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**Greco (2011) 1E Final**

## Eleventh General Activity Report of GRECO (2010)

### Feature: Sponsorship and Corruption

Adopted by GRECO 50  
(Strasbourg, 28 March – 1 April 2011)

**FOREWORD**

The Eleventh General Activity Report of the Group of States against Corruption (GRECO) provides a succinct overview of the activities of the Group throughout 2010.

Since the accession in 2010 of Liechtenstein (1 January) and San Marino (13 August) GRECO's monitoring model is applied to scrutinise the anti-corruption efforts of all Council of Europe member states. The strength accorded us through our broad membership is further reinforced by the full participation of the United States of America since September 2000. Most recently, Belarus' participation became effective on 13 January 2011. Forty-nine states now contribute to the fulfilment of GRECO's mission and benefit from critical assessment of their anti-corruption efforts and tailor-made recommendations for improvement.

As with other criminal activity in our global society, corruption seeks out and exploits vulnerabilities – those of individuals as well as those in our laws and legislative and institutional set-ups. Moreover, as a result of the persistent economic and financial crisis with its harmful impact on employment and prosperity, moral barriers are often lowered. Respected corruption indices, including those produced by the World Bank and Transparency International, as well as the evidence gathered by GRECO, clearly indicate that corruption is a continuing, and even growing concern.

Pooling the strengths and resources of the international structures that support the efforts of networks of states committed to stamping out corrupt practices is, to my mind, essential. I am therefore particularly encouraged by the advances made in 2010 towards strong cooperation between GRECO and the European Union (see paragraph 40 below). Under the terms of the Stockholm Programme there are concrete prospects of formal participation of the EU in GRECO and I am convinced that it would create significant added value by combining GRECO's extensive monitoring expertise with the EU's political leverage and bring additional impetus to anti-corruption efforts across GRECO's membership. Such participation could also be expected to bolster our response to the high public expectations as regards the need for effective counter measures.

In 2010, GRECO further developed benchmarks within its Third Evaluation Round which, coupled with its rigorous compliance methodologies represent significant incentives for member states to bring domestic rules and institutional frameworks into line with international standards. With an eye to the future, GRECO also defined the theme of its Fourth Evaluation Round which is due to be launched in 2011. GRECO's decision to focus on corruption prevention in respect of members of parliament, judges and prosecutors responds constructively to real concerns of member states and civil society bodies.

The question of sponsoring has occasionally emerged during GRECO's evaluation of political funding systems as an issue of interest and concern for a growing number of countries. Regulating this matter, in particular by ensuring a proper level of transparency and thus avoiding that sponsoring is used with the intent to procure undue advantages, is not an easy task. Some of the legal intricacies involved are explored in this year's thought-provoking feature article prepared by a German professor with specialist knowledge in this area. I am confident that the experience of Germany, on which the article focuses, will provide some valuable insights for future debate.

During the course of 2010, I heard many complimentary remarks on GRECO's work. Most recently, we were referred to as being the reference for comprehensive and incisive monitoring. The fact that the constructive peer pressure exercised within the mechanism continues to bear results is highly satisfying and motivating for those of us sitting in GRECO. The success of our mission depends also on all the actors who ensure an effective implementation of laws and regulations and I wish here to signal the essential role played by civil society bodies which, through their campaigning, help to construct a healthy resistance within our societies to all forms of corrupt practices and abuse of official position.

**Drago KOS – President of GRECO**

## MISSION AND WORKING FRAMEWORK

1. The Group of States against Corruption (GRECO) was established in May 1999 to monitor states' compliance with the Council of Europe's anti-corruption instruments<sup>1</sup> in order to improve the capacity of its members to fight corruption. Through a dynamic process of mutual evaluation and peer pressure, the combined expertise of practitioners acting as members of evaluation teams and of state representatives sitting in plenary is applied to identify shortcomings in national legislation, regulations, anti-corruption policies and institutional set-ups and to propose tailor made recommendations with a view to prompting the necessary reforms.

2. GRECO's work is structured by evaluation rounds, each covering a selection of specific themes. To date, three rounds have been launched.

3. 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 No. 173), its Additional Protocol (ETS No. 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).

4. 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 the instruments.

5. 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.

6. The preceding **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 No. 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.

7. 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.

<sup>1</sup> \* Criminal Law Convention on Corruption (ETS No. 173)

\* Civil Law Convention on Corruption (ETS No. 174)

\* Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 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).

8. Any member to have joined GRECO after the close of the Second Evaluation Round<sup>2</sup> 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.

## 2010 – PRINCIPAL ACTIVITIES

9. The major part of GRECO's annual work programme is devoted to the carrying out of its evaluation and compliance procedures. In 2010, GRECO continued its monitoring within the framework of the current Third Evaluation Round while conducting impact assessments of measures taken by members to implement recommendations emanating from country evaluations. The various stages of the impact assessment are designed to maintain the momentum of ongoing reforms initiated as a result of GRECO's findings.

10. In 2010, the following meetings were held in Strasbourg:

### Plenary Meetings

GRECO 46 (22-26 March)  
 GRECO 47 (7-11 June)  
 GRECO 48 (27 September – 1 October)  
 GRECO 49 (29 November – 3 December)

### Bureau Meetings

Bureau 52 (1 March)  
 Bureau 53 (30 April)  
 Bureau 54 (14 September)  
 Bureau 55 (27 October)

### Statutory Committee

15<sup>th</sup> Meeting – Adoption budget 2011 (25 November)

## Evaluation procedures

11. In 2010, GRECO evaluation teams carried out **Third Round evaluation visits** to Azerbaijan (26-30 April), Serbia (26-30 April), Armenia (17-21 May), Portugal (17-21 May), Montenegro (14-18 June), Romania (21-25 June), Bosnia and Herzegovina (20-24 September), the Czech Republic (11-15 October), Cyprus (25-29 October), Andorra (15-19 November), Moldova (15-19 November) and Georgia (13-17 December).

12. Following on-site visits, draft evaluation reports are drawn up and submitted to the GRECO plenary for an in-depth examination before their adoption. In 2010, GRECO adopted **Third Round Evaluation Reports** in respect of eleven of its members (Armenia, Azerbaijan, Bulgaria, Greece, Hungary, Montenegro, Portugal, Romania, Serbia, "the former Yugoslav Republic of Macedonia" and Turkey) addressing in all some 190 recommendations to the authorities of the countries concerned.

13. GRECO's evaluation reports contain a wealth of factual information on the situation in the countries concerned, an expert appraisal of shortcomings and tailored recommendations for improvements. In all cases members are required to report on implementation of recommendations within an 18 month period.

