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Group of States against corruption

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Joint First and Second Evaluation Rounds

Evaluation Report on Monaco

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INTRODUCTION

1. Monaco joined the partial agreement establishing GRECO on 1 July 2007, that is after the closure of the first evaluation round. It was therefore the subject of a joint evaluation procedure covering the themes of the first and second rounds (see paragraph 3). The GRECO evaluation team (hereafter the GET) comprised Mrs Maribel Lafoz Jodar (Andorra, police superintendent), Mrs Cornelia Vicleanschi (Moldova, prosecutor, head of the International Relations Department, office of the Prosecutor General), Mr Jean-Baptiste Carpentier (France, inspector of finances, Inspectorate General of Finance), Mr Antonio Francisco Cluny (Portugal, Deputy Prosecutor General, Court of Auditors). The team, accompanied by two members of the Council of Europe secretariat, visited Monaco from 14 to 18 April 2008. Before the visits, the GET received replies to the evaluation questionnaires (Greco Eval I-II (2008) 1F Eval I – Part 1 and Greco Eval I-II (2008) 1F Eval II – Part 2), copies of relevant legislation and other documentation.

2. The GET met the following leading figures and representatives from Monaco's governing institutions: the Minister of State, the Director of Judicial Services (who performs tasks similar to those of a Minister of Justice in other countries), the Government Counsellors responsible for Finance and Economy, External Relations and Education and Culture, the National Council, the Public Prosecutor and members of his office, the courts (courts of first instance and appeal), the investigating judges, the Director and members of the Public Safety Department, the Department of Finance, the Financial Information and Monitoring Department (SICCFIN), the Customs Department, the Directorate of Economic Expansion, the General Inspectorate of Administration, the Controller of Public Spending, the Directorate of Fiscal Services, the Department of the Interior, the Directorate of the Public Service, the Department of Health and Social Affairs, the Gaming Commission, the High Commission for Accounts, the Directorate of Legal Affairs of the General Secretariat of the Minister of State and the Counsellor responsible for mediation. The GET also met representatives of Monaco's municipal authorities and the following representatives of business and the media: the Chamber of Economic Development, a telecommunications operator, representatives of the building sector including the chamber of building trades, the professional association of accountants and auditors, Monaco Hebdo, l'Observateur de Monaco, la Gazette de Monaco, Radio Monte Carlo, Télé Monte Carlo and Nice Matin (a French daily with a Monaco section).

3. In accordance with Article 10.3 of its Statute, GRECO had decided that:

   - the First Evaluation Round would deal with the following themes:

     - Independence, specialisation and means available to national bodies engaged in the prevention of and fight against corruption[1]: Guiding Principle 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: specialised persons or bodies dealing with corruption, means at their disposal);
     - **Extent and scope of immunities**[2]: Guiding Principle 6: immunities from investigation, prosecution or adjudication of corruption); and

[1] Themes I and II of the first evaluation round
[2] Theme III of the first evaluation round

- the Second Evaluation Round would deal with the following themes:

  - **Proceeds of corruption**[3]: Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), together, for members having ratified the Criminal Law Convention on Corruption (ETS 173), with articles 19.3, 13 and 23 of the Convention;
  - **Public administration and corruption**[4]**:** Guiding Principles 9 (public administration) and 10 (public officials);
  - **Legal persons and corruption**[5]**:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), together, for members having ratified the Criminal Law Convention on Corruption (ETS 173), with articles 14, 18 and 19.2 of the Convention.

4. Monaco signed and ratified the Council of Europe Criminal Law Convention (STE 173) on 13 March 2007; this entered into force on 1 July 2007 which implied Monaco's automatic accession to GRECO on that date.

5. This report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to assess the effectiveness of measures adopted by the Monegasque authorities to comply with the provisions referred to in paragraph 3. For each theme, the report presents a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Monaco on how to improve compliance with the provisions under consideration.

I. OVERVIEW OF MONACO'S ANTI-CORRUPTION POLICY

a. Description of the situation

6. The Principality of Monaco is situated on the Mediterranean coast between France and Italy and is a sovereign and independent state. Historically, the Principality has always maintained close relations with France. For example, more than half of the judges and prosecutors are seconded from France to carry out judicial functions in Monaco; the current bilateral agreement which constitutes the basis for these temporary secondments provides for a period of three years (renewable once). The banking system is also strongly integrated: the banks of Monaco have been subject to the French banking legislation since the bilateral Convention of 1945. The GDP per capita in 2007 was estimated to be € 50 000 and unemployment is almost inexistent. The tax system exhibits certain peculiarities: it is mostly based on indirect taxes (which account for 73% of the state budget), among which the VAT (52%) and there is no direct taxation applicable to personal income. The profit of companies, which is generated abroad for a share of 25% or more, as well as the profit of certain businesses, is subject to a flat taxation rate of 33%. Nationals and foreigners who reside in Monaco are not taxable, as natural persons, in respect of their income, assets and movable or immovable property[6] (except for French citizens who settled in Monaco

[3] Theme I of the second evaluation round
[4] Theme II of the second evaluation round
[5] Theme III of the second evaluation round
[6] Monaco is also one of three countries classified by the OECD's Committee on Fiscal Affairs as an un-cooperative tax haven, as it has not yet made any undertakings with regard to transparency or the effective exchange of information. The Monegasque authorities underline, however, that since 1 July 2005 they have implemented the Agreement between the European Community and the Principality of Monaco providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments. Furthermore, they stress that the OECD has published a report in 2008 pointing out there are significant restrictions in access to banking information for tax

after 1958). The Principality forms a single municipality covering an area of 202 hectares, 31 of which have been recovered from the sea, and shares a border of 5.5 km with France. It is highly cosmopolitan, with nearly 125 nationalities. Of the total population of 32 020, 6 089 are Monegasque, 10 229 French and 6 414 Italian (2000 figures). The population density has doubled in 10 years and at 15 500 inhabitants per km² is considered to be the highest in the world. Under the Constitution of 1962 (revised in 2002), the Principality is governed by a hereditary, constitutional monarchy. Executive power devolves from the Prince. Legislative power is exercised jointly by the Prince and the National Council. The latter comprises 24 members elected by direct universal suffrage and list system every five years. The Prince has the power to initiate legislation. Government is exercised, under the sovereign authority of the Prince, by a Minister of State, who is assisted by a Council of Government. Monaco has a two-tier administrative structure, which includes both the central state services and a municipality governed by a Mayor and a municipal council of 15 members elected for five years. The municipality has its own administrative service (587 persons on 31 December 2007) and a certain amount of financial autonomy since 1 January 2007.

Perception and phenomenon of corruption

7. Monaco does not appear on Transparency International's annual index of perception of corruption. Judicial statistics on corruption have only recently been established. The replies to the questionnaire indicate that there is little corruption in Monaco. Two complaints of corruption were lodged between 2002 and 8 November 2006 and both were discontinued with no action taken[7]. During the period from 8 November 2006 to the end of December 2007, two new cases were opened and were the subject of judicial investigations at the time of the visit, pending the implementation of requests for international judicial assistance lodged by the Monegasque judicial authorities. In the other direction, between 2002 and late December 2007, the prosecutor's office received 39 requests for international assistance in cases concerning corruption.[8] In recent years, Monaco has sometimes been the target of criticism concerning such areas as money laundering, white collar crime and the functioning of the judicial system. The Principality has since been the subject of reports requested by the French authorities (and in agreement with the Monegasque authorities) and of international evaluations, notably by the International Monetary Fund and the Council of Europe's MONEYVAL Committee[9]; according to the Monegasque authorities these reports have shown that the criticism was not justified.

Criminal law

8. Paragraph IV of the Monegasque Criminal Code, entitled "corruption of public officials and employees of private undertakings", has for a long time contained a series of provisions making certain forms of corruption criminal offences: active or passive corruption of civil servants and other public officials in exchange for positive or negative decisions or actions in connection with their duties (articles 113 and 118 respectively), passive corruption of arbitrators and experts in exchange for decisions or opinions favourable to one of the parties (article 114), active and passive corruption in the private sector (articles 115 and 119 respectively) and passive corruption of members of criminal courts deciding on criminal charges (article 121). In a series of

authorities in OECD countries, as well as a certain number of off shore financial centres, which had promised to undertake transparency measures.

[7] One was registered with the prosecution service on 23 January 2002 and discontinued on 22 August 2002 and the other was registered on 5 April 2005 and discontinued on 29 June 2006.

[8] In each case, the prosecution service submitted them for execution. Thirty-five were executed within an average period of 3.5 months. Assistance was refused in just one case because the foreign authorities' request was considered to be insufficiently precise. At the end of January 2008, three were still being processed.

[9] See the following link for the Council of Europe's anti-money laundering evaluation.

reservations to the Criminal Law Convention on Corruption (ETS 173), Monaco reserves its right not to establish as a criminal offence the trading in influence or passive bribery of foreign public officials and of members of foreign public assemblies.

9. The penalties vary: one to five years' imprisonment and a fine of € 18 000 to 90 000 in cases of corruption under articles 113, 114 and 118, six months to three years' imprisonment and a fine of € 9 000 to 18 000 in cases under articles 115 and 119, and finally five to ten years' imprisonment in article 121 cases. Articles 116, 117 and 120 are mainly concerned with ancillary penalties, such as loss of rights, and compulsory and total confiscation of the money or goods making up the bribe. Offences are classified according to the maximum penalty incurred, so that the maximum penalty for lesser offences ("délits") is five years' imprisonment, beyond which they become serious offences ("crimes"). The passive corruption of a member of a criminal court is therefore the only corruption offence that counts as a serious offence. The limitation period for prosecution depends on how offences are classified: three years for lesser offences and ten years for serious offences.

10. Although trading in influence is not an offence, the Monegasque authorities state that the provisions on active corruption in articles 118 and 119 sometimes come close to covering it. Under articles 209 to 211, conspiracy and criminal association for the purposes of preparing or committing a serious offence, which thus includes the corruption of a member of a court (art. 121 CP), themselves constitute a serious offence. The definition of "organised gang" is provided for in the Penal Code by the Law 1.344 of 26 December 2007 and constitutes an aggravating circumstance for certain offences such as abuse of a vulnerable person or procurement in the area of prostitution; this is not however the case for corruption offences which will be covered in a draft law currently being prepared and awaiting adoption. Monegasque criminal law also recognises the notion of "organised crime" in its Sovereign order[10] 605 of 1 August 2006 which implements the United Nations Convention Against Transnational Organised Crime. This offence was however already defined in Law No.1.161 of 1993 which altered the Penal Code and introduced the offence of money laundering and made organised crime an aggravating circumstance in connection with this type of offence. Money laundering is an offence in Monaco, and corruption offences are predicate offences of money laundering (see Part IV of the report). Extortion, misappropriation, fraud and forgery are also offences. According to the Monegasque authorities, the latter is used to prosecute accounting offences which do not exist as such.

Main initiatives

11. Monaco ratified the Council of Europe Criminal Law Convention on Corruption (ETS No. 173) in March 2007, following which it became a member of GRECO. The country's anti-corruption approach is currently based mainly on combating money laundering. The GET was told that the anti-corruption services keep regular check on the most recent types of money laundering of the proceeds of corruption observed abroad. By virtue of the Sovereign Order 1.204 of 7 July 2007, the Financial Information and Monitoring Department (SICCFIN) – which acts as Monaco's Financial Intelligence Unit – was also designated as specialised anti-corruption authority. According to the authorities, it was decided to make the same body responsible for combating corruption, money laundering and terrorism financing for reasons of effectiveness.

12. The GET has also been told that the results of this evaluation would form the basis for a possible anti-corruption work programme to be submitted to the government by SICCFIN. In the short term, draft legislation on corruption is currently being drawn up. It would provide for stricter

[10] Sovereign orders issued in application of international conventions constitute criminal law in Monaco in the same way as criminal laws themselves do (including the Criminal Code).

penalties that would make more of the offences serious ones ("crimes" as opposed to "délits") and trading in influence would also be introduced. A reform of the Code of Criminal Procedure is also under consideration, covering such matters as anonymous witnesses and the generalised confidentiality of investigations.

b. Analysis

13. Apart from the fact that the country is something of a micro-society, with barely 6 000 citizens, representing about one-fifth of the resident population, it also has a very special sociological and institutional relationship with France. There is a marked French presence in the Monegasque administrative structure, including the judiciary, police, tax services and supervisory bodies. The presence of French high ranking civil servants in a society the size of Monaco can contribute to some kind of social balance.

14. In addition, the Monegasque Constitution grants the Prince a leading role. The Council of Government and its members are answerable to the Prince. Parliament – the National Council – has limited powers, (which means that it can only initiate legislation with the prior agreement of the Council of Government and, through it, the Prince and it exercises no oversight of the administrative departments and so on). The media have very restricted access to information held by the authorities, and so on. Despite the relatively large number of media outlets, there is no investigative journalism and journalists themselves say that they are too dependent on information that government and officials want them to have (requests for information are approved and answered by the Minister of State, no public communication is made outside the framework of the governmental press centre). It was said that the public at large was not interested in public affairs or in questions of corruption, and that for various reasons, the journalists themselves, most of whom are French, tend towards self-censorship. The GET therefore concluded that there is little in the way of political counterbalance in Monaco.

15. Another point to note is that Monaco's image is of critical importance to it, as the country's representatives emphasised during the visit. The Monegasque government believes that this image, which is based internally on certain objective "quality of life" factors (such as income levels, low taxation, almost non-existent street crime and the prestige of the Principality), would be threatened if Monaco suffered a bad reputation internationally, as in the case of other, non-European, micro-states. Defending this image – which appears to be a major policy objective – has two conflicting consequences. It often impels the Monegasque authorities to react firmly and practically to cases of corruption to defend its reputation. On the other hand, concern with this image could result in possible corruption cases being dealt with and settled before it could be taken to court. At all events, the GET found that arrangements for preventing and assessing the scale of corruption, and to support an administrative transparency policy, are lacking.

16. A judicial statistical system has only recently been established. It is perhaps not surprising therefore that there do not appear to have been any convictions for corruption, or even judgments concerning such cases. In fact very little information is available on the nature of corruption or the sectors that are most at risk. Many of those whom the GET spoke to and who might have been in a position to clarify the situation had been in post for too short a time. What emerged from the conversations as a whole was that the building and construction sector, (as a result of pressures on land), public procurement, and certain major associations, which received significant public support, were all areas potentially at risk. The fact that there is no general ban on gifts and presents to public officials (see paragraph 98) is a significant source of vulnerability. The GET was pleased to note that a first conference on combating corruption had been organised by the Directorate of Judicial Services (on the final day of the GET visit), to which a wide range of persons from the private sector and government institutions had been invited.

17. The on-site meetings, including ones with the Chamber of Economic Development, whose task is to promote Monegasque companies abroad and encourage exports, show that no preventive or awareness raising measures have been taken in the private sector, even though the companies concerned are required to operate in countries that are vulnerable to or already strongly affected by corruption. This does not mean that specific Monegasque subsidiaries of foreign companies have not sometimes introduced anti-corruption measures. Nevertheless, the GET finds the existing gaps regrettable and believes that the private sector should be included in any future discussions on anti-corruption policies in the Principality and itself encouraged to make employees aware of the need to refuse inducements and combat corruption.

18. In the light of what has been said, it is clear the Monaco needs to make further progress in preventing and combating corruption. Ratification of the Criminal Law Convention on Corruption (ETS 173) and membership of GRECO are a first step that must be consolidated by a change in general approach, coupled with various specific measures such as those presented in this report. The GET notes that the personal and direct involvement of members of the Council of Government in managing public affairs would enable it to act as co-ordinator between the various ministries in discussions on SICCFIN's proposed work programme. For the time being, the GET recommends **to adopt an anti-corruption work programme that leads to the effective adoption of such measures a) a study of the characteristics of corruption in its various forms and the sectors exposed to risk; b) identifying what reforms are required in the field of public procurement and other existing sectors at risk; c) measures to raise awareness of the importance of combating corruption in its various forms at both state and municipal levels.**

II. INDEPENDENCE, SPECIALISATION AND MEANS AVAILABLE TO NATIONAL BODIES ENGAGED IN THE PREVENTION OF AND FIGHT AGAINST CORRUPTION

a. Description of the situation

Police

19. The Department of the Interior, which is answerable to a government counsellor who is currently a senior French civil servant, is responsible for public security and the establishment of individuals and legal persons. It monitors and supervises associations, federations and foundations and is responsible for relations with the different religious communities in the Principality. The Department of the Interior includes the Public Security Directorate, which in turn comprises divisions responsible for administration and training, the administrative police, the criminal police, the urban police and the maritime and airport police. The Criminal Police Division deals with organised and financial crime. It has 45 police officers, seven of whom work in the economic and financial investigations section. One also specialises in criminal records and relations with Interpol and an operational liaison unit was established in 2006 for international co-operation in combating money laundering. In 2006, following police misappropriation of funds and fraud, a general inspectorate of police was created. There is no specific police code of conduct.

