for such favouring. Correspondingly, the purpose of the person accepting the bribe must be to favour the briber or reward him/her –directly or indirectly- for such favouring.

### Sanctions

58. The sanctions in respect of bribery in the private sector – active as well as passive - are a fine or up to two years’ imprisonment. There is no aggravated form of private sector bribery and there is no possibility to go beyond a sentence of 2 years of imprisonment. On the other hand, the sanction of a fixed-term business prohibition may be imposed on a person who is part of the management of a business or on an employee of a business committing a bribery offence in the private sector (Act on Business Prohibitions). A corporate fine may also be imposed on the business in whose activities the person committing active or passive bribery was employed pursuant to the provisions on corporate criminal liability (Chapter 9 and Chapter 16:18 of the Penal Code).

### Statistics/case law

59. Statistics show that during the period 1996-2005 six cases of active bribery in the private sector were sent to prosecution and there was one conviction in respect of this offence. The offender concerned was given a suspended sentence of 3 months. Four cases were rejected and one declared inadmissible by the courts.
60. In respect of passive bribery in the private sector, statistics show that there were two cases prosecuted and two cases adjudicated by court during the period 1996-2005. These cases resulted in two convictions; in one case the sanction was a suspended sentence of 3 months and in the other no punishment was imposed.

### **Bribery of officials of international organisations (Article 9 of ETS 173)**

61. Active and passive *bribery of officials of international organisations*, covered by the notion “foreign public officials”, are criminalised pursuant to Chapter 16, section 20(3) and Chapter 40, section 12(3) of the Penal code, which make reference to the provisions of active and passive bribery of domestic public officials (Chapter 16, section 13 and 14, and Chapter 40, section 1–3) referred to above. A definition of “*foreign public official*” appears in Chapter 40, section 11(4) of the Penal Code which reads: “*a foreign public official is defined as a person who has been appointed or elected to an administrative or judicial office or position in a body or court of a foreign state or public international organisation, or who otherwise attends to a public function on behalf of a body or court of a foreign state or public international organisation*”. The elements/concepts described under bribery of domestic public officials (above) also apply to bribery of officials of international organisations.
62. The sanctions mentioned under bribery of domestic officials (above), with the exception of removal from office (PC, Chapter 40, section 12(3)), also apply in respect of bribery of officials of international organisations.
63. The authorities informed the GET that there were no statistics or case law available in respect of this offence.

### **Bribery of members of international parliamentary assemblies (Article 10 of ETS 173)**

64. Active and passive bribery of members of international parliamentary assemblies, covered by the notion “*member of a foreign parliament*”, are criminalised pursuant to Chapter 16, section 20(4) and Chapter 40, section 12(4) of the Penal Code according to the same provisions as those applicable to bribery of members of Parliament (see above). A member of a foreign Parliament is defined in Chapter 40, section 11(6) of the Penal Code as “*...a person who is a member of the Parliament of a foreign state or an international Parliamentary assembly*”. Other elements/concepts described under bribery of members of Parliament also apply to bribery of members of international parliamentary assemblies.
65. The sanctions mentioned under bribery of members of Parliament (above), with the exception of removal from office (PC, Chapter 40, section 12(3)), also apply in respect of bribery of officials of international parliamentary assemblies.
66. The authorities informed the GET that there were no statistics or case law available in respect of this offence.

### **Bribery of judges and officials of international courts (Article 11 of ETS 173)**

67. Active and passive *bribery of judges and officials of international courts*, covered by the notion “foreign public officials”, are criminalised in the same way as domestic public officials, pursuant to Chapter 16, section 20(1) and Chapter 40, section 12(3) of the Penal Code. A *foreign public official* is defined as a person who has been appointed or elected to an administrative or judicial office or position in a body or court of a foreign state or public international organisation, or who otherwise attends to a public function on behalf of a body or court of a foreign state or public international organisation. The elements/concepts described under bribery of domestic public officials (above) also apply to bribery of judges and officials of international courts.
68. The sanctions available for bribery of domestic public officials (above), with the exception of removal from office (PC, Chapter 40, section 12(3)), also apply in respect of bribery of judges and officials of international courts.
69. The authorities informed the GET that there were no statistics or case law available in respect of this offence.

