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**Addendum**

## **Joint First and Second Evaluation Rounds**

### **Addendum to the Compliance Report on Monaco**

Adopted by GRECO  
at its 58<sup>th</sup> plenary meeting  
(Strasbourg, 3-7 December 2012)

## I. INTRODUCTION

1. GRECO adopted the joint first and second round evaluation report on Monaco at its 39th meeting (6-10 October 2008). The report ([Greco Eval I/II Rep \(2008\) 1E](#)), which contained 28 recommendations, was published on 14 November 2008.
2. The joint first and second round compliance report on Monaco was subsequently adopted by GRECO at its 48th meeting (1 October 2010) and published on 13 October 2010 ([Greco RC-I/II \(2010\) 3E](#)). GRECO concluded that recommendations iii, viii, xii, xiii and xxvi had been implemented satisfactorily and that recommendations i, ii, xvii and xix had been dealt with satisfactorily. Recommendations iv, v, vi, x, xi, xiv, xv, xvi, xviii, xx, xxi, xxii, xxiii, xxiv and xxvii had been partly implemented and recommendations vii, ix, xxv, xxviii had not been implemented. GRECO requested additional information on their implementation. This information was supplied on 27 April 2012 and up-dated on 20 September.
3. The report was on the agenda for the 57th plenary meeting, held from 15 to 19 October 2012. Due to the fact that a series of reforms had become effective shortly before this meeting and the corresponding legislation had been submitted on 12 October 2012, the examination of the report was postponed to the 58th plenary meeting, so as to allow GRECO to take due account of this legislation.
4. In accordance with Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, the purpose of this addendum to the joint first and second round compliance report is to assess the implementation of the outstanding recommendations, namely recommendations iv, v, vi, vii, ix, x, xi, xiv, xv, xvi, xviii, xx, xxi, xxii, xxiii, xxiv, xxv, xxvii and xviii, in the light of the additional information referred to in paragraph 2.

## II. ANALYSIS

### **Recommendation iv.**

5. *GRECO recommended 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.*
6. GRECO considered this recommendation to have been partly implemented, pending the final adoption by the National Council of two draft laws: a) [Bill 778 to revise the organisation and administration of the judicial system](#), tabled in the National Council (parliament) in 2004, sections 26 and 27 of which increase the protection of prosecutors with regard to the prerogatives of the executive authorities; b) [Bill 880 to reform the criminal and criminal procedure codes with regard to corruption and special investigation techniques](#) (subsequently tabled in parliament in December 2010). GRECO noted that since the Director of Judicial Services would retain the right to issue written instructions in specific cases, section 12 of the second draft law was particularly important because it specified conditions to apply to the discontinuation of proceedings, such as the need to communicate and justify such decisions in writing and the possibility of appeal, as proposed in the second part of the recommendation.

7. The Monegasque authorities state that because the government has no control over the timetable for examining draft legislation originating in the National Council it was unable to do more than draw the attention of the Speaker of the National Council on several occasions to the urgent need to consider and vote on the bills (letters of 21 October 2010, 9 September 2011 and, most recently, 24 February 2012). In a letter in reply to the Minister of State dated 2 March 2012, the Speaker of the National Council indicated that bills 778 (pending the completion of a technical study) and 880 (bearing in mind the heavy legislative timetable) could be considered at the spring and autumn sessions, respectively.<sup>1</sup> As far as the former is concerned, these plans did not materialise. Bill 880 was finally adopted in October 2012 as [Law No. 1394 of 9 October 2012 reforming the criminal and criminal procedure codes with regard to corruption and special investigation techniques](#) (published in the official gazette on 12 October 2012).
8. GRECO notes with interest that part of the reform was finally completed in October 2012 with the passage of Law No. 1394, but regrets that since the compliance report was adopted two years ago Monaco has not made use of this additional period to finalise in full this important reform of the judicial system: Bill 778, tabled in 2004, is still before parliament.
9. GRECO therefore invites the country to redouble its efforts to complete the reform under way.
10. It concludes that recommendation iv remains partly implemented.

**Recommendations v, vi, xi, xiv, xv and xvi.**

11. *GRECO recommended to introduce, as rapidly as possible, clear provisions to guarantee the confidentiality of investigations. (recommendation v)*
12. *GRECO recommended 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. (recommendation vi)*
13. *GRECO recommended 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. (recommendation xi)*
14. *GRECO recommended 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. (recommendation xiv)*

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<sup>1</sup> The Monegasque authorities quote from this reply:

- *With regard to Bill 778 to revise the organisation and administration of the judicial system, the Committee awaits the completion of the technical study on the draft legislation being undertaken by Professor Thierry Serge Renoux. This should be submitted very shortly. Since the Assembly considers the Bill to be a priority it could be included on the order paper of one of the public parliamentary sessions of the spring session.*
- *The National Council's legal department is giving close attention to Bill 880 to reform the criminal and criminal procedure codes with regard to corruption and special investigation techniques. However, the particularly heavy legislative timetable in the early part of the year and the shortly awaited tabling of two major bills, reforming economic and business law and private sector pensions, make it impossible to vote on it in the spring session. However, it could probably be included on the agenda of one of the public legislative sittings in the autumn session.*