20. The criminal police investigate offences, assemble evidence and seek out the perpetrators, with a view to their arrest (they remain under the administrative management of the hierarchy of the Department of Interior). The police operate under the direction of the public prosecutor. The latter also supervises the activities of individual police officers, to whom he may issue warnings in cases of negligence. In more serious cases he can refer the matter to the Court of Appeal, which after any necessary inquiries may order the temporary or permanent suspension from duties of the individual concerned. The first President of the Court may also refer such cases to it.

21. Officials of the Public Security Directorate are recruited by competitive examination and the level of qualification required varies according to grade. Recruits receive a two-year theoretical training followed by placements. The directorate has a total of 519 staff, of whom 6% are Monegasque, the rest being French (also recruited by competitive examination). The Director of Public Security and two other senior officials, the heads of the urban and the criminal police, are seconded French officials appointed for a three-year term, renewable once.

22. The municipality of Monaco has its own municipal police force with 32 staff. According to those whom the GET spoke to, its responsibilities are not always clear. The head of the municipal police has "judicial police" powers, as (under section 44 of the Municipal Government Act, no. 959 of 24 July 1974) do the Mayor and his deputies. However, these are not applied in practice.

Courts

23. Under Article 88 of the Monegasque Constitution, judicial power lies with the Prince, who delegates its exercise in full to the courts. The courts deliver justice in the Prince's name. Judicial independence is guaranteed. The organisation, jurisdiction and functioning of the courts and the status of judges must be laid down in law.

24. The main legislation on the organisation of the judicial system are the order of 9 March 1918 on the Directorate of Judicial Services and the Administration of Justice Act of 15 July 1965. The administration of justice is the responsibility of the Directorate of Judicial Services, with the Director of Judicial Services at its head. The latter is appointed by the Prince for an unlimited term of office. Until the appointment of a Monegasque judge in January 2006, the post was filled by French nationals seconded for a fixed term. The Director has powers similar to those of ministers of justice in other countries. However, the separation of powers laid down in Article 46 of the Constitution means that the latter is not a member of the government but directly answerable to the Prince.

25. Depending on whether offences are considered to be misdemeanours ("délits") or serious crimes ("crimes), they will be heard in the first instance and in appeal (or retrial) in different courts; a) with regard to **misdemeanours**, the court of first instance sitting as a criminal court hears cases involving lesser offences carrying sentences of up to five years' imprisonment and fines of up to € 90 000. The court only has one bench and therefore acts, as a bench of three judges, as both a criminal and a civil court. The Court of Appeal constitutes the second degree of jurisdiction, notably for misdemeanours in criminal cases. It always sits with at least three members. When it cannot establish a bench from its own members it may make up the numbers with a lower court judge who has not heard the case at first instance, a magistrate (*juge de paix*) or, failing that, the "defence counsel" (*l'avocat-défenseur*), the longest serving lawyer at the bar or a notary. In response to referrals from the prosecutor and without prejudging the outcome of any subsequent criminal proceedings, the court may impose various disciplinary penalties on certain categories of personnel such as police officers, court lawyers, court registrars and bailiffs; b): with regard to **serious crimes**, the criminal court is not a standing body and, as its name suggests, can hear cases, in the first instance, relating to what are defined by the law as serious offences. It is a composite body made up professional and non-professional members, namely three judges, two assessors and three jurors, drawn from a list prepared every three years of thirty Monegasque citizens of legal age who have never been sentenced for a serious or lesser criminal offence. There is no appeal on the merits against judgments of the criminal court but they may be referred to the Court of Cassation (*cour de révision*) for violation of the rules governing jurisdiction, failure to observe substantial formal requirements or violation of the law. Such appeals on points of law may be lodged within five days of the judgment. In principle, the Court of Cassation is not a third

tier court but one that merely rules on points of law. It may hear appeals against final judgments or decisions on the merits of criminal cases handed down by the various courts, including the magistrates' court, for violation of the law or of the rules governing jurisdiction, or failure to observe substantial formal requirements. If such a judgment is quashed, the case is processed by the court itself, with a different composition (Act N° 1.327 of 22 December 2006 concerning the revision procedure in criminal matters). The Court of Cassation is composed of eight judges; these are appointed by sovereign order. As a rule they are chosen from the honorary magistrates of the French Court of Cassation. The court always sits with a panel of at least three judges.

Judges

26. All the judges, defence counsel, notaries, court bailiffs and other judicial officials are appointed by the Prince on the recommendation of Director of Judicial Services. The Principality has about thirty judges, including four prosecutors. About half of them are seconded from France to undertake judicial functions in Monaco. They are appointed under a bilateral agreement for a fixed term, which under the most recent – 2005 – agreement on administrative co-operation between the two countries is three years, renewable once. These seconded judges are appointed by co-option following an invitation to apply issued by the French justice ministry, which selects the candidates according to its own criteria but must, in principle, present three candidates for each vacant post. Successful candidates do not have to undergo an additional selection process in the Principality, which relies on the fact that in principle they are already experienced and that Monegasque law is fairly similar to its French counterpart. Under the secondment agreement, the French judges are subject to both Monegasque and French rules governing their judicial status. They could therefore be liable to dual disciplinary proceedings or measures.

27. The practice regarding judges of Monegasque nationality is for young persons concerned to complete their law studies, generally in France, and then advise the Director of Judicial Services of their interest in becoming a judge or prosecutor. If the Director and the Government agree, the candidates are authorised to attend the French legal service training college, with financing from the Principality. The college subsequently forwards the students' marks and assessments to the Director of Judicial Services. When the training is completed, the Director then recommends the Prince to appoint candidates to the rank of first tier substitute judge. Monegasque judges can also be recruited from the legal profession, particularly court lawyers, but this possibility was never used until now. A draft piece of legislation reforming the statute of judges and prosecutors is being examined by the National Council, at the time of adoption of the present report.

28. Under Article 39 of the Code of Criminal Procedure, investigating judges are appointed from among the members of the court of first instance and appointed by sovereign order for three years on the recommendation of the President, after the public prosecutor has been consulted. Their appointments may be confirmed for successive periods of the same duration. During these periods, investigations may not be taken away from them, other than at their own request, or with the approval of the Court of Cassation, in accordance with the disciplinary rules. Cases may also be removed from an investigating judge and transferred to another one in the interests of the proper administration of justice (Article 39-1 of the Code of Criminal Procedure), if the public prosecutor, acting on his own behalf or at the request of the parties, submits an application, giving reasons, to the President of the Court. The President must rule within eight days and there is no appeal against this ruling.

29. The Court of Cassation plays a major part in disciplinary proceedings against judges, as specified in part IV of the Administration of Justice Act of 15 July 1965. Whereas the two least serious sanctions – reminder of the rules and simple warning – can be issued by the Directorate of Judicial Services, written warnings, with or without reprimand, and temporary suspension from 15

days to 6 months can only be ordered by the Court of Cassation, sitting in chambers. Those concerned have a right to be heard in disciplinary proceedings, with the prosecutor's office making the case for disciplinary measures. The court's decision must be accompanied by reasons, signed by all the judges taking part and recorded in a special register maintained in the general registry. Depending on the circumstances and the seriousness of the case, the court may recommend the Prince to dismiss the judge concerned. The draft legislation mentioned earlier (see paragraph 27), which is aimed at reforming the statute of judges and prosecutors, provides for the creation of a judicial service commission which would have exclusive responsibility to decide on disciplinary matters and sanctions applicable to judges and prosecutors.

30. Under Article 88 of the Constitution, judicial power lies with the Prince, who delegates its exercise in full to the courts. The courts deliver justice in the Prince's name. Judicial independence is guaranteed. Article 6 of the Administration of Justice Act (Act no. 783) establishes the principle that judges cannot be removed[11]. In principle, they can only be dismissed, suspended or transferred on the grounds laid down by law. Under section 5 of the Administration of Justice Act, judicial functions are incompatible with any other public office or paid private activity, other than the production of scientific, literary or artistic works and educational activities.

31. The measures to protect the independence of judges and make them irremovable are not applicable to members of the prosecution service. Under article 20 of the order of 9 March 1918, the Director of Judicial Services brings criminal prosecutions, but he does not exercise this responsibility directly since it is explicitly devolved to the public prosecutor. However, the Director of Judicial Services may give orders and instructions to members of the prosecutor's office. The latter also maintains relations with the Minister of State and prosecutors must when necessary refer matters of importance or difficulty to the government to the Director of Judicial Services (articles 20 and 21 of the 1918 order). Officials of the prosecutor's office are appointed by sovereign order of the Prince on the recommendation of the Director of Judicial Services. They may be dismissed in the same way after the Court of Cassation has been consulted. The prosecutor's office operates on a hierarchical basis and is headed by the public prosecutor, assisted by three substitutes. The public prosecutor also benefits from administrative support. The public prosecutor is represented before all the courts of first instance and the courts of appeal and cassation, as well as courts dealing with constitutional and administrative proceedings. The Director of Judicial Services may himself impose on prosecutors one of the disciplinary sanctions applicable to judges, but in the case of the more severe measures – written warnings and temporary suspension – he must consult the Court of Cassation. These various prerogatives and powers will be entrusted to the future judicial service commission.

32. The GET was told that, in practice, the courts, investigating judges and prosecutors have all one practitioner who is more specialised in economic and financial matters, including corruption. It appeared that this was not completely correct, since the investigating judges dealt with every type of case.

33. Under section 5 of the of the Administration of Justice Act, judges' and prosecutors' functions are incompatible with any other public office or paid private activity, other than the production of scientific, literary or artistic works and educational activities. Section 7 also prohibits judges from assisting the defence, either orally or in writing or even on a consultative basis, and even in courts other than the one to which they belong. The GET was told that there are no rules on judicial conflicts of interest. Judges and prosecutors must withdraw from proceedings in which

[11] This does not apply to substitute judges, who form the first step on the Monegasque judicial hierarchy. Substitute judges are normally attached to the court of first instance but may, on the order of the first President of the Court of Appeal, be allocated to the prosecutor's office depending on the needs of the office.

they have an interest in accordance with unwritten natural and general principles, or otherwise suffer penalties.

Criminal inquiries into corruption cases: organisation, special investigation techniques, witness protection and sources of information

34. The penal system operates on the mandatory prosecution principle, which excludes the discontinuation of cases on the basis of considerations of "opportunity". Cases can be discontinued for reasons of the efficiency of prosecution in particular where the offender cannot be identified or the acts do not qualify for a criminal offence or the conditions for an accusation are not met. The GET was told that the conditions for discontinuing a case or lodging an appeal against such a decision are not clearly specified. On the other hand, the GET noted that under the Code of Criminal Procedure, if an investigating judge is allocated a case and discontinues it, by reasoned decision, the prosecution service or the party claiming damages may appeal against the decision.

35. The Principality's judicial system operates with both prosecutors and investigating judges. For example, the public prosecutor may refer to an investigating judge complaints, accusations, instruments seized and any documents relating to lesser offences that require investigation, whose conduct he then monitors. In the case of offences committed by minors and serious offences, judicial investigations are obligatory. In principle then, investigating judges are automatically allocated corruption cases under article 121 of the Criminal Code (corruption of judges sitting in criminal courts), but in contrast their intervention is not compulsory for the other cases of corruption which qualify as less serious offences or "délits" (less than 5 years' imprisonment incurred).

36. In connection with inquiries and prosecutions, the public prosecutor also directs police activities. He receives accusations and complaints sent to him directly and any reports and records drawn up by police officers and other officials specially authorised to decide that offences have been committed.

37. Articles 101 and 103 require investigating judges and police officers undertaking inquiries to maintain professional confidentiality in the matter at stake. Other persons involved are bound by professional confidentiality under Article 308 of the Criminal Code and section 30 of the Freedom of Expression Act, no. 1.299 of 15 July 2005. This makes it an offence to publish or disseminate procedural documents that have not been presented in court, including investigative measures. Bill no 823, which would introduce a new Article 1100-1 to the Code of Criminal Procedure and is currently being considered by the National Council, would introduce a wider notion of confidentiality of investigation, applicable to all persons involved in the procedure.

38. Most forms of corruption constitute lesser offences ("délits") for which, under Article 13 of the Code of Criminal Procedure, the limitation period is three years from when the act was committed. Article 121 corruption offences are serious offences ("crimes"), with a limitation period of ten years under Article 12 of the Code of Criminal Procedure. As already noted, under legislation currently being drafted more forms of corruption would become serious offences.

39. When investigating judges conduct inquiries, Article 87 of the Code of Criminal Procedure requires them to take all practicable measures to establish the facts. They have wide access to commercial and financial information and the principle in Monaco is that banking secrecy may be lifted in case of criminal investigations. They may also seize or order the seizure of any object (Article 100), including financial documentation or assets. The prosecutor's office only has the same prerogatives as investigating judges when offences are actually being committed (Article

255). Otherwise, it must ask an investigating judge to act (Article 91). Police officers themselves do not have access to any external databases, such as the mortgage register, or financial, banking or other information. Each time, they must seek authorisation from the prosecutor's office or an investigating judge. They have easier access to information during preliminary inquiries when they are working under the orders of the prosecutor.

40. Turning to special investigation techniques, since the Justice and Liberty Act, no. 1.343 of 26 December 2007, the Code of Criminal Procedure has authorised the interception and recording of telecommunications and electronic correspondence. They require the prior authorisation of an investigating judge and can only be ordered for offences carrying terms of imprisonment of one year or more, which includes all the corruption offences. Such operations may not exceed two months but can be renewed, subject to the same conditions and duration. There is no provision in Monegasque legislation for other special means of investigation, such as controlled deliveries, undercover investigations and infiltration and joint inquiry teams. However, they can be used in the context of an international agreement and the fight against organised crime, under article 20 of Sovereign Order 605 of 1 August 2006 to apply the United Nations Convention against Transnational Organised Crime and two of its three additional protocols of 15 November 2000. According to the Monegasque authorities, the proposed reform of the Code of Criminal Procedure will introduce such new measures as anonymous witnesses, genetic fingerprinting and sound and video surveillance or certain locations or vehicles.

41. There is no witness protection properly speaking. Article 7 of Order 605 of 2006, which could apply to corruption cases in connection with organised crime, specifies terms of imprisonment of five to ten years for threats, intimidation or bribery aimed at witnesses or intended to prevent public officials in the administrative or judicial branches or any other public officials from performing their duties. There is also a system of judicial immunity, which may apply to persons who collaborate with the judicial authorities in cases of organised crime, and indirectly corruption[12]. In practice, the prosecutor's office asks for police protection for the most vulnerable witnesses. So far, there is no legislation to allow recorded audiovisual evidence to be given or the use of methods that partially conceal the identity of witnesses giving evidence before the courts. The future Code of Criminal Procedure will go some way to recognising anonymous witnesses by offering this sort of evidence a legal status, while bearing in mind the requirements of the European Convention on Human Rights, particularly on the rights of the defence. Article 22 of Order 605 now permits plea bargaining, which is a form of incentive to co-operate with the courts.

Other authorities

42. The Financial Information and Monitoring Department - SICCFIN - is an administrative branch of the Department of Finance and Economic Affairs and acts as the financial intelligence unit in the fight against money laundering. It receives and collates information required for preventing and identifying cases of money laundering. If reports of suspicious transactions notified to it appear to be well-founded, it refers them to the relevant authorities to initiate proceedings. The department offers both analytical and supervisory skills. It has a staff of nine, plus one outside expert, a former member of the French banking commission who is specifically in charge of the department's supervisory/control activities. The latter will be strengthened by the forthcoming establishment of two new posts. As noted already, in 2007 SICCFIN, which already specialised in

[12] According to Article 22 of sovereign order 605, persons who take part or have taken part in an organised criminal gang and who co-operate with inquiries or criminal proceedings concerning offences covered by this order – article 6 of which includes provisions on corruption – may be eligible for total immunity if the information they supply to the competent authorities has made it possible either to prevent an offence from taking place or to arrest other members of the gang. If not, those concerned may have their sentences reduced if their information has made it possible to stop the offence or identify other members of the gang.

money laundering and terrorist financing, was formally named as the body specialising in combating corruption, as specified in the Criminal Law Convention on Corruption (ETS 173). This now enables it to propose changes to legislation or regulations deemed necessary to deal with the problem.

b. Analysis

43. Generally speaking, the police and judicial authorities seems to have sufficient human and other resources to carry out their responsibilities. The on-site discussions suggest that the workload is reasonable and that those responsible for complex cases of economic and financial crime and serious crime in general have sufficient logistical support and time to devote to them.

44. The police, prosecution service and courts all have one or more members who specialise in economic and financial crime. The professionals dealing with these cases, about half of which concern fraud, misappropriation or breach of trust with regard to private companies and financial packages, consider themselves to be sufficiently familiar with these fairly complex forms of crime, including the associated machinery of international mutual assistance. The special links with France mean that the Principality does not have to suffer the inevitable consequences of a limited national reservoir of candidates. However, new arrivals are not given an opportunity to familiarise themselves rapidly with the specific features of Monegasque law. Although there are one or two training CD-Roms and a review of Monegasque law has recently appeared, most of the training is on the job. Moreover, corruption is very much a new theme in Monaco, for both judges and the police. The GET recommends **to introduce further regular training for judges and police that takes account of the needs of new arrivals and new crime-related problems, particularly concerning corruption.**

45. The lack of information on corruption in the Principality, the limited number of acknowledged cases and the fact that many of those whom the GET met were recently appointed – and often French - senior officials who did not necessarily have a comprehensive understanding of Monegasque institutions, meant that it was not always possible to gauge the extent of and limits to the independence of the institutions charged with investigating, prosecuting and trying corruption offences. The Director of Judicial Services has considerable discretion over the selection, appointment and careers of judges and prosecutors. He is well aware of the problem this poses for their independence and plans to reform the statute of the judiciary (judges and prosecutors) and proposes some amendments in this matter as well as the creation of a form of judicial service commission. This is a very welcome initiative, which might also be an opportunity to discuss and review, together with the French authorities, the arrangements for selecting seconded judges from France, since the Monegasque authorities were unable to describe with any precision the criteria used by France to choose the three candidates it had to propose for each vacant post. Finally, the current rules governing French secondments (re-negociated in 2005 and effective as of 2008) – a three year period, renewable once, as with all other seconded French personnel – poses practical problems because of the excessively rapid turnover that results. The GET also considers that this could affect the independence of judges and prosecutors faced with the pressure of renewal as the end of their first term approaches. The renewal of their secondments is not an automatic entitlement for judges and the decision depends on the respective intentions of the French and Monegasque authorities. The GET believes that while the former period of up to twenty years was too long the current one is too short, and that a reasonable balance has to be struck. The executive, in the form of the Director of Judicial Services, also has a predominant and largely discretionary role in the exercise of disciplinary authority over prosecutors, and to a lesser extent judges. The GET recommends that the authorities, **in consultation with the French authorities where this is necessary, a) complete the proposed reorganisation of the judiciary and establish a judicial body that**

would be responsible for the recruitment, appointment, promotion and training of Monegasque and seconded French judges, together with disciplinary and other aspects of their careers; and b) take steps to review the arrangements for the secondment of French judges to offer more safeguards for their independence, particularly at the time of eventual renewal of secondment.

46. There are virtually no guarantees of the independence and irremovability of prosecution officials, who are removable at the instigation of the Director of Judicial Services, approved by the Prince, (with the approval of the Court of Cassation) and no provisions on conflicts of interest. The grounds on which the prosecution service can discontinue proceedings are not specified, and there is no appeal against such decisions, even though the Court of Appeal apparently ruled in 2007 that the prosecutor's office could take over and reopen a discontinued case on the basis of the same facts and that an individual prosecutor could reopen discontinued inquiries. Although, in principle, the Director of Judicial Services may not interrupt or suspend the course of public prosecution, s/he retains the right to ask for any information on current cases and there do not appear to be any particular rules to prevent orders and instructions issued by the hierarchy from constituting inappropriate interference in cases. Examples might include a ban on instructions concerning individual cases, the requirement to issue instructions in writing and record them in the case file or the right of individual prosecutors to challenge instructions. The GET considers that the current status of prosecutors and the arrangements for discontinuing proceedings do not offer sufficient safeguards for the handling of corruption cases, which may be very sensitive. The GET recommends **a) to introduce a professional status for prosecutors that offers more protection against the powers of the executive/administrative authorities, and in particular specifies the circumstances in which they can be dismissed and the limits to the power of the executive/administrative authorities to influence the conduct of proceedings; b) to specify the grounds and arrangements for discontinuing proceedings.**

Conduct of inquiries

47. Under the Code of Criminal Procedure, the limitation period for most corruption offence is three years and the period starts from the date the offence was committed. Even though there do not appear to be any delays in proceedings in Monaco, the three-year deadline could be very tight given the fact that locally generated cases will probably require international assistance. Account should also be taken of the very secret nature of corruption, so that the facts may only be reported or come to light after a considerable time. Those whom the team met were unable to state with any precision whether there was any flexibility in the way the limitation period was calculated. However the GET notes that according to Articles 17 ff of the Code of Criminal Procedure, the limitation period is interrupted by any criminal proceedings or judicial investigations. Finally, proposed legislation would transform the various lesser offences of corruption into serious offences and the limitation period would then rise to ten years (see paragraph 12).

48. There is no formal confidentiality of investigations in Monaco. A partial remedy seemed to have been found when, in November 2007, in reply to a judge the Court of Appeal confirmed that the general provisions on professional confidentiality also applied to judicial investigations. The GET has not had an opportunity to examine in detail the precise scope of this decision, which probably allows those concerned to rely on these provisions to refuse to pass on information requested by their hierarchy or other persons on the progress of inquiries or cases. However, this approach cannot replace, or offer the same safeguards as, clear provisions on the confidentiality of investigations that would limit the risk of "leaks" or interference in cases, or of lawyers passing on inappropriate information in interviews with the media. The GET noted that a new draft Code of Criminal Procedure was under consideration and that this would introduce the principle of

confidentiality of investigations, which is to be welcomed. The GET recommends **to introduce, as rapidly as possible, clear provisions to guarantee the confidentiality of investigations.**

49. Even though the police themselves appear to be denied access to many sources of information, most of those whom the team spoke to did not report any particular difficulties in eventually obtaining relevant information. Since banking, commercial and professional confidentiality are not applicable to judicial requests, prosecutors can, if necessary, asks an investigating judge to obtain this information. Turning to special investigation techniques, telephone intercepts have recently been introduced and can be used in corruption inquiries, which is to be welcomed. The country's small geographical area causes a practical problem because mobile telephones operate equally on Monegasque and nearby French networks. However, the investigation authorities have developed the practice of systematically requesting mutual assistance from France when telephone intercepts are authorised and the GET was assured that this operates smoothly. Other investigation techniques can be used, but only in the case of mutual assistance concerning organised crime. The new draft Code of Criminal Procedure will make provision for new techniques[13] as well as for witness anonymity. Some of these techniques could also be useful in corruption inquiries. The GET therefore recommends **to adopt as soon as possible new criminal provisions introducing new investigative techniques which are currently missing in Monaco, and to ensure that they are also applicable to corruption inquiries**.

50. The GET is extremely surprised that, in practice, judges and prosecutors cannot approach police officers directly but only through their hierarchy, namely the Director of Public Security. This is a pointless constraint that can lead to loss of time and increase the risk of leaks – since corruption cases are often sensitive – and there is always the risk that the police resources mobilised will not match the judge's expectations. The GET therefore recommends **that in sensitive inquiries such as ones concerning corruption and other – often related – offences, like money laundering and organised crime, prosecutors and investigating judges be authorised to summon police assistance directly and give them appropriate instructions without having to pass through the respective hierarchies.**

Other authorities

51. The GET notes that the Financial Information and Monitoring Department (SICCFIN) has been given additional responsibilities after being named the central authority for corruption purposes. The precise nature of these duties is unclear and SICCFIN has not yet taken any steps to clarify the situation, such as organising training or discussions on preventing corruption or drawing up an anti-corruption work programme. Two new officials are to be appointed to the department to help it monitor compliance with anti-money laundering rules by the various financial and non-financial bodies. In due course, it will be necessary to ensure that SICCFIN has sufficient human resources to carry out its new anti-corruption responsibilities. Moreover, if it is required to play an operational role, for example by acting as a clearing house for and processing suspicions of corruption (something that is under consideration), it might be necessary to review its status. It is currently seen in its own department/ministry as a "normal" administrative department, with no particular guarantees of independence, as required by Article 20 of Convention 173 on specialised authorities for combating corruption. This is particularly important now that SICCFIN has become the main body specialising in corruption and will also be required to deal with purely Monegasque corruption cases. SICCFIN does not yet have access to certain information, for example it cannot go to notaries and lawyers, and it could therefore be authorised to request information relevant to combating corruption from any source. Finally, if the presence of foreign,

[13] Notably electronic surveillance of premises and vehicles and under cover operations; discussions are still underway concerning controlled deliveries. It is intended to make these techniques applicable to corruption inquiries.

and particularly French, personnel adds a certain balance in the context of a society the size of Monaco, it might be useful to extend this benefit to SICCFIN, which is the only department the GET encountered that – for historical reasons, apparently – has practically only Monegasque staff. The GET therefore recommends **to clarify SICCFIN's responsibilities for preventing and combating corruption and, in the light of the outcome, review and strengthen its independence and resources, including access to information.**

III. EXTENT AND SCOPE OF IMMUNITIES FROM PROSECUTION

a. Description of the situation

52. Apart from diplomats and the absolute immunity enjoyed by the Prince and – in practice – his family, members of parliament are the only category of persons to benefit from a system of immunity that might impede judicial proceedings in connection with cases of corruption. Under Article 56 of the Constitution, members of the National Council incur no civil or criminal liability for opinions expressed or votes cast in the exercise of their duties. They may not be prosecuted or arrested during the parliamentary session for any criminal offence without the authorisation of the Council, unless they are actually committing an offence. Under section 7 of Act 771 of 25 July 1964 on the organisation and functioning of the National Council, the circumstances in which the Council may authorise such a prosecution or arrest, other than when the offence is being committed, shall be laid down in its rules of procedure. However, it emerged from conversations on the spot that the rules have nothing whatever to say on the procedure to be followed, not even the majority required for the lifting of immunity.

53. The GET discovered that the question of lifting immunity had never arisen in recent years, until in 2007 criminal proceedings were brought – for the first time - against a member of parliament and several other persons in connection with the offence of document forgery. Following appeals, the case reached the Supreme Court, which ruled in February 2008 on a number of questions concerning the separation of powers and the scope of immunity with regard to the stages in judicial proceedings.

54. The replies to the questionnaire indicated that there was nothing in Monegasque law to enable certain persons to benefit from specific privileges allowing them to be prosecuted or tried in connection with corruption offences under a procedure constituting an exception to general law. This was confirmed on the spot. However the GET notes that Article 14 of the Order of 9 March 1918 on the Directorate of Judicial Services states that after receiving orders from the Prince the Director of Judicial Services shall transmit to the Council of State[14] requests to authorise the prosecution and trial of civil servants and administrative or military employees. According to the authorities, however, this text has become obsolete and is likely to be abrogated by the future legislation on the judicial organisation.

b. Analysis

55. Experience shows that existing legislation and regulations are inadequate because there are no rules laying down the procedure for the National Council to lift parliamentary immunity. It also appears from conversations on the spot that the wording of the Constitution and of Act 771 of 25 July 1964 on the organisation and functioning of the National Council is too vague to determine the investigation measures covered by immunity, at which points of the session it applies and so

[14] The Council of State's main task is to issue opinions on draft legislation, regulations and orders submitted to it by the Prince. It may also be consulted on any other proposals. It comprises twelve members, chosen and appointed by the Prince, after consulting the Minister of State and the Director of Judicial Services. The latter automatically chairs the Council.

on. Nor did the police and justice officials spoken to fully agree on their powers if a member of parliament was caught committing an offence during the parliamentary session, even in a simple case of drunk driving associated with a traffic accident. This highlights the value of clear and practical guidelines indicating when and how immunity should be lifted. They should make it clear that immunity is an exception and must not apply if suspects have abused their position or benefited from impunity for actions that are unrelated to their duties as elected representatives. These important gaps need to be filled and the authorities are therefore recommended **a) to clarify the scope of parliamentary immunity with regard to the different stages of the judicial procedure; b) to clarify the procedure for lifting immunity; c) to adopt guidelines to help members of parliament to decide whether to lift immunity, according to the offences concerned.**

56. The GET considers that Article 14 of the Order of 9 March 1918 establishes particularly wide-ranging and protective immunity arrangements because it potentially applies to all public officials in the Principality – "civil servants and administrative or military employees" – and the launching of a prosecution requires prior decisions reaching the highest levels of state: the prosecutor or investigating judge in charge of the case, the Director of Judicial Services, the Prince and finally the Council of State. Moreover, as far as the GET can see, there is no secondary provision to clarify the scope of this protection of public officials or to limit it by specifying the circumstances in which requests from the prosecuting authorities should receive a favourable response. The GET thinks it would be preferable to make the prosecuting authorities solely responsible for determining whether an offence has been committed and deciding whether it is appropriate to prosecute, powers that are traditionally conferred on prosecution services. In theory, it is difficult to reconcile Article 14 with the need to combat corruption or, more generally, exercise legal oversight of the public service. The GET recommends **to abolish, as it is already envisaged, the requirement, under Article 14 of the Order of 9 March 1918, for the judicial authorities to obtain authorisation at several levels in order to prosecute and try Monegasque civil servants and administrative or military employees.**

IV. PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other forms of deprivation of the instruments and proceeds of crime

57. Confiscation is obligatory in corruption cases. Article 122 of the Criminal Code states that items given as bribes or their equivalent value will never be returned to persons giving bribes, but will be confiscated. The general rules governing confiscation are laid down in Article 12 of the Criminal Code, which states that confiscation, whether of the *corpus delicti* when it is the property of the offender, items that are the proceeds or procured from the offence or items that were used or were intended for use in committing the offence, shall apply to all offences, however they are classified. Confiscation is therefore applicable to the objects, proceeds and instrumentalities of serious and lesser offences, which covers all the offences of corruption. In principle, all types of assets may be confiscated, but confiscation may only be applied to the property of convicted persons and not to assets belonging to third parties, as the latter are protected under civil law. Articles 434 and 444 of the Civil Code draw a distinction between moveable property, where holders' good faith is assumed, and immoveable property, for which holders must establish their good faith in order to exercise their rights. According to the replies to the questionnaire, there are no general provisions authorising the confiscation of indirect assets, that is the proceeds of criminal assets, or the equivalent of criminal assets. Nor is confiscation possible when criminal and legitimate assets are combined. Monaco has not made any provision for reversing the burden of proof for confiscation purposes, confiscation based on civil law standards of proof or

confiscation *in rem*, that is in the absence of a conviction. Some of these aspects are currently under consideration.

58. Special confiscation arrangements apply to money laundering, organised crime and drug trafficking. They go further than the general rules on confiscation and some are only applicable in the context of international co-operation. For example, a) Article 218 of the Criminal Code, on money laundering, and section 6 of the Drugs Act, no. 890 of 1 July 1970, refer to the direct or indirect proceeds of crime, including moveable and immoveable property, funds, securities, shares and capital of illicit origin. Article 219 of the Criminal Code specifies that if assets of illicit origin are combined with ones that have been acquired legitimately, these may be confiscated up to the estimated value of the proceeds that have been incorporated in the combined total; b) using very similar terms, the fourth sub-paragraph of article 16 of Sovereign Order 605 of 1 August 2006 implementing the United Nations Convention against Transnational Organised Crime authorises the confiscation of the income and other benefits derived from offences, assets into which proceeds have been transformed or converted and sums equivalent to the estimated value of the proceeds. If assets of illicit origin have been combined with ones that have been acquired legitimately, these may be confiscated up to the value estimated by the court concerned. c) specifically in connection with the execution of foreign confiscation orders, article 5.3 of Sovereign Order 15.457 of 9 August 2002 on international cooperation in seizure and confiscation as part of the fight against money laundering authorises the recovery of a sum of money corresponding to the value of a given asset constituting the proceeds from or instrumentality of an offence. Under article 8.2, if the foreign judgment provides for value confiscation, the judgment authorising its enforcement renders Monaco creditor of the obligation to pay the corresponding sum of money. If payment is not forthcoming, the state receiving the request may make good its claim on all assets available for that purpose.

Provisional measures: seizure of material evidence and preventive attachment of assets

59. Once again, the Principality has two sets of arrangements, a general one applicable to all offences, including corruption, and other – special – ones that mainly apply to money laundering cases and international co-operation. The general arrangements are specified in the Code of Criminal Procedure. Section 2 of the Code concerns transport, searches and seizures, and contains a general provision, Article 100, which authorises investigating judges to seize, or order the seizure, of any objects necessary to establish the facts, which are placed under seal after an inventory is prepared. Investigating judges have wide powers of investigation and Article 87 of the Code of Criminal Procedure authorises them to take all practicable measures to establish the facts.