### **Trading in influence (Article 12 of ETS 173)**

70. Trading in influence is not included in the penal legislation and Finland has made a reservation in this respect, see Annex B. The reservation to Article 12 was first introduced in 2002 and renewed in March 2005.

### **Bribery of domestic arbitrators (Article 1, sections 1 and 2 and Articles 2 and 3 of ETS 191)**

71. Active and passive *bribery of domestic arbitrators* are criminal offences under the Penal Code. The provisions concerning bribery of domestic public officials (Penal Code 16:13 and 14, 40:1–3) are applicable in respect of bribery of persons exercising public authority. A person *exercising public authority* is, in accordance with Chapter 40, section 11(5) of the Penal Code, defined as somebody with functions based on an act or decree, authorised to issue orders that oblige another or to decide on the interest, rights or duties of another, or who on the basis of an act or decree intervenes within the framework of his/her duties in the benefits or rights of another, and who on the basis of an act or decree or on the basis of a commission from an authority on the basis of an act or decree, participates in the preparation of a decision referred to above, by presenting a draft decision or a proposal for a decision, preparing a report or plan, taking a sample, carrying out an inspection etc. Other elements/concepts described under bribery of domestic public officials (above) also apply to bribery of domestic arbitrators.
72. Domestic arbitrators are governed by the Arbitration Act (967/1992).
73. The sanctions described under bribery of domestic officials (above) also apply in respect of bribery of domestic arbitrators.
74. The authorities informed the GET that there were no statistics or case law available in respect of this offence.

### **Bribery of foreign arbitrators (Article 4 of ETS 191)**

75. The authorities claim that *bribery of foreign arbitrators* is covered by the notion of “foreign public officials” (Chapter 40, Section 12 (3) of the Penal Code). The definition of a *foreign public official* is contained in Chapter 40, section 11(4) of the Penal Code, which reads: “a *foreign public official* is defined as a person who has been appointed or elected to an administrative or judicial office or position in a body or court of a foreign state or public international organisation, or who otherwise attends to a public function on behalf of a body or court of a foreign state or public international organisation”. The authorities have added that in case a foreign arbitrator would not be covered by the notion of foreign public official, s/he would be seen as a person exercising public authority (Chapter 40, Section 12 (1) of the Penal Code). Other elements/concepts described under bribery of domestic officials (above) also apply to bribery of foreign arbitrators.
76. The sanctions described under bribery of domestic public officials (above) with the exception of removal from office (PC, Chapter 40, section 12(3)), also apply to bribery of foreign arbitrators.
77. The authorities informed the GET that there were no statistics or case law available in respect of this offence.

### **Bribery of domestic jurors (Article 1, section 3 and Article 5 of ETS 191)**

78. Active and passive *bribery of domestic jurors* are covered by the Penal Code. This follows from Chapter 16, section 20(3) and Chapter 40, section 12(1) of the Penal Code, according to which the provisions on bribery of a public official also apply to a person *exercising public authority*. “Jurors” are defined as “lay judges”. In Finnish courts, lay judges are members of a collegial body who, together with the ordinary judge/judges, have to decide on the guilt and sanctions in criminal proceedings. Both judges and lay judges are public officials exercising public authority. A person *exercising public authority* is, defined in Chapter 40, section 11(5) of the Penal Code, see above under *bribery of domestic arbitrators*. Other elements/concepts described under bribery of domestic public officials (above) also apply in respect of bribery of domestic jurors.
79. The sanctions described under bribery of domestic public officials (above) also apply to bribery of domestic jurors.
80. The authorities informed the GET that there were no statistics or case law available in respect of this offence.

### **Bribery of foreign jurors (Article 6 of ETS 191)**

81. Active and passive *bribery of foreign jurors* are criminal offences under the Penal Code. A foreign juror is considered a foreign public official, following the same rationale as described above under bribery of domestic jurors and foreign arbitrators. The elements/concepts described under bribery of domestic public officials (above) also apply in respect of bribery of foreign jurors.
82. The sanctions described under bribery of domestic public officials (above) with the exception of removal from office (PC, Chapter 40, section 12(3)), also apply to bribery of foreign jurors.
83. The authorities informed the GET that there were no statistics or case law available in respect of this offence.

## Other questions

### Participatory acts

84. Chapter 5, section 6 of the Penal Code contains general provisions on participation (aiding and abetting) in criminal offences, which are applicable to the above-mentioned bribery offences. In particular, *“a person who, before or during the commission of an offence, intentionally furthers the commission by another of an intentional act or of its punishable attempt, through advice, action or otherwise, shall be sentenced for abetting on the basis of the same legal provision as the offender”*.

### Jurisdiction

85. The rules of Finnish criminal jurisdiction are laid down in Chapter 1 of the Criminal Code. These rules cover acts committed within the territory of Finland (principle of territoriality, Chapter 1, Section 1, Penal Code) as well as acts committed abroad by Finnish nationals and foreigners domiciled in Finland (principle of nationality, Chapter 1, Section 6, Penal Code). Offences are deemed to have been committed both where the criminal act was committed and where the consequence of the offence became apparent (Chapter 1, Section 10, Penal Code). If there is no certainty as to the place of the commission of an offence, but there is justified reason to believe that the offence was committed in Finland, the offence is deemed to have been committed in Finland.
86. Pursuant to Chapter 1, Section 11(2) of the Penal Code, the general principle of dual criminality provided for in the Penal Code is not applicable in respect of any of the offences of active bribery in the public sector (Chapter 16, Sections 13, 14 and 14a, Penal Code) nor with regard to passive bribery where the offender is a member of Parliament, a foreign public official or a member of a foreign parliament (Chapter 40, Sections 1-4, Penal Code). It should be noted in this respect that members of a foreign public assembly other than parliamentarians are covered by the notion “foreign public official” and thus also excepted from the dual criminality requirement.
87. Finland has made a reservation<sup>4</sup> in respect of Article 17, paragraph 1(b) of the Criminal Law Convention on Corruption in order to apply the requirement of dual criminality in respect of active or passive bribery in the private sector committed abroad by a Finn, provided that the criminal offence does not seriously interfere with or jeopardise the governmental, military or economic interests or benefits of Finland. Consequently, if the offence has been committed in the territory of a foreign State, Finnish law would only apply if the offence was also criminalised under the law of that State and Finnish courts cannot deliver a more severe sentence than would be possible in the other State.
88. The GET was informed that there were no court decisions/case law in connection with jurisdiction in respect of bribery offences.

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<sup>4</sup> The reservation contained in the instrument of acceptance deposited by the Government of Finland on 3 October 2002, was renewed - following an explanation to GRECO - in accordance with Article 38 of the Criminal Law Convention on Corruption, on 13 July 2006. The reservation remains valid for three years until 2009.



### Statute of limitations

89. The period of limitation is, as a main rule, determined by the length of imprisonment which can be imposed for the offence in question (Chapter 8, Section 1, Penal Code). There is no statute of limitation for offences which may lead to life imprisonment. The period of limitation is 20 years for offences with a penalty of over 8 years imprisonment and 10 years for offences which may lead to between 2 and 8 years' imprisonment. The period of limitation is 5 years if the most severe penalty is between 1 and 2 years' imprisonment.
90. On this basis, a limitation period of 5 years is provided for bribery (in the public as well as in the private sector). In the case of aggravated bribery of public officials, as well as bribery of members of Parliament, the limitation period is 10 years. The minimum period of limitation is 5 years in respect of all offences committed in public office and, as a consequence, even the offence bribery violation is covered by a 5 year period.
91. The period of limitation starts at the time of the commission of the offence and finishes, normally, when charges have been brought against the defendant, i.e. when the defendant has been legally summoned to court.
92. The periods of limitation may be extended for a maximum of one year if (1) the pre-trial investigation of the offence requires special time-consuming investigative measures due to which the investigation would clearly be incomplete at the time the statute of limitations expires; (2) the offence has come under pre-trial investigation at an exceptionally late date; (3) the person to be summoned as a defendant is a fugitive from justice and therefore could not in all likelihood be served with a summons prior to the expiry of the statute of limitations. In all cases it is required that the extension of the period of limitation is in the public interest (Chapter 8, Section 4 of the Penal Code).
93. It should be added that the maximum time for investigating offences, from the moment that charges have been brought against the defendant, is 10 years in respect of bribery and 20 years in respect of aggravated bribery.

### Defences

94. There are no special defences in Finland that would exempt an individual from criminal liability if s/he freely reports the offence to the relevant authorities.

### **III. ANALYSIS**

95. Finland has a comprehensive criminal legislation which to a large extent complies with the provisions of the Criminal Law Convention on Corruption and the Additional Protocol thereto<sup>5</sup>. Having said that, an inevitable consequence of the low number of corruption cases in Finland is that it is difficult to assess the effectiveness of the relevant provisions.
96. The authorities argue that bribery of foreign arbitrators is criminalised in the same way as bribery of foreign public officials in accordance with Chapter 40, section 12 (3) of the Penal Code which, *inter alia*, defines a foreign public official as a person "...who otherwise attends to a public function on behalf of a body or court of a foreign state or public international organisation". The authorities have added that in case a foreign arbitrator would not be captured by the notion

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<sup>5</sup> Trading in influence is not an offence in Finland and Finland has made a reservation in this respect.

“foreign public official”, s/he would be considered “a person exercising public authority” in accordance with Chapter 40, section 12 (1) of the Penal Code. The authorities also invoke the general principle contained in Chapter 1, section 5 of the Penal Code, which makes Finnish law applicable in respect of offences committed abroad directed at a Finnish citizen. The GET is of the opinion that the definition of foreign public officials as provided in Finnish law cannot always be used in respect of *foreign* arbitrators, who do not necessarily carry out public functions on behalf of any particular body of a foreign state or public international organisation. Moreover, the GET has doubts that section 12(1) - “a person exercising public authority”- is applicable in respect of foreign arbitrators as this section of the law appears to be aimed at domestic persons. Finally, the general principle contained in Chapter 1, section 5 of the Penal Code has no impact on the criminalisation of this offence as such. Therefore, the GET takes the view that that Finnish law covers domestic arbitrators, as stated above, but not foreign arbitrators who are governed by the law of a foreign country without being a foreign public official. The GET concludes that the notion of foreign arbitrators does not appear to be entirely reflected in Finnish legislation. The GET furthermore notes that Finland has not yet signed and ratified the Additional Protocol to the Criminal Law Convention (ETS 191). The GET therefore recommends **to verify the coverage of the notion of foreign arbitrators in Finnish law and, if need be, to transpose in an unequivocal manner the definition of foreign arbitrators as provided for in Article 4 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) into Finnish legislation and, to sign and ratify this Instrument as soon as possible.**

97. With regard to active and passive bribery of parliamentarians, it is noted that the relevant provisions of the Finnish law (Chapter 16, section 14a and Chapter 40, section 4 of the Penal Code) cover situations where a member of Parliament “*in exchange for the benefit and in his/her parliamentary mandate, act[s] so that a matter being considered or to be considered by Parliament would be decided in a certain way*”. This wording is more narrow than is foreseen in Article 4 of the Convention. Moreover this approach also applies in respect of parliamentarians in the foreign or international context, the criminalisation of whom is built on the same principle. The GET therefore recommends **to review the legislation concerning bribery of members of the Finnish Parliament, members of foreign parliaments and members of international parliamentary assemblies, in order to comply with the requirements of Articles 4, 6 and 10 of the Criminal Law Convention on Corruption (ETS 173).**
98. The GET notes that in respect of active bribery of public officials any “gift or other benefit” may be taken into account if the gift or other benefit is intended to influence or is conducive to influencing the action in service of the public official. In respect of bribery offences where Finnish law requires a qualified form of advantage/benefit, the translations of the law were found not to be consistent with the original texts, but the GET was pleased that it was clarified that the notion “undue benefit” appears in the wording of the Finnish legislation<sup>6</sup> which is fully compatible with the expression “undue advantage”, provided for in the Criminal Law Convention.
99. “Undue advantage” would clearly cover “unlawful advantages”. However, the meaning of this expression goes further: for the drafters of the Convention the adjective *undue* aims at excluding advantages permitted by law or by administrative rules as well as minimum gifts, gifts of a very low value or socially acceptable gifts (Explanatory report of ETS 173, paragraph 38). As a consequence of the limited court practice in respect of bribery in Finland, the case law does not provide much guidance as regards the meaning of “undue” benefit. According to a handbook for civil servants (issued by the Ministry of Finance), a gift or benefit may not be accepted if it might

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<sup>6</sup> The translations of the various provisions indicated different terms, i.e. “unlawful”, “unjustified” and “undue” for the same word in the original texts, see description, above. It should be noted, however, that in respect of active bribery of public officials, it is not required that the advantage is undue; any gift or benefit is sufficient for responsibility.

weaken the trust in the civil servant or the authority in the view of an outsider. Moreover, it is stated in Regulation 10/2001 of the Ministry of Finance, that not only the value is decisive when assessing to what extent a benefit may jeopardise public trust but that there is a lack of case law which makes it difficult to draw conclusions in this respect. Officials met by the GET indicated that there is a “grey zone” between due and undue benefits and that public officials must use their “common sense” when dealing with such situations. Fully aware that an exact borderline between due and undue advantages cannot be drawn for all situations, the GET takes the view that in the particular situation that prevails in Finland - with only limited case law - other guidance as to when a gift or a benefit could be considered “undue” would be very helpful for an effective implementation of the Criminal Law Convention in practice. Moreover, although the concept of “benefit” which appears in the bribery provisions does not literally exclude immaterial/intangible advantages, the GET noted that practitioners met referred only to benefits of a monetary value. Consequently, it was not clear to what extent immaterial advantages, without an obvious economic value, were covered by the notion “gift/benefit”. The GET recommends **to clarify in an appropriate manner what should be considered “due” and/or “undue” gifts/benefits, both in terms of material and immaterial advantages for all forms of bribery offences.**

100. None of the bribery provisions contained in the Penal Code provides expressly for indirect commission of bribery offences, i.e. bribery committed through intermediaries. No court practice could be referred to in this regard and the authorities invoked the rules of the Penal Code (Chapter 5, section 6) on participation (abetting) which were said to also cover situations of indirect bribery. The GET acknowledges the legal situation as described by the authorities. In the absence of any clear indications to the contrary, the GET considers that the lack of an express reference to offenders acting indirectly in the various bribery provisions would not exclude such perpetrators from being investigated and prosecuted, if not pursuant to the existing bribery provisions, then at least in accordance with the general rules on abetting.
101. The Penal Code provides for aggravated bribery offences in the public sector and, consequently, for the possibility of imposing more severe sanctions in such cases. The GET noted that a bribery offence, according to the law, may qualify as aggravated if the benefit is intended to make the person in service act contrary to his/her particular duties with the result of considerable benefit to the briber or to the considerable loss or detriment of another or in case the value of the benefit is considerable and the circumstances of the offence as a whole are to be considered aggravated. While the GET was informed that the wording “considerable loss or detriment of another” would cover also situations involving damages other than purely economical. Officials met during the visit argued that the aggravated form of bribery would only be at stake when the monetary values involved were high (10 000 Euros was mentioned as a threshold).
102. Moreover, the GET understood that bribery offences, including aggravated bribery, are largely regarded as crimes equivalent to “other types of serious economic offences” in Finland, such as embezzlement or fraud, which in their aggravated forms may lead to the same sanctions (except dismissal from office). The GET finds this approach slightly narrow in comparison with the intentions underlying the Criminal Law Convention<sup>7</sup> according to which corruption does not only represent a mere economic offence, but may, in some of its serious forms, threaten the rule of law, the stability of democratic institutions and the moral foundations of society, undermine good governance, security, health, fairness and justice. The GET is concerned that the seriousness of aggravated corruption is not fully reflected by the existing penal sanctions in Finland. The GET is aware that the sanctions available for corruption cannot be taken out of the Finnish legal context but must be assessed from the perspective that the general level of penal sanctions is low in

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<sup>7</sup> ETS 173, Preamble.

Finland. Nevertheless, the sanctions for aggravated bribery appear weak, in comparison with some other offences contained in the Finnish Penal Code, such as false statement before a court or falsification of evidence, which in their aggravated forms (Chapter 15, sections 3 and 8) may lead to imprisonment of up to 6 years. Consequently, the GET takes the view that the maximum penalties available for the most serious forms of bribery in the public sector (4 years' imprisonment and, in respect of domestic passive bribery, dismissal from office) do not appear to be proportionate and sufficiently dissuasive. The GET therefore recommends **to consider increasing the penalties for aggravated bribery offences in the public sector.**