15. *GRECO recommended 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. (recommendation xv)*
16. *GRECO recommended 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. (recommendation xvi)*
17. GRECO noted in the compliance report that the aforementioned Bill 880 included new provisions specifically designed to a) ensure the confidentiality of investigations (section 9 of the bill), in accordance with recommendation v; b) authorise, in accordance with recommendation vi, certain special investigation techniques in addition to the telephone intercepts introduced in 2007, such as sound and video recording, and infiltration operations (sections 13-15), whose application to serious corruption offences unrelated to organised crime had not yet been clarified; c) make offences related to organised crime an aggravating circumstance for corruption offences (section 6), in accordance with recommendation xi; d) require courts to order the confiscation of the proceeds of conflict of interest, corruption and trading in influence offences, even in the absence of laundering or organised crime (section 7), in accordance with recommendation xiv; e) authorise the confiscation of the proceeds of conflict of interest, corruption and trading in influence offences held by third parties who were or should have been aware of their illicit origin (section 7), in accordance with the first part of recommendation xv (the compliance report having already found that the Principality had given satisfactory consideration to the second part); f) modify Article 596-1 of the Code of Criminal Procedure to extend the possibility of seizure to cases of corruption and trading in influence (section 18) and introduce new arrangements for administering assets subject to interim measures.
18. Pending the enactment of Bill 880 and receipt of some desired clarifications, GRECO considered that recommendations v, vi, xi, xiv, xv and xvi had been partly implemented.
19. As already mentioned, the Monegasque authorities now refer to the recent enactment of Bill 880, which has become Law No. 1394 of 9 October 2012 (published on 12 October 2012).
20. GRECO notes that, with the passage of Law No. 1394, a number of changes seem to have been made to Bill 880, as previously examined by GRECO. Regarding recommendations v, xi, xiv and xv, the underlying concerns are nonetheless reflected in the final adopted version of the law.
21. With regard to recommendation vi and special investigation techniques, the final version of Bill 880 is somewhat different from the initial draft. It provides for the use of electronic surveillance and infiltration in respect of certain cases such as those involving forms of “organised criminality and delinquency” (new articles 106-12 and 107-17 of the Code of Criminal Procedure). GRECO understands that the introduction of a new aggravating circumstance where offences are committed in the context of an organised gang [*bande organisée*, a concept which is looser than organised crime group] in connection with the conduct criminalised in articles 114 to 121 of the Penal Code (i.e. all the new bribery and trading in influence offences provided by the same Code) – as a result of recommendation xi – makes it possible to apply these investigative techniques in all serious cases of bribery and trading in influence. Controlled deliveries, the benefits of which are increasingly acknowledged by other countries (for instance in relation with deliveries of bribes), are only possible in connection with bribery cases falling under Government Order n°605 of 1<sup>st</sup> August 2006 on the implementation of the United Nations Convention against Transnational

Organised Crime: i.e. in the context of organised crime and upon request of a foreign country (article 20 of the Order). This mechanism is thus of limited use for the fight against corruption *per se*, especially since the scope of these offences under Order n°605 is narrower than that of the new Penal Code offences, and that the existence of specific corruption offences in the Order is a matter to be reconsidered as a result of GRECO recommendations issued in the Third Evaluation Round. The Principality could therefore pursue actively consideration of the introduction of controlled deliveries in the Penal Code and their applicability in serious cases of corruption. This being said, and bearing in mind that phone tapping was already introduced in 2007 for the investigation of corruption, GRECO is globally pleased to see that measures have been taken in accordance with the underlying concern of this recommendation.

22. With regard to recommendation xvi and interim measures, GRECO notes with satisfaction that the new article 596-1 of the Code of Criminal Procedure explicitly provides for the application of interim measures in matters of corruption and trading in influence (and also money laundering). The Monegasque authorities had announced that new measures would also be taken in respect of the management of assets concerned by such measures. This is not clear from the provisions of the above article, and no further information has been provided on this subject. GRECO accordingly can but maintain its previous "partly implemented" conclusion. GRECO also wishes to draw the attention of the Monegasque authorities to the fact that the above Order n°605, which seems to provide for a specific confiscation mechanism (article 16), is silent when it comes to temporary measures.
23. In the light of the above, GRECO concludes that recommendations v, xi, xiv and xv have been implemented satisfactorily; recommendation vi has been dealt with in a satisfactory manner and recommendation xvi remains partly implemented.

#### **Recommendation vii.**

24. *GRECO recommended 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.*
25. In the October 2010 compliance report, GRECO noted the Monegasque authorities' reasons for maintaining the current situation and the lack of any response to recommendation vii. which it therefore considered not to have been implemented.
26. For the purposes of this addendum, the Monegasque authorities merely reiterate<sup>2</sup> the arguments already presented in October 2010.

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<sup>2</sup> "Other than in cases where police officers are themselves involved, when bribery investigations involve persons exercising public authority the judicial authority will refer the case to the Director of Public Security, who is a police official and who will assign the case to the Financial Investigations Section. In such cases the investigators carry out the tasks delegated to them by the judicial officer. The administrative hierarchy must retain its powers concerning the organisation of these services to ensure that resources are properly managed and that instructions received are carried out correctly.

The Monegasque authorities also point out that instructions from investigating judges or prosecutors are issued to the Director of Public Safety, who himself has police powers and is responsible for using the necessary resources for carrying out judicial instructions. Cases are allocated in accordance with the division of responsibilities in force in the police. Once the Director of Public Safety has allocated an investigation to a department, the officer in charge of the case contacts the judge or prosecutor concerned. At this stage the role of the police hierarchy is to ensure that instructions are carried out properly and within the deadlines set."

27. GRECO observes that this recommendation has not been examined from a fresh standpoint and can only conclude that recommendation vii remains not implemented.

**Recommendation ix.**

28. *GRECO 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.*
29. GRECO notes that the scope of and procedure for lifting parliamentary immunity (inviolability) have never been dealt with in Monegasque legislation. In the compliance report, the authorities stated that draft legislation to amend Act 771 of 25 July 1964 on the organisation and functioning of the National Council was currently under consideration by the National Council and that this would be a good opportunity for it to fill the existing legal vacuum (with the necessary further adjustments to its rules of procedure). In the absence of any concrete measures, GRECO considered that the recommendation had not been implemented.
30. The Monegasque authorities do not report any new developments on this subject and, as GRECO notes, the draft legislation to amend Act 771 of 25 July 1964 has not yet been passed. The authorities confine themselves for the time being to stating that the National Council is itself responsible for determining its internal arrangements for lifting immunity and that the government could do no more than draw the Council's attention to the relevant GRECO recommendations in letters to the National Council dated 21 October 2010 and 24 February 2012 (see also paragraph 6 above).
31. GRECO is disappointed by the lack of any progress on this subject and, without more specific information on relevant steps taken by the National Council, concludes that the questions of substance have not even been considered or debated.
32. GRECO concludes that recommendation ix remains not implemented.

**Recommendation x.**

33. *GRECO recommended 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.*
34. GRECO previously noted that section 102 of the draft legislation to revise the organisation and administration of the judicial system, tabled in the National Council in 2004, would repeal the sovereign order of 9 March 1918, thereby abolishing the requirement for the judicial authorities to obtain authorisation at several levels in order to prosecute and try Monegasque civil servants and administrative or military employees. It is recalled that even if the Monegasque authorities consider that this provision became null and void in 1976, GRECO considered it preferable to abolish it in order to avoid any ambiguity in practice and it concluded that this recommendation had been partly implemented.
35. The Monegasque authorities again refer to the information contained in paragraph 6 of this report, namely that Bill 778 has not yet been passed and that the government could only draw the attention of the Speaker of the National Council to the urgent need to consider and vote on the

bills (letters of 21 October 2010, 9 September 2011 and 24 February 2012, and Speaker's reply of 2 March 2012).

36. In the absence of any progress since the compliance report, GRECO concludes that recommendation x remains partly implemented.

**Recommendation xviii.**

37. *GRECO recommended 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.*

38. In the compliance report, GRECO considered that recommendation xviii had been partly implemented. In practice, GRECO was awaiting certain additional measures: " ... it appears that there has not yet been any follow-up to the first two parts of the recommendation and that the Principality still lacks general legislation on access to public information which makes free access the norm and refusal to supply information the exception. Moreover, the documentation supplied by the authorities on the reasons for administrative measures does not deal with the reasons for refusing requests for information. GRECO notes with interest that discussions are under way on the issue of access to archive documents but it would have preferred these to extend to documents of topical concern, access to which is crucial to ensure maximum transparency in the work of government." (paragraph 108 of the compliance report)

39. The Monegasque authorities now refer to the recent adoption of a new piece of legislation: [Sovereign Order 3.413 of 29 August 2011 on various measures concerning relations between the administration and the public.](#) The order has a specific section (Articles 21 ff) on administrative documents. It establishes the right of access of persons to administrative documents. It sets a time-limit of four months to respond to requests, requires that reasons be given for negative decisions, authorises, depending on circumstances, the receipt of copies of documents or their consultation on the spot, and lays down an exhaustive list of documents to which the public cannot have access because this could reveal confidential information or pose a threat to legitimately protected interests. It also stipulates that reasons must be given for refusing to grant a member of the public access to an administrative document and that such refusal is liable to an administrative appeal to the Minister of State (who forwards it to the official mediator) or an appeal on grounds of misuse of authority to the Supreme Court. In its version of 29 August 2011, the Order guaranteed the right of access to administrative documents, provided that the persons concerned demonstrate a legitimate interest. In the light of misgivings expressed in the preliminary draft of the present report, which was sent for comment to the Monegasque authorities on 24 August last, a new Order was passed on 6 September 2012 (published on 14 September) to abolish this restrictive condition.

40. A seminar has been held for government department heads to explain the arrangements for implementing the sovereign order.

41. A new government Internet portal was established early in 2012, which includes a specific part concerned with the activities of the government and another on the public service containing a whole range of information for the public.

42. GRECO notes with satisfaction the adoption in August 2011 of this legal framework governing i.a. access to administrative information and documents, which corresponds to the expectations inherent in the recommendation including in respect of arrangements for reviewing possible refusals. In this context, GRECO welcomes the responsiveness of the Monegasque authorities which have ultimately removed the existence of a "legitimate interest" as a precondition for the right of access to information to be fulfilled. GRECO would use this opportunity to reiterate one of the basic principles laid down by the Council of Europe since June 2009 in its Convention on Access to Official Documents (CETS 205), namely that "an applicant for an official document shall not be obliged to give reasons for having access to the official document" (Article 4.1). The accompanying measures taken, in particular the seminar for department heads, are also consistent with the requirements of the present recommendation. GRECO encourages the Principality to implement these new important rules as broadly as possible.

43. GRECO concludes that recommendation xviii has been implemented satisfactorily.

#### **Recommendation xx.**

44. *GRECO recommended 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.*

45. GRECO considered that this recommendation had been partly implemented because of the planned legislation a) in the administrative field, in the form of a draft order specifying the different categories of non-established state employees, which would supplement the law on the status of state public officials, which was itself currently being modified; b) in the criminal law field, in the form of the new offences of bribing public officials set out in Bill 880, as referred to in paragraph 6.

46. The Monegasque authorities again state the importance of Bill 880 *to reform the criminal and criminal procedure codes with regard to corruption and special investigation techniques* , which was enacted and came into force in October 2012 (see paragraph 6). They confirm that its preliminary section contains an extended definition of the persons subject to the legislation on active and passive corruption, in which the term "performing public duties or exercising public authority or holding elective public office" makes it possible to cover all the categories of persons concerned. Meanwhile, the draft sovereign order on non-established state employees has been transmitted to the National Council and to the Public Service Commission, which includes members of the various trade unions representing the Monegasque public service. During the discussion of the present report, the Monegasque authorities indicated that the various categories of staff including high ranking officials and those who traditionally enjoy special status (directors, special advisers, staff recruited by or otherwise in the service of the royal family and members of the government etc.) will be covered by these rules. Finally, Bill 895 to amend Act 975 of 12 July 1975 on the status of state public officials was tabled in the National Council on 14 December 2011. It defines the various categories of state public officials and contains specific provisions on how these officials should respond to gifts and other advantages offered to them. Municipal staff regulations being normally based on national rules, similar provisions will be adopted by the municipality to amend the provisions for civil servants and contractual employees.



47. GRECO notes the various initiatives described above, which for the time being are still just legislative proposals. The reform of the status of established state public officials, coupled with recognition of contractual staff, who represent 50% or more of the personnel employed in the various government departments, alongside established public officials, appears to go in the direction of the clarification sought by this recommendation.
48. GRECO concludes that recommendation xx remains partly implemented.

**Recommendation xxi.**

49. *GRECO recommended 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.*
50. GRECO took note in the compliance report of a number of proposals, particularly the introduction of a code of ethics for the various categories of public employee, whether or not established officials, which would regulate, among other things, conflicts of interest, and also the introduction of a general ban on gifts, other than small and courtesy presents, and of procedures for declaring them, as part of the reform of the status of state public officials and of the rules applicable to contractual staff. Provisions relating to migration to the private sector, which already existed for non-established officials, would be introduced for state officials. The Monegasque authorities said that Act 1364 of November 2009 on the status of judges laid down ethical rules and standards, which the judicial service commission was responsible for enforcing, and that these measures would be drawn to the attention of the municipality. GRECO therefore considered that this recommendation had been partly implemented.
51. The Monegasque authorities have provided the following information. With regard to conflicts of interest, Article 18 of [Sovereign Order 3.413 of 29 August 2011 on various measures concerning relations between the administration and the public](#) stipulates that members of a consultative body may not take part in its deliberations when they have a personal interest in the matter under discussion. [Ministerial order 2011-468](#) implementing the sovereign order also lays down the ethical requirements applicable to established officials concerning gifts. Similar requirements feature in section 10 of [Bill 895](#)<sup>3</sup> amending Act 975 of 12 July 1975, tabled in the National Council in December 2011.
52. In the information they provided in October 2012 the Monegasque authorities indicated that Ministerial Order 2011-468 had finally been amended and supplemented again (by Ministerial Order 2012-586 of 11 October 2012), in particular in respect of the prevention of conflicts of interest. A new article 8 requires officials to avoid all conflicts of interest, whether real or potential, that might influence or seem to influence the performance of their duties. All those concerned are obliged to report such situations to their superiors. They also provide assurances that the rules pertaining to civil servants apply by analogy to contractual staff under clauses contained in their employment contracts. The rules laid down in Ministerial Order 2011-468 also apply to all personnel of the executive branch of power, which comes under the responsibility of the Minister of State. This principle is clearly established by the new article 9 introduced under Ministerial

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<sup>3</sup> Section 10 states that officials may not request or accept gifts or any other advantage that may influence or appear to influence the impartiality with which they exercise their duties or may be or appear to be a reward relating to their duties. This does not include conventional hospitality or courtesy gifts.

Order 2012-586. This reportedly covers all state personnel, including the police forces, but not judges and prosecutors or established and non-established staff of the judicial services. For the latter categories, a directorial order has been prepared with a view to supplementing the existing rules, notably in respect of gifts. It will be published after consulting the judicial service commission.

53. In letters of 26 September 2011 and 6 March 2012, the Monegasque authorities drew the mayor's attention to the need to adopt equivalent provisions for officials and other staff of the municipality. In a letter of 29 March 2012, the mayor stated that at a full sitting on 27 March 2012, the municipal council had expressed its support for the transposition of these provisions, which should be adopted shortly in a municipal order. Work is currently in progress.
54. Finally, [Sovereign Order 3.410 of 16 August 2011](#) established a General Inspectorate of Administration, answerable to the Minister of State, and laid down its duties, particularly with regard to oversight and inspections.
55. GRECO notes this information. Monaco is gradually supplementing its professional ethics rules. Pending a revision of the regulations applicable to established officials and the preparation of an order concerning other categories of staff (see also recommendation xx above), which would permit the adoption of a genuine consolidated ethical framework, the rules lack consistency: a) the legislation governing the status of established officials solely addresses conflicts of interest linked to undertakings under the authority of or having dealings with the relevant official's department; b) Ministerial Order 2011-468 more broadly covers situations involving conflicts of interest, regardless of the context.
56. GRECO finds that there has been some progress with regard to gifts in cash or in kind but also notes certain inconsistencies in the existing or proposed regulations. Ministerial Order 2011-468 establishes the principle of a ban on gifts but confines this to gifts that are likely to compromise officials' integrity, whereas section 10 of Bill 895 refers to the protection of objective integrity ("advantage that may influence or appear to influence [their] impartiality"), which is a much better approach. Moreover, while the order and section 10 of the draft legislation both authorise conventional hospitality or courtesy gifts, the order alone limits this exception to "traditional events, such as, in particular, new year celebrations" (section 3). GRECO therefore considers that the two sets of regulations should be as mutually consistent as possible, but also stricter: the situation in practice in Monaco, already referred to in the evaluation report, justifies the introduction of an ambitious, solid and clear body of regulations, with a prohibition in principle of all donations in money or in kind. The existence of such a broad exception as the one above ("traditional events....such as") leaves the door open for abuse<sup>4</sup>. The experience of other GRECO member countries has also shown that the exception applicable to conventional hospitality or courtesy gifts may continue to cause problems, particularly in the case of senior officials (offers of foreign travel and visits abroad, invitations to expensive and sought after events, high value official gifts and so on). The Principality should thus pursue efforts aimed at the regulation of donations and gifts. Finally, this matter also remains to be dealt addressed with regard to members of the judicial services.
57. To conclude the discussion on the first part of the recommendation, the action taken to date is still insufficient. GRECO notes with satisfaction that the municipality has indicated its willingness to adopt relevant measures.

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<sup>4</sup> Section 2 only prohibits the solicitation of donations and civil servants thus remain free from accepting funds in accordance with both section 2 and section 3.

58. Turning to the second part of the recommendation, the information supplied or available in the legislation does not allow GRECO to conclude that a monitoring/management mechanism exists, based on procedures for declaring, assessing, accepting or rejecting gifts in cash or in kind or in connection with trading in influence. The latter point arises from the as yet embryonic nature of the regulations on the subject. Order 2011-468 merely provides that the official concerned shall report conflicts of interest to his or her superior. Nothing is said about what happens next, what role is played by management, and so on. With regard to gifts, the same order simply indicates that if an unacceptable gift cannot be refused because of departmental requirements the official concerned should immediately inform his or her superior. The order does not define the term “because of departmental requirements”, or what then becomes of the gift, the role of the hierarchy in such cases or, more generally, what steps are taken if an official contravenes the regulation or has doubts about the admissibility of a gift, and so on. The Monegasque authorities refer to the General Inspectorate of Administration but in the absence of further information, GRECO cannot determine how far this body actually has responsibility for matters covered by the first part of recommendation xxi.<sup>5</sup>

59. GRECO concludes that recommendation xxi remains partly implemented.

#### **Recommendation xxii.**

60. *GRECO recommended 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.*

61. GRECO previously noted the efforts already made, in the form of training and a handbook, to inform staff about corruption issues. Systematic information sessions were planned for existing and newly recruited public officials and a draft code of ethics was in an advanced stage of preparation. GRECO therefore considered that this recommendation had been partly implemented.

62. In the most recent information supplied, the Monegasque authorities state that Ministerial Order 2011-248 implementing Sovereign Order 3.413 of 29 August 2011 on various measures concerning relations between the administration and the public (see above – paragraphs 39 ff) sets out the ethical rules applicable to established and other state employees. In addition, the “public service” section of the civil service intranet site contains a section headed “ethical conduct”, which sets out this ministerial order. Moreover, specific information is included in edition 37, April 2012, of the internal administrative newsletter to draw officials’ attention to the provisions of the order. Similarly, the new government internet portal www.gouv.mc will inform users of the expected conduct of public officials. As indicated in the RC report, a specific module on anti-corruption matters and rules of conduct was included in the end of 2010 in the training

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<sup>5</sup> The Inspectorate is not a recent creation since an “Inspector General of Administration” has existed since 1978, though the GET was unable to obtain any information during its on-site visit on the work, past or present, actually performed by this institution (which already had a monitoring and inspection function before 2011). Nevertheless, the sovereign order undeniably strengthens the resources of the General Inspectorate, an issue already discussed in the compliance report (recommendation xix).

scheme for new staff who join the Monegasque administration (senior staff mostly) and more than 300 civil servants and employees have attended this management training. Training on integrity issues will be strengthened as from 2013 with the creation of a specific module. Finally, on 27 October 2011, the Monegasque authorities hosted the 3<sup>rd</sup> congress of DELFICO (European Research Group on Financial and Organised Crime), which was an opportunity to draw the attention of the public and civil society to the fight against corruption and present the draft legislation that had been tabled in the National Council. This seminar included special workshops for judges and the police.

63. In the case of the local authority, in a letter of 29 March 2012 the mayor stated that, at a meeting on 27 March 2012, the municipal council had supported the transposition of these provisions, which would shortly be laid down in a municipal order. In the immediate, obligations from the Chapter « rules of conduct » which are included in State employees' contractual provisions have been communicated to the municipality so as to be included also in the employment contracts of municipal staff.
64. GRECO takes note of the information supplied above on training and awareness-raising measures aimed at officials and the public on the conduct expected of government departments with regard to integrity, and of the action that the municipality intends to take on the recommendation as a whole. GRECO is globally pleased with these. The main shortcoming however concerns the quality of the information supplied, reflecting the scarcity of existing rules and standards. Thus, with reference to the third part of the recommendation, GRECO regrets that the Monegasque authorities have apparently still not finalised the draft code of ethics referred to in the compliance report, which according to paragraph 127 was scheduled for adoption in late 2010. Although it suggested certain possible improvements, GRECO welcomed this draft document, which covered such pertinent issues as the general rules of good conduct, for example respect for the individual, the need for real and objective impartiality (actual and perceived), the prevention of corruption, including such subjects as privileges, gifts and trading in influence, and relevant disciplinary measures. In comparison, Ministerial Order 2011-468 implementing Sovereign Order 3.413 of 29 August 2011 – see paragraphs 39 and 62 above – fails to offer an alternative that matches the expectations of the recommendation. The order contains a mere six articles and these deal only with gifts. GRECO once again draws attention to [Recommendation No. R \(2000\) 10 on codes of conduct for public officials](#), whose appended model Code and [Explanatory Memorandum](#) can serve as a practical source of inspiration. Finally, as indicated in relation to the previous recommendation (see paragraph 52), general staff rules mentioned above do not apply to employees of the judicial services, for which it is envisaged to adopt specific regulations and rules. In conclusion, given the insufficiencies of the content and scope of the rules, GRECO cannot consider that this recommendation has been fully implemented.
65. GRECO concludes that recommendation xxii remains partly implemented.

#### **Recommendation xxiii.**

66. *GRECO recommended to introduce arrangements for controlling and scrutinising conflicts of interest affecting elected members of public assemblies.*
67. GRECO considered that this recommendation had been partly implemented, having regard to the proposed amendments to the Criminal Code, in Bill 880 on reforming the criminal and criminal procedure codes with regard to corruption and special investigation techniques (see paragraph 5

ff of this report), to introduce an offence of bribery and trading in influence, as well as conflicts of interest, for members of elected assemblies. However, GRECO also argued that even if these offences were established, that would not be enough since the recommendation was primarily concerned with controlling and scrutinising conflicts of interest, with criminal penalties being merely the last potential stage of the process.

68. The Monegasque authorities indicated that Bill 880 had been enacted as Law No. 1394 of 9 October 2012, which establishes the offence of unlawful receipt or acceptance of an interest. They also state that it is for elected public assemblies themselves to determine their rules for scrutinising and dealing with members' conflicts of interest. The government could therefore only draw their attention to the relevant GRECO recommendations<sup>6</sup>. In his letter of 29 March 2012, the mayor stated that the municipal council had decided to establish an internal council regulation on controlling and scrutinising elected members' conflicts of interest, as recommended by GRECO.
69. GRECO notes the lack of further information and concludes that recommendation xxiii remains partly implemented.

#### **Recommendation xxiv.**

70. *GRECO recommended 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.*
71. GRECO noted in the compliance report that the Monegasque authorities intended to take a number of steps. a) Reference would be made to Article 61 of the Code of Criminal Procedure in the code of ethics currently being drawn up, in training sessions that would start in 2011 and elsewhere, such as in the monthly administrative newsletter. GRECO had emphasised the importance of authorising reporting of offences without necessarily passing through the hierarchy. b) Measures would be introduced to protect whistle-blowing officials and other staff against possible reprisals; discussions were under way about the possible form of such protection. c) It was planned to make provision for anonymous whistle blowing in Bill 880 to reform the criminal and criminal procedure codes with regard to corruption and special investigation techniques; GRECO considered that, subject to certain conditions, such as parallel protection for the rights of the defence, this could offer sufficient protection for whistle blowers in the context of Monaco. Pending the introduction of these proposals, recommendation xxiv was considered to have been partly implemented.
72. According to the Monegasque authorities, [edition 37, April 2012, of the internal administrative newsletter](#) reminds staff of their obligations to report corruption under Article 61 of the Code of Criminal Procedure. With regard to witness protection, section 17 of the aforementioned Bill 880, now enacted as Law No. 1394 of 9 October 2012, authorises anonymous testimony in certain criminal proceedings. It is applicable if witnesses or their families may be subject to duress in cases incurring at least 5 years' imprisonment. By virtue of the new stricter penalties also

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<sup>6</sup> Letters were sent to the National Council on 21 October 2010, 9 September 2011 and 24 February 2012 and to the mayor on 6 March 2012.

included in this new legislation, the protection measures are applicable in relation to bribery and trading in influence offences and the new offence of unlawful receipt or acceptance of an interest.

73. In the comments they submitted on the preliminary draft of the present report, the Monegasque authorities said they had decided to supplement Ministerial Order 2011-468 of 29 August 2011, which was mentioned under recommendation xxi, so as to take into account GRECO's recommendations. The changes were introduced through Minister Order 2012-586 of 11 October 2012 (which was published on 12 October 2012 and amended Order 2011-468). The new provisions stipulate that the duty of discretion and confidentiality shall not prevent an official from reporting to his/her hierarchy or the judicial authorities any facts, practices, actions or behaviour that may constitute an offence. The authorities are required to protect officials who report such offences in good faith. The new provisions also prohibit any disciplinary sanction or other measure likely to have negative repercussions on the career of the official concerned. These rules benefit both established and other officials of the services of the Principality's executive branch.
74. GRECO notes with satisfaction that, in the end, effective action has been taken in response to the different components of this recommendation.
75. GRECO concludes that recommendation xxiv has been implemented satisfactorily.

**Recommendation xxv.**

76. *GRECO recommended 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.*
77. GRECO recalls that this recommendation had not been implemented.
78. The Monegasque authorities state that [Act 1.385 to reform the legislation on public companies, partnerships, trusts and foundations](#) was passed on 15 December 2011. The new legislation extends accounting requirements to partnerships and trusts (sections 6 and 7) and includes criminal penalties for failure to allow auditors and supervisory bodies access to foundations' accounts (section 8). Articles 10 and 11 of ministerial order 2012-182 of 5 April 2012 specify the arrangements for applying the new obligations regarding partnerships and trusts. The authorities provide assurances that at this stage of the reform process, all activities performed in the form of a company are subject to accounting declarations. They are all required to submit to the Commerce and Trade Register their documents pertaining to the closure of annual accounts. As for the last element of the recommendation, the authorities recall once again that accountants, as a profession, are subject to the limits and standards set by the Accounting Association and that the presence of major international audit firms in Monaco contributes to further increase professionalism.
79. GRECO notes with satisfaction the improvements in Act 1.385 of December 2011, which generally reflect the purpose of the first two parts of the recommendation. It also welcomes the fact that the new legislation requires existing bearer securities issued by companies to be

converted into registered securities.<sup>7</sup> However, with regard to the third part of the recommendation, GRECO regrets that no additional efforts appear to have been made to improve the professionalism of accountancy professionals practising in Monaco, whether or not they are registered or members of professional bodies. GRECO therefore invites the authorities to pursue consideration of this issue.

80. GRECO concludes that recommendation xxv has been partly implemented.

**Recommendation xxvii.**

81. *GRECO recommended 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.*

82. GRECO considered this recommendation to have been partly implemented in so far as a handbook for the tax authorities had been finalised in September 2010, and a draft Order had been drawn up, both aimed at implementing the recommendation. Apart from the fact that the order had still not been finalised, GRECO noted a number of significant shortcomings, in particular, a) these documents were concerned with non-deductibility and the identification of advantages or expenses linked to corruption in the very limited context of the bribery of foreign public officials for the purpose of securing or retaining a contract or advantage linked to international commercial transactions, and b) they did not provide explicitly for the reporting of such cases to the criminal authorities but apparently simply for the taxation of the sums concerned.

83. The Monegasque authorities merely repeat, with no further clarifications, that they have prepared a draft order to amend Sovereign Order 3.152 of 19 March 1964 on the taxation of profits so as to introduce the principle of the non-deductibility (for corporate income tax purposes) of sums paid or advantages granted, directly or indirectly, to any person in order to obtain from a natural or legal person that it perform or refrain from performing an act, or for having performed or refrained from performing such an act, for the purpose of securing or retaining a contract or other unreasonable advantage linked to commercial transactions.

84. GRECO takes note of the above information which shows once again, the responsiveness of the Monegasque authorities. The scope of the new wording is undoubtedly broader than the previous drafts submitted to GRECO, but the non-deductibility would still be limited to the context of tendering procedures and business transactions – even though this would potentially cover a large number of cases likely to occur in practice. GRECO calls on the Principality to concern itself rapidly with the issue of the detection and reporting of possible corruption offences by employees of the tax authorities (second part of the recommendation), to which no follow-up has been given so far.

85. GRECO concludes that recommendation xxvii remains partly implemented.

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<sup>7</sup> An issue primarily of concern to anti-money laundering efforts, which GRECO did not consider in the second evaluation round, but which is not unconnected to the general topic of the transparency of legal persons.

### **Recommendation xxviii.**

86. *GRECO recommended 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.*
87. GRECO notes that the compliance report referred to the failure of Bill 755 to take more account of corruption offences and the lack of progress in its enactment. It therefore considered that the recommendation had not been implemented.
88. The Monegasque authorities state that Bill 755 on disqualifications from and conditions for the exercise of commercial, industrial, artisanal or professional activities was finally withdrawn by the government, with a view to its incorporation into the draft legislation on the modernisation of Monaco's economic and business law, the so-called "Economic Code". This draft legislation, which shall be sent to Parliament in autumn this year, provides for a chapter entitled "Incapacities and conditions for exercising a commercial, industrial, craft or professional activity". It is foreseen that a final conviction for a conduct criminalised in accordance with articles 113 to 115, 118 or 119 of the Penal Code concerning bribery of public officials and private sector employees shall lead, as an additional penalty, to the automatic disqualification of the offender from any commercial, industrial, craft or professional activity carried out in an independent capacity, whether directly or through a third person. The term of exclusion, to be determined by the judge, shall not exceed 10 years except in case of repeated offence where disqualification can be permanent.
89. GRECO notes the preparation of new draft legislation as described above, which seems to take more account of the problem of fighting corruption in connection with the exercise of commercial or professional activities, and thus of recommendation xxviii. Since this is still a draft, GRECO cannot conclude that the recommendation has been fully implemented and it would be necessary, in any event, to examine the new provisions in greater detail.
90. GRECO concludes that recommendation xxviii has been partly implemented.

### **III. CONCLUSION**

91. Apart from the conclusions in the joint first and second round compliance report on Monaco and in the light of the foregoing, GRECO concludes that recommendations v, xi, xiv, xv, xviii and xxiv have been implemented satisfactorily and recommendation vi has been dealt with in a satisfactory manner. Recommendations iv, x, xvi, xx, xxi, xxii, xxiii, xxv, xxvii and xxviii have been, or remain, partly implemented. Recommendations vii and ix have still not been implemented.
92. With the adoption of this Addendum to the joint first and second round Compliance Report, GRECO concludes that of the 28 recommendations to Monaco, 16 have now been implemented satisfactorily or dealt with in a satisfactory manner, 10 have been partly implemented and two have not yet been implemented. The real progress identified relates to the adoption, in August 2011 with subsequent amendments in September 2012, of a legal framework governing access to administrative information and documents. More recently, the adoption in October 2012 of the law reforming the criminal and criminal procedure codes with regard to corruption and special investigation techniques introduced significant improvements concerning confiscation and interim measures applicable to the proceeds of corruption. Legislation has also been enacted governing the situation of whistle-blowers in the public sector. Regarding the five main themes on which the



evaluation focussed, Monaco still needs to make changes: for instance strengthening the machinery for preventing public service corruption and increasing the transparency of legal persons. In particular, public officials' obligations must include the prevention of corruption in its various forms (including favours, dispensations and conflicts of interest), which may be of particular relevance in a country the size of Monaco. Finally, GRECO urges the Principality to resume its examination of the limited number of issues to which no serious consideration seems to have been given so far, particularly ones relating to parliamentary immunity.

93. The adoption of this Addendum to the Compliance Report terminates the compliance procedure in respect of Monaco for the joint first and second rounds. However, if they so wish, the Monegasque authorities can keep GRECO informed of any relevant fresh developments concerning the implementation of recommendations iv, vii, ix, x, xvi, xx, xxi, xxii, xxiii, xxv, xxvii and xxviii.