60. Turning to special regimes, chapter X of the Code of Criminal Procedure is concerned with seizure in connection with money laundering. For example, Article 596-1 states that with regard to money laundering, the seizure of assets may be ordered, after consulting the state prosecutor, by a substantiated decision of the investigating judge or court, which shall prescribe all appropriate measures of administration. The prosecutor shall enter motivated decisions taken under this article in the register of trade and industry, the special register of non-trading companies (*sociétés civiles*) or the mortgage register. In addition Monaco is a party to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990, which is implemented in Sovereign Order 15.452 of 8 August 2002, and in Sovereign Order 15.457 of 9 August 2002 on international cooperation in seizure and confiscation as part of the fight against money laundering. The latter applies to any request made pursuant to Article 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted at Vienna on 20 December 1988. Article 2 states that *"The provisions of this order also apply to any request made pursuant to Chapter III of the Council of*

Europe Convention on Laundering .... by a State that is party to the Convention having as its purpose one or more of the following measures: 1. the search for and identification of the proceeds from an offence and any things used or intended to be used to commit the offence and any asset whose value corresponds to the proceeds from the offence; 2. the confiscation of such things, proceeds or assets; 3. the taking of interim measures with regard to such things, proceeds or assets." Under Article 9, execution on Monegasque territory of interim measures that are the subject of a request submitted by a foreign judicial authority pursuant to Article 1.3 or Article 2.3 shall be ordered, at the prepaid expense of the state making the request and under the terms and conditions set forth in the Code of Civil Procedure, by the President of the court of first instance on a referral from the public prosecutor, provided that the owner of the assets could not be unaware of their origin or fraudulent use. The maximum term for these measures is two years, but they may be renewed without restriction under the same conditions before the deadline expires. Article 9 also allows any interested party to ask for the total or partial lifting of interim measures and requires the party that initially requested them to be advised of this beforehand.

61. Under section 4 of Act 1.162 of 7 July 1993 relating to the participation of financial undertakings in countering money laundering, prior to any decision to open judicial investigations the public prosecutor may ask the President of the court of first instance to issue a sequestration order. This procedure makes it possible to freeze funds suspected of originating from the money laundering of the proceeds of crime.

62. There are no special regulations on the management of seized or frozen assets derived from offences, except in the case of money laundering where, according to Article 596-1 of the Code of Criminal Procedure, an investigating judge or court may prescribe all appropriate measures of administration. Thus, for example, this has made it possible to entrust the management of a seized property to a court appointed administrator/estate agent, for the purpose of paying charges, receiving rents and so on.

Other machinery

63. Section 4 of the Anti-Money laundering Act (No. 1.162[15]), as amended, states that where a suspicion has been reported, SICCFIN may oppose the operation of any transaction. This is then suspended for twelve hours, and this period may be extended by order of the President of the court of first instance. Section 4 also allows SICCFIN to request the public prosecutor, on a substantiated order issued by the President of the court of first instance or a judge delegated by him, to sequester the assets concerned: monies, accounts, stocks or products addressed in the suspicion report. Assets are released according to the general rules.

64. Sovereign Order 15,321 of 8 April 2002 on the procedures of freezing of funds for the purposes of combating terrorism has been adopted in the framework of international sanctions against terrorism (and completed shortly after the visit by the Sovereign Order 1,675 of 10 June 2008 on the procedures of freezing of funds through the implementation of economic sanctions).

[15] Act of 7 July 1993 relating to the participation of financial undertakings in countering money laundering

Money laundering

65. Money laundering is an offence under Section VII of the Criminal Code (articles 218 and 219)[16]. The various corruption offences constitute predicate offences for the purposes of money laundering, in accordance with the definition of assets and funds of unlawful origin in Article 218-3. This provides that money laundering applies in connection with offences carrying a sentence of more than three years' imprisonment, as well as various other offences, including corruption in the private sector under articles 115 and 119 of the Criminal Code, which normally carry lighter sentences. According to the authorities, the definition of money laundering in Article 218 implies that self-laundering is also an offence. Attempts to commit the offence are themselves an offence and under Article 218-1 the Principality claims jurisdiction to try cases of laundering committed in Monaco when they concern the proceeds of offences committed elsewhere, subject to the predicate offences meeting the dual criminality requirement (article 218-3).

66. Monaco has had arrangements for identifying and preventing money laundering since the 1993 Act relating to the participation of financial undertakings in countering money laundering (and terrorism financing since the modifications in July 2002). The details of the law's application are specified in Sovereign Order 11.160 of 24 January 1994, as amended. The GET notes that under section 3 of Act 1.162, the duty to report suspicions of money laundering concerns all sums

[16] Article 218 (Act 1.161 of 7 July 1993). 1. The following shall be liable to five to ten years' imprisonment and the fine provided for at Article 26.4, the maximum amount of which may be increased tenfold:
- any person who knowingly uses directly or indirectly assets or funds of unlawful origin to acquire movables or real property, in any form whatsoever, for himself or on another's behalf, or who has knowingly held or used such goods;
- any person who has knowingly lent assistance to any transfer, investment, concealment or conversion of assets or funds of unlawful origin;
- any person who has knowingly held assets or funds of unlawful origin, without prejudice to the provisions relating to handling stolen goods.
2. (as amended by Act 1.261 of 23 December 2002) In the event of aggravating circumstances, the penalty shall be ten to twenty years' imprisonment and the fine set forth at Article 26.4, the maximum amount of which may be increased twenty fold. Aggravating circumstances exist when the perpetrator:
- acts as a member of a criminal organisation;
- takes part in other international organised criminal activity;
- takes up a public duty which helps him to commit the offence;
- takes part in other unlawful activities facilitated by committing the offence;
- involves persons under twenty-one years of age in committing the offence;
- has been convicted by a foreign court of a money laundering offence under the conditions regarding repeat offences set forth at Article 40.
Article 218-1 (Act 1.162 of 7 July 1993; replaced by Act 1.322 of 9 November 2006). The offences referred to in the preceding Article shall be constituted even though the offence from which the laundered funds derive has been committed in another country, if it is punishable in the State where it has been perpetrated. Attempts to commit the above-mentioned offences shall incur the same penalties as the completed offence. The same shall apply to conspiracy or association with a view to committing the above-mentioned offences.
Article 218-2 (Act 1.162 of 7 July 1993; replaced by Act 1.322 of 9 November 2006). Any person who, in disregard of his professional obligations, provides assistance with any transfer, investment, concealment or conversion of assets or funds of unlawful origin shall be liable to one to five years' imprisonment and the fine provided for at Article 26.4, the maximum amount of which may be increased tenfold, or to one only of those two penalties.
Article 218-3 (Act 1.162 of 7 July 1993; modified by Act 1.274 of 25 November 2003; replaced by Act 1.322 of 9 November 2006). - For the purposes of the present Section, assets and funds of unlawful origin are deemed to be the proceeds of the following offences, when they are committed within the framework of organised criminal activity;
The proceeds of offences specified in articles 82, 83, 115, 118, 119, 265, 268, 304, 324, 327, 328-5, 335, 337, 360, 362, 363 and 364 of the Criminal Code, sections 44 and 45 of Act 606 of 20 June 1955, sections 23, 24 and 25 of Act 1.058 of 10 June 1983 and section 26-1 of Act 1.194 of 9 July 1997 are also deemed to be assets and funds of unlawful origin.
Article 219 (Act 1.162 of 7 July 1993). - The court shall order the confiscation of assets and funds of unlawful origin. It may order the confiscation of movables or real property acquired using such funds. If assets and funds of unlawful origin have been mingled with lawfully acquired assets, such assets may be confiscated up to the estimated value of the proceeds mingled therewith. Confiscation may be ordered without prejudice to the rights of third parties. The State Prosecutor shall carry out the necessary formalities for registration and public notice.

recorded in the books and all transactions relating to funds that could derive from drug trafficking, organised criminal activity or terrorism or terrorist acts or terrorist organisations. Although the proceeds of corruption are not explicitly mentioned, the Monegasque authorities consider that this article deals with all the proceeds-generating offences of article 218-3 of the Penal Code, and to this end, corruption is explicitly addressed.

67. As noted earlier (see paragraph 42), the Financial Information and Monitoring Department (SICCFIN) acts as the financial intelligence unit and as such receives reports of suspicious transactions. This requirement concerns financial institutions[17] and a certain number of non-financial ones[18], as specified in sections 1 and 2 of the 1993 Act and Sovereign Order 14.466 of 22 April 2000, which slightly extended the list of entities covered. The entities covered by the legislation are also required to exercise due diligence and to have internal policies concerned with identifying and monitoring clients that take account of the need to combat money laundering and terrorism financing. These requirements do not apply in the same way to all the categories of entities and institutions concerned. Article 12 of Sovereign Order 632 of 10 August 2006 financial institutions are required to exercise a higher level of vigilance with regard to "persons who hold or have held prominent public functions in a foreign country, or politically exposed persons". In addition to its analytical responsibilities, SICCFIN is responsible for enforcing the 1993 anti-money laundering legislation.

Statistics

68. Sequestrations were ordered in 2006 (on the basis of Act 1.162 of 7 July 1993 relating to the participation of financial undertakings in countering money laundering) in connection with money laundering cases to a total value of € 5 900 000, but have not yet been followed by final confiscation as the cases are still not closed. There is no record so far of any confiscations as a result of corruption. There are no available statistics on interim measures, which the authorities explain by the fact that Monaco's membership of GRECO is still very recent.

69. Over the period 2005-2007, SICCFIN received 8 declarations of suspicious transactions linked to the proceeds of corruption. These declarations have been dealt with and two of them were transmitted to the judicial authorities in 2007 on the basis of SICCFIN's general administrative responsibilities with regard to money laundering and the notion of "organised criminal activity" in the anti-money laundering legislation which may apply to certain corruption offences.[19] SICCFIN says that it regularly reviews progress on cases transmitted to the police. However, at the time of the visit, it had not received any information back from the police on the two cases in question.

[17] persons who carry on banking or bank intermediation business on a regular basis; the financial services of the Post Office; insurance companies referred to at Article 3 of Order 4.178 of 12 December 1968 instituting State supervision of insurance undertakings of all types and of capitalisation undertakings and organising the insurance industry; companies carrying on the activities referred to at Article 1 of Act 1.194 of 9 July 1997 relating to portfolio management and similar stock market activities; bureaux de change.

[18] persons carrying out operations relating to the management and control of foreign companies (company service providers); casinos; estate agents; lawyers; notaries; legal officials; legal and financial advisers; statutory auditors, chartered accountants and liquidators in bankruptcy; dealers in precious objects, such as precious stones, precious materials, antiques, works of art and other valuable objects.

[19] The preamble to Law No. 1.253 (of July 2002) altering Law No. 1.162 states that the notion "of organised crime" covers "activities carried out by an organised group of at least three persons, which has existed for a certain length of time and works in a concerted way with the aim of committing offences punishable by a sanction of deprivation of liberty of at least four years, with reference to Monegasque criminal law"

Mutual assistance: provisional measures and confiscation

70. Monaco's taxation system means that in principle it does not provide assistance in cases that are solely tax-related, unless they involve offences under Monegasque law, such as organised tax fraud. The Principality may, however, give assistance when the request concerns criminal offences as well as fiscal matters. As already noted, existing provisions on special confiscation arrangements are largely bound up with the international assistance that Monaco can provide as a requested state. Monaco is a party to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990, which is implemented in Sovereign Order 15.452 of 8 August 2002, and in Sovereign Order 15.457 of 9 August 2002 on international cooperation in seizure and confiscation as part of the fight against money laundering. The latter applies to any request made pursuant to Article 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted at Vienna on 20 December 1988. Article 2 states that *The provisions of this order also apply to any request made pursuant to Chapter III of the Council of Europe Convention on Laundering .... by a State that is party to the Convention having as its purpose one or more of the following measures: 1. the search for and identification of the proceeds from an offence and any things used or intended to be used to commit the offence and any asset whose value corresponds to the proceeds from the offence; 2. the confiscation of such things, proceeds or assets; 3. the taking of interim measures with regard to such things, proceeds or assets.*

71. Under Article 9, execution on Monegasque territory of interim measures that are the subject of a request submitted by a foreign judicial authority shall be ordered, under the terms and conditions set forth in the Code of Civil Procedure, by the President of the Court of First Instance on a referral from the public prosecutor, provided that the owner of the assets could not be unaware of their origin or fraudulent use (which the GET takes to be a partial reversal of the burden of proof, otherwise absent from Monegasque law). The maximum term for these measures is two years, but they may be renewed without restriction under the same conditions before the deadline expires. Article 9 also allows any interested party to ask for the total or partial lifting of interim measures and states that the party that initially requested them must be advised of this beforehand.

72. The replies to the questionnaire indicate that as an applicant state, Monaco bases its requests for interim measures or confiscation, either on bi- or multilateral treaties or on the general principle or reciprocity.

73. Thirty-nine requests for international assistance relating to corruption were recorded between 2002 and 2007, from countries such as France, Belgium, Italy, the United Kingdom and Germany. Over the same period, the Monegasque authorities issued four requests for international assistance specifically concerned with corruption offences. No information is available on these last four cases.

b. Analysis

74. As indicated in paragraph 10, Monegasque law makes conspiracy and criminal association in the preparation or commission of a crime an aggravating circumstance in the case of the offence of corruption of a member of court (Art. 121 PC). The definition of "organised gang" laid down in the Penal Code in Law No. 1.344 of 26 December 2007 constitutes an aggravating circumstance for certain offences such as those concerning the abuse of a vulnerable person and procurement through prostitution, but not for corruption offences pending the adoption of the relevant law (which, it was announced during the visit, was due in 2008 but will be postponed). Monegasque law also incriminates "organised crime" through its Sovereign Order 605 of 1 August 2006

(implementing the United Nations Convention Against Transnational Organised Crime), in connection with criminal activities linked to corruption under certain conditions: a) when the corruption offences are punishable by a sanction of at least 5 years' imprisonment according to Monegasque law; b) when these acts have a transnational dimension and c) in all cases relating to active and passive corruption as defined in Article 8 of the United Nations Convention Against Transnational Organised Crime. Finally, according to Law No.1.161 of 1993 adapting the Penal Code, organised crime constitutes an aggravating circumstance for money laundering alone. The GET considers that with regard to Guiding Principle 19, the Principality should include more often and more systematically legislation pertaining to organised crime (and similar notions) in connection with corruption, in particular as regards the mechanism of aggravating circumstances. The GET recommends **to take the appropriate measures to make offences committed in relation with organised crime and similar notions (criminal association, organised gang) an aggravating circumstance for a broad range of corruption offences.**

75. The Monegasque anti-money laundering arrangements[20] under the 1993 legislation are confined to the proceeds of drug trafficking and organised crime. They do not cover corruption as such, unless it is linked to organised crime. However, it appeared from discussions on the spot that SICCFIN does take note of reports and other information received, including information from abroad, concerning possible corruption and systematically treats such cases as "organised criminal activities". The GET welcomes the fact that SICCFIN takes as broad a view of corruption as the relevant legislation allows. Nevertheless, the current situation is less than satisfactory since SICCFIN is now the country's specialist authority on corruption matters (according to the meaning given by the Criminal law Convention on Corruption (ETS 173)) and would be desirable that the SICCFIN be competent to deal with the broadest range of corruption offences. Finally, since the predicate offences to money laundering specified in Article 218-3 of the Criminal Code include the various corruption offences it would be logical to bring the preventive arrangements into line with the criminal provisions to ensure that cases were dealt with in a standard fashion from reporting through to criminal proceedings. The GET has been told that this is under consideration, which is to be welcomed. The GET regrets that at present the higher level of vigilance that has to be applied under the anti-laundering legislation to transactions involving "politically exposed persons" is confined to persons who hold or have held functions abroad (along the lines of FATF recommendation 6, which encourages the countries, however, to extend the concept to domestic PEPs). This means that Monegasque decision makers are not subject to particular vigilance from Monaco's financial and other establishments. It is, admittedly, a small country and there are very few decision makers. Nevertheless, members of the Monegasque political class are not currently subject to any specific administrative or criminal law provisions (apart from two provisions, still to be confirmed). In the light of the foregoing, the GET recommends **a) to explicitly extend the 1993 anti-money laundering legislation to include the various corruption offences, even outside the context of organised crime, as is currently envisaged; b) to consider extending the notion of "politically exposed persons" to persons who hold or have held functions in Monaco, rather than simply abroad.**

76. SICCFIN has produced documentation to help entities covered by the legislation to fulfil their identification obligations in money laundering cases, carry out their legal due diligence requirements and so on. The status of these memorandums and guidelines is not entirely clear since the anti-money laundering legislation does not specify SICCFIN's powers to issue such material. So far, these documents have not dealt with corruption, although SICCFIN's 2007 report does look at money laundering in relation to corruption. Since corruption is a fairly new topic of concern, the GET thinks that it would be particularly helpful to offer the entities concerned more information on the subject. It therefore recommends **to draw up guidance documents,**

[20] A detailed evaluation has been carried out by the Council of Europe's MONEYVAL Committee (www.coe.int/moneyval)

organise training and develop other initiatives to help entities subject to the legislation to fulfil their detection and other obligations with regard to money laundering linked to corruption.