103. Finland applies the jurisdictional principle of dual criminality for bribery in the private sector and has made a reservation to the Criminal Law Convention on Corruption in this respect (Appendix A). This means that Finnish residents could only be prosecuted for bribery offences in the private sector committed abroad if the offence is punishable in the foreign State and, if so, Finnish courts may not apply sanctions which are more severe than those applicable under the law of the foreign State. The GET was informed that the requirement of dual criminality in respect of private bribery, is subject to debate and controversy in Finland. The GET, unaware of any particular legal difficulties connected to this requirement, would welcome its removal as it weakens Finland's possibilities to fight corruption committed abroad. The GET recommends **to consider abolishing the requirement of dual criminality in respect of bribery offences in the private sector when committed abroad and thus withdrawing or not renewing the reservation relating to Article 17 of the Criminal Law Convention on Corruption (ETS 173).**
104. The GET furthermore notes that in relation to active and passive bribery in the private sector - in contrast to bribery in the public sector - there is no form of aggravated bribery provided for in law. The available sanctions in respect of private sector corruption - a fine or up to two years' imprisonment - even though they may be combined with a business prohibition on a physical person, are significantly lower than those foreseen for public sector corruption. The GET has serious doubts whether these sanctions could be considered proportionate and sufficiently dissuasive. Another aspect of the present situation is that special investigative techniques, such as telephone interception cannot be used at all in respect of bribery in the private sector as such interventions may only be used in connection with offences with a maximum sanction of at least 4 years' imprisonment. The GET is of the opinion that this particular approach of the Finnish law inevitably leads to the presumption that private sector corruption is a much less serious offence than public sector corruption. The GET recalls the preference expressed in the Explanatory Report to the Criminal Law Convention<sup>8</sup> to limit the differences between public and private sector bribery as corruption in this form may cause significant damage to society at large, not least with regard to public functions being carried out increasingly by the private sector – a trend that can be seen in many GRECO member States. Consequently, the GET recommends **to increase the penalties for bribery offences in the private sector.**
105. Finland has not established trading in influence as an offence and has made a reservation in this respect (Appendix A). In its reply to GRECO's Evaluation Questionnaire, the Government argues that such an offence might be in conflict with the principle of the freedom of speech and the rule of law as guaranteed under the Constitution and, furthermore, that abuse of influence would be difficult to define with an adequate degree of precision. The Government was also of the opinion that a significant and most reprehensible part of the actions described in Article 12 of the Criminal Law Convention is already covered by the Penal Code as inciting, abetting or indirectly committing a bribery offence. Therefore, the Government sees no pressing need to transpose Article 12 into Finnish law. This position was maintained by officials met on site. The

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<sup>8</sup> Explanatory report to the Criminal Law Convention, paragraph 52.

understanding of the GET is that the reservation is based on rather vague and unspecific considerations and it is difficult to grasp the reasoning in respect of the alleged constitutional complications without further information. However, the officials met were not in a position to provide any clear explanations on the legal difficulties. On the contrary, some of them were of the opinion that the inclusion of trading in influence as a separate offence in Finnish law might be a useful complement to existing anti-corruption legislation. As a convincing explanation for the reasons of and justification for the reservation was not provided to the GET, it recommends **to consider criminalising trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) and thus withdrawing or not renewing the reservation relating to this article of the Convention.**

106. The limitation period for the bringing of charges in respect of bribery offences (5 years, except in relation to aggravated bribery in the public sector and in respect of bribery of members of Parliament where the limit is 10 years) may be *extended* in extraordinary situations by a maximum of one year. Considering the particular features of investigating corruption offences, which often involve “a pact of silence” between the briber and the bribee, complicated financial transactions, sometimes at an international level and where the offenders may be fugitive, the GET wishes to stress that the period by which the limitation may be extended appears to be short and may well on occasion hamper the initiation of a successful investigation and prosecution of corruption offences. However, once the prosecution has taken place, it appears that there is sufficient time available for the handling of corruption cases. The Finnish authorities do not share the view that the limitation period, which follows general principles applicable to all offences, is too short and have stated that there has been no particular problem in relation to corruption offences in this respect.

#### **IV. CONCLUSIONS**

107. Finland has comprehensive criminal legislation in respect of bribery offences which to a large extent complies with the provisions of the Criminal Law Convention on Corruption under review; however, the offence of bribery of members of parliament is more limited in scope than foreseen in the Convention and bribery of foreign arbitrators does not appear to be covered by the existing penal legislation<sup>9</sup>. The experience of law enforcement agencies<sup>10</sup> and the judiciary in dealing with corruption is limited, in particular, with regard to the more sophisticated forms of corruption; several of the offences provided for under Finnish law have never been tested in practice. Moreover, the number of investigated, prosecuted and adjudicated corruption cases is significantly low and there is not much case-law available. Consequently, it is difficult to assess the effectiveness of the provisions as applied.
108. Furthermore, it appears that corruption to a large degree is seen as a mere economic crime in Finland. Corruption in its serious forms may well threaten the fundamental values of a rule of law society and could be addressed in a more determined manner; the weak penal sanctions provided for serious corruption offences – in both the public and the private sectors – are particularly striking in this respect. Moreover, it appears that the “undue benefit”-requirement is rather vague in practice, in particular as there is limited court practice available. Finally, Finland should reconsider its position concerning reservations made in respect of the Criminal Law Convention and, as soon as possible, become a Party to the Additional Protocol to the Criminal Law Convention on Corruption.

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<sup>9</sup> Trading in influence is not an offence in Finland, which has made a reservation in this respect.

<sup>10</sup> There is no particular specialisation on corruption as such within the police or in the prosecution service.

109. In view of the above, GRECO addresses the following recommendations to Finland:
- i. **to verify the coverage of the notion of foreign arbitrators in Finnish law and, if need be, to transpose in an unequivocal manner the definition of foreign arbitrators as provided for in Article 4 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) into Finnish legislation and, to sign and ratify this Instrument as soon as possible (paragraph 96);**
  - ii. **to review the legislation concerning bribery of members of the Finnish Parliament, members of foreign parliaments and members of international parliamentary assemblies, in order to comply with the requirements of Articles 4, 6 and 10 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 97);**
  - iii. **to clarify in an appropriate manner what should be considered “due” and/or “undue” gifts/benefits, both in terms of material and immaterial advantages for all forms of bribery offences (paragraph 99);**
  - iv. **to consider increasing the penalties for aggravated bribery offences in the public sector (paragraph 102);**
  - v. **to consider abolishing the requirement of dual criminality in respect of bribery offences in the private sector when committed abroad and thus withdrawing or not renewing the reservation relating to Article 17 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 103);**
  - vi. **to increase the penalties for bribery offences in the private sector (paragraph 104);**
  - vii. **to consider criminalising trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) and thus withdrawing or not renewing the reservation relating to this article of the Convention (paragraph 105).**
110. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Finnish authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2009.
111. Finally, GRECO invites the authorities of Finland to translate the report into the national language and to make this translation public.

## APPENDIX A

ETS 173:

The Government of the Republic of Finland makes the following reservations:

Finland shall only establish as a criminal offence under its domestic law the conduct referred to in Article 12 to the extent it is considered a punishable corruption offence or punishable participation in such an offence, or other criminal offence.

Finland reserves itself the right to apply, in respect of its own nationals, the jurisdiction rule laid down in paragraph 1 (b) subject to the requirement of dual punishability set forth in Chapter I, section 11 of the Finnish penal Code in cases of active or passive bribery in the private sector referred to in Articles 7 and 8, provided that the criminal offence does not seriously interfere with or jeopardise the governmental, military or economic interests or benefits of Finland.

**Note by the Secretariat** : By a Note Verbale from the Permanent Representation of Finland, dated 12 July 2006, registered at the Secretariat General on 13 July 2006 - Or. Engl. - the Government of Finland has informed the Secretary General of its intention to uphold wholly these reservations for a period of 3 years (Article 38 of the Convention).]

**Period covered: 1/2/2003 -**

The preceding statement concerns Article(s) : 37

**Declaration contained in a letter from the Permanent Representative of Finland, dated 30 September 2003, registered at the Secretariat General on 1 October 2003 - Or. Engl.**

The Government of Finland declares that the central authority designated pursuant to Article 29 is the Ministry of Justice, PO Box No. 25, 00023 Valtioneuvosto, Finland.

**Period covered: 1/10/2003 -**

The preceding statement concerns Article(s) : 29