14. In order to take stock of the outcomes of its Third Evaluation Round from a different perspective than its own, GRECO commissioned a horizontal study of the results of the first 22 evaluations carried out under Theme II of its Third Evaluation Round: transparency of party funding. In his study (cf. link page 12), the author, Mr Yves-Marie DOUBLET, Deputy Director of the General Secretariat of the National Assembly (France) points out that although political systems can differ significantly from one member state

<sup>2</sup> Andorra, Armenia, Austria, Azerbaijan, Belarus, Italy, Liechtenstein, Monaco, Montenegro, Russian Federation, San Marino, Serbia, Switzerland, Turkey and Ukraine.

to another, the principles set out in the Council of Europe Recommendation (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns are “common to all these countries and are of critical importance to them, whatever the form of their institutions, because they share the same democratic values.”

15. The **Fourth Evaluation Round** is due to be launched in 2011 and significant progress in its preparation was made in 2010. GRECO decided that its theme would be corruption prevention in parliamentary assemblies, the judiciary and among other actors of the pre-judicial and judicial process. A working party (WP-Eval IV) was established to assist in the preparation of the round and was entrusted notably with identifying its precise scope and the topics to be addressed, drawing up a focused evaluation questionnaire as well as advising on a number of practical aspects, in view of final decisions to be taken by the plenary during the first quarter of 2011.

16. WP-Eval IV held its first meeting in October, it was chaired by the President of GRECO and composed of experts from Albania, Croatia, France, Georgia, Germany, Italy, Latvia, Norway, the Russian Federation, Switzerland, the United Kingdom and the United States of America and assisted by a Scientific Expert from the Office of Government Ethics of the United States of America and by the Chair of the Global Task Force on Parliamentary Ethics and Conduct of the Global Organization of Parliamentarians against Corruption (GOPAC). The first tasks accomplished had been to form an opinion on the scope of the round and to develop a draft evaluation questionnaire. In order to allow for in-depth, substantive evaluations, it had been felt that GRECO should focus on corruption prevention in respect of members of parliament (regardless of the chamber of parliament, regardless of whether they are appointed or elected), judges (both professional and lay judges, regardless of the type of court in which they sit) and prosecutors.

### **Compliance procedures**

17. Measures taken in response to GRECO recommendations are subject to a specific impact assessment – **Compliance Procedure** – that 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. Assessments are pursued within a further period of 24 months in an addendum to the compliance report (First and Second Round compliance procedures) or a second compliance report (Third Round compliance procedures).

18. In 2010, compliance procedures were reinforced by a revision of the Rules of Procedure to be applied to Third Round and subsequent compliance procedures. The revised Rule transforms the ‘addendum stage’ into a full ‘second compliance report stage’. In 2010, GRECO adopted **Third Round Compliance Reports** with respect to Estonia, Iceland, Latvia, Luxembourg, the Netherlands, Poland, Slovakia, Slovenia and the United Kingdom as well as Third Round Interim Compliance Reports, pursuant to Rule 32, paragraph 2(i), on Iceland and Slovakia.

19. As regards compliance procedures related to previous evaluation rounds, **Second Round compliance procedures** were closed in respect of Cyprus, the Czech Republic, Greece, Hungary, Ireland, Moldova, Portugal and the United States of America with the adoption of addenda to the relevant second round compliance reports. GRECO also closed **Joint First and Second Round compliance procedures** with respect to Armenia, Azerbaijan, Montenegro, Serbia and Turkey with the adoption of addenda to the relevant joint first and second round compliance reports. Procedures were opened with the adoption of Joint First and Second Round Compliance Reports on Austria, Monaco, the Russian Federation and Switzerland – in each case, the assessment of further measures taken to implement outstanding recommendations will commence within a period of 18 months.

20. 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.

### **Exchange of views and *Tour de Table***

21. Encounters between GRECO's plenary and external stakeholders provide a useful platform for an exchange of information on good practice, difficulties encountered and emerging trends in the anti-corruption field.

22. At its March plenary meeting GRECO held a *tour de table* on recent developments regarding anti-corruption institutions with the participation of the late Mr David MARTÍNEZ MADERO, Director of the **Anti-Fraud Office of Catalonia** – an independent body attached to the Parliament of Catalonia with wide powers and a mandate to prevent and investigate corruption in the public sector, and Mr Kairat KOZHAMZHAROV, Chairman of the **Anti-Corruption and Economic Crime Agency of Kazakhstan** – an body with a central office and sixteen regional divisions that reports directly to the President and is responsible for the prevention, detection and investigation of corruption offences. In November, GRECO's President was invited to present GRECO's work, notably in the field of transparency of party funding, to investigators from the Anti-Fraud Office of Catalonia.

23. Bearing in mind its planned Fourth Evaluation Round, GRECO held an exchange of views, during its September plenary meeting, on corruption prevention in parliamentary assemblies with Mr Ghassan E. MOUKHEIBER, member of the Lebanese parliament since 2002 and chair of the Taskforce on Parliamentary Ethics and Conduct of the **Global Organization of Parliamentarians against Corruption (GOPAC)**. The Taskforce had developed, in collaboration with the Westminster Foundation for Democracy (WFD), a comprehensive set of guidelines for parliamentarians in a Handbook on Parliamentary Ethics and Conduct (cf. link page 12).

24. Mr MOUKHEIBER was invited by GRECO to assist its working party WP-Eval IV by sharing his expertise and opinion on relevant sections of the draft evaluation questionnaire under preparation for the forthcoming Fourth Evaluation Round (see paragraphs 15 - 16 above).

### **COOPERATION WITH OTHER BODIES OF THE COUNCIL OF EUROPE**

25. GRECO's President presented the Tenth General Activity Report (2009) to the **Ministers' Deputies of the Council of Europe** during their 1087<sup>th</sup> Meeting (Strasbourg, 9 June). 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.

26. The results of GRECO's monitoring are used to provide input to the work of other sectors of the Council of Europe, more particularly monitoring missions on compliance with accession commitments and obligations as well as cooperation activities coordinated and managed by the **Directorate General of Democracy and Political Affairs**, they also feed in to the action of the **Commissioner for Human Rights** and the **Venice Commission**.

27. GRECO is kept informed of and consulted with regard to relevant initiatives by the **Parliamentary Assembly of the Council of Europe** (PACE). For example, in 2010, GRECO's President participated, with Mr KIROV, Chairman of the Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism (MONEYVAL), in an exchange of views with the PACE Committee on Economic Affairs and Development on the need to combat economic crime in times of economic crisis (Strasbourg, 28 January). GRECO is formally consulted by the Ministers' Deputies on



recommendations of the Parliamentary Assembly and in 2010, GRECO adopted comments as follows:

- on Recommendation 1896 (2010) on Judicial Corruption – in which GRECO welcomes the proposed elaboration of a model code of conduct directed at judicial officials, along the lines of the model code of conduct for public officials appended to Committee of Ministers Recommendation No. R (2000) 10.
- on Recommendation 1916 (2010) on the Protection of Whistle-blowers – in which GRECO expresses the view that the Parliamentary Assembly's initiative to strengthen whistle-blowing policies is timely and that more could clearly be done to make these policies more effective.
- on Recommendation 1908 (2010) on Lobbying in a democratic society (European code of conduct on lobbying) – in which GRECO states that the drawing up of such a code would be beneficial, in particular the establishment of a precise definition of lobbying to assist countries in dealing with the issue of trading in influence and in better preventing conflicts of interest.

28. The **Council of Europe Development Bank (CEB)** made a request for formal cooperation with GRECO considering the pertinence of GRECO's work for preventive policies and guidelines it had developed. The CEB was therefore invited to nominate a representative to sit in GRECO and its Chief Compliance Officer participated for the first time in GRECO's December plenary meeting.

29. The 2010 Session of the **Council of Europe Forum for the Future of Democracy** which was held in Yerevan in October, included a working session on Democratic Political Culture, during which consideration was given to the numerous serious challenges that a democratic political culture faces from issues as diverse as the growing heterogeneity of European societies, corruption (including in the funding of political parties and electoral campaigns), populism, media manipulation, overplayed vested interests and political disaffection. Participants examined examples of initiatives and strategies to strengthen democratic culture at all levels. Mr Yves-Marie DOUBLET, scientific expert for Theme II of GRECO's Third Evaluation Round, Deputy Director of the General Secretariat of the National Assembly, France, participated in the debate referring to GRECO's contribution in the anti-corruption field in particular as regards political funding.

30. In 2010, a number of components of **technical cooperation** projects implemented by the Corruption and Money Laundering Unit, Economic Crime Division, Directorate General of Human Rights and Legal Affairs were designed to assist member states in the implementation of GRECO recommendations and the relevant Council of Europe instruments. Examples include on-going support to improve the package of anti-corruption laws while setting up relevant structures related to enforcement and policy advice (Ukraine – Project against Economic Crime); assistance for an effective design of the anti-corruption strategy and action plan while increasing capacities of the newly established Coordination Council (Georgia – Support to the Anti-corruption strategy (GEPAC)); specialised training and tools for revenue services to detect and report corruption (Georgia – Project against Economic Crime); assistance and advice in drafting the Anti-corruption Strategy's Action Plan 2011-2013 and in the drafting of new legislation on controlling the financing of political parties and electoral campaigns (Albania – Project against Corruption (PACA)); enhancing the anti-corruption and good governance reform processes in the six Eastern Partnership Countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine): multilateral advice and sharing of good practices (EaP-Support to the Eastern Partnership Panel against Corruption (EaP Bridge Project)).

31. Furthermore, in 2010, support was provided to activities designed to measure the causes and level of corruption and perception of it in different sectors in order to identify areas of intervention and priority. For example, risk assessments of corruption in a selection of public service sectors were initiated in Albania to provide input for designing

priority actions while implementing the cross-sector anti-corruption strategy and surveys measuring the perception of corruption of the public and of public officials were carried out in Georgia as input to the process of designing the new action plan against corruption. The aforementioned initiatives represent valuable support for translating the results of GRECO monitoring, and the relevant recommendations in particular, into practical achievements. For more details: [www.coe.int/corruption](http://www.coe.int/corruption).

32. GRECO Plenary agendas will in future foresee yearly or twice-yearly reporting by the secretariat running these capacity building projects. Coordination of the monitoring and cooperation activities managed by the Directorate General of Human Rights and Legal Affairs (including in the anti-corruption field) is regularly assured through country-specific roundtables.

33. GRECO's President contributed to the drawing up of a draft recommendation on match fixing prepared by the **Enlarged Partial Agreement on Sport (EPAS)** of the Council of Europe, following his participation in the 18<sup>th</sup> Informal Conference of Ministers responsible for Sport.

34. Within Theme II of the Third Evaluation Round GRECO takes note of and refers to opinions in the field of political financing of the European Commission for Democracy through Law (**Venice Commission**) and GRECO's President participated in a meeting of the Sub-Commission on Democratic Institutions of the Venice Commission held in Venice on 16 December.

35. Members of GRECO's Secretariat also participated in discussions with **Special Representatives of the Secretary General** based in Council of Europe external offices – contacts are maintained in particular in the context of on-site evaluation visits by GRECO.

## OBSERVERS

36. Cooperation with the **OECD** – which has had observer status in GRECO since 2002 – is regular and facilitates the sharing of expertise and coordination of planning. In 2010, GRECO was represented at the following meetings organised by the OECD:

- 8<sup>th</sup> Monitoring meeting of the Istanbul Anti-Corruption Action Plan/Anti-Corruption Network for Eastern Europe and Central Asia (ACN) (Paris, 29-30 March)
- 9<sup>th</sup> ACN Steering Group – second Expert Seminar on Asset Declarations (Paris, 30-31 March)
- Working Group on Bribery in International Business Transactions (Paris, 16-17 June)
- Working Group on Bribery in International Business Transactions – Phase 3 Lead Examiner Training Seminar (Paris, 18 June)
- OECD secretariat retreat to discuss practical matters and opportunities for cooperation within Phase 3 evaluations of the Working Group on Bribery in International Business Transactions (Paris, 14 September)
- 9<sup>th</sup> Monitoring meeting of the Istanbul Anti-Corruption Action Plan/Anti-Corruption Network for Eastern Europe and Central Asia (ACN); 11<sup>th</sup> ACN Steering Group Meeting and Donors Coordination Meeting (Paris, 5-8 December).

37. GRECO also took note of the statement made by the Secretary General of the OECD on the occasion of the Fourth Part of the 2010 Ordinary Session of the Parliamentary



Assembly of the Council of Europe in October in which he welcomed the continuous collaboration with GRECO.

38. The **United Nations**, represented by the **United Nations Office for Drugs and Crime** (UNODC) has had observer status with GRECO since October 2006. GRECO follows closely the work of the Conference of States Parties to the United Nations Convention against Corruption (UNCAC) and related UN initiatives in particular as regards implementation review of the convention and was represented at the following events:

- Inaugural meeting – Implementation Review Group of the UNCAC (Vienna, 28 June – 2 July)
- first meeting of the interim open-ended Intergovernmental Working Group on the Prevention of Corruption of the Conference of the States Parties to the UNCAC (Vienna, 13-15 December)
- UNDP conference Building Strategic Anti-Corruption Partnerships in the Arab Region (Amman, 26-27 October).

39. The above-mentioned Amman conference launched a four-year regional anti-corruption initiative; in that context there was a strong interest in Council of Europe anti-corruption standards and in particular in GRECO's methodology which was considered as an inspiration for promotion of the implementation of the UNCAC.

#### **COOPERATION WITH THE EUROPEAN UNION**

40. The pace of exchanges between the Group of States against Corruption (GRECO) and relevant European Union bodies increased during 2010, in particular as regards the follow-up to the Stockholm Programme in which the Council of the European Union invites 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. Following an informal meeting at the Directorate General Justice, Freedom and Security (JLS) of the European Commission in May, GRECO held detailed discussions during its June plenary meeting with representatives of the Secretariats of the European Commission and the Council of the EU where it stressed that accession of the EU to GRECO represented a unique opportunity both for the Union and GRECO to reinforce the coherence and, hence, the efficiency of action to fight corruption in Europe. These matters were pursued further at inter-secretariat level and resulted in a provisional common understanding of the key issues which need to be clarified in connection with EU participation in GRECO and GRECO's contribution to the Commission's own anti-corruption endeavours; a provisional written framework was under discussion by the end of the year.

41. The results of GRECO evaluations have continued to serve as a useful source of input to European Union Enlargement and Neighbourhood Policy progress review reports and the Group was represented at the following events:

- kick-off meeting for ALACs – Promotion of participation and citizenship in Europe through Transparency International's "Advocacy and Legal Advice Centres (ALACs)", a European Commission – TI project (Berlin, 22 January)
- workshop on "Ethics in society at all levels: political, civil society, media and business", organised within the framework of the European Commission Technical Assistance Information Exchange Instrument – TAIEX (Budva, 6-7 April)
- international conference on "Corruption prevention in the midst of crisis?" organised by the *dbb akademie* in cooperation with the European Anti-Fraud Office -OLAF (Cologne, 22-23 November).

## **THE ROLE OF CIVIL SOCIETY ORGANISATIONS**

42. Constructive links have been developed with Transparency International (TI) – the most high profile NGO in the anti-corruption field – and the Anti-Corruption Commission of the International Chamber of Commerce (ICC) as well as with international networks of public bodies such as the European Partners against Corruption (EPAC) and the Global Organization of Parliamentarians against Corruption (GOPAC). Even though GRECO's Statute does not provide for formal participation through observer status of civil society organisations, GRECO recognises the important role played by them as well as their influence on policy making and associates them with its work in various ways: through exchanges of views/roundtables during GRECO plenary meetings and, in particular, meetings with national civil society representatives (for example, national chapters of TI, Open Society, bar associations, academics, media associations and numerous others active in fields related to the themes of GRECO's evaluation rounds) which are a regular component of on-site evaluation visits. These meetings provide a valuable complement to the information and views gathered by evaluation teams.

## **COOPERATION WITH OTHER ORGANISATIONS AND INSTITUTIONS**

43. 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:

- Asia-Europe Foundation and Institute of Social Sciences of the University of Lisbon conference New Trends in Political Financing Regulation in Asia and Europe: The New Role of Monitoring and Enforcement Agencies (Lisbon, 18-19 February) – Secretariat
- Institute for Legal Studies of the Hungarian Academy of Sciences and Friedrich Ebert Stiftung conference on Party and Campaign Finance (Budapest, 19 March) – Secretariat
- Institute of Political Science of the University of Vienna Symposium on Global Corruption (Vienna, 19 March) – Secretariat
- Central European Initiative – Parliamentary Dimension (CEI-PD) parliamentary committee meeting on the Role of Parliaments in Combating Corruption and Organised Crime (Cetinje, 26-27 April) – President
- Congress of Local and Regional Authorities of the Council of Europe, Committee of the Regions of the European Union, Municipality of Messina and the Sicilian Region conference on Fighting Corruption at Local and Regional Level (Messina, 7 May) – President
- 17<sup>th</sup> National Government Ethics Conference (Chicago, 10-14 May) – President
- Marmara University, Council of Ethics for Public Officials of the Prime Ministry and Union of Municipalities of Marmara symposium on Local Government Ethics (Istanbul, 17 May) – Vice-President
- World Bank and UNODC conference entitled No Safe Havens: A Global Forum on Stolen Asset Recovery and Development (Paris, 8-9 June) – President
- The World Bank Anticorruption Thematic Group on Monitoring Anti-Corruption Efforts session (Washington DC, 17 June) – President
- Counteracting Corruption: International Mechanisms and Tools conference jointly organised by the Agency of Kazakhstan on fighting economic and corruption crime, OSCE center in Kazakhstan, UNDP and Transparency Kazakhstan (Astana, 23-26 June) – Secretariat

- Launch of the International Anti-corruption Academy (Vienna, 2-3 September) – President and Secretariat
- ODIHR-Venice Commission roundtable on Guidelines on Political Parties (Munich, 9-10 September) – Secretariat
- 18<sup>th</sup> Council of Europe Informal Conference of Ministers responsible for Sport (Baku, 22 September) – President
- Conference on the Fight against Corruption – Integrative Feedback of Domestic and International Activities, organised during the chairmanship of the “former Yugoslav Republic of Macedonia” of the Committee of Ministers of the Council of Europe (Ohrid, 15-16 October) – President and Secretariat
- European Business Association (EBA) conference on European Anti-Corruption Practices and Public Administration Reform in Ukraine (Kiev, 5 October) – President
- 14<sup>th</sup> International Anti-Corruption Conference (IACC) on Restoring Trust through Global Action on Transparency (Bangkok, 10-13 October) – President
- Friends of Europe high-level roundtable co-organised by the Ministry of Justice of Serbia on Counter Measures in the Balkans against Organised Crime and Corruption (Brussels, 28 October) – Vice-President
- 10<sup>th</sup> Annual Conference of the European Partners against Corruption – EPAC (Oradea, 17-19 November) – President
- Third meeting of the Conference of the States Parties – Mechanism for follow-up on implementation of the Inter-American Convention against Corruption (Brasilia, 9-10 December) – Secretariat.

44. In 2010, the Secretariat held individual meetings with: Mr Sadik AHMETOVIĆ, Minister of Security and Deputy Prime Minister of Bosnia and Herzegovina, accompanied by Mr Senad KUSEVIĆ, his Head of Cabinet, Ms Amela DAUTBEGOVIĆ, Adviser and Ms Mirsa MUHAREMAGIC, Deputy Permanent Representative to the Council of Europe (25 January); Mr Stanislav VASSILENKO, Representative of Kazakhstan (28 January); Ambassador Veselin SUKOVIC, General Director for Multilateral Affairs, Ministry of Foreign Affairs, Montenegro (22 October); Mr Jaume BARTUMEU CASSANY, Head of the Government of Andorra (27 October); Mr Pierre MEMHELD, Senior Consultant, Relecom & Partners (19 November); Ms Simone WHITE, European Anti-Fraud Office – OLAF (8 December); Mr MONDEKAR, Member of the Parliament of Croatia (15 December).

45. In the course of the year, GRECO’s Secretariat designed presentations for the following groups of study visitors: senior officials participating in training sessions organised by the Robert Bosch Foundation and the German Council on Foreign Relations (11 January); Council of Europe trainees (21 January, 16 September); Chairman and Executive Director, Association of Judges, Head of Judicial Department and members of the Board of the Association of Judges of Armenia (1 February); officials from China (15 March); European press correspondents (18 March); Supreme Court judges from Ukraine (9 June); judges from France (21 June, 7 October); senior officials from Vietnam (12 July); Council of Europe ‘Open House’ for Permanent Representations (20 September); participants in the activist enrichment programme run by the UK based NGO René Cassin (27 September); judges from Sweden (13 October); judges of the High Administrative Court of Ukraine (7 December); public officials, Anti-Corruption and Civil Rights Commission of Korea (14 December).

## VISIBILITY

46. All adopted reports are made available on GRECO's website following the prior authorisation of the member states concerned which are also invited to make national language versions available to the public. Visibility of the results of GRECO's work has a role to play in mobilising domestic actors – for example, national parliaments and NGOs – to contribute to the practical implementation of Council of Europe anti-corruption standards and GRECO recommendations in particular.

47. The media response to GRECO's work shows that significant interest continues to be 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 announcing the publication of reports (designed and issued in close cooperation with the Directorate of Communication of the Council of Europe). During 2010, the Secretariat counted over 110 press articles making explicit references to GRECO's work and/or the Council of Europe's anti-corruption agenda.

### Further reading

- Political financing: GRECO's first 22 evaluations – Yves-Marie DOUBLET, Deputy Director of the General Secretariat of the National Assembly, France – a horizontal study that focuses on three key topics examined during the Third Evaluation Round, namely the transparency of political funding, monitoring compliance with regulations and penalties for those who breach them.  
[http://www.coe.int/t/dghl/monitoring/greco/documents/2010/Greco\(2010\)8\\_RapportYVDoublet\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/2010/Greco(2010)8_RapportYVDoublet_EN.pdf)
- Practical Impact of the Council of Europe monitoring mechanisms in improving respect for human rights and the rule of law in member states – publication drawn up by the Directorate General of Human Rights and Legal Affairs that provides examples of the impact that GRECO's work has had at national level among its membership.  
[http://www.coe.int/t/dghl/publications/index\\_publications\\_en.asp](http://www.coe.int/t/dghl/publications/index_publications_en.asp)
- GRECO's General Activity Report on its work in 2009, including a feature on Experience with the Criminal Offence of Trading in Influence in France prepared by Marc Segonds and Armand Riberolles who provide expert insight into the significant experience of France in dealing with trading in influence and examples of good practice in that field.  
[http://www.coe.int/t/dghl/monitoring/greco/documents/2010/Greco\(2010\)1\\_GenActRep2009\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/2010/Greco(2010)1_GenActRep2009_EN.pdf)
- Handbook on Parliamentary Ethics and Conduct published by the Global Organization of Parliamentarians against Corruption (GOPAC) and the Westminster Foundation for Democracy (WFD).  
<http://www.gopacnetwork.org/Docs/PEC/HandbookonParliamentaryEthicsandConductFinal2010.pdf>
- A general information leaflet "Monitoring compliance with Council of Europe anti-corruption standards" and a compendium of anti-corruption instruments of the Council of Europe can be obtained from the Secretariat.

All reports adopted by GRECO can be consulted at: [www.coe.int/greco](http://www.coe.int/greco).

## BUDGET AND PROGRAMME

48. During its June plenary meeting GRECO approved budgetary proposals for 2011 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 25 November. The 2011 budget was adopted under the chairmanship of the newly elected President of GRECO's Statutory Committee, Ambassador Hans-Dieter HEUMANN, Permanent Representative of Germany to the Council of Europe. Within the constraints of a zero real growth budget, the intention is, as far as possible, to replicate in 2011 the rhythm of activities as scheduled in 2010. The fact that GRECO can rely on the support of its member states in providing the expertise of evaluators and plenary representatives whose work is un-remunerated is key in this context. The Secretariat's effective management of the budget and programme and its analytical and technical input are also a valuable asset. At its December plenary meeting, GRECO adopted its Programme of Activities for 2011 (document Greco (2010) 21E Final) including a schedule of on-site visits organised to facilitate dividing GRECO's work between four plenary meetings and ensuring that the financial resources available allow to structure the transition period from the Third to the Fourth Evaluation Round in the most efficient manner.

49. GRECO expresses its appreciation to the authorities of Monaco for a voluntary contribution which helped to fund the activities of the working party set up to assist GRECO in the preparation of the Fourth Evaluation Round.

## MEMBERSHIP

50. Currently 49 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 (date of accession: 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)<sup>3</sup>, Switzerland (1 July 2006), Austria (1 December 2006), the Russian Federation (1 February 2007), Italy (30 June 2007), Monaco (1 July 2007), Liechtenstein (1 January 2010), San Marino (13 August 2010) and Belarus (1 July 2006 – effective participation as of 13 January 2011). The List of representatives appointed by member states appears in [Appendix I](#).

51. Membership in GRECO is open on an equal footing to 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 to the European Union. Ratification by such states of the Criminal or Civil Law Conventions on Corruption (ETS Nos. 173 and 174) leads to automatic accession to GRECO.

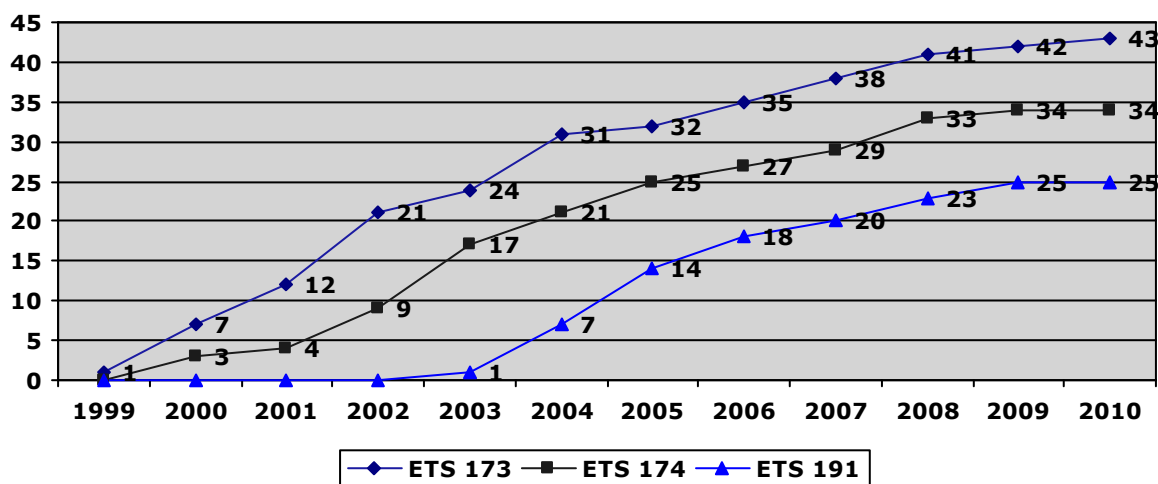
52. In 2010 GRECO took note of the strong interest of Kazakhstan to join the Group. GRECO's Statute provides for two ways of accession in respect of States that are not members of the Council of Europe and that did not participate in the elaboration of GRECO: becoming a party to the Criminal or Civil Law Conventions on Corruption or being invited by the Committee of Ministers to accede to GRECO.

<sup>3</sup> 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.

## RATIFICATION OF COUNCIL OF EUROPE ANTI-CORRUPTION CONVENTIONS

53. After over 10 years' experience in applying the standards developed by the Council of Europe, GRECO is in no doubt as to their relevance. All member states are subject to evaluation in light of the Criminal Law Convention on Corruption and its Additional Protocol (ETS Nos. 173 and 191), irrespective of whether they have ratified them or not. When appropriate, GRECO issues a recommendation to proceed swiftly with ratification of the aforementioned instruments and attention is drawn to the formal Appeal by the Committee of Ministers to States (103<sup>rd</sup> Ministerial Session) on the occasion of the adoption of the text of the Criminal Law Convention (ETS No. 173) to limit as far as possible the reservations that states declare, when expressing their consent to be bound by the convention and to use their best endeavours to withdraw such reservations as soon as possible.

54. The following chart indicates the development in the number of states parties to the above-mentioned Council of Europe conventions as well as the Civil Law Convention on Corruption (ETS No. 174). The full text of the conventions and lists of contracting parties can be consulted at: <http://conventions.coe.int/>



\* \* \*



## **FEATURE**

### **SPONSORSHIP AND CORRUPTION: THE GERMAN MODEL**

#### **I. Introduction**

The Winter Olympics in Vancouver, the Football World Cup in South Africa, the European Handball Championships in Austria, all three major sporting events in 2010 provided ample opportunity for firms to demonstrate their qualities as promoters and thus “good corporate citizens” to the public. Sponsorship has now become a widely accepted part of company activity. An idea of the economic extent of this form of private – and above all private-sector – economic involvement may be obtained from dipping into a study by the US market research corporation IEG. It states that world spending on sport, culture and entertainment sponsorship amounted to 46.3 billion dollars in the year 2010 (IEG Sponsorship Report dated 4/1/2011). The trend is upward. Only recently has sponsorship become an issue as a new form of cooperation between business firms and the public authorities too. In particular, the area of sponsorship of pharmaceutical and medical products in support of clinics or faculties of medicine may be seen as a sensitive one since the decision of the BGH (Federal Court of Justice) in the so-called “cardiac valve” case (BGHSt 47, 295).

However, alongside the desired promotional effects, such a system of financing can also lead to corruption. Under the guise of sponsorship, it appears easier to exploit the covetousness of decision-makers and influence their future actions in the interests of the donor. Consequently, every system of national legislation has to confront the difficulties of setting the boundaries between permissible sponsorship and criminal behaviour.

Based on a prior definition of the notion of “sponsorship”, the following outlines the manner in which it is dealt with by the criminal law in Germany, and discusses the problems arising from it.

#### **II. The starting-point: what is sponsorship?**

At first sight, the concept of sponsorship is shifting and hard to grasp. However, in order to form a view of its relevance to criminal law we must begin by examining the sponsorship phenomenon and clarifying its conceptual content.

Nowadays we speak of “conventional” sponsorship where “firms hand over money or monetary advantages in order to promote individuals, groups and/or organisations in sporting, cultural, religious or similar important socio-political areas, while at the same time pursuing their own entrepreneurial aims in advertising or publicity work” (BGHSt 47, 187, 193). By contrast, donations to charitable institutions as well as patronage do not generally involve any expectation of an immediate return but rather stem from altruistic motives. In order to avoid a narrow, purely conceptual approach to the question, a broad concept of sponsorship is used as the basis for the following analysis. Thus, alongside sponsorship contracts in the “conventional” sense – including funds obtained from third parties for the purpose of academic research – donations (to parties) and contributions by way of patronage will also be considered.

So-called hospitality invitations occupy a special position in the range of sponsorship measures. While under a typical sponsorship arrangement the sponsor’s donation goes to the organiser of a sporting or cultural event, who in return provides the donor with advertising opportunities, in the case of hospitality sponsorship the benefit accrues not to the organiser, but to a party who is not involved in the sponsorship agreement and who is able to influence technical decisions favourable or unfavourable to the inviting sponsor. Though they do not fit the usual pattern, these invitations on the part of decision-makers, when set in a sponsorship framework, will also be considered as sponsorship measures for our present purposes.

### III. Analysis in light of German criminal law

#### 1. The relevant penal rules

In order to understand the manner in which sponsorship in the above sense is seen against the background of German criminal law, a brief account of the relevant penal rules is called for at this point.

If we begin by taking a look at the interests of the sponsoring asset-holder – usually a company – sponsorship payments from company assets invariably raise the question whether the management may be committing the offence of breach of trust under § 266 StGB (Criminal Code). This may be presumed if a person entrusted with another's assets (the trustee) deliberately fails in that duty and thereby causes deliberate prejudice to the assets for which he or she is responsible. The determining factor in establishing such prejudice is that the outflow from the company's assets is not compensated by an asset inflow of equal value, that is to say that the sponsorship reveals an unbalanced *do ut des*.

On the other hand, where there is an appropriate benefit in return for the sponsorship payment, there is not infrequently a risk of committing the criminal offence of corruption of a public official under §§ 331 *et seq* StGB or of taking and offering a bribe in business transactions under § 299 StGB. These rules lay down, as preconditions for the unwritten material criterion of an "unlawful agreement", that an advantage must accrue in return for a tangible service provided (§§ 332, 334 StGB) or at least a duty performed (§§ 331, 333 StGB) by an official, or preferential treatment "in the competitive purchase of goods or commercial services" (§ 299).

This unfortunate dilemma for those involved is in no way affected by the fact that donations are tax-deductible in accordance with §§ 10b EStG (Income Tax Act), § 9 I Nr. 2 KStG (Corporate Income Tax Act) and § 9 Nr. 5 GewStG (Trade Tax Act), so that sponsorship as such is legitimate and supported by legislation.

Consequently, financial support to art, science, sport and social welfare in Germany occupies a sphere in which the criminal law risks are often very difficult to assess.

#### 2. Criminal law problem areas in the types of offence considered

This grey area between prohibited (unlawful) influence and socially accepted – and, with declining public resources, even desirable – sponsorship is examined more closely in the following paragraphs.

##### a) Breach of trust under § 266 StGB

In the context of breach of trust, difficulties arise in particular in determining the necessary dereliction of duty on the part of the trustee. Such a person acts unlawfully only if legal or actual action within his or her sphere of duties is no longer covered by the legal authority that he or she enjoys in the particular relationship with the person transferring the assets.

The starting point for active dereliction of duty by the management of a company in sponsorship cases is an actual donation which has to be seen as a waste of company assets. Of course, the decision whether to support institutions or events in this way is a business decision, in respect of which decision-makers, in principle, enjoy a wide margin of action (see, *inter alia*, BGHSt 50, 331, 336 – "Mannesmann"). This margin is justified by the fact that business decisions have constantly to be taken on the basis of an overall assessment of future risks and opportunities which, because of its predictive character, carries the danger that they will prove to have been mistaken only at a later stage. The limits on business activities are essentially set by the civil law rules applicable at a given time (breach of duty being ancillary to the civil law). However, not every infringement of

civil law suffices for dereliction of duty within the meaning of § 266 StGB: rather, the BGH requires “grave” dereliction of duty for a criminal offence in the area of sponsorship to have been committed (e.g. BGHSt 47, 187; 47, 148). In order to give established authority to this liability qualification – which is not undisputed in respect of its scope or starting-point, the BGH developed a number of criteria in its landmark decision “SSV Reutlingen” (BGHSt 47, 187, 197). According to that decision, the boundaries of internal authority are likely to have been overstepped if the following is established: “Lack of concern for the interests of the company, inappropriateness in view of the net assets and results of operations, lack of transparency within the company or the presence of unrelated motives, namely the pursuit of purely personal preferences”. Whenever all these criteria are met, according to the BGH “grave” and therefore unlawful dereliction of duty within the meaning of § 266 StGB is to be presumed.

It remains unclear what weighting is to be given to the said criteria when assessing the overall picture. The fact that the problem has to be solved by reference to a list of indicators illustrates the practical difficulties of drawing clear boundaries in the field of breach of trust involving sponsorship.

With regard to damage, the BGH is already aware that the desired image enhancement or publicity effect of sponsorship “can by no means always be assessed in monetary terms and certainly not reflected in the balance-sheet” (BGHSt 47, 187, 194), so that approximate compensation is sufficient. Any remaining doubt goes in favour of the accused, *in dubio pro reo*.

## **b) Corruption of officials under §§ 331 et seq StGB**

Furthermore, the persons concerned may have committed a corruption offence under §§ 331 et seq StGB where an official (or third party) is offered, promised or given, or where he or she demands, obtains a promise of or accepts an advantage in return for a tangible act of service contrary to his or her duty (§§ 332, 334 StGB) or performance of service contrary to his or her duty (§§ 331, 333 StGB).

### **aa) Difficulties over the concept of advantage**

Initial difficulties in the area of sponsorship arise over the concept of advantage. Essentially, German criminal law considers this notion as covering any benefit to which the official has no lawful entitlement and which objectively improves his or her financial, legal or merely personal situation.

Uncertainty may arise where a corresponding benefit accrues to the official (or third party) by way of reward. For example, the 1st civil chamber of the BGH, which has competence in competition cases, decided that a PC donated to a school by a photographer in return for the possibility of carrying out photographic work as part of the school’s operations, rooms being made available for that purpose, was not to be considered as a (third-party) advantage within the meaning of §§ 331 et seq StGB because of the appropriate relationship between the benefit and that granted in return (BGH NJW 2006, 225, 228). The question as to the effects of such a benefit in return has also taken on topical significance in connection with the obtaining of funds from third parties for academic research, since research programmes are conducted and paid for on the basis of contracts. The prevailing view in criminal law literature and case-law – and indeed shared by the Celle appeal court in its criminal-law judgment in the case of the above-mentioned school photographic work (OLG Celle, NJW 2008, 164) – does regard the conclusion of the sponsorship contract (and at the very latest its execution) as a potentially corrupt advantage, because the official had no legal right whatever to that contract.

In cases concerning the obtaining of third-party funds, the case-law does exclude the commission of a criminal offence as the next step by restricting the objective requirements for it, in so far as the legal rules, administrative instructions and procedural

rules in force have been complied with (essentially BGHSt 47, 295, 303). This idea can also be applied to good effect to sponsorship in general public administration: the federation and the *Länder* have issued so-called sponsorship guidelines (e.g. the “general administrative instruction for the promotion of federal activities through private services (sponsorship, donations and other gifts)” issued in 2003; for a detailed account of these guidelines, see *Schröder*, NJW 2004, 1353 *et seq*) which meet the requirements of the BGH. The federal guidelines on sponsorship decisions in public administration require above all transparency, objective and impartial selection from among several sponsors, limits on the benefit accorded by the authorities in return and the observance of certain procedural steps (e.g. compiling of file notes, agreement of higher authorities). Over and beyond the abstract instructions, the administrative instruction also gives practical examples of permissible sponsorship such as the “full or partial financing of apparatus by a promotional association” or “events in the framework of local and non-local sports, cultural and educational policy”. Adhering to these guidelines does at least afford officials assistance in appropriate cases.

### **bb) Use of indicators in the framework of illicit agreements**

An illicit agreement is the nucleus of any offence involving corruption. Generally, it is here that the illegality or legality of the act is decided. In German law, the characteristic of a corruptive agreement is the combination of giving and taking: both partners must regard the service they provide as something given in exchange for that of the other person (“*do ut des*” – “I give in order that you give”). The advantage offered must, therefore, be clearly regarded as the equivalent of a tangible official act or performance of an official function (cf. “in return for” in the wording of §§ 331 *et seq* StGB).

However, it is a question of fact whether such an objective is pursued: the limit between still permissible and already prohibited behaviour is drawn – at all events if a “looser” unlawful agreement is sufficient as under §§ 331, 333 StBG – according to the circumstances of the particular case, and especially the overall interests of the parties involved. Special importance attaches in this connection – with a view to the basic principle of the BGH judgment in the “Utz Claassen – EnBW” case (BGHSt 53, 6, 16 f.) – to the plausibility of a different objective, the position of the official and the relationship of the person offering the advantage to the latter’s official duties, the manner of making the offer (especially secrecy or transparency) and the nature, value and number of advantages. Partly, even the specific way of life of the donee is taken into consideration. Here again – as with breach of trust – case-law makes use of a list of indicators, which can only with difficulty help to establish the unclear distinction between what is allowed and what is forbidden in the context of corruption offences; the predictability of what constitutes criminal behaviour – a requirement under the Constitution serving as a reference point for individual conduct – can often no longer be established in this context.

The limits of what is still permissible are particularly unclear in the case of hospitality sponsorship, mentioned above (see also BGHSt 53, 6 *et seq*). In principle, it is permitted for high-ranking officials to be invited to cultural and sporting events as representatives of the state, thus highlighting the importance of the occasion. The performance of official duties is often necessarily linked to a representative function; the donation then takes place not “for” the exercise of the office but as a “means of” exercising it. However, if at the same time the official has an obligation to supervise or oversee a company from a public law standpoint, or if there are other points of contact with entrepreneurial activity (for example in the granting of building permits), then invitations by the company verge on punishable offences. The question as to which of such cases may involve the permissible discharge of a representative task without any suspicion of corruptive behaviour still awaits a definite answer. In any case, invitations are questionable whenever they are unrelated to a social event but are intended rather to serve the recreational interests of the official.

As with breach of trust, the case-law criteria used in corruption cases are plausible and do provide at least some guidance for differentiation. Though, in the individual case, the multiplicity and uncertainty of the indicators lead to rather casuistic solutions: in the end, the task of determining the limits is largely shifted to the trier of fact, with the result that the criminal liability of those involved in partial areas can hardly be assessed with any certainty.

### **c) Taking and offering a bribe in business transactions under § 299 StGB**

The statutory definition of the offence of taking and offering a bribe in business transactions in accordance with § 299 StGB constitutes another hurdle for sponsorship to overcome. Besides giving financial support to public institutions, companies often assist private-law associations, mostly in the sporting and cultural fields. Thus, the question arises as to the criminal law risks of such behaviour. Like §§ 331 *et seq* StGB, § 299 StGB covers both the active and the passive aspects of corruptive agreements. Unlike corruption of officials, however, this rule requires that the advantage to an employee or representative of a company (or a third party) accrues in exchange for preferential treatment of the donor in the purchase of goods or services in a competitive situation. So the required illicit agreement links the advantage not to the – broadly interpreted – performance of duties as under §§ 331, 333 StGB, but covers only dishonest preferential treatment in connection with an actual future commercial decision. Therefore, the criminal scope is markedly less extensive with regard to business decisions than with corruptive offers to officials; in particular, the granting of advantages – including invitations – in the private sector for the general purpose of assisting the business climate is entirely permissible. An illicit agreement strictly interpreted in this sense requires the sponsorship contract to be closely linked to a palpable preferential treatment, e. g. the awarding of a contract the sponsor has bid on. And the limits on the value of socially appropriate and therefore permissible donations are markedly higher in the commercial sphere by reason of the much less sensitive legally protected principle of “fair competition (in the provision of services)”.<sup>4</sup>

## **IV. Conclusion**

In Germany, private sponsorship – although basically desirable at a time when public coffers are empty – entails a considerable risk of criminal penalties, against the background of the corruption and breach of trust offences. The broad compass of the relevant rules renders it vital, in practice, to distinguish unlawful from socially appropriate behaviour, on the basis of lists of indicators which are further developed if the case requires so. That is rather damaging to a system of criminal law (especially a predictable one) in a state based on the rule of law. Even well-intentioned sponsors find it hard to tailor their behaviour to the rules: all they can do is ensure that they comply with as many indicators as possible which preclude the commission of an offence. In this legal situation, sponsorship beneficial to both sides is often obstructed. The only salvation can come from legislation, or strong guidelines set by other authorities, the observance of which will preclude any offence.

**Professor Thomas Rönau**

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and criminal procedure at Bucerius Law School, Hamburg

**Ramona Francuski, LL.B.**

Academic assistant in the same department

\* \* \*

<sup>4</sup> Reference may be made here to the fact that in many fields § 299 of the Criminal Code, in accordance with customary interpretation, establishes criminal liability which is difficult to justify – for example in the case of an employee negotiating discounts for his or her principal as a third party.

## **SECRETARIAT**

55. GRECO's Secretariat (cf. organigram 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**

56. The general activity report of the Group of States against Corruption – GRECO – for 2010 is submitted pursuant to Article 8, paragraph 1, iii) of GRECO's Statute and Rule 38 of its Rules of Procedure.



**APPENDIX I****LIST OF REPRESENTATIVES IN GRECO**

At 30/12/10

**ALBANIA / ALBANIE**

Mr Ivi KASO (Head of delegation)  
Director  
Department of Internal Administrative Control  
and Anti-Corruption (DIACA)  
Council of Ministers

M. Edmond DUNGA  
**Membre du Bureau – Bureau Member**  
Head of the Office in the Anticorruption  
Secretariat  
Regional Anti-Corruption Initiative (RAI)  
Secretariat

*Substitutes:*

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Inspector  
Department of Internal Administrative Control  
and Anti-Corruption  
Council of Ministers

Mrs Helena PAPA  
Inspector/Coordinator  
Department of Internal Administrative Control  
and Anti-Corruption  
Council of Ministers

**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  
Yerevan State University

*Substitute:*

Mr Gevorg KOSTANYAN  
Assistant  
Office of the President of the Republic

**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  
Federal Ministry of the Interior

Ms Gerlinde WAMBACHER  
a.i. Deputy Head of Department  
International Cooperation  
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  
Sénat

*Substituts :*

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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  
Council of Ministers  
Ministry of Security

Mr Sead TEMIM  
Prosecutor  
Federal Prosecutor's Office

*Substitute:*

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

**BULGARIA / BULGARIE**

Mr Georgi RUPCHEV (Head of delegation)  
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State Expert  
Directorate of International Cooperation and European Affairs  
Ministry of Justice

Mr Petar PETKOV  
Public Prosecutor  
Supreme Prosecutor's Office

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Directorate of International Cooperation and European Affairs  
Ministry of Justice

**CROATIA / CROATIE**

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**Vice-Président du GRECO – Vice-President of GRECO**  
Justice of the Supreme Court

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Ministry of the Interior

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County State Attorney's Office

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

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Senior Counsel of the Republic  
Law Office of the Republic of Cyprus

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Law Office of the Republic of Cyprus

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Office of the Director of Public Prosecutions

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Office of the Director of Public Prosecutions

**ESTONIA / ESTONIE**

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Criminal Policy Department  
Ministry of Justice

Ms Heili SEPP  
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Criminal Policy Department  
Ministry of Justice

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Public Law Division  
Legislative Policy Department  
Ministry of Justice

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Criminal Policy Department  
Ministry of Justice

**FINLAND / FINLANDE**

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Inspector General of the Police  
National Police Board

Ms Helinä LEHTINEN  
Ministerial Advisor  
Ministry of Justice  
Crime Policy Department

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**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  
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M. François BADIE  
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*Substituts :*

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Sous-directeur  
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Direction des Affaires Criminelles et des Grâces

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Direction des Affaires Criminelles et des Grâces

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Prime Ministers Office  
Deputy Head of the Anti-corruption Council  
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Mr Otar KAKHIDZE  
Head of Analytical Department  
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Ireland  
Italy  
Malta  
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