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Tenth General Activity Report of GRECO (2009)

Including

■ **Echoes from**

GRECO's 10th Anniversary

■ **Special feature**

Experience with the criminal offence of trading in influence in France

Adopted by GRECO 46
(Strasbourg, 22 – 26 March 2010)

FOREWORD

It is a pleasure for me to present the Tenth General Activity Report of the Group of States against Corruption (GRECO) which provides a succinct overview of the activities of the Group throughout 2009. One highlight of the international anti-corruption movement's calendar was the celebration of GRECO's 10th Anniversary.

In the 1990s, the governments of Council of Europe member States identified the need for a concerted effort against corruption and had the foresight to adopt a multidisciplinary approach which favours not only repressive action but also prevention and deals with civil and administrative as well as penal aspects of the fight against corruption. Moreover, the Council of Europe reaffirmed its position as a forerunner in the anti-corruption movement by establishing a body responsible for monitoring the observance and effective implementation of Council of Europe anti-corruption standards. The scope of GRECO's membership today – 46 European States and the United States of America – is proof of the political will to cooperate internationally and to submit national systems to rigorous scrutiny.

In 2009, we celebrated 10 years of action by GRECO. At a high-level conference, held in Strasbourg on 5 October to mark that event, ministers, senior officials, representatives of civil society and independent experts paid tribute to the results achieved by the Group. Participants also looked to the future, focusing on cooperation of international stakeholders, future challenges and emerging subject areas. I am convinced that the Council of Europe, through GRECO, will continue to play a major role alongside other players, each with their own geographical or thematic specificities. In the years to come, and in the specific context of the preparation of GRECO's Fourth Evaluation Round, we can draw on the results of the conference. I renew here my warm thanks to the authorities of Monaco and Slovenia, my own country, which provided valuable financial support for the holding of the conference.

An area, among others, that clearly warrants further attention within our member States is that of lobbying, including the sometimes unclear dividing line between lobbying and trading in influence. I am, therefore, very pleased to present this year's feature article which was prepared by two French experts. Their first-hand knowledge and expertise provides us with an insight into the significant experience of France in dealing with trading in influence and examples of good practice in that field.

In the course of the year, notable and praiseworthy developments within other institutions have taken place. As regards the UN Convention against Corruption, the Third Session of the Conference of States Parties to the Convention (Doha, Qatar, 9-13 November 2009) adopted terms of reference for a review mechanism. It is gratifying to think that regular calls from GRECO and other stakeholders in the fight against corruption to ensure that the Convention is complemented by an effective review mechanism, did not fall on deaf ears. I particularly welcome that, in the Stockholm Programme, the Council of the European Union invited the European Commission to develop a comprehensive anti-corruption strategy, in close cooperation with GRECO, and to submit a report to the Council on the modalities for the Union to accede to GRECO. I sincerely hope that within the framework of these initiatives, further strides forward will be taken, but also that GRECO member States' legitimate concerns regarding the need to avoid duplication of work will be seriously taken into account.

I remain convinced that the benchmarks established in the course of GRECO's evaluation work and the constructive peer pressure exercised within the mechanism contribute significantly to affording a better protection to the often unheard and unseen victims of corruption within our societies.

Drago KOS - President of GRECO

Chairman of the Commission for the Prevention of Corruption (Slovenia)

2009 - HIGHLIGHT**GRECO's 10th Anniversary¹**

1. A Conference was held on 5 October to celebrate GRECO's 10th Anniversary. The high-level participants included speakers and panellists who play a prominent role in the fight against corruption whether in governments, national administrations, international fora, civil society networks and academia.
2. The Conclusions of the Conference stressed that attitudes in GRECO member States have moved towards a more healthy intolerance of corruption. Within its Third Evaluation Round, GRECO had fixed concrete benchmarks in a great number of areas, including transparency of political financing, which policy makers had to bear in mind. The need for a collective effort to ensure that the international anti-corruption movement was not jeopardised through duplication of efforts, the setting of conflicting standards and a multiplication of reporting duties on States was also clearly stated.
3. Future challenges identified included the need to ensure that anti-corruption principles recognised and implemented at national level are applied and enforced at local and regional government level. National parliaments and NGOs should contribute to the practical implementation of standards and recommendations. It was felt that greater recognition needed to be gained of the fact that corruption – and other forms of abuse of power and position – undermine fundamental civil and political rights.
4. Emerging themes to which further attention needed to be paid included private sector bribery, lobbying, an issue on which very little legislation was available to clarify limits and provide safeguards against abuse, and conflicts of interest regarding elected representatives whose responsibilities towards their electorate require integrity, transparency and the application of convincing standards of accountability.

Some echoes from the Conference

- **Maud de BOER-BUQUICCHIO** - Deputy Secretary General of the Council of Europe

"Corruption is a mortal threat to democracy and I choose my words carefully. Corrupt practices undermine and may eventually destroy people's confidence in political institutions and state administration. When this happens there is a risk that democracy will not function, become a charade or simply disappear."

- **Aleš ZALAR** – Minister of Justice, Slovenia

"GRECO's policy has always been openness. Over the last ten years it has established good relations with other international organisations engaged in the fight against corruption. These include the United Nations Office on Drugs and Crime where GRECO is contributing to ongoing reflection on the review of the implementation of the UN Convention against Corruption, the Organisation for Economic Co-operation and Development, Transparency International and the European Union, where GRECO plays an important role in the enlargement process and where the European Commission often refers to GRECO's findings on anti-corruption matters."

¹ The programme of the 10th Anniversary conference appears in Appendix I to this Report. A complete file on the conference, including speeches and conclusions, is available on GRECO's website.

■ **Drago KOS** – President of GRECO

"We must ... build on the current momentum to ensure sustainable and well-designed anti-corruption policies. Such policies must include credible prevention strategies, backed and carried by strong and independent institutions, and vigorous law-enforcement. But such policies also require a clear commitment, at the highest political level, to the belief that corruption is an evil which needs to be addressed with determination - and not with symbolic legislation, solemn declarations and paper tiger institutions."

■ **Brigitte ZYPRIES** – Minister of Justice, Germany

"Fighting corruption is not a task that can be dealt with on a national level only. If anything, we need to continuously strengthen our global networks. International cooperation has grown substantially not least because of the work done by GRECO. This work must therefore be continued..."

■ **Thomas HAMMARBERG** – Commissioner for Human Rights, Council of Europe

"In several European countries there is a widespread belief that the judiciary is corrupt and that the courts tend to favour people with money and contacts."

■ **Alexander KONOVALOV** – Minister of Justice, Russian Federation

"We consider the GRECO trend for the comprehensive resistance to corruption risks ... should be further developed. Today's criminal law should be applied to corrupted persons along with procedural, administrative, civil and ethical measures in order to make criminals feel as if the earth were burning under their feet regardless of nationality, place of residence and political convictions."

■ **Tuija BRAX** – Minister of Justice, Finland

"By selecting [transparency of political financing] for evaluation, GRECO showed great courage and its decision underlines the importance of fighting corruption in political decision-making. As a subject of evaluation, the choice of political financing is unique: GRECO is the first international monitoring body to address the issue."

■ **Mark PIETH** – Chairman of the OECD Working Group on Bribery in International Business Transactions

"[GRECO's] approach to preventing and combating corruption has contributed substantially to advance the course in Europe, but also on a worldwide basis, through the inspiration it gave UNCAC. Even if the OECD has a narrower remit than GRECO, focussing on transnational economic bribery, we have one thing in common: the no-nonsense monitoring through peer review."

- **Huguette LABELLE** – Chair of the Board of Directors, Transparency International

"While GRECO works with governments on the technical aspects of anti-corruption, TI can take their recommendations and translate them into a powerful language that crosses borders and reaches the ears of decision-makers and the public alike. Advocacy for GRECO's work can also be brought to those places where it is the most necessary. Although the next 10 years will bring new challenges for the anti-corruption movement, we must continue to work together, to bring new partners into our folds, and to find solutions for lasting reform."

2009 - PRINCIPAL ACTIVITIES

5. As in previous years, the major part of GRECO's 2009 work programme was devoted to the carrying out of its evaluation and compliance procedures. The Group had to draw on a very broad spectrum of specialised knowledge and to demonstrate a significant degree of flexibility in order to perform in-depth analyses and assessments within the framework of its Third Evaluation Round while continuing the ongoing assessment of measures taken by its other members to implement the recommendations of previous rounds.

Meetings

Plenary Meetings - Strasbourg

GRECO 41 (16-19 February)
 GRECO 42 (11-15 May)
 GRECO 43 (29 June – 2 July)
 GRECO 44 (6-8 October)
 GRECO 45 (30 November – 4 December)

Bureau Meetings - Strasbourg

Bureau 47 (23 January)
 Bureau 48 (17 April)
 Bureau 49 (12 June)
 Bureau 50 (22 September)
 Bureau 51 (2 November)

Conference - Strasbourg

High-level Conference to celebrate GRECO's 10th Anniversary (5 October)

Evaluation procedures

6. GRECO evaluation teams carried out **Third Round** evaluation visits to Lithuania (26-30 January), Croatia (30 March-3 April), Malta (20-24 April), Germany and Ireland (8-12 June), "the former Yugoslav Republic of Macedonia" (21-25 September), Bulgaria and Turkey (19-23 October), Hungary (16-20 November) and Greece (14-18 December).

7. GRECO, sitting in plenary, completed the **Third Round** evaluation procedures in respect of twelve of its members (Albania, Belgium, Croatia, Denmark, France, Germany, Ireland, Lithuania, Malta, Norway, Spain and Sweden) with the adoption of evaluation reports addressing in all over 160 recommendations to the authorities of the countries concerned. The **Joint First and Second Round** evaluation procedure in respect of Italy was also completed with the adoption of a comprehensive report and set of recommendations. Italy now takes its place in GRECO's Third Evaluation Round. In all cases, and in accordance with the Rules of Procedure, members are required to report on implementation of recommendations within an 18 month period.

8. The **evaluation reports** adopted by GRECO contain a wealth of factual information on the situation in the members concerned, an expert appraisal of shortcomings and tailored recommendations for improvements in legislative frameworks, practices and institutions. They can be consulted at : www.coe.int/greco.

Compliance procedures

9. The last in the series of **Second Round** compliance procedures were opened with the adoption of Second Round Compliance Reports on Bosnia and Herzegovina and Georgia – in each case, the assessment of further measures taken to implement outstanding recommendations will commence within a period of 18 months. Second Round compliance procedures were closed in respect of Albania, Belgium, Bulgaria, Croatia, Denmark, France, Germany, Iceland, Latvia, Lithuania, Malta, the Netherlands, Romania, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia” and the United Kingdom with the adoption of Addenda to the relevant Second Round Compliance Reports. GRECO also opened **Joint First and Second Round** compliance procedures in respect of Andorra and Ukraine with the adoption of Joint First and Second Round Compliance Reports. Both countries were asked to report back within 18 months on measures taken to implement outstanding recommendations. In 2009, GRECO also examined its first **Third Round** compliance reports (Finland and the United Kingdom) – these first assessments of action taken in the field of political party and electoral campaign funding provide indications of strong political will to meet the benchmarks set by GRECO recommendations on that theme.

10. The **compliance reports** adopted by GRECO provide a detailed assessment of measures taken to implement recommendations, identify areas where progress is lacking and, in a number of cases, describe examples of good practices in the fight against corruption. They can be consulted at : www.coe.int/greco.

Exchange of views and roundtable

11. At its May Plenary Meeting, GRECO held an exchange of views with Mr François VINCKE, Chair of the Anti-Corruption Commission of the **International Chamber of Commerce (ICC)**. The ICC had been the first international private organisation to propose to the business community to impose a general prohibition on all forms of bribery and to develop appropriate codes of conduct. Subsequently the setting up by the business community of “compliance programmes” was advocated. Such programmes had several components: the introduction of a code of conduct; designation of compliance officers; implementation of Human Resources policies which allow for the effective implementation of the provisions of the code of conduct; information and training; management control and internal/external audit, the introduction of disciplinary sanctions and the review of codes of conduct as and when necessary. The aim of the ICC is to support and promote liberalism, free enterprise and sound capitalism while at the same time insisting on the importance of supporting such mechanisms with good ethical values and conduct.

12. Mr Vincke congratulated GRECO on the format of its monitoring which he found to be particularly efficient and expressed particular satisfaction with the fact that the Council of Europe had included in its legal instruments a prohibition of private to private corruption – a form of corruption that escapes management review and is very detrimental to a company. He identified two areas which would be focused on by the ICC in the future. Firstly, the need to envisage some form of ‘reward’ for compliant companies (those who successfully implement comprehensive compliance programmes) which would aim to encourage companies to continue implementing effective anti-corruption measures. Such a reward could take the form of a mitigation of corporate liability. Secondly, examining the possibility of agreeing (for example in cooperation with the Council of Europe and/or the European Union) on a definition of breach of professional duties which would be particularly useful when dealing with cases of private to private corruption.

13. GRECO took note of ICC anti-corruption products available to its members which include a set of Rules and Regulations, a Handbook – “Fighting Corruption”, Guidelines on Whistleblowing as well as on Intermediaries (an essential and yet potentially problematic element in business relations) and the RESIST listing which contains proposals as to how to react when exposed to extortion attempts. Note was also taken of a letter addressed by some 25 Chief Executives of prestigious companies around the world to the UN Secretary General supporting the United Nations Convention against Corruption (UNCAC) urging the States Parties to create an effective monitoring mechanism.

14. Following the exchange of views, it was agreed that annual exchanges with representatives of the ICC would be arranged.

15. The organisation of regular *tours de table* provides a useful platform for an exchange of information on good practice, difficulties encountered and emerging trends. During its October Plenary Meeting, GRECO held a *tour de table* on the highly topical issue of **corruption in sport**. In order to provide an introduction to the topic, Mr Wolfgang MAENNIG, Professor, Chair of Economic Policy of Hamburg University was invited to act as keynote speaker. Mr Stanislas FROSSARD, Executive Secretary of the Enlarged Partial Agreement on Sport of the Council of Europe (EPAS) also participated. It was clear that the social costs of corruption in sport are high. Perceptions as to what constitutes corruption in sports are constantly evolving and specific legal instruments to tackle the different opportunities for corruption in this field – which vary considerably from sport to sport and from country to country – are not yet in place. A summary record of the discussions, which includes information from GRECO member States on specific cases and on difficulties in applying existing legal frameworks to cases of corruption in sport can be consulted at : www.coe.int/greco.

COOPERATION WITH OTHER BODIES OF THE COUNCIL OF EUROPE

16. GRECO’s President presented the Ninth General Activity Report (2008) to the **Ministers’ Deputies of the Council of Europe** during their 1052nd Meeting (Strasbourg, 25 March). This annual event provides a unique occasion for formal contact with the Committee of Ministers which has always shown a vivid interest in GRECO’s work. The President stated that GRECO’s efforts to increase the visibility of its work had, *inter alia*, a clear policy purpose, namely to mobilise domestic actors to contribute to the practical implementation of Council of Europe anti-corruption standards in general and GRECO recommendations in particular. He had no doubt that national parliaments and NGOs could make a useful contribution in this respect.

17. The results of GRECO’s work are used to provide input to monitoring missions of the **Parliamentary Assembly of the Council of Europe** (PACE) and the Group’s expertise was sought by the Assembly’s Rapporteur on judicial corruption, Mr Sasi. GRECO took note of a report (Doc. 12006) prepared by the Committee on Legal Affairs and Human Rights on the Protection of Whistleblowers which included a resolution calling on member States to adjust their legislation to a set of guiding principles which refer, *inter alia*, to measures foreseen in the Civil Law Convention on Corruption (ETS 174).

18. In 2009, a number of components of **technical cooperation** activities implemented by the **Economic Crime Division, Directorate General of Human Rights and Legal Affairs** were designed to assist member States in the implementation of GRECO recommendations. Examples include support for the preparation of a package of anti-corruption laws and for the setting up of a national policy body, as well as strengthening capacities for enhancing the transparency of political financing (Ukraine - Project against Corruption (UPAC)); assistance for the effective implementation of a Code of Ethics for public officials and the adoption of codes applicable to other categories of officials (Turkey – Project on Ethics for the Prevention of Corruption); policy advice on compliance with the Criminal Law Convention on Corruption (ETS 173), legal advice and technical

support for the review of legislation on financing of political parties (Support to the Anti-corruption strategy of Georgia (GEPAC)); development of guidelines on the protection of whistleblowers as well as legal advice on draft legislation on conflicts of interest (Azerbaijan – Support to the Anti-corruption strategy (AZPAC)) and the drawing up of a work plan for enhancing the implementation of the Anti-corruption Strategy and Action Plan 2007-2013 (Albania – PACA Project against Corruption). The aforementioned initiatives represent valuable support for translating the results of GRECO monitoring, and the relevant recommendations in particular, into practical achievements.

19. Following the participation of the Executive Secretary of the **Enlarged Partial Agreement on Sport (EPAS)** of the Council of Europe in a GRECO *tour de table* on Corruption in Sport held during the 44th Plenary Meeting (see paragraph 15 above), the Secretariat took part in a round table held by EPAS aimed at preparing a basis for a draft recommendation on match fixing, following a call from the Conference of Ministers responsible for Sport to continue work on the issue of corruption in sport.

20. A presentation of GRECO's evaluation procedures and working methods was made to a meeting of **GRETA** (Council of Europe Convention on Action against Trafficking in Human Beings) on 17 June by the Executive Secretary. Members of GRECO Secretariat also participated on a number of occasions in discussions with **Special Representatives of the Secretary General** in Council of Europe field offices – contacts are maintained in particular in the context of on-site evaluation visits by GRECO.

21. GRECO also took note of the **Council of Europe Convention on Access to Official Documents** (CETS No. 205) which is the first binding international legal instrument to lay down a general right of access to such documents – an issue which was extensively dealt with in the context of GRECO's Second Evaluation Round.

OBSERVERS

22. Cooperation between GRECO and the **OECD** - which has had observer status in GRECO since 2002 – is regular and GRECO was represented by its President and/or the Secretariat at the following meetings organised by the OECD:

- OECD Working Group on Bribery in International Business Transactions (Paris, 18-19 March and 17 June)
- OECD-Agency of the Republic of Kazakhstan on Fighting Economic and Corruption Crime International Conference: Fighting Corruption and Promoting Good Governance – (Astana, 16-18 September)
- OECD Global Awareness-Raising Campaign on Foreign Bribery, launched on the occasion of International Anti-Corruption Day (Paris, 9 December).

23. The Chairman of the OECD Working Group on Bribery in International Business Transactions, Mr Mark PIETH, participated as a panellist during the round table on Cooperation of international stakeholders in the fight against corruption at GRECO's 10th Anniversary Conference.

24. The **United Nations**, represented by the **United Nations Office for Drugs and Crime** (UNODC) has had observer status with GRECO since October 2006. GRECO followed closely the work of the Conference of States Parties to the United Nations Convention against Corruption – in particular as regards the setting up of a review mechanism – and was represented in this context at the following meetings:

- Expert Group Meeting – Development of Omnibus Survey Software to gather information on the Implementation of the United Nations Convention against

Corruption (UNCAC) and the United Nations Convention against Transnational Organized Crime (UNTOC) (Vienna, 23-24 February)

- Third Meeting of the Open-ended Intergovernmental Working Group on Technical Assistance (Vienna, 3-4 September)
- Third Session of the Conference of the States Parties to the United Nations Convention against Corruption: COSP-3 (Doha – Qatar, 9-13 November)

25. As concerns the Omnibus Survey Software mentioned above, the Secretariat had advised the inclusion of a system of cross-referencing which would alert users of the tool to relevant provisions of non-UN treaties and pertinent information already provided in other contexts (e.g. within the framework of GRECO procedures). In a Communication addressed to the Third Session of the Conference of States parties to the United Nations Convention against Corruption (Doha), GRECO again encouraged the States Parties to complement their universal instrument with an effective review mechanism, while avoiding duplication. GRECO also restated its willingness to offer its long-standing expertise and knowledge.

26. The Executive Director of UNODC, was represented at GRECO's 10th Anniversary Conference by Ms Brigitte STROBEL-SHAW who acted as a panellist during the round table on Cooperation of international stakeholders in the fight against corruption.

27. GRECO's secretariat also participated in a meeting with representatives of the United Nations Office of the High Commissioner for Human Rights (OHCHR) on input to UN Universal Periodic Review (UPR), a worldwide compilation of human rights matters (Strasbourg, 15 September).

MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNCIL OF EUROPE AND THE EUROPEAN UNION

28. Steps pursued by the Council of Europe and the European Union through their Memorandum of Understanding lead to strengthened communication between the relevant services/bodies, which, *inter alia*, involved an informal meeting between the Council of Europe Secretariat (Director of Monitoring and Executive Secretary) and representatives of the Directorate General Justice, Freedom and Security of the European Commission (JLS) as well as a subsequent exchange of views between GRECO and a representative of the JLS during GRECO's July Plenary Meeting. Significant advances towards closer cooperation were reflected in the Stockholm Programme as finalised at the meeting of the Justice and Home Affairs Council on 30 November and 1 December. GRECO welcomed, *inter alia*, the invitation by the Council of the European Union to the European Commission to develop a comprehensive anti-corruption policy in close cooperation with GRECO and to submit a report on the modalities for the Union to accede to GRECO.

29. Following an inter-secretariat contact meeting between GRECO and EUROJUST – a body of the European Union tasked with enhancing the coordination of investigations and prosecutions as regards serious transnational crime (including corruption) – on 3 February, GRECO's Bureau held discussions with EUROJUST at its 50th meeting which lead to the first stage in the preparation of a draft exchange of letters which would form the basis of more formal cooperation arrangements.

30. The results of GRECO evaluations have continued to serve as a useful source of input to European Commission progress review reports in the framework of EU enlargement and neighbourhood policies.

31. Moreover, in 2009, GRECO was represented at the following events organised or co-organised by European Union bodies:

- European Commission (DG Enlargement) Seminar - The Role of Civil Society in Combating Corruption (Brussels, 26-29 January)
- OLAF Conference, hosted by the Office of the Director of Public Prosecutions, Ireland and the Public Prosecution Service, Northern Ireland – Cross Border Fraud, Corruption and European Union Financial Interests (Dublin, 19-20 March)
- European Commission – Consultation Meeting (Strasbourg, 15-16 December).

32. The Director General of the European Anti-Fraud Office (OLAF) was represented at GRECO's 10th Anniversary Conference by his adviser, Mr Paul LACHAL ROBERTS who acted as a panellist during the round table on Cooperation of international stakeholders in the fight against corruption.

COOPERATION WITH OTHER ORGANISATIONS AND INSTITUTIONS

33. GRECO is invited regularly to provide input at events related to its field of expertise. In the course of the year, the events attended included:

- Dow Jones/Ethisphere Ethics Summit 2009 – Effective Strategies for Anti-Corruption Compliance (New York, 4-5 February) - President
- Centre for European Policy Studies (CEPS) Expert Seminar on Safeguarding the Rule of Law in an Enlarged EU (Brussels, 24 March) - Secretariat
- Ministry of the Interior – 3rd Austrian Anti-Corruption Day (Altlengbach, 19-20 May) – Secretariat
- Ethical Corporation Conference – The Future of Anti-Corruption Law and Enforcement in Europe (Brussels, 27-28 May) – President
- Regional Transparency International Conference on the contribution of the EU accession process to the fight against corruption (Ohrid, 15 June) - President
- Transparency International Expert Roundtable on Whistleblowers (Prague, 8-9 July) – Secretariat
- Konstanz University Final Conference of the Crime and Culture Project (Brussels, 10 July) – Secretariat
- OSCE Office for Democratic Institutions and Human Rights Roundtable on Public Funding of Political Parties and Abuse of State Resources (Athens, 17-18 September) – President and Secretariat
- Ethical Corporation's 3rd Annual Anti-Corruption Summit : Ethics, values and corporate compliance – How to persuade employees to do the right thing (Brussels, 20-21 October 2009) – President
- Conference on Corruption and Human Rights organised by the Maastricht Centre for Human Rights (Maastricht, 22-23 October) - President
- Regional High level Seminar in Preparation for the COSP-3 (Beirut – Lebanon, 15-16 October) – Secretariat
- Ethical Corporation's 3rd Annual Anti-Corruption Summit : Ethics, values and corporate compliance – How to persuade employees to do the right thing (Brussels, 20-21 October 2009) – President
- European Partners against Corruption (EPAC) 9th Annual Conference : Continuing the Dialogue – fighting corruption with integrity (Nova Gorica – Slovenia, 4-6 November) - Secretariat

- Global Forum VI – Fighting Corruption and Safeguarding Integrity (Doha – Qatar, 7-8 November) – President and Secretariat

34. GRECO's President held high-level bi-lateral meetings mainly focused on initiatives aimed at implementing GRECO recommendations with the Minister of Justice of Georgia; authorities in Greece; President Yushchenko, Prime Minister Tymoshenko and Mr Onischuk, Minister of Justice of Ukraine, and later with leaders of the principle political parties of Ukraine; as well as representatives of a newly established anti-corruption agency in Serbia.

35. In 2009, the Secretariat held individual meetings with: the Chief Executive, Electoral Commission, United Kingdom (13 February); Mr David Bernstein, Senior Public Sector Management Specialist – Europe and Central Asia, World Bank (24 March); Mr Rick Lawson, Professor of Law, Leiden University (15 July); Mr Kim Freidberg, Head of Section-Europe, Civilian Planning and Conduct Capability (CPCC)/EU and Ms Sirpa Rautio, Head of Human Rights and Gender Office, Eulex mission in Kosovo (17 July); Mr A. G. Zvyagintsev, Deputy Prosecutor General, Russian Federation (30 September).

36. In the course of the year, GRECO's Secretariat also met, *inter alia*, with the following groups of visitors: participants in a PACE seminar on Monitoring Procedures of the Council of Europe (10 March); students from the *Haute Ecole Paul-Henri Spaak*, Brussels (19 March); participants in a round of lectures at the *Ecole Nationale d'Administration – ENA* (16 June); experts and lawyers from domestic Parliaments and Ministries (16 June); representatives of the Nordic Investment Bank (11 September); study visitors from the *Ecole Nationale de la Magistrature* of France (22 June and 30 September); study visitors from the Human Rights Institute of Catalonia (1 October); UK-based journalists (13 October); high ranking Lebanese Judges (21 October); Norwegian Judges (9 November); Chinese Officials (12 November).

VISIBILITY

37. All adopted reports are made available on GRECO's website following the prior authorisation of the member State concerned. By maintaining this practice, GRECO demonstrates to a broad public the political will of its member States to make concrete advances in their fight against corruption. It has become standing practice to announce the publication of Evaluation Reports by press releases issued on GRECO's homepage and on the Council of Europe's Internet portal. Moreover, members are invited to translate reports into their national language and to make them available to the public. In 2009 a number of such translations were posted on GRECO's website.

38. GRECO also disposes of an information leaflet "Monitoring compliance with Council of Europe anti-corruption standards" and a compendium of anti-corruption instruments of the Council of Europe, destined for distribution to the general public.

39. In March, GRECO published a newly designed General Activity Report on its work in 2008. It included a feature on Independent Monitoring of Party Funding prepared by Patricia PEÑA ARDANAZ who had acted as a consultant during the preparatory work for Theme II of GRECO's Third Evaluation Round *Transparency of Party Funding* and had assisted with some evaluations carried out on that theme. When preparing the article which focused on the role of supervisory bodies in identifying, monitoring and addressing corruption in political financing, she had examined the wide range of different approaches and interpretations reflected in the results of GRECO's evaluations on the subject.

40. The media response to GRECO's work shows that significant interest is triggered by the political funding component of the current Third Evaluation Round, the on-site presence of evaluation teams in the capitals of States under evaluation and press releases (designed and issued in close cooperation with the Directorate of Communication of the Council of Europe). During the sole period June to

December 2009, the Secretariat counted over 100 press articles which contained explicit references to GRECO’s work and/or the Council of Europe’s anti-corruption agenda.

BUDGET AND PROGRAMME

41. The Secretariat’s effective management of the budget and programme is a valuable asset to GRECO. The additional post allocated to GRECO in 2009 provided a welcome reinforcement to the team that provides high quality analytical and technical input to GRECO’s work. In this connection, GRECO wishes to express once again its gratitude for the continuous support to its work provided by the Secretary General and the Statutory Committee.

42. During its 43rd Plenary Meeting GRECO approved budgetary proposals for 2010 and instructed the Executive Secretary to submit them to the Secretary General for consideration by the Budget Committee prior to their transmission to GRECO’s Statutory Committee for adoption on 26 November. The 2010 budget was adopted under the chairmanship of the newly elected President of GRECO’s Statutory Committee, Mr Per SJÖGREN, Permanent Representative of Sweden to the Council of Europe, who referred to the strong support enjoyed by GRECO in the Committee of Ministers and the European Union.

43. At its 45th Plenary Meeting, GRECO adopted its Programme of Activities for 2010, as it appears in document Greco (2009) 22E Final. The schedule of evaluations to be carried out and plenary meetings to be held aimed at ensuring an even distribution of work throughout the year, while bearing in mind statutory deadlines and longer-term planning.

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GRECO - WORKING FRAMEWORK AND METHODS

44. The Group of States against Corruption (GRECO) was established² in order to improve the capacity of its members to fight corruption. GRECO monitors the observance of Council of Europe anti-corruption instruments³ through a dynamic process of mutual evaluation and peer pressure.

45. GRECO **monitoring** involves the collection of information through questionnaires and on-site country visits which enable evaluation teams to solicit further information through high-level discussions with domestic key players (including representatives of civil society and the media), and subsequently the drawing up of evaluation reports. These reports, which are submitted to peer review during GRECO plenary meetings, contain formal recommendations to the authorities of the evaluated country in order to improve its level of compliance with the provisions under consideration.

46. GRECO’s work is structured by evaluation rounds, each covering a selection of specific themes. To date, three Evaluation Rounds have been launched.

² On 18 April 2002, the Committee of Ministers of the Council of Europe adopted Resolution Res(2002)6 authorising the continuation of the Enlarged Partial Agreement establishing GRECO which had been set up on 1 May 1999. Thus, GRECO became a permanent body of the Council of Europe.

³ * Criminal Law Convention on Corruption (ETS 173)
 * Civil Law Convention on Corruption (ETS 174)
 * Additional Protocol to the Criminal Law Convention on Corruption (ETS 191)
 * Twenty Guiding Principles against Corruption (Resolution (97) 24)
 * Recommendation on Codes of Conduct for Public Officials (Recommendation No. R (2000) 10)
 * Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (Recommendation Rec(2003)4).

47. GRECO's current **Third Evaluation Round** (as of 1 January 2007) is devoted to two distinct themes:

- Theme I: the *incriminations* provided for in the Criminal Law Convention on Corruption (ETS 173), its Additional Protocol (ETS 191) and Guiding Principle 2 (Resolution (97) 24);
- Theme II: the *transparency of party funding* (as understood by reference to Recommendation Rec(2003)4 of the Committee of Ministers on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns).

48. The first theme focuses on the transposition into domestic law of key provisions of the reference instruments and in particular of the corruption offences established by these instruments.

49. The second theme covers, *inter alia*, the requirements upon political parties to properly account for and publicise income (including donations and loans) and expenditure, the supervision of parties' routine operations and of election campaigns, as well as the enforcement of financing rules and regulations.

50. As regards GRECO's previous evaluation rounds, the **First Evaluation Round** (1 January 2000 – 31 December 2002) dealt with themes based on specific provisions of the Council of Europe's Twenty Guiding Principles for the Fight against Corruption (Resolution (97) 24), in particular

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

The **Second Evaluation Round** (1 January 2003 – 31 December 2006) addressed themes based on specific provisions of the Council of Europe's Twenty Guiding Principles for the Fight against Corruption (Resolution (97) 24) and associated provisions of the Criminal Law Convention on Corruption (ETS 173), in particular

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

51. Any member to have joined GRECO after the close of its Second Evaluation Round⁴ is subject to a **Joint First and Second Round Evaluation** which covers the whole range of issues examined during the first two rounds. This comprehensive approach is considered indispensable both for the sake of equal treatment of all members and to gain a clear and accurate picture of the anti-corruption regulatory framework and policies of new member States.

52. In 2009, GRECO began to reflect on the content and structure of its **Fourth Evaluation Round** which will most likely be launched in 2012. Starting this process well in advance (as well as the use of working parties to prepare the draft questionnaires) had previously proved to be very constructive, as it provided ample time for the development of a well-designed framework for evaluations and allowed time for focused expert input to draft basic texts such as guidelines to evaluators and questionnaires.

53. Measures taken in response to GRECO recommendations are subject to a specific impact assessment (**Compliance Procedure**). This procedure provides meaningful follow-up to GRECO evaluations. The first stage is the adoption of a compliance report some 24 months after an evaluation report has been addressed to a member State.

⁴ Andorra, Armenia, Austria, Azerbaijan, Italy, Liechtenstein, Monaco, Montenegro, Russian Federation, Serbia, Switzerland, Turkey and Ukraine.

Assessments are pursued within a further period of 24 months within an addendum to the compliance report.

54. Information on GRECO and its activities are available on its website www.coe.int/greco (including the full text of adopted Evaluation and Compliance Reports) and in a leaflet which can be requested from the Secretariat.

MEMBERSHIP

55. GRECO is an Enlarged Partial Agreement open to the membership, on an equal footing, of Council of Europe member States, non-member States having participated in its elaboration and other non-member States invited to join it as well as the European Union. The ratification of the Criminal or Civil Law Conventions on Corruption (ETS 173 and 174) leads to automatic accession to GRECO. With the accession of Liechtenstein on 1 January 2010 GRECO has currently 47 members: Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, Luxembourg, Romania, Slovak Republic, Slovenia, Spain and Sweden (founding States – 1 May 1999), Poland (20 May 1999), Hungary (9 July 1999), Georgia (16 September 1999), the United Kingdom (18 September 1999), Bosnia and Herzegovina (25 February 2000), Latvia (27 July 2000), Denmark (3 August 2000), the United States of America (20 September 2000), “the former Yugoslav Republic of Macedonia” (7 October 2000), Croatia (2 December 2000), Norway (6 January 2001), Albania (27 April 2001), Malta (11 May 2001), Moldova (28 June 2001), the Netherlands (18 December 2001), Portugal (1 January 2002), the Czech Republic (9 February 2002), Serbia (1 April 2003), Turkey (1 January 2004), Armenia (20 January 2004), Azerbaijan (1 June 2004), Andorra (28 January 2005), Ukraine (1 January 2006), Montenegro (6 June 2006)⁵, Switzerland (1 July 2006), Austria (1 December 2006), the Russian Federation (1 February 2007), Italy (30 June 2007), Monaco (1 July 2007) and Liechtenstein (1 January 2010). The List of representatives appointed by member States appears in Appendix I.

56. At the date of adoption of the present report, San Marino was the only Council of Europe member State still not to have joined GRECO. GRECO trusts that formalities concerning the accession of Belarus – a non-member State of the Council of Europe which had ratified both the Criminal and Civil Law Convention on Corruption – will be completed soon, following the signing on 22 January 2010 by the Deputy Secretary General and the Minister of the Interior of Belarus of an agreement guaranteeing the privileges and immunities of the members of GRECO evaluation teams.

RATIFICATION OF COUNCIL OF EUROPE ANTI-CORRUPTION CONVENTIONS

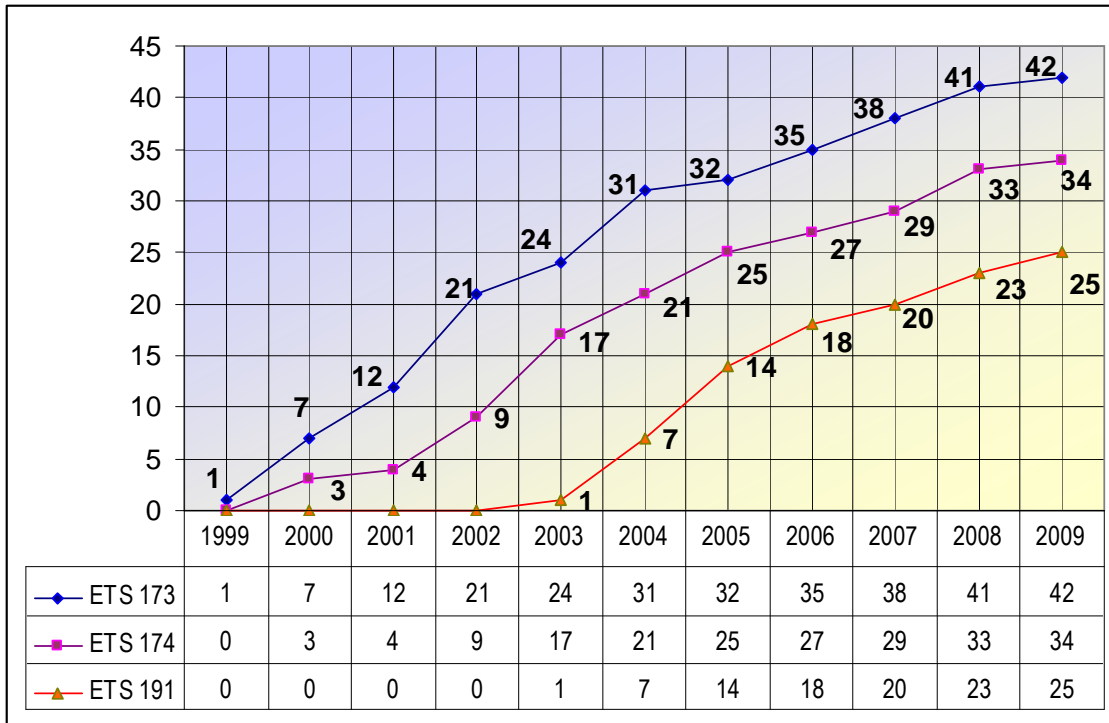
57. By the end of 2009 the Criminal Law Convention on Corruption had been ratified by 41 member States of the Council of Europe (and Belarus). Austria, Germany, Italy, Liechtenstein, Spain and San Marino had signed but not ratified the instrument. The number of ratifications of the Additional Protocol to the Criminal Law Convention (ETS 191) stood at 25. Regarding the Civil Law Convention on Corruption (ETS 174), the number of ratifications had reached 34 by the end of the year (including by Belarus).

58. As already indicated (see paragraph 47 above) Theme I of the GRECO’s Third Evaluation Round is devoted to the incriminations provided for in the Criminal Law Convention on Corruption and its Additional Protocol. It is noteworthy in this connection, that GRECO members which are not as yet parties to the Convention/ the Additional Protocol are nevertheless subject to evaluation in light of the standards set by the Convention and its Protocol. This approach involves the issuing to the members concerned of a general recommendation “to proceed swiftly with the ratification of the

⁵ Following independence, Montenegro succeeded to all treaties to which the State Union of Serbia and Montenegro was a party, including the Criminal Law Convention on Corruption (ETS No 173) making it *ipso facto* a member of GRECO.

Criminal Law Convention on Corruption (ETS 173) as well as the signature and ratification of its Additional Protocol (ETS 191)". Moreover, in the reports concerned attention is drawn to the formal Appeal by the Committee of Ministers to States, made at its 103rd Ministerial Session on the occasion of the adoption of the text of the Criminal Law Convention on Corruption (4 November 1998), to limit as far as possible the reservations that they declare pursuant to the Convention, when expressing their consent to be bound by the Convention. On the same occasion the Committee of Ministers appealed to States "which nevertheless find themselves obliged to declare reservations, to use their best endeavours to withdraw them as soon as possible".

59. The following chart indicates the development in the number of ratifications (ETS 173, 174, 191) across time.



* * *

FEATURE EXPERIENCE WITH THE CRIMINAL OFFENCE OF TRADING IN INFLUENCE IN FRANCE

While France is not the only Council of Europe member State where trading in influence is now a criminal offence, it was at a very early stage, in the final years of the 19th century, under pressure following a number of scandals that left their mark on judicial history, that it added this offence to its legislative arsenal, which had made corruption a punishable offence since the 1791 and 1810 codes.

Trading in influence is covered by three conventions in the international legal system.

The first is the Criminal Law Convention on Corruption, Article 12 of which requires signatory States to establish as criminal offences the trading of national⁶, foreign⁷ or international⁸ public influence in both active form (the undue advantage is given to "anyone") and passive form (the undue advantage may be received by anyone). However, Article 37 of the Convention allows any State to reserve its right not to establish as a criminal offence, in part or in whole, the conduct referred to in Article 12.

The second is the United Nations Convention against Corruption, known as the Merida Convention, which calls on every State Party to consider making the trading of national public influence⁹ a crime in its active form (the undue advantage is given to a "public official" or "any other person")¹⁰ and in its passive form (the undue advantage is received by a "public official" or "any other person")¹¹.

The third and last is the African Union Convention on Preventing and Combating Corruption, which requires signatory States, albeit allowing possible reservations¹², to make trading of public or private national influence¹³ - an offence termed "related to corruption" - a crime in its active and passive form, committed by perpetrators not specified.

If we confine ourselves solely to the objective elements of corruption¹⁴, the definition of corruption is the gaining of an undue advantage in return for the performance or non-performance of an act of the official position held. In France a distinction is made between "corruption" and a concept known as "paracorruption", defined as the obtaining of an undue advantage in return for the performance or non-performance of an act facilitated by the official position held. For its part, trading of influence is distinct from corruption and "paracorruption" in that undue advantage is obtained in return for improper use of actual or supposed influence in order to obtain a favourable decision from a third authority.

⁶ Through reference to Article 2, on "domestic public officials", and Article 4, on "members of domestic public assemblies".

⁷ Through reference to Article 5, on "foreign public officials", and to Article 6, on "members of foreign public assemblies".

⁸ Through reference to Article 9, on "officials of international organisations", Article 10, on "members of international parliamentary assemblies", and Article 11, on "judges and officials of international courts".

⁹ The only other authorities concerned are "an administration or public authority of the State Party". *Cf Article 18a and b.*

¹⁰ *Cf Article 18a.*

¹¹ *Cf Article 18b.*

¹² *Cf Article 24.*

¹³ Under Article 4 (1) f, the third authority is effectively a person performing functions in the public or private sector. "Private sector", under Article 1 of the same Convention, means "the sector of a national economy under private ownership in which the allocation of productive resources is controlled by market forces, rather than public authorities and other sectors of the economy not under the public sector or government".

¹⁴ Deliberately leaving out of consideration the subjective elements of corruption offences, active and passive.

If we supplement the objective elements of the trading of influence with its subjective elements, we can consider the offence in both its active and its passive form. In its active form, trading of influence means the promising, offering or giving to anyone of an undue advantage in return for his or her improper use of his or her actual or supposed influence in order to obtain a favourable decision from a third authority. In its passive form, trading of influence means the requesting, acceptance or receipt of an undue advantage by a person in return for improper use of actual or supposed influence in order to obtain a favourable decision from a third authority.

De lege ferenda, active trading of influence may be committed vis-à-vis a private or a public person. *De lege ferenda*, again, passive trading of influence may be committed by a private or a public person, this difference in status having the potential to justify aggravated responsibility, as decided by the legislature.

The need for trading of influence to be established as a crime

Trading of influence was made an offence under criminal law in France for two reasons: to punish conduct which undermines public trust and to comply with the rule forbidding courts to extend the meaning of a criminal statute, a corollary of the principle of strict definition by the law of offences and punishments.

Among the scandals most widely talked about in judicial circles in the late 19th century, the most spectacular was probably the "decorations scandal": several members of parliament, including the then French President's son-in-law, openly made money by using their powers of influence to have decorations awarded to other persons. Prosecuted and convicted by the court of first instance for fraud and corruption, they were ultimately acquitted by the Paris Court of Appeal, reflecting the incompleteness of the texts on corruption, which made the trafficking of acts of an official position an offence, but not the exerting of influence on public authorities, with a view to obtaining a favourable decision for the benefit of third parties, by well-connected persons (officials, members of parliament or ordinary individuals) in return for payment or advantages.

This acquittal, required by the principle of strict definition by the law of offences and punishments, and the great agitation which it generated led to the tabling of numerous bills, culminating in the Act of 4 July 1889.

The French legislature had a choice between creating a specific offence and including the trading of influence in either fraud or corruption. When the decision was made, it was to make an addition to Article 177 of the then Penal Code against corruption. It could be argued that this was not the right place for the trading of influence, since Article 177 of the then Penal Code was in a section entitled "Abuse of office and crimes and offences committed by public officers in the exercise of their duties", whereas passive trading of public influence may be done by an ordinary individual. This objection did not stop the legislature: as an offence which undermined public trust, the trading of influence would have been perfectly well placed in Title I of Book III of the former Penal Code, on "Crimes and offences against the State".

In the new Penal Code, the trading of public influence is still linked to corruption offences. This drafting option has the advantage of highlighting the common elements of the offences of corruption and trading of influence (in their passive form, the act of seeking or accepting an undue advantage; in their active form, the act of offering or granting an undue advantage), as well as the differentiation elements associated with the specific nature of their aims¹⁵ (an act of an official position or an act facilitated by an official position, on the one hand, and improper use of influence, on the other hand). Thus the structure of the drafting relating to these offences in French law makes it clear that, legally speaking, the two offences have something in common, but are not one and the same.

¹⁵ Cf Y Mayaud, "Code pénal commenté", Dalloz, 1996, p 717.

Conventional legal theory has enabled the offences of public corruption to be specified vis-à-vis the offences of trading of public influence. It has highlighted the fact that it was the intention that French law should punish, under the heading of corruption, the *trading of an act of "the official position itself and not the trading of the influence which it brings"*. Corruption, according to the same legal theory, "occurs only as a result of an act of the official position, i.e. an act which is part of the duties of the person carrying it out or refraining from carrying it out"¹⁶. In contrast, if a person "in return for money, places his or her direct or indirect influence at the service of a person so requesting, he or she *makes improper use of his or her status, but not his or her official position*"¹⁷. Thus the Criminal Division of the Court of Cassation criticised the trial and appeal courts which had found a person guilty of passive trading of public influence, whereas the person concerned had accepted an undue advantage for supplying information about forthcoming public works contracts. According to the Court of Cassation, the offence of trading of influence is committed if the person concerned "is considered, or describes him or herself, as an intermediary whose actual or supposed influence is such as to be able to obtain an advantage or a favourable decision from a public authority or government department"¹⁸. The undue advantage is not the consideration for the favourable decision obtained or likely to be obtained from the public authority, but solely for the improper use of actual or supposed influence. The trading of influence relates to a "favourable decision" which the perpetrator of the offence him or herself does not have the power to take¹⁹.

Unlike the offence of public corruption (which presupposes that the person corrupted or likely to be so has the status of a public official), the trading of influence "does not presuppose the exercise of any official position"²⁰, so may be committed actively or passively, and whether or not the person has the status of a public official.

The different degrees of the offence of trading of influence

The penalties for trading of national public influence, considered in both its passive and its active form, differ according to whether the offence was committed "by a person holding public office"²¹ or by "private persons"²². In the first case, the primary penalties are ten years' imprisonment and a fine of € 150 000, while in the second, the primary penalties are five years' imprisonment and a fine of € 75 000.

Statistics collected by the Ministry of Justice and Liberties show that convictions for offences of trading of influence (active or passive, committed by private individuals or public officials) numbered 51 in 2004, 56 in 2005, 41 in 2006, 40 in 2007 and 20 in 2008.

Case-law shows how varied the conduct encompassed by the offence can be. Some examples are given below:

- payment, via circuitous routes, of over 5 million Deutschmarks in return for improper use of influence by two French nationals, comprising the "smoothing out" with various public departments of the difficulties associated with the performance by a company incorporated under foreign law of a contract connected with an arms deal, to the benefit of the foreign company. The latter's representatives were prosecuted for

¹⁶ Cf R Garraud, *op cit*, p 387, n° 1526; Adde A Chauveau and H Faustin, "Théorie du Code pénal", 1872, 5^{ème} éd., Tome II, p 602. The same definition principle is found in contemporary legal theory: W Jeandidier, "Droit pénal des affaires", Dalloz, 6^{ème} éd., 2005, p 42, n° 35.

¹⁷ Cf R Garraud, *op cit*, p 391, n° 1527.

¹⁸ Cf Cass. crim., 1er oct. 1984 : B n° 277.

¹⁹ Cf M Delmas-Marty and G Giudicelli-Delage, "Droit pénal des affaires", PUF, 2000, 4^{ème} éd., p 294.

²⁰ Cf E Garçon, "Code pénal annoté", Sirey, 1953, Tome I, art. 177, n° 203.

²¹ The terms used in the section containing Article 432-11 (2) of the Penal Code, the article concerned making explicit reference to persons holding public authority or discharging a public service mission or holding a public electoral mandate.

²² The term used in the section containing Article 433-2, paragraph 1 of the Penal Code.

active trading of influence, while the first French national was prosecuted for trading of influence by a public official (a status that he held in various respects), and the second as the first's accomplice (Cass.crim., 19 March 2008);

- a private individual who believed that he had committed an offence against currency exchange regulations and told another person about this, handing over to him 1 million francs to "hush up the case" and to make use of the influence which the individual concerned supposed him to have (Cass.crim., 20 March 1997);
- a private individual who asked persons wishing to obtain social housing to give him various sums of money in return for his intervention with a municipal councillor who was chairman of a semi-public social housing company (Cass.crim., 7 February 2001);
- various executives of private companies who, in application of prior agreements, had received funds from firms which had obtained public contracts, in remuneration for their intervention with elected representatives responsible for awarding those contracts, who were members of political parties financed by the companies managed by the accused (Cass.crim., 16 December 1997).

Where improper use of influence to the detriment of public international organisations is concerned, with effect from the Act of 13 November 2007, the improper use of actual or supposed influence, in return for an undue advantage, with a view to securing the obtaining of something from a person holding public authority or discharging a public service mission or holding a public electoral mandate in a public international organisation, has been an offence, in both its passive and its active form.

There is no difference in the punishment for the passive offence of trading of international public influence according to whether it is committed by a person holding public office or a private person. The primary penalties for which Article 435-2 of the Penal Code provides are in all cases five years' imprisonment and a fine of € 75,000.

Nor is there any difference in the punishment for the active offence of trading of international public influence according to whether it is committed for a person holding public office or a private person. The primary penalties for which Article 435-4 of the Penal Code provides are identical to those for which Article 435-2 provides.

It has, however, been decided not to make the trading of influence to the detriment of another State an offence under French law, thus confirming French case-law²³, but conflicting with the provisions of Article 12 of the Criminal Law Convention on Corruption, in respect of which France decided to make a reservation relating to application²⁴. It is clear from the *travaux préparatoires* relating to the Act of 13 November 2007 that there were two reasons for this: firstly, that the offence of trading of influence is not recognised by the law in all Council of Europe member States and that it is preferable not to expose French businesses to distortion of competition against businesses in countries which do not apply the same rules, and, secondly, the difficulty of distinguishing between mere lobbying and activity of the nature of trading of influence²⁵.

The arguments put forward may not be convincing, because not only is trading of influence not an offence in French law alone (more than three-quarters of the States which have ratified the Criminal Law Convention on Corruption recognise the offence of trading of influence), but also, as pointed out by the National Assembly rapporteur, "the lack of a sufficiently clear distinction between 'business introducers' and persons who trade in influence could probably be resolved if precise terminology for commercial

²³ Cf CA Paris, 15 February 1941: RSC 1941, p 192, obs. Hugueney.

²⁴ Cf J Lelieur, "La loi du 13 novembre 2007 relative à la lutte contre la corruption : quelles avancées du droit français par rapport aux exigences du droit international?": Dr. pén. 2008, étude 25, n° 13.

²⁵ In respect of this whole debate, cf. M Segonds, "A propos de la onzième réécriture des délits de corruption", D. 2008, p 1068, sp. p. 1073 n° 30.

mediation could be established"²⁶. There is indeed no reason to be afraid that lobbying activity might be undermined by the existence of the criminal offence of trading of influence. Lobbying is not intended to exert influence on a decision covertly, in return for money, but to provide information and convince a public decision-maker by fully transparent means. Provided that lobbying activity takes place within a clear framework and is not perceived as a "shadowy activity", the issue of the boundary between it and trading of influence should no longer be an obstacle to making the trading of influence vis-à-vis a foreign public official a criminal offence.

The extent of the challenge is doubtless commensurate with the expansion of international trade, providing opportunities to win new markets by any means, in an area where public decision-making must remain impartial and above suspicion. The obstacles referred to can be overcome.

Marc Segonds, Agrégé of the law faculties, CETFI-Wesford
Armand Riberolles, magistrat

* * *

SECRETARIAT

60. GRECO's Secretariat (cf. organigramme reproduced in [Appendix II](#)) is part of the Directorate of Monitoring within the Directorate General of Human Rights and Legal Affairs

TERMS OF REFERENCE OF THE REPORT

61. The general activity report of the Group of States against Corruption – GRECO – for 2009 is submitted pursuant to Article 8, paragraph 1, iii) of GRECO's Statute and Rule 38 of its Rules of Procedure.

²⁶ Cf M Hunault, *Rapport A.N.*, n° 243, p 38.

APPENDIX I**10th ANNIVERSARY CONFERENCE - PROGRAMME****OPENING SESSION**

Address by **Maud de BOER-BUQUICCHIO**, Deputy Secretary General of the Council of Europe

Address by **Aleš ZALAR**, Minister of Justice - Slovenia

Address by **Drago KOS**, President of GRECO

ACHIEVEMENTS AFTER 10 YEARS**Session I**

The prevention of corruption - fighting corruption in public administration
The contribution of criminal law to the fight against corruption

Aleš ZALAR, Minister of Justice – Slovenia

Gevorg DANIELYAN, Minister of Justice – Armenia

Ivan ŠIMONVIĆ, Minister of Justice – Croatia

Brigitte ZYPRIES, Minister of Justice – Germany

Thomas HAMMARBERG, Commissioner for Human Rights, Council of Europe

Giacomo CALIENDO, Under Secretary of State for Justice – Italy

Gytis ANDRULIONIS, Vice Minister of Justice – Lithuania

Alexandre KONOVALOV, Minister of Justice – Russian Federation

Michael LEUPOLD, Secretary of State – Switzerland

Ergin SADULLAH, Minister of Justice – Turkey

Session II

The transparency of political financing

Brigitte ZYPRIES, Minister of Justice – Germany

Tuija BRAX, Minister of Justice – Finland

Jean-Marie BOCKEL, Justice Secretary of State – France

Julia PITERA, Secretary of State - Poland

Mark SWEENEY, Deputy Director and Head of Elections and Democracy Division, Ministry of Justice – United Kingdom

ROUND TABLE 1

Cooperation of international stakeholders in the fight against corruption

Philippe BOILLAT, Director General, Directorate General of Human Rights and Legal Affairs, Council of Europe

Drago KOS, President of GRECO

Mark PIETH, Chairman of the OECD Working Group on Bribery in International Business Transactions

Brigitte STROBEL-SHAW, Crime Prevention and Criminal Justice Officer, United Nations Office on Drugs and Crime (UNODC)

Paul Lachal ROBERTS, Advisor to the Director General of the European Anti-Fraud Office (OLAF)

Huguette LABELLE, Chair of the Board of Directors, Transparency International

Lorenzo SALAZAR, Director of Legislative and International Affairs (*Ufficio I*), Ministry of Justice (Italy)

Manuel LEZERTUA, Director of Legal Advice and Public International Law, Jurisconsult, Council of Europe

ROUND TABLE 2

GRECO – Future challenges and emerging subject areas

Topic 1: Lobbying and corruption

Topic 2: Private sector bribery

Martin KREUTNER, Director, Federal Bureau for Internal Affairs, Federal Ministry of the Interior (Austria) and President, European Partners against Corruption (EPAC)

Michael LEVI, Professor of Criminology, Cardiff University, Wales (United Kingdom)

Jane LEY, Deputy Director, US Office of Government Ethics – OGE (United States of America)

Manfred NÖTZEL, Head of Prosecutions – *Leitender Oberstaatsanwalt*, Munich Prosecution Office (Germany)

François VINCKE, Chair, Anti-corruption Commission, International Chamber of Commerce (ICC)

Conclusions of the Conference

Drago KOS, President of GRECO and **Wolfgang RAU**, Executive Secretary

APPENDIX II**LIST OF REPRESENTATIVES IN GRECO**

At: 21/12/09

ALBANIA

Mr Oerd BYLYKBASHI (Head of delegation)
Director
Department of Internal Administrative Control
and Anti-Corruption (DIAC)
Council of Ministers

M. Edmond DUNGA
Membre du Bureau – Bureau Member
Head of the Office in the Anticorruption Secretariat

Substitutes:

Mr Saimir STRUGA
Inspector
Department of Internal Administrative Control
and Anti-Corruption

Mrs Helena PAPA
Inspector
Department of Internal Administrative Control and
Anti-Corruption

ANDORRA / ANDORRE

M. Sergi ALIS SOULIE (Chef de délégation)
Unité de Prévention et Lutte contre
la Corruption
Présidence du gouvernement

M. Gérard ALIS EROLES
Avocat
Présidence du gouvernement

ARMENIA / ARMENIE

Mr Artur OSIKYAN (Head of delegation)
Deputy Head of Police

Mr Karen GEVORGYAN
Deputy Dean of International Relations
Faculty of Law

Substitute:

Mr Gevorg KOSTANYAN
Assistant
President of the Republic of Armenia

AUSTRIA / AUTRICHE

Mr Christian MANQUET (Head of delegation)
Head of Unit, Directorate for Penal Legislation
Federal Ministry of Justice

Mr Andreas ULRICH
Federal Chancellery
Constitutional Service

Substitutes:

Mr Martin KREUTNER
Director
Federal Bureau of Anti-Corruption, BAK
Federal Ministry of the Interior

Ms Gerlinde WAMBACHER
Department 4
Federal Bureau of Anti-Corruption, BAK
Federal Ministry of the Interior

AZERBAIJAN / AZERBAIDJAN

Mr Inam KARIMOV (Head of delegation)
Chief Adviser
Law Enforcement Coordination Department
Administration of the President of the Republic
Secretary of the Commission for Combating
Corruption

Mr Kamran ALIYEV
Head of Anti-Corruption Department
Prosecutor General's Office

Substitute:

Mr Vusal HUSEYNOV
Senior Advisor
Commission for Combating Corruption

BELGIUM / BELGIQUE

M. Frederik DECRUYENAERE (Chef de délégation)
Attaché au Service du droit pénal spécial
Service Public Fédéral Justice (SPF Justice)

M. Guido HOSTYN
Premier conseiller de direction
Secrétaire de la Commission de contrôle des
dépenses électorales

Substituts :

Mlle Claire HUBERTS
Attachée au service des principes de droit pénal et
de procédure pénale
Direction Générale des Droits et Libertés
fondamentales
Service public fédéral Justice (SPF Justice)

M. Paul MULS
Premier conseiller de direction
Secrétaire de la commission de contrôle des
dépenses électorales
Chambre des représentants

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Mr Vjekoslav VUKOVIC (Head of delegation)
Assistant Minister of Security of Bosnia
and Herzegovina
Council of Ministers of Bosnia and Herzegovina
Ministry of Security

Mr Sead TEMIM
Prosecutor
Federal Prosecutor's Office of the Federation of
Bosnia and Herzegovina

Substitute:

Mr Srdja VRANIC
National Public Administration Reform (PAR)
Coordinator
Office of the Chairman
Council of Ministers

BULGARIA / BULGARIE

Mr Georgi RUPCHEV (Head of delegation)
Membre du Bureau – Bureau Member
State Expert
Directorate of International Cooperation and
European Affairs
Ministry of Justice

Mr Petar PETKOV
Public Prosecutor
Supreme Prosecutor's Office

Substitute:

Ms Irena BORISOVA
Head of Department of International Cooperation
and Legal Assistance in Criminal Matters
Directorate of International Cooperation and
European Integration
Ministry of Justice

CROATIA / CROATIE

Mr Marin MRČELA (Head of delegation)
Vice-President of GRECO
Justice of the Supreme Court

Mr Kršimir SIKAVICA
Department for the Fight against Economic
Crime and Corruption
General Police Directorate
Division for Criminal Investigation
Ministry of the Interior

Substitutes:

Mr Dražen JELENIĆ
Acting County State Attorney
County State Attorney's Office

Mr Nenad ZAKOŠEK
Professor
Faculty of Political Science
University of Zagreb

CYPRUS / CHYPRE

Mr Philippos KOMODROMOS (Head of delegation)
Counsel of the Republic
Law Office of the Republic of Cyprus

Mrs Rena PAPAETI-HADJICOSTA
Senior Counsel of the Republic
Law Office of the Republic of Cyprus

Substitute:

Ms Despo THEODOROU
Counsel of the Republic
Law Office of the Republic of Cyprus

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Ms Helena LIŠUCHOVÁ (Head of delegation)
Legal Expert
Department for International Programmes
and Cooperation
Ministry of Justice

Ms Milada VANĚČKOVÁ
Deputy Director
Territorial Public Administration Department
Ministry of Interior

Substitutes:

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Legal expert
Department for International Programmes and
Cooperation
Ministry of Justice

Ms Marta LÉBLOVÁ
Expert
Public Administration Section
Ministry of the Interior

DENMARK / DANEMARK

Ms Eva RONNE (Head of delegation)
Acting Deputy Director
Office of the Director of Public Prosecutions

Mr Flemming DENKER
Deputy Director
Public Prosecutor for Serious Economic Crime

Substitutes:

Mrs Alessandra GIRALDI
Deputy Chief Prosecutor
Office of the Director of Public Prosecutions

Mr Lars LICHTENSTEIN
Head of Section
Office of the Director of Public Prosecutions

ESTONIA / ESTONIE

Mrs Mari-Liis SÕÖT (Head of delegation)
Head of Criminal Statistics and Analysis Division
Criminal Policy Department
Ministry of Justice

Ms Heili SEPP
Head of Penal Law and
Procedure Division
Criminal Policy Department
Ministry of Justice

Substitutes:

Ms Tiina RUNTHAL
Advisor
Public Law Division
Legislative Policy Department
Ministry of Justice

Mr Tanel KALMET
Advisor
Penal Law and Procedure Division
Criminal Policy Department
Ministry of Justice

FINLAND / FINLANDE

Mr Kaarle J. LEHMUS (Head of delegation)
Inspector General of the Police
Ministry of the Interior
Police Department

Ms Helinä LEHTINEN
Ministerial Advisor
Ministry of Justice
Crime Policy Department

FRANCE

M. Michel GAUTHIER
**Président d'Honneur du GRECO / Honorary
President of GRECO**
Avocat Général auprès de la Cour d'Appel de
Paris

M. Jean ALEGRE (Chef de délégation)
Chargé de mission auprès du directeur des
affaires juridiques
Ministère des Affaires étrangères et
européennes

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APPENDIX II

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Denmark
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Ireland
Italy
Malta
Montenegro
Poland
Russian Federation
Serbia
Slovenia
Spain
Sweden
"the former Yugoslav Republic of Macedonia"
Turkey
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United Kingdom
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Evaluation and compliance procedures in respect of:

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Azerbaijan
Belgium
Bulgaria
Cyprus
Czech Republic
France
Georgia
Germany
Greece
Latvia
Liechtenstein
Lithuania
Luxembourg
Moldova
Monaco
Netherlands
Norway
Portugal
Romania
Slovak Republic
Switzerland