77. The GET welcomes the fairly broad definition of money laundering, which also makes self-laundering an offence. This is important in the context of combating corruption. Those whom the GET spoke to stressed that the broad definition of money laundering also made it easy to apply the provisions on confiscation and interim measures. However, as noted in the descriptive part, there are different rules governing confiscation: the general rules in Article 12 of the Criminal Code (CC) and those specifically applicable to money laundering, organised crime and terrorism in articles 218-3, 219 and 391-10 CC. In principle, therefore, it is the general rules that apply to corruption cases. Here, the GET has identified a number of problems, or even shortcomings, and the lack of practical experience of confiscation in connection with corruption means that these doubts must remain. For example, it was told that the general confiscation provisions always had to be applied. Yet, this does not follow from Article 12 CC and the only provision on confiscation and corruption – Article 122 CC (*items given as bribes or their equivalent value will never be returned to persons giving bribes, but will be confiscated*) – only deals with the matter from the standpoint of the instruments of the offence and of persons who have actually given bribes, whereas Article 12 CC also deals with instruments intended for use in committing offences. The general rules are also less specific than the special ones, which clearly apply to direct and indirect assets, combinations of legal and illicit assets and, in certain cases, their equivalent value. The special confiscation arrangements are also more precise in that they apply to all assets of whatever nature, though there is no reference to the non-material benefits sometimes encountered in corruption cases, such as the granting of honours or finding work for a family member. The GET recommends **that the rules on confiscation applicable to corruption, in the absence of money laundering or organised crime, be amended to make it clearly obligatory for all types of corruption and applicable to tangible, intangible, direct and indirect proceeds, to their equivalent value and to cases where legal and illicit assets are intermingled.**

78. Confiscation in both its general form and in that stipulated in Article 219 for money laundering can only be applied to assets belonging to convicted persons. It cannot be ordered in respect of any assets held by third parties. Monegasque law protects bona fide holders or owners but experience shows that in practice persons involved in corruption often seek to conceal assets in the names of other persons or in the balance sheets of legal persons that they themselves control. The inability to confiscate assets transferred to third parties could reduce the effectiveness of anti-corruption efforts. Finally, Monegasque does not authorise confiscation if there is no conviction, even though this may be valuable if, for example, the perpetrator of an offence dies before the verdict or flees abroad, or the matter concerns a foreign confiscation request based on non-penal standards. The GET recommends **to consider the possibility of confiscation of the proceeds of corruption held by third parties who are or should be aware of their illicit origin and also envisage making it possible to confiscate in the absence of a conviction.**

79. Under the general rules on interim measures, the emphasis in Article 100 of the Code of Criminal Procedure (CCP) is essentially on protecting evidence, or "objects necessary to establish the facts", which are then placed under seal after an inventory is taken. This approach is also reflected in the following articles, which deal with the seizure of correspondence, documents, counterfeit money and so on. The Code contains no other justifications for seizure, such as a precautionary measure with a view to subsequent confiscation. The professionals whom the team met said that in practice the scope of Article 100 was sufficiently broad and permitted the sequestration of real property, the freezing of funds and so on. However, the GET noted that

sequestration of assets is foreseen in the CCP only in case of conviction in absentia, and in the anti-money laundering legislation for what is the area of implementation of the latter. The special arrangements in the CCP and the sovereign orders on international co-operation deal more clearly with interim measures and lay down detailed procedures for seizure. However, the GET notes that the special arrangements relating to money laundering in Article 596 of the CCP once again make no provision for seizure as a prior step to confiscation, which would make it possible in practice to apply interim measures to the same types of assets as those liable to be confiscated. Finally the on-site meetings cast no further light – concerning corruption offences - on the various possible options for managing seized or perishable assets, or for liquidating confiscated assets for the benefit of the state. In the light of the foregoing, the GET recommends **to provide for interim measures applicable to corruption as such, that will make it possible at an early stage of inquiries to protect the various forms of assets and, if necessary, to make further arrangements for the management of seized assets.**

80. The GET notes that there are no general instructions or directives making it an obligation to conduct special financial and asset investigations with a view to identifying, localising and freezing the proceeds of criminal offences when such offences – including ones linked to corruption - are uncovered. Practitioners met on site said that detailed investigations of this sort were carried out as a matter of course. The GET has no reason to doubt these claims but notes that little information is available on the practice of interim measures and confiscation when nearly 13% of the criminal cases in Monaco – 50% of the cases handled by the investigating judges – concern economic and financial offences (which in theory would generate confiscatable profits for the state or the victims). It also finds it surprising that the employees of the companies register whom it met could not remember even once in recent years receiving a judicial order to supply full information on one or more companies. The Monegasque authorities should perhaps examine the work practices of the enforcement authorities and make sure that, whenever necessary, those concerned are deprived of the proceeds of crime. At all events, such an assessment should be able to rely on systematically collected quantitative data on seizures and confiscation, something that is currently lacking outside the context of international mutual assistance. The GET therefore recommends **to put in place appropriate measures (notably a system to collect detailed statistics on interim measures and confiscation, including data on offences committed in Monaco) to evaluate the effectiveness, in practice, of the activity of the enforcement authorities concerning the proceeds of crime.**

V. PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework - anti-corruption programme

81. The Monegasque constitution establishes the principle of separation of administrative, legislative and judicial functions. Besides the criminal law provisions on corruption seen at the beginning of this report and which cover broadly corruption involving civil servants, there is no specific anti-corruption programme or policy for the administrative authorities, or any specific definition of "administration" or "public official" [21]. The Criminal Code refers to civil servants and contractual

[21] Public Officials: those persons who, within the meaning of the Status of Public Officials Act, no 975 of 12 July 1975, are nominated by Sovereign Order to one of the permanent State positions and hold tenure within the hierarchical structure of the Administration.
State Officials: those officials who do not have the status of public official within the meaning of the Status of Public Officials Act, no 975 of 12 July 1975 and who are employed under contract or temporarily to carry out tasks serving the State. The length of their employment, which can be renewable, is generally between one and five years, depending on the nature of the tasks and responsibilities concerned.

staff, administrative employees and similar concepts, and the Code of Criminal Procedure uses terms such as authority and public official.

82. The GET was told that as part of the modernisation of the public service, the Public Service Directorate planned to produce a circular on integrity, ethics and other matters of relevance to fighting corruption. The principle of appraising officials is only just emerging but it is planned to develop such a policy. The Inspectorate General of Administration (IGA) was entrusted with the overall coordination of the administrative modernisation including reforms that would include the status of established and non-established officials, modernised procedures and proper explanations for administrative decisions. The government has commissioned an opinion survey on the quality of the public service and the image of officials, the findings of which were handed over in March 2007.

Transparency

83. Information in legal compendiums, the Principality's official gazette and the Internet site of Monegasque institutions is accessible to interested parties and the general public. An administrative information centre, which is responsible to the Minister of State, was established in 1993. It advises the public on administrative procedures, organises and runs a database of documents for administrative departments and puts individuals into contact with the relevant officials and departments. Legislation and regulations are often drafted in consultation with the business community and civil society. Moreover, public works projects must be debated in the National Council in public sessions, to which all citizens therefore have access. The GET was informed after the visit that a website entitled "Legimonaco" will allow the public in the near future to have access to the laws, codes, jurisprudence as well as legislation which is in the adoption phase.

Oversight of public administration and other measures

84. The Principality adopted on 29 June 2006, the Act N° 1.312 on explanations for administrative decisions. To facilitate its implementation, an interpretative circular was issued on 1 June 2007 and sent to the various administrative departments. A round table was also organised on this subject in June 2008 with the participation of the decision-makers from the various departments concerned. Under Monegasque law, both the public and officials can appeal against administrative decisions to the authority that made the decision and to a higher administrative authority. Applications may also be lodged with the Supreme Court under administrative law to set aside decisions of administrative authorities and sovereign orders to implement legislation on grounds of breach of authority. In addition, citizens may also refer matters to the official mediator within the Ministry of State.

85. The Controller of Public Spending (CGD), created in 1968, who is answerable to the Minister of State, heads a department established in 1959 that currently has 12 staff, comprising financial and technical inspectors and auditors, secretariat and archivist. The department, which since 2007 has been headed by a Monegasque, monitors authorisations of payment, public income, final budgetary accounts and so on. The control is predominantly ex ante and is concerned with the income and expenditure of the state and public establishments, and of foundations, companies and other bodies receiving state support. The CGD's monitoring is mainly financial

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Elected Officials : members of the National Council and Municipal Council . Carrying out functions on a voluntary basis, the elected official can exercise any profession which is not incompatible with the public function, within the meaning of revised Act no 839 of 23 February 1968 on national and municipal elections.

and legal. The Controller must authorise any overspending. He can refuse to approve commitments or payments, if they differ from budget provisions or are not accompanied by the right supporting documents, thus blocking them. The CGD also audits the budget of the Prince and his entourage and produces an annual report, which is not published but submitted to the Minister of State, the Prince and the Speaker of the National Council.

86. The High Commission for Accounts (CSC), or auditor general's department, exercises ex post control of public income and spending and the administration of the state budget. The Commission therefore monitors the finances of the state, the municipality and the constitutional reserve fund, whose income come from budget surpluses and certain investments. An annual, unpublished, report on the national accounts is presented to the Prince and the National Council. Separate, non-annual, reports may be prepared on other sectors. The Commission does not monitor all the bodies receiving public funding. Companies in which the state has a holding and associations are excluded, though in certain circumstances – as in the case of associations - the Prince may request an *ad hoc* examination. Decisions are taken on a collegial basis. The work of the CSC is primarily financial/formal and relies heavily on the earlier efforts of the CGD. The CSC has no investigative or coercive powers. It comprises six judges, all of them French but in Monaco on an independent basis. They are co-opted by the Prince, the government and the CSC itself. The Chair, a retired member of the French Court of Auditors, is appointed personally by the Prince and has held this position since 1969. At the time of the visit, a draft sovereign order was under consideration to strengthen the institution and authorise publication of its annual report[22]. The CSC has never shown an interest in corruption and considers that criminal offences fall outside its remit.

87. Order 6364 of 17 August 1978 on the senior posts covered by section 4 of the Status of Public Officials Act, no 975 of 12 July 1975, created the post of Inspector General of Administration – IGA). The Minister of State may ask the latter to carry out investigations into the functioning of departments or the conduct of individual officials. However, the IGA is not systematically involved in the disciplinary proceedings of other departments, which are not referred to her. It emerged from discussions that the institution does not have its own secretariat but relies on that of the Minister of State, to which it is answerable and which gives it its terms of reference. The present incumbent, a Monegasque citizen appointed in 2007 for an indefinite term just like any other civil servant, also acts as adviser on the modernisation of the public service and administration in general, other than the police and judicial system, which are outside her jurisdiction. The current IGA has not yet had the occasion to conduct any internal administrative inquiries and the GET was unable to obtain information on her predecessors' activities in this area, since their reports are not published and the current IGA had not consulted any of the ones produced by them. Corruption as such is not part of this authority's current mandate and the team was told that if the IGA were to suspect that an offence – of corruption or anything else – had been committed, the Minister of State would be consulted and the public prosecutor would then be informed, as laid down in the Criminal Code.

88. Finally, there is the post of Counsellor to the Minister of State responsible for applications and mediation. The Counsellor is a sort of ombudsperson who receives applications and complaints from citizens. In its current form, the institution, which is answerable to and financed by the Minister of State dates from 2003 and has no powers to issue orders. It tries to find solutions through compromise. The present incumbent is a Monegasque citizen appointed in 2005. The mediator has not so far been concerned with any matters relating to corruption.

[22] As indicated in paragraph 138, this legislation (Order no. 1.707) was adopted after the visit on 2 July 2008.

89. In the realm of public security, since 2006 there has been a general inspectorate of police, under the direct hierarchical control of the Government Counsellor for the Interior (see also paragraph 19 of this report).

Recruitment, careers and preventive measures

90. The state public service employs about 3 400 established and non-established officials and the municipal service 590. Including a little over 2 000 persons employed by public establishments, this gives a total of about 6 000. This does not include the 15 elected members of the municipal council, who are mainly from the private sector and are not paid, and the 24 members of the National Council.

91. There are specific but similar policies and legislation for each of the two bodies of officials, those of the Principality and of the municipality. Similar legislation dating from 2000 concerns court registrars. Act 975 of 12 July 1975 and Act 1.096 of 7 August 1986 lay down the recruitment arrangements for, respectively, state and municipal established officials. Contractual employees of the state are not covered by Act 975 (as the GET was sometimes told) but by standard contractual provisions laid down in a regulation issued by the Minister of State. The GET was unable to determine what regulations applied to contractual staff of the municipality.

92. During the visit, the team was told that all recruitment of established and contractual staff was by competitive examination following an announcement in the official gazette. The recruitment conditions are detailed in almost identical terms in Articles 18 ff of Acts 975 and 1096.Those concerned must enjoy civil and political rights, be of good character, which in practice means no police record, have successfully completed the selection procedures[23] and be physically and psychologically suited for the work. However section 4 of the legislation on state officials states that appointments to senior posts are solely the responsibility of the authority concerned[24]. Otherwise, these posts carry the status of established or contractual official, depending on the particular case. There is no nationality condition for public employment but preference is given wherever possible to Monegasque citizens. Monaco employs very large numbers of French staff. The GET notes that the high proportion of French nationals working in Monaco representing, for example, 75 to 80% of the 6 000 public officials, may at least help to limit the narrowness of social relationships. All public officials, both administrative and military, must swear an oath of loyalty to the Prince and obedience to the laws of the Principality, and must also swear to carry out their duties faithfully. The rights and obligations of officials seconded by France are those laid down in Monegasque law.

Training

93. Newly recruited officials receive a general training of seven months and undergo placements in various departments before their final posting. There is no system of continuing training. It

[23] Under articles 21 and 22 of the legislation on established officials of the state, an examination panel lists the successful candidates in order of merit. Applicants are initially made, by ministerial decree, to the post of trainee. The length of training period is laid down by sovereign order after consulting the Public Service Commission.

[24] Under Order 6364 of 1978 (amended in February 2007), these concern a) members of the diplomatic and consular corps, b) the Controller of Public Spending, c) the Secretary General of the Minister of State, d) directors general and directors, heads of department, counsellors, the General Inspector of Administration and certain other senior officials responsible directly to the Minister of State and the government counsellors, e) the Secretary General of the Directorate of External Relations; f) the secretaries general and chief secretaries of departments; g) the Treasurer or General Treasurer of Finance; the Secretary General of the Directorate of Judicial Services; h) the Secretary General of the National Council; i) the commissioners of police and the Head of Public Security; j) the Head of the private office of the Speaker of the National Council.

emerged from the on-site discussions that no particular efforts were usually made to raise awareness of ethical issues and the need to prevent corruption. Seconded French staff receive no training on the Monegasque institutional and legal system.

Conflicts of interest, incompatibilities

94. The Status of Public Officials Act, no 975, establishes certain basic principles concerning conflicts of interest in dealings with companies and other parallel activities. For example, all public servants, irrespective of position, are forbidden from having interests of whatever form, either directly or via a third party, in any undertakings overseen by the administrative departments to which they belong or having a direct relationship with them, if those interests could pose a threat to their independence (section 7). Such prohibitions continue for two years after their appointment to another department. Nor may officials engage in paid occupations without an exemption issued by the Minister of State. The latter must also be informed of any paid activity undertaken by spouses and take appropriate measures to protect the interests of the public service, after consulting a special joint committee (section 8). Under section 4, similar rules apply to contractual or replacement staff, except that they are banned from undertaking paid employment, even on an exceptional basis. The Status of Municipal Officials Act, no 1.096, has the same provisions as those that apply to state officials. The municipality also employs contractual staff, but the GET has not been able to determine what provisions apply to them.

95. Article 67 of the National Council rules of procedure forbid national councillors from using their parliamentary influence in business affairs, though this is a purely ethical ban since there are no penalties attached. "Councillors may not rely on or allow the use of their parliamentary status in financial, industrial or commercial undertakings or in the exercise of liberal professions or other occupations. Nor may they enter into any commitments with associations or groupings dedicated to defending special interests concerning their parliamentary activities." According to information received, there are no similar provisions at municipal level.

96. The Administration of Justice Act (no. 783) 1965 makes the function of judge incompatible with any other public duties and paid private activities, other than research, artistic and educational ones. The Act also covers the posts of court registrar and bailiff.

97. Finally, the GET notes that Article 112 of the Criminal Code makes it an offence for established and other public officials to take unlawful advantage of an interest, that is interfere in matters in a way that is incompatible with their status[25], while Article 308-1 makes insider dealing – using privileged information for personal purposes – an offence[26].

Other measures

98. Apart from the aforementioned rules there are no general provisions on gifts and benefits. Nor has the GET identified any clear provisions on the subject in specific authorities and departments,

[25] Article 112 of the Criminal Code states that established and other public officials who, whether openly, covertly or through third parties, take or receive any interest whatever in decisions, public contracts, undertakings or state-run businesses in or over which they have, or had at the time of the action, in whole or in part, executive or oversight responsibility, shall be liable to six months' to three years' imprisonment and the fine specified in Article 26.3. They shall also be declared ineligible for any public duty. This provision also applies to established and other public officials who have taken any interest in cases where they were responsible for ordering or settling payments.

[26] Article 308-& of the criminal code states that members of any council, commission or consultative committee of an administrative nature who disclose facts, information or the contents of documents of which they aware because of their official status, communicate them to third parties or make personal use of them, without the government's authorisation, shall be liable to six months' imprisonment and a fine of from € 2 250 to 9 000.

other than the hospital regulations[27]. Elected members are not required to declare their assets or interests, and there is no system of rotation for public officials in posts that are exposed to the risk of corruption, though the employment of seconded French officials means that there is a certain natural rotation. Neither are there a code of conduct or ethical rules for public officials that take account of corruption. The replies to the questionnaire showed that there are no regulations governing movements of personnel between the public and private sectors – the so-called revolving doors. However, the regulations applicable to state contractual officials (though no others) do include a provision that could be interpreted in this way, since it prohibits interests in companies for five years for officials covered in the previous paragraph who are appointed to a department that no longer exercises such supervision or who cease to be employed (underlined by the GET). It was also told that the work culture, in which the hierarchy is consulted on numerous decisions, including so-called "sensitive" ones, offers a certain additional measure of oversight.

99. In the case of established state officials, in addition to the oath they take at the start of their careers, sections 10 and 11 of Act 975 refer to the Criminal Code's requirement for professional confidentiality and introduce an obligation of professional discretion that extends to documents and information held[28]. Identical provisions appear in Act 1.096 of 7 August 1986 on municipal officials, and similar ones in Act 1.228 of 10 July 2000[29].

Reporting corruption

100. Article 61 of the Code of Criminal Procedure requires public officials to report offences that come to their attention: authorities and public officials who, in the course of their duties, become aware of the commission of an offence shall immediately report the fact to the public prosecutor and supply him with all information, documents and legal instruments necessary to prosecute the offence. There is also a general principle whereby all public officials can alert their superiors if they identify or uncover corruption, based on the general rule that staff who encounter cases or problems that cannot be settled at their own level because of their importance, complexity or potential consequences can refer the matter to their hierarchical superior or head of department, who will decide what measures to take (source: practical guide to the public service). There are no specific administrative provisions to protect officials who have reported such conduct (or their careers) against possible reprisals. The only possible protection is afforded by articles 230 to 235 in the form of the criminal offences of making threats in cases where there is specific physical or moral risk.

[27] These ban hospital staff from receiving tips, gifts and gratuities (article 62). Gifts to the hospital in the form of equipment or other forms of assistance may be accepted, but must be approved by the hospital board and the cabinet.

[28] Section 10 – In addition to the rules on professional confidentiality in the Criminal Code, all public officials are bound by an obligation of professional discretion regarding facts and information that come to their attention in the course of their duties.
The misappropriation of departmental information or documentation or its communication to third parties in contravention of the regulations is strictly forbidden.
Officials may only be exempted from this obligation of discretion or the prohibition specified in the previous sentence with the authorisation of the head of the department concerned.
Section 11 – Public officials, irrespective of their position, shall abstain from any conduct, attitude or activity, either on their own behalf or on that of any other individual or legal person, that is incompatible with the discretion and circumspection inherent in their duties.

[29] Article 9: Registrars, irrespective of their position, shall abstain from any conduct, attitude or activity, either on their own behalf or on that of any other individual or legal person, that is incompatible with the discretion and circumspection inherent in their duties.

101. The auditors' representatives also drew the GET's attention to Article 64 of the Code of Criminal Procedure, which in addition to the abovementioned obligation applicable to state officials provides that any person who is aware of a crime or lesser offence may report it.

Disciplinary procedures

102. Certain professions such as judges and the police are subject to specific rules (see paragraphs 20, 29 and 31). Section 41 of Act 975 of 12 July 1975 specifies several disciplinary sanctions for established state officials in general, which are applicable in addition to any criminal proceedings: warning, reprimand, relegation in step, downgrading, temporary exclusion from duties from three months to one year, compulsory retirement and dismissal. Temporary exclusion from duties for up to three months may also be ordered as a principal or supplementary sanction. Identical provisions apply to municipal officials under sections 12 and 36 of Act 1.096 of 7 August 1986. Disciplinary inquiries are conducted by the Director of Public Service when public officials are concerned (a specific regime applying to municipal officials). Under section 45 of Act 975, a disciplinary board with six members orders sanctions where an official has committed a serious fault. If cases are referred to the judicial authorities, disciplinary proceedings will normally be interrupted until a verdict has been handed down, and the implications of the official's failure to comply with the required conditions of integrity and loyalty will then be examined.

103. The Public Service Directorate has indicated that there are an average of 3 to 4 disciplinary cases each year (5 in 2006 and 4 in 2007)[30].

b. Analysis

104. Despite the fact that public administration and the state play a large part in the economy and that certain factors, such as the existence of a micro-society with close relations between individuals, substantial support and subsidies, pressure on land, the importance of financial activities and Monaco's attractions as a tax haven, may create additional risks, measures to prevent corruption at both institutional and individual levels, such as transparency and internal and external internal controls, seem to be very underdeveloped.

105. With regard to transparency and access to information, the GET notes with satisfaction that steps have been taken in recent years to make Monaco's legislation and regulations more accessible to the public. However, the conditions and arrangements for accessing administrative documents are not clear and it is therefore difficult to say whether or not persons must demonstrate a particular interest in order to see different types of document. Several of those whom the GET spoke to said that the government's efforts to improve communication, such as an increased number of Internet sites and arrangements to improve access to administrative documents, were a welcome consequence of Monaco's membership of the Council of Europe. Nevertheless, providing information is still seen as part of the authorities' discretionary powers. In the case of topics of particular interest to the media, the information must be requested in writing followed by a meeting with the Minister of State, who may then approve the request. As the GET was told, a pyramidal system was established several years ago which means that only senior officials are authorised to supply information. The GET notes that the rules on professional confidentiality and discretion applicable to the authorities are applied strictly in Monaco. Finally, it emerged from several meetings with the Monegasque authorities that little is known of the possibilities available under common administrative law (appeal to the authority that made the decision, to a higher

[30] In the last two years there have been cases of indiscipline, police officers cancelling fines, threats to a superior, violation of professional confidentiality, false travel declarations, theft (outside work) and so on.

administrative authority or before a court, see paragraph 84) for appeal against refusals to supply reports, dossiers or other information.

106. The Principality is still in a period of change and that these changes are gradual. As part of the modernisation of its state, Monaco should provide more opportunities for the public and various institutions to participate in efforts to oversee the activities of government and prevent corruption, for example, by making it easier to identify possible malfunctioning or wastage of public assets, assess the real work carried out and prevent various possible conflicts of interest. Moreover, despite progress in recent years on the status of certain documents, for example greater availability of those relating to the finance acts, others remain confidential, such as the reports of the High Commission for Accounts[31], the Controller of Public Spending and the General Inspectorate of Administration, or very difficult to obtain, such as court judgments and decisions. The GET therefore recommends **a) to introduce framework legislation that liberalises access to state-held documents and information, with the requirement to justify decisions to withhold them, and sets out the circumstances in which their provision may exceptionally be refused; b) to establish arrangements for reviewing refusals to supply such information, based on objective criteria; c) to make a larger number of important documents on the activities and functioning of government available to the public.**

107. The GET has given close consideration to how the authorities are overseen. With regard to transparency, the GET noted with satisfaction the existence of the 2006 legislation requiring that administrative decisions be explained (Act N° 1.312 of 29 June 2006). The General Inspector of Administration is currently taking steps to ensure that this practice becomes widespread and it is apparently still difficult, even for the counsellor responsible for mediation, to intervene in respect of decisions in areas where discretionary powers are traditionally important. These include immigration and residence, and social and occupational benefits, to name only the ones most frequently raised with the mediator. Initiatives such as the round table organised in Junes 2006 are thus timely.

108. Monaco has a well developed institutional framework of government. Despite the country's small size, there are many bodies – similar to ones in larger countries – overseeing the activities of government in one form or another. However, the GET has found that, as a rule, the bodies that exercise horizontal oversight of (other) departments, which could enable them to identify possible corruption, do not have authority to do so or make little or no use of it. For example, discussions showed that the Inspector General of Administration does not carry out inspections – regular of other – in other departments and has no specialist staff for this purpose. It is hardly surprising therefore that in practice the Inspector does not carry out inspections. The oversight exercised by the High Commission for Accounts is essentially a formal financial control procedure. The same applies to the Controller of Public Spending. In practice, neither institution exercises much, if any, on-site oversight, and expediency and efficiency reviews are practically non-existent[32]. Besides, as the GET was informed, the institutional culture is such that administrative departments do not report any problems or malfunctioning but try to settle them internally and/or consult their supervisory authority, or even the Prince, before taking any action. The same applies when a criminal or other offence is uncovered. The supervisory authority is informed before any reference is made to the public prosecutor. So to identify certain types of malfunctioning or offences, an internal control function is required, even in the context of Monaco. But generally speaking this is

[31] As indicated in paragraph 86 and footnote 22, since July 2008, this is no longer the case as regards the HCA.

[32] The Controller of Public Spending did note on one occasion that electric vehicles purchased by a department were five times dearer that normal equivalent vehicles and broke down after one year. He commented on this to the head of the department concerned. The High Commission for Accounts was asked about the role of efficiency, effectiveness and output in its work and said that it had encouraged the financial control authorities to use these criteria.

not provided for[33], probably because of the existence of the Inspector General of Administration. This is an important role in the context of Monaco, where measures such as the rotation of officials with oversight responsibilities or who issue permits and authorisations are difficult to introduce.

109. In the context of inter-institutional relations, the parliament has (too) few powers to allow it to exercise any oversight whatever[34]. Briefly, the Minister of State and the Prince are heavily involved in the day-to-day management of the Principality's affairs, so most authorities feel answerable to them and they exercise various powers in practice, either directly or through the government. They can therefore be considered to some extent as the state's main supervisory bodies. The GET believes that this represents a general system of oversight, which cannot replace internal and external arrangements for monitoring efficiency, quality, processes and so on. In this context, it was nearly always told by the administrative monitoring bodies that they were not concerned with corruption issues, and more generally uncovering criminal behaviour, notwithstanding the duty laid down in Code of Criminal Procedure to report offences, which is applicable to all government authorities.

110. None of the bodies involved in scrutinising government activities in one form or another currently offer guarantees of independence. This applies to the High Commission for Accounts, whose members are appointed by the Prince for five years, with no other specifications. It has no powers of enforcement whatever, it cannot make recommendations or follow them up, and it cannot make *ad hoc* checks on its own initiative in areas other than those connected with the auditing of accounts. The institution appears to be far less advanced than its foreign counterparts. At the time of the visit, new rules were under discussion that would enable the Commission to act on its own initiative and extend the scope of its oversight to most bodies receiving public funding. The draft legislation would also have allowed the Commission to recruit outside experts and to publish its reports. The final version – the sovereign order of 2 July 2008 – was approved after the visit. However, the GET thinks that several questions remain unanswered, particularly relating to the institution's independence, its role and the scope of its oversight and its powers. The GET recommends **a) to strengthen the General Inspectorate of Administration and the High Commission for Accounts, by assigning them genuine responsibilities and powers of audit, inspection and oversight, as appropriate, and updating their working methods; b) to give the members of the Commission adequate guarantees of independence; c) to ensure that the Commission is empowered to investigate the maximum possible number of entities and bodies receiving public funding.**

Incompatibilities, conflicts of interest, gifts, codes of conduct

111. Monegasque law provides no definition of the public service (in French *administration*) and its officials and resorts to a wide range of concepts in both criminal and administrative law to designate persons working for the state. Even though the GET was told on the spot that all those working in the public service, including members of the government and special advisers, automatically fell into the category of established or contractual public officials, and even though it is ready to accept the principle that Monegasque law does not need to be very strict and precise, a number of questions remain.

[33] In certain cases, directors of particular departments have established such internal machinery on their own initiative. For example, the Director of Financial Services has asked his two deputy directors to perform this internal control function.

[34] Despite the recent changes in the Principality, the National Council is still unable to introduce legislation without the government's agreement, the Constitution does not allow it to set up parliamentary committees of inquiry and although it approves the budget it has no direct control over its execution (it receives the report of the National Accounting Commission but can only comment on it). According to members whom the team met, parliament itself is often unable to obtain important information in full, such as specific audit reports, of which it generally only receives extracts.

112. Given the state's large role in the economy, which includes state enterprises, public service concessions, associations organising activities of general interest and numerous special advisers, it is not always clear if these persons are covered by the various terms used to describe public officials in the criminal and administrative provisions on the rights and obligations of such officials. The same applies to staff of Monaco municipality. In certain cases, contractual employees said that they were covered by the rules governing established staff, rather than contractuals. The GET also notes that article 1 of the regulations on the status of contractual staff appears to refer to officials with a particular status, to which these regulations do not apply. To ensure that the various types of staff have a clear and unequivocal understanding of their obligations, and thus that existing rules are effective, the GET recommends **to clarify the categories of personnel concerned by the administrative and criminal provisions on the rights and obligations of established and contractual staff and make certain that these provisions cover all the relevant categories of employees working for or on behalf of the state and the municipality.**

113. In general, the problem of corruption in its various forms appears not to have been taken fully into account in the management of human resources in the Principality. Existing national and municipal regulations are only concerned with certain types of conflicts of interest and do not constitute a general means of preventing such conflicts in all their various forms. The GET also found that the rare administrative provisions that did exist – on incompatibilities in general and certain conflicts of interest – were generally little well know, as were articles 112 and 308-1 of the Criminal Code – on taking unlawful advantage of an interest and insider dealing – which are nevertheless of general application[35]. The occasional official told the GET that good sense had prevented them from participating in a decision on a case in which they might have an interest, whereas others saw no problem in taking part in negotiations on contracts with firms belonging to close relatives. The Public Service Directorate has confirmed that existing training, on recruitment and subsequent, does not cover issues of integrity and ethics, including corruption.

114. As noted in the descriptive part, there are significant gaps in the rules of conduct on integrity and corruption, and in the rules on gifts and other benefits and gratuities, such as honorary distinctions and jobs or placements for near relatives. What makes this worse is that no provision is made for such crucial officials in the fight against corruption as police officers and judges. Cash gifts are even permitted in the police force[36]. With the possible exception of the regulations applicable to contractual state employees, which are themselves little known, there are no restrictions on public officials moving to the private sector, where they might misuse their networks of contacts or knowledge of administrative and decision-making procedures, or simply be offered attractive posts by companies in exchange for certain favourable administrative decisions in the past.

115. The GET believes that an urgent and comprehensive reform is required that will extend and clarify public officials' rights and obligations to take more account of questions of integrity and the prevention of corruption. The current plans to modernise the machinery of administration and reform the status of public officials would be a good opportunity to incorporate these proposed improvements. The GET recommends **a) to take rapid steps to include anti-corruption provisions in the rights and obligations of established and contractual state and municipal**

[35] For example, at the round table that the GET organised with about ten representatives of the municipality, it was told that municipal employees were not covered by any provisions designed to prevent corruption, concerning gifts, conflicts of interest or whatever.

[36] There are no regulations in the law enforcement sector on end-of-year gifts in kind or of perishable items. Moreover, a departmental memorandum states that cash gifts should, in principle, be paid into the police association fund and registered.

officials, paying particular attention to the police and judges, in particular establish more detailed regulations on conflicts of interest in general and regulate gifts in a restrictive manner; and b) to establish arrangements to monitor compliance with these obligations.

116. In GRECO's experience, when new legislation and regulations are designed to fill significant gaps or when existing provisions are not properly understood they must be accompanied by training, guidance and other measures to raise awareness, aimed not just at officials but also at the general public. The GET recommends **in respect of all officials employed by the state and municipality and with particular attention to the police and judges a) to include the topic of anti-corruption prevention in the initial training of all new officials; b) to organise training and other activities to familiarise all departments and staff in post with the new rules recommended in this report and use the opportunity to advise the public on the conduct to be expected from public officials; and c) to approve and circulate a code of conduct or ethics for public officials that can serve as a reference document in practical situations.**

117. There do not appear to be any administrative of criminal provisions on corruption that are applicable to other categories of public official, particularly elected members, other than the general ethical and non-enforceable principles that the members of the National Council have adopted to prevent conflicts of interest. The GET was unable to determine on site whether articles 112 and 308-1 of the Criminal Code, on taking unlawful advantage of an interest and insider dealing, apply to members of parliament, but the authorities confirmed after the visit this was not the case. The GET believes that clear and effective measures are needed to counter the risk of conflicts of interest and unjust enrichment among national and local elected members. These are subject to quite substantial risks since neither is there any legislation making it an offence to bribe members of public assemblies, another gap which Monaco should fill but which comes within the scope of GRECO's third round evaluations. The GET recommends **to introduce arrangements for controlling and scrutinising conflicts of interest affecting elected members of public assemblies.**

Reporting suspicions of corruption and protecting whistleblowers

118. It is clear from discussions with various administrative and other departments that there is a strong sense of hierarchy within the government apparatus. This means that when criminal offences are uncovered or some form of remedy is required, the department concerned normally informs the relevant counsellor, who if necessary then informs the Minister of State, who in turn keeps the Prince informed. The GET thinks that this method of operating may be unhelpful for combating corruption and identifying possible cases. If the hierarchy is consulted so systematically there might be a temptation not to disclose cases to preserve the department's good name, thus protecting individuals from the possible criminal consequences of their actions. The fact is that, to date, few cases of corruption have been identified, if any. The duty under Article 61 of the Criminal Code for departments and public officials to inform the judicial authorities of any offences, including corruption, of which they are aware is an important safeguard in this context, as is Article 64 of the Code of Criminal Procedure, which entitles anyone to report offences to the criminal authorities. However, the GET has been told that Article 61 is not used in practice. Persons who wish to report misconduct do so by anonymous letter to the judicial authorities, usually with a copy to the Prince, but the examples given to the GET mainly concerned citizens' complaints on matters of little importance. The GET was told that the judicial authorities tried to follow them up when the alleged facts appeared to be sufficiently serious. It considers that the duty to report offences in the Criminal Code must be applied in practice and that this probably requires certain additional measures. These include reminding officials of the obligation and making it clear that reporting suspicions in good faith cannot result in sanctions for defamation, and is not incompatible with the principle of respect for the hierarchy,

professional confidentiality as laid down in the Criminal Code or the obligation of discretion for established and other officials under their respective statutes. Finally, the GET notes that there are no other administrative measures to protect staff and their careers against internal reprisals for reporting suspicions of corruption (or any other offences) in good faith. It believes that protective arrangements could act as incentives to whistleblowers to take part in judicial proceedings as witnesses. The GET therefore recommends **a) to remind all public officials and departments of the duty to report offences, as laid down in Article 61 of the Criminal Code, if necessary making it clear that such suspicions can be reported directly to the judicial authorities without passing through the hierarchy, and that this is fully compatible with other professional obligations, particularly those of confidentiality, discretion and respect for the hierarchy; b) to introduce measures to protect public officials against possible retaliation when they report suspicions of offences in good faith; c) to supplement this administrative protection with measures applicable to witnesses in judicial proceedings concerning corruption offences.**

VI. LEGAL PERSONS AND CORRUPTION

a. Description of the situation

General definition and constitution

119. Associations, including federations, are governed by Act 1.072 of 27 June 1984 and ministerial order 84-582 of 25 September 1984. These stipulate that associations must be non-profit making. At the time of the visit, the Department of the Interior had registered 678 associations and federations, of which 85 received public funding, in particular to organise certain high-profile televised sporting events, such as Formula 1 and tennis. Foundations are governed by Act 56 of 29 January 1922. These are private establishments to which donations have been allocated, either permanently or temporarily. There are 18 foundations.

120. Monegasque law recognises the following forms of company: commercial partnerships, limited partnerships, Monegasque public limited companies, limited partnerships with shares, private limited companies and civil-law partnerships. Sovereign Order 3.157 of 17 January 1946 prohibits holding companies. There were 12 133 companies registered at the time of the visit (57 commercial partnerships, 492 limited partnerships, 1200 Monegasque public limited companies, 245 limited partnerships with shares, 9943 non-trading companies (*sociétés civiles*), 100 insurance companies and 91 branches of foreign companies (mainly French banks or companies). There are various forms of company legislation, including laws, sovereign orders, the civil and commercial codes and so on, but since Act 1331 of 8 January 2007, which introduced private limited companies to facilitate business creation by small entrepreneurs, there has been a unified procedure for establishing them. A written request must be sent to the government, which gives a rapid agreement in principle after a brief examination of the relevant documentation and the lodging of the memorandum and articles of association. The latter process allows companies to be formed and to start the installation procedure. During this time, the authorisation procedure is conducted, including administrative and police inquiries. Once authorisation is issued, a company is registered, and activity and employer codes are allocated. It is only at this stage that companies are fully constituted and become effective against third parties. Partnerships and private limited companies of whatever form must have a company manager or founder living on the spot. This does not apply to entities established by companies themselves. Approval for the establishment of companies lies within the authorities' discretion. The GET was told that there is a fairly consistent "case-law" on refusals. Act 1331 of January 2007 has also harmonised the procedure for striking off companies, based on the one laid down in Act 767 of 1864 on public limited companies and limited partnerships. Since 2007, irrespective

of type of company, when an entity has had no turnover for six months, or no longer has premises or staff, or its object has changed in practice, the managers must appear before the supervisory commission to explain. Absence of activity is uncovered at twice-yearly meetings between the Directorate of Economic Expansion and the tax authorities. At the last meeting of the supervisory commission before the GET visit, of 14 cases considered, 13 had their authorisation withdrawn. There are about thirty such withdrawals each year.

121. Monegasque law also recognises the British and American institution of trusts. These are governed by Act 214 of 27 February 1936, as amended by Act 1.216 of 7 July 1999 and Sovereign Order 14.346 of 2 March 2000. These are not, strictly speaking, legal persons but Monegasque law stipulates that trustees must include at least one legal person from Monaco, taken from a list prepared for that purpose. Trusts are registered with the Registrar of the Court of Appeal. The list is held by the first President, who may refuse, by reasoned decision, to register a trust, but is not expected to scrutinise the object, beneficiaries or origin of the moneys concerned. Trustees must meet the requirements of the anti-money laundering legislation.

Registration and measures to ensure transparency

122. There is no register as such of associations and foundations. The small number of foundations does not justify such a register. In practice, there is a list of associations on the government portal with certain basic information, such as date of establishment, object and headquarters. Apart from cases where the bodies concerned publish it themselves on Internet sites, information on the officials of associations is held by the private office of the Department of the Interior and the department that receives applications for their establishment. Because this is nominal information, it is not accessible to the various departments of the interior (in the context of administrative cooperation, some departments can be provided with the information, though). Some external departments, including SICCFIN, can ask the Department of the Interior for this information. However, the general public do not have access to this information. The government's Internet portal simply lists Monegasque associations with their contact details. Associations formed by Monegasque citizens must be declared to the general secretariat of the Minister of State within a month of their foundation. Ones formed by Monegasque and foreign citizens or by foreign nationals only require administrative authorisation, following an application to the general secretariat of the Minister of State. Associations and federations that receive public funding are scrutinised by the Controller of Public Spending. Foundations require authorisation, are overseen by a supervisory commission and their names are published in the official gazette. The GET was told on-site that grants to associations are allocated without any pre-determined eligibility criteria[37].

123. A section of the Directorate of Economic Expansion maintains the register of commerce and industry, in which companies are recorded. It is responsible for initial registration, changes of information and the striking off of companies and other businesses, commercial agents, non-trading companies and so on. It also issues the necessary extracts for the completion of formalities. The register is computerised and includes information on partners and company members and their addresses, registered offices, financial structures and the most recent balance sheets and accounts. The GET was informed that anyone can request an extract from the register and obtain basic information. With the exception of balance sheets, the full information held in the central system is only directly accessible by two persons in the tax department and the employees of SICCFIN. The team was told that because of the separation of

[37] As of 2 July 2008, it is provided under Article 2 of the Sovereign Order 1.706 that Monegasque and foreign private law legal persons, exercising a general interest activity, one of public utility or which contributes to the reputation of the Principality may benefit from subsidies in conformity with budgetary regulations.

administrative and judicial powers, the criminal authorities could only gain access to the full body of information held after issuing a formal judicial request. As far as could be remembered, no such requests had been issued in recent years.

124. There are various measures to promote the transparency of legal persons: a. for all companies other than Monegasque public limited companies, share transfers must be approved by the authorities; b. companies' right to issue bearer securities was abolished in 2004 and existing securities of this type had to be converted into registered securities within one year (other bearer instruments, such as savings deposits issued by banks, continue to exist); c. Act 1144 of 26 July 1991, as subsequently amended, prohibits companies from using front names; d. article 10 b of the order of 5 March 1895 on public companies and limited partnerships with shares makes it illegal for persons to be members of more than eight boards of commercial companies with their registered offices in Monaco; e. as in other countries, companies offering financial services are subject to stricter rules and scrutiny than other companies (Act 1.338 of 7 September 2007).

Restrictions on the performance of duties by individuals and legal persons

125. With the introduction in June 2008 of criminal liability of legal persons for all offences, additional penalties can now be imposed on companies that would prevent them from undertaking certain activities or taking part in public tendering procedures.

126. In the case of companies and company members that are subject to authorisation, the authorities have discretionary power to refuse such authorisation when there is insufficient evidence of their good character. Moreover, Section 9 of Act 1.144 of 26 July 1991 allows the authorities to withdraw or suspend authorisation to pursue an economic activity if company members no longer produce sufficient evidence of good character. Articles 587 to 591 of the Commercial Code prohibit persons convicted of bankruptcy from engaging in commerce or managing, administering or controlling any commercial undertaking or company.

127. Draft legislation, in the form of bill 755 on disqualification and conditions for the exercise of commercial, industrial, artisanal or professional activities, is currently awaiting consideration by the National Council. Under section 1 of the bill, persons finally convicted, without suspension of sentence, of a serious offence or to imprisonment for a series of other offences shall be immediately ineligible to exercise, either directly or through a third party, on their own behalf or that of others, any commercial, industrial, artisanal or professional activity. The other offences referred to are robbery, handling stolen goods, bankruptcy, misappropriation, various forms of fraud including issuing false cheques and commercial fraud, stealing public property, laundering the proceeds of an offence, forgery of private documents, and breaches of the legislation and regulations on games of chance, lotteries and loans against pledges or at unreasonably high rates. Under the draft legislation, disqualification will apply to any function on the boards or senior management of public companies and limited partnerships with shares. It also entails the compulsory retirement of the senior managers of the companies concerned.

Legislation on the liability of legal persons, penalties and other measures

128. Until recently, legal persons could only be held criminally liable under specific legislation such as terrorism or its financing, and counterfeiting of currencies. General responsibility for all offences was the subject of draft legislation under consideration by the National Council at the time of the visit. The legislation in question – Act 1349 of 25 June 2008 – was finally passed in July 2008[38]. Under Article 4-4 of the Criminal Code, "any legal persons, other than the state, the municipality

[38] Official gazette 7867 of 4 July 2008

and public establishments, are criminally liable for all serious and lesser offences committed on their behalf, by one of their bodies or representatives." The provision does not apply to certain bodies, in particular political associations and groups, professional bodies and employers' and employees' organisations. The main penalties are fines within the following ranges: serious offences (Article 26.3 of the Criminal Code) € 18 000 to 900 000; corruption offences, € 18 000 to 450 000 (active and passive corruption of public officials, Articles 113 and 114, and passive corruption of arbitrators or experts, Article 118) and € 9 000 to 90 000 (private sector corruption, Articles 115 and 119). Additional penalties include temporary (maximum of five years) or permanent exclusion from a specific occupational or social activity or from taking part in public tendering procedures, judicial supervision, temporary (maximum of five years) or permanent closure of an establishment and confiscation of the instruments or proceeds of an offence. The courts may also order the winding up of the body or entity concerned.

Tax relief

129. Article 1 of the Franco-Monegasque Tax Convention of 18 May 1963 states that taxes on commercial profits "shall be assessed and collected on the same basis as the French tax on the profits of companies and other legal persons". Articles 9 and 14 of Sovereign Order 3152 of 19 March 1964, which implements the Convention, states that so-called facilitation expenses should not be treated as deductible. This is because, under the general rules covering tax deductibility (for example the costs borne by undertakings must be in the direct interest of the business and form part of the normal management process, and costs should only be deductible if they appear in the firm's accounts and sufficient documentation is available to establish the identity of the beneficiary, and the real nature of the service provided).

Tax authorities

130. Under Sovereign Order 653 of 25 August 2006, the Fiscal Affairs Department can lodge complaints of possible tax fraud with the prosecuting authorities. This reporting obligation does not apply to other offences.

131. In accordance with article 1 of the Sovereign Order 3085 of 25 September 1945 and Article 308 of the Criminal Code, tax officials are bound by professional confidentiality, other than in cases where the law obliges or authorises them to report offences. These officials are therefore absolved from this obligation by the courts, which can issue instructions ordering the communication of any fiscal information, including the declarations made by any individuals or legal persons.

Accounting and auditing rules

132. The following are required to maintain accounts: a. associations receiving state subsidies, under Section 2 of Act 885 of 29 May 1970 on the financial control of private law bodies receiving state subsidies; b. foundations, under Section 13 of the Foundations Act; c. any trader, under Article 10 of the Commercial Code, and commercial companies of whatever form, under Article 51-7 of the Commercial Code.

133. Double billing and the use of invoices or any other accounting or registration documents containing false or incomplete information constitute VAT and profits tax fraud and incur fiscal and sometimes criminal penalties. These are the only situations where sanctions may be applied, other than in cases of forgery under Articles 90 ff of the Criminal Code.

134. The destruction or concealment of accounts and accounting documents are liable to penalties. If within nine months of the end of the financial year, an auditor has not supplied the Minister of State with a certified copy of a company's accounts and a report on the accounts submitted for approval to the company general meeting, the Minister of State may appoint an accountant to report on the situation and the company's operations. Where such inquiries are opened, any company director or manager who destroys, removes or conceals any documents required by law or who deliberately supplies the accountant conducting the inquiries with false information about the company's operations shall be liable to one to five years' imprisonment and/or a fine of € 150 to 3 000 (Article 40 of The Act 408 of 20 January 1945 complementing the Ordinance on limited companies and limited partnership companies of 5 March 1895 concerning the appointment, tasks and responsibility of auditors) .In addition, under Section 51-12 of the Companies Act, No 1331 of 8 January 2007, company managers who fail to appoint one or more auditors or refuse to supply them with material necessary for them to carry out their duties shall be liable to two years' imprisonment and/or a fine as specified in Article 26.4 of the Criminal Code. Under Section 51-13 of the Companies Act, company managers who fail to prepare an annual inventory, balance sheet and profit and loss account, submit these documents to the company general meeting for approval or transmit them to the register of commerce and industry shall be liable to six months' imprisonment and/or a fine as specified in Article 26.4 of the Criminal Code

Role of auditors, accountants and other professionals

135. As well as financial establishments, the anti-money laundering legislation (Act 1.162, section 2) applies to persons "who, in the conduct of their business, carry out, control or advise on transactions entailing movements of funds ...., with the exception of attorneys who, in ensuring the defence of their clients, have acquired information relating to such operations". The list of persons covered is specified in Sovereign Order 14.466 of 2000, and includes, chartered accountants (also when they carry out the function of statutory auditor), accountants and a series of other professions such as liquidators in bankruptcy, legal and financial advisers, estate agents, business agents, retailers and persons organising the sale of precious stones, precious materials, antiques and so on. Such persons are only required to report suspicions of money laundering to SICCFIN. They are not covered by all the requirements of the anti-money laundering legislation, such as the obligation to identify ultimate or real beneficiaries or retain certain documents.

136. In Monaco, there are only expert-accountants and licensed accountants. Only the latter may act as auditors or statutory appraisers. By virtue of Article 51-8 of the commercial code, they are entrusted with a general and permanent control mission, and given broad powers to carry out investigations in respect of the legality of operations and accounts of a corporate entity, as well as its overall functioning in compliance with regulations. According to art. 32 of Act N°408 of 20 January 1945 (complementing the Ordinance on limited companies and limited partnership companies of 5 March 1895 concerning the appointment, tasks and responsibility of auditors), an auditor is liable to imprisonment for a term of 1 to 5 years and/or a fine if he/she delivers or certifies false information about the audited company or does not notify the prosecutor of a crime he/she would come across in the course of his/her duties (this applies to the two types of company covered by the law of 1895).

b. Analysis

137. Foundations are very few in number in Monaco and their activities are confined to charitable works, so they do not appear to present any significant risk. Associations, on the other hand, vary according to their particular area of interest and are sometimes set up to offer greater flexibility of management, for example by bypassing strict accounting and other financial rules. Associations play an important part in the Principality's cultural and sporting life, and sometimes enjoy

substantial public funding. The GET was told that there were sometime problems associated with these bodies, such as managers receiving over-generous payments, excessive expenses and lax financial discipline. Despite this, at the time of the visit the issue of how to supervise them remained unresolved. The GET is pleased to observe that the draft orders to extend the remit of the High Commission for Accounts and of the Controller of Public Spending to bodies receiving public funding have finally been approved[39].

138. Generally speaking, the GET considers that adequate checks are carried out when companies are set up and registered, and with a view to their possible removal from the register, which involves their appearance before a supervisory commission. It welcomes the extension of these arrangements to all companies since January 2007. However, the legal framework governing the various types of company is fairly heterogeneous and it is difficult to identify and compare the various requirements, particularly regarding accounting and auditing. The team was told on the spot that, other than in the case of Monegasque public limited companies, the accounting obligations were unsatisfactory and the accounting environment needed to be clarified. In particular, representatives of the profession advised the GET that there appear to be significant variations in the professionalism of accountants. Despite this, there had only been one penalty imposed in ten years for failure to notify a money laundering suspicion. The GET also notes that only commercial companies are bound by accounting obligations, and the need for some form of approval or certification by a statutory auditor. This excludes so-called non-trading companies (*sociétés civiles*), which a. represent 80% of the companies registered in Monaco; b. are often used in the property sector, which is considered to be at risk. These constitute some risk factors. The GET therefore recommends **a) to strengthen the accounting requirements and corresponding penalties for all forms of company; b) to ensure that they are applicable to non-commercial bodies under Monegasque legislation that are nevertheless exposed to potential risks, particularly non-trading companies (*sociétés civiles*); and c) to take appropriate steps to improve the professionalism of all the accountancy professionals practising in Monaco.**

139. The on-site discussions also showed that one of the frequent gaps identified by SICCFIN in its supervisory work was that company service providers[40] often had no computerised means of recording commercial and other information. SICCFIN does monitor their activities – 9 of the 38 company service providers were checked in April 2008 - but the Principality could usefully introduce stiffer requirements concerning the way in which this information is recorded in practice.

140. Until legislation was passed in 2007, the Directorate of Economic Expansion required undertakings in the personal name of their proprietor and other forms of company to renew their entries on the register of commerce and industry every five years and update all the relevant information. The updating of the register now depends on the goodwill of companies' officials. The GET was told that Directorate staff had established certain routines to collect the most up-to-date information by other means. For example, although public limited companies remain particularly problematic because even significant share sales and purchases do not have to be declared to the register, the information is always available from the tax authorities. Under draft legislation currently under consideration at the time of the visit, the registrar would be authorised to modify the information recorded on his own initiative, to take account of any updated information he might uncover, something that is not permitted at present.

[39] The sovereign order in question was approved on 2 July 2008.

[40] They provide a range of services, including the constitution of companies and other types of body, managing companies and trusts, completing banking and property formalities, and other activities such as maintaining registers and legal documents, preparing accounts, receiving and transmitting orders and invoices, monitoring bank accounts, and completing tax and customs formalities.

141. The recent extension of legal persons' criminal liability to all offences is to be welcomed. The GET notes that the lower limit for fines applicable to corruption offences committed by legal persons is relatively low, since it is the same as for individuals. Above all, there is still no criminal record or any other type of register to record companies guilty of offences, including corruption. Such a record would ensure that entities that resorted to corruption were actually known and that any additional penalties imposed were as effective as possible. The GET recommends **to consider the introduction of a register of convicted legal persons.**

142. Currently, Monegasque legislation does not explicitly prohibit the tax-deductibility of costs and expenses linked to corruption for tax purposes, for example by making any sum used for a criminal offence or amounts paid directly or indirectly to public officials, or others, non-deductible. In fact, the sovereign order of 1964, whose roots go back much further, authorises the deduction of such commissions, brokerage and commercial fees and so on paid to Monegasques or other nationals outside the business, so long as normal conditions, such as the clear identification of the beneficiary by the taxpayer and proof of expenses incurred, are respected. The GET was told that in principle the ten of so French officials in the Directorate of Fiscal Services (out of a total staff of 49) interpret the current provisions to mean that bribes are non-deductible[41]. However the Monegasque tax authorities have so far taken no steps, in the form of implementing regulations, circulars or instructions, to ensure that this interpretation is applied uniformly so it does not necessarily apply to all the Directorate's staff. Moreover, according to information received by the GET, in principle when the tax authorities identify cases where expenses linked to corruption have been deducted this results, mainly, in a tax reassessment. Finally, nothing seems to have been done to involve the tax authorities more closely in preventing and identifying corruption, for example through training or simply by circulating the OECD Bribery Awareness Handbook for Tax Examiners. The GET considers, therefore, that there are improvements to be made as regards regulation and the involvement of the tax authorities in preventing and detecting corruption offences. The GET recommends **that the authorities involve the tax authorities in combating corruption by a) specifying clearly and through appropriate means that expenses linked to the various corruption offences are non-deductible; and b) taking measures to encourage the identification of possible cases of corruption and their reporting to the criminal authorities.**

143. Professionals such as auditors and accountants are required to report suspicions to SICCFIN and like any other person they must or may, whichever is the case, report offences (thus including corruption offences) to the authorities. Professional confidentiality does not absolve them from this. SICCFIN received 7 reports of suspicions from accountants in 2007, compared with 11 in 2006. However, the GET does not understand why notaries are subject to specific arrangements in the area of money laundering prevention. Notaries are in fact involved in numerous procedures, such as the constitution of companies, the authentification of documents, including trust deeds, and property transactions. The GET was told that by the nature of their profession, notaries were obliged to report suspicions of money laundering to the prosecuting authorities. Yet it appears that, to date, no such suspicions have been reported and according to its representatives the prosecuting authorities do not consider themselves really competent to initiate awareness raising, monitoring or other activities in this area. A similar situation applies to lawyers, whose reporting obligations and procedures have not so far been clarified. The GET believes that these questions need to be resolved rapidly and it might be more logical, in the interests of combating serious crime (and bearing in mind the importance of the property sector

[41] The French staff would continue to apply the principle, based on Article 32.9 b of the French General Tax Code, that it was prohibited to pay sums to public officials or persons. The GET notes that, as indicated in the second round evaluation report on France, this article only concerns the bribery of foreign public officials.

when looking at the problem of fighting corruption), to transfer responsibility for the anti-money laundering legislation in respect of notaries to the SICCFIN.

144. The GET notes that draft legislation – Bill 755 on disqualifications from and conditions for the exercise of commercial, industrial, artisanal or professional activities – would make it possible to prevent individuals from establishing companies or exercising managerial functions in them. However this would only apply if they had committed serious offences, and certain lesser ones, but not corruption. In the current situation, most forms of corruption will continue to constitute lesser offences until they are reclassified, as provided for in another bill. The planned change is therefore to be welcomed but will not apply to persons with convictions for corruption. The GET therefore recommends **that the authorities press ahead with Bill 755 on disqualifications from and conditions for the exercise of commercial, industrial, artisanal or professional activities, and ensure that the authorised exclusions are extended to include corruption offences.**

CONCLUSIONS

145. The recent ratification of the Criminal Law Convention on Corruption (ETS 173) was a first step for the Principality of Monaco in respect of the introduction of anti-corruption measures, and it was indicated that GRECO's report would serve as a basis for further discussions and new initiatives in this area. The phenomenon of corruption is considered little developed in Monaco and the country attaches great importance to the preservation of its image, which may potentially result in cases not reaching the justice system. Monaco has no record of a conviction or court decision in this area, despite sectors sometimes considered to be at risk, and significant gaps in anti-corruption measures and internal/external controls over the administrative work and public officials, the latter often ignoring the few preventive measures that do already exist. The GET identified further deficiencies which could explain the few cases uncovered to date. For instance, the most advanced mechanisms in the area of detection, seizure and confiscation of proceeds from crime which have been introduced in recent years in the anti-money laundering context, do not fully apply to the fight against corruption and remain limited to the scope of organised crime and drug trafficking; and this, despite the fact the Principality itself has to face a non negligible economic and financial delinquency. Another example of gaps is the non-tax deductibility of bribery-related expenditures, which is not clearly provided for, and in parallel, the fact that the tax administration does not feel involved in the detection and reporting of possible criminal offences including corruption. Finally, it was also found that there is room for improvement in respect of the statute of the prosecutors and judges, including the protection of the prosecutorial work in criminal matters.

146. In the light of the foregoing, GRECO addresses the following recommendations to Monaco:

i) **to adopt an anti-corruption work programme that leads to the effective adoption of such measures a) a study of the characteristics of corruption in its various forms and the sectors exposed to risk; b) identifying what reforms are required in the field of public procurement and other existing sectors at risk; c) measures to raise awareness of the importance of combating corruption in its various forms at both state and municipal levels** (paragraph 18);

ii) **to introduce further regular training for judges and police that takes account of the needs of new arrivals and new crime-related problems, particularly concerning corruption** (paragraph 44);

iii) **in consultation with the French authorities where this is necessary, a) complete the proposed reorganisation of the judiciary and establish a judicial body that would be responsible for the recruitment, appointment, promotion and training of Monegasque and seconded French judges, together with disciplinary and other aspects of their careers; and b) take steps to review the arrangements for the secondment of French judges to offer more safeguards for their independence, particularly at the time of eventual renewal of secondment** (paragraph 45);

iv) **a) to introduce a professional status for prosecutors that offers more protection against the powers of the executive/administrative authorities, and in particular specifies the circumstances in which they can be dismissed and the limits to the power of the executive/administrative authorities to influence the conduct of proceedings; b) to specify the grounds and arrangements for discontinuing proceedings** (paragraph 46);

v) **to introduce, as rapidly as possible, clear provisions to guarantee the confidentiality of investigations** (paragraph 48);

vi) **to adopt as soon as possible new criminal provisions introducing new investigative techniques which are currently missing in Monaco, and to ensure that they are also applicable to corruption inquiries** (paragraph 49);

vii) **that in sensitive inquiries such as ones concerning corruption and other – often related – offences, like money laundering and organised crime, prosecutors and investigating judges be authorised to summon police assistance directly and give them appropriate instructions without having to pass through the respective hierarchies** (paragraph 50);

viii) **to clarify SICCFIN's responsibilities for preventing and combating corruption and, in the light of the outcome, review and strengthen its independence and resources, including access to information** (paragraph 51);

ix) **a) to clarify the scope of parliamentary immunity with regard to the different stages of the judicial procedure; b) to clarify the procedure for lifting immunity; c) to adopt guidelines to help members of parliament to decide whether to lift immunity, according to the offences concerned** (paragraph 55);

x) **to abolish, as it is already envisaged, the requirement, under Article 14 of the Order of 9 March 1918, for the judicial authorities to obtain authorisation at several levels in order to prosecute and try Monegasque civil servants and administrative or military employees** (paragraph 56);

xi) **to take the appropriate measures to make offences committed in relation with organised crime and similar notions (criminal association, organised gang) an aggravating circumstance for a broad range of corruption offences** (paragraph 74);

xii) **a) to explicitly extend the 1993 anti-money laundering legislation to include the various corruption offences, even outside the context of organised crime, as is currently envisaged; b) to consider extending the notion of "politically exposed persons" to persons who hold or have held functions in Monaco, rather than simply abroad** (paragraph 75);

xiii) **to draw up guidance documents, organise training and develop other initiatives to help entities subject to the legislation to fulfil their detection and other obligations with regard to money laundering linked to corruption** (paragraph 76);

xiv) **that the rules on confiscation applicable to corruption, in the absence of money laundering or organised crime, be amended to make it clearly obligatory for all types of corruption and applicable to tangible, intangible, direct and indirect proceeds, to their equivalent value and to cases where legal and illicit assets are intermingled** (paragraph 77);

xv) **to consider the possibility of confiscation of the proceeds of corruption held by third parties who are or should be aware of their illicit origin and also envisage making it possible to confiscate in the absence of a conviction** (paragraph 78);

xvi) **to provide for interim measures applicable to corruption as such, that will make it possible at an early stage of inquiries to protect the various forms of assets and, if necessary, to make further arrangements for the management of seized assets** (paragraph 79);

xvii) **to put in place appropriate measures (notably a system to collect detailed statistics on interim measures and confiscation, including data on offences committed in Monaco) to evaluate the effectiveness, in practice, of the activity of the enforcement authorities concerning the proceeds of crime** (paragraph 80);

xviii) **a) to introduce framework legislation that liberalises access to state-held documents and information, with the requirement to justify decisions to withhold them, and sets out the circumstances in which their provision may exceptionally be refused; b) to establish arrangements for reviewing refusals to supply such information, based on objective criteria; c) to make a larger number of important documents on the activities and functioning of government available to the public** (paragraph 106);

xix) **a) to strengthen the General Inspectorate of Administration and the High Commission for Accounts, by assigning them genuine responsibilities and powers of audit, inspection and oversight, as appropriate, and updating their working methods; b) to give the members of the Commission adequate guarantees of independence; c) to ensure that the Commission is empowered to investigate the maximum possible number of entities and bodies receiving public funding** (paragraph 110);

xx) **to clarify the categories of personnel concerned by the administrative and criminal provisions on the rights and obligations of established and contractual staff and make certain that these provisions cover all the relevant categories of employees working for or on behalf of the state and the municipality** (paragraph 112);

xxi) **a) to take rapid steps to include anti-corruption provisions in the rights and obligations of established and contractual state and municipal officials, paying particular attention to the police and judges, in particular establish more detailed regulations on conflicts of interest in general and regulate gifts in a restrictive manner; and b) to establish arrangements to monitor compliance with these obligations** (paragraph 115);

xxii) **in respect of all officials employed by the state and municipality and with particular attention to the police and judges a) to include the topic of anti-corruption prevention in the initial training of all new officials; b) to organise training and other activities to familiarise all departments and staff in post with the new rules recommended in this report and use the opportunity to advise the public on the conduct to be expected from public officials; and c) to approve and circulate a code of conduct or ethics for public officials that can serve as a reference document in practical situations** (paragraph 116);

xxiii) **to introduce arrangements for controlling and scrutinising conflicts of interest affecting elected members of public assemblies** (paragraph 117);

xxiv) **a) to remind all public officials and departments of the duty to report offences, as laid down in Article 61 of the Criminal Code, if necessary making it clear that such suspicions can be reported directly to the judicial authorities without passing through the hierarchy, and that this is fully compatible with other professional obligations, particularly those of confidentiality, discretion and respect for the hierarchy; b) to introduce measures to protect public officials against possible retaliation when they report suspicions of offences in good faith; c) to supplement this administrative protection with measures applicable to witnesses in judicial proceedings concerning corruption offences** (paragraph 118);

xxv) **a) to strengthen the accounting requirements and corresponding penalties for all forms of company; b) to ensure that they are applicable to non-commercial bodies under Monegasque legislation that are nevertheless exposed to potential risks, particularly non-trading companies (*sociétés civiles*); and c) to take appropriate steps to improve the professionalism of all the accountancy professionals practising in Monaco** (paragraph 138);

xxvi) **to consider the introduction of a register of convicted legal persons** (paragraph 141);

xxvii) **that the authorities involve the tax authorities in combating corruption by a) specifying clearly and through appropriate means that expenses linked to the various corruption offences are non-deductible; and b) taking measures to encourage the identification of possible cases of corruption and their reporting to the criminal authorities** (paragraph 142);

xxviii) **that the authorities press ahead with Bill 755 on disqualifications from and conditions for the exercise of commercial, industrial, artisanal or professional activities, and ensure that the authorised exclusions are extended to include corruption offences** (paragraph 144).

147. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the Monegasque authorities to present a report on the implementation of the above-mentioned recommendations by 30 April 2010 at the latest.

148. Finally, GRECO invites the authorities of Monaco to authorise, as soon as possible, the publication of the report.