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Group of States against corruption

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Conférence de haut niveau à l'occasion du 10e Anniversaire du GRECO

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Textes soumis pour publication par les Orateurs et Intervenants

OPENING SESSION / SÉANCE D'OUVERTURE

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.

It was therefore natural that, in the early 90s, the Organisation felt the need to engage in a comprehensive action to prevent and combat corruption continent wide. You will remember that Europe at the time was witnessing, on the one hand, the fall of the Berlin wall and, on the other hand, a series of mainly politically related corruption scandals in a number of Western States.

It is for this reason that our Committee of Ministers approved in 1996 a multidisciplinary, comprehensive, far-reaching and unique Programme of Action against corruption.

Multidisciplinary, because it covers the civil, criminal and administrative legal dimensions of any anti-corruption strategy.

Comprehensive, because it covers prevention, criminalisation, prosecution, civil/criminal/corporate/individual liability, compensation of victims, procurement issues as well as international cooperation.

Far-reaching, because it calls for the adoption of a series of legal instruments, including of a binding nature, to strengthen the international action against this scourge and, more specifically, the Criminal Law Convention and the Civil Law Convention. The Programme of Action also called for the development of a strong monitoring mechanism, which embodies for the first time at the Council of Europe the principles of peer pressure and mutual evaluation. This mechanism is called GRECO and the celebration of its 10th anniversary brings us together today.

It is indeed unique, because it was the first example of transversal work at the Council of Europe, in recognition of the fact that the fight against corruption cannot be handled by law enforcement and criminal law measures only. To prevent and combat corruption, we also need other measures and new partnerships, including with civil society and the private sector.

Today 45 out of the 47 member States of the Council of Europe are members of GRECO and I urge the remaining two, Liechtenstein and San Marino, to do their utmost to join GRECO as soon as possible. Let me also express my satisfaction with the full participation in GRECO of the United States since 2002.

I am also pleased to inform you that the Committee of Ministers approved a few days ago the draft agreement between Belarus and the Council of Europe concerning the privileges and immunities of the representatives of members of GRECO and members of evaluation teams. This paves the way for the effective participation of Belarus – which is not yet a member of the Organisation, but has acceded to both the Criminal law and Civil law Conventions – in GRECO.

Externally, the Council of Europe's work against corruption has inspired other institutions, such as the United Nations, in the development of their own legal tools against corruption. I am glad to say that we are not only closely cooperating both with the United Nations and the OECD, but also with the World Bank and the IMF, to use our comparative advantages and strengths, in order to help our member States to prevent and combat corruption. We want to avoid monitoring fatigue in our member States, while at the same time ensuring the respect of the commitments they made under their various international obligations.

Internally, the work of GRECO is also associated with the work carried out by MONEYVAL, which is the Financial Action Task Force-Style Regional Body. Both GRECO and MONEYVAL do a great job in

ensuring that financial and non-financial institutions, as well as public authorities, do their utmost to prevent and combat corruption, money laundering and financing of terrorism.

We live in a time when international institutions must concentrate on their core values. I cannot think of a better example than GRECO: a pragmatic, specific and effective body which exists to prevent and combat an evil which undermines the very values the Council of Europe was set up to defend and promote.

I know I am not the first one to compare our campaign to the second labour of Hercules, his fight against Hydra, the beast with nine heads. Every time Hercules cut one of its heads off, two heads would grow back. Eventually, Hercules succeeded in defeating the beast whereas we still have some way to go. There are no irreversible victories in the fight against corruption and we must remain constantly vigilant.

It must never be forgotten that both in political life and in the economic sphere there are powerful factors prompting and encouraging corrupt practices. They include exposure to tough competition and the holding of positions which involve the exercise of considerable power – sometimes compounded by a culture of silence and favouritism.

What is more, the lingering economic and financial crisis with its negative impact on prosperity and employment, is also bound to make the lives of all those who wish to play by the rules more difficult and temptation to circumvent them is there.

It remains therefore essential for States to agree – and continue to agree – to submit themselves to international scrutiny of their efforts to fight corruption.

I am therefore thankful to all members of GRECO for their continued support.

Happy birthday GRECO! I wish you all the very best in your work for the next 10 years and more.

Aleš ZALAR
Minister of Justice - Slovenia

it is a special privilege and honour to address you on this solemn occasion on behalf of the Republic of Slovenia, the present chair of the Committee of Ministers, and one of the seventeen founding members of the Group of States against Corruption (GRECO) and to express our warm welcome to all participants.

I am pleased that this gathering gives us the opportunity to highlight the three fields where GRECO, the Council of Europe anti-corruption watchdog, as we like to call it, has achieved considerable progress: prevention of corruption in public administration, adoption of anti-corruption legislation, and encouraging more transparency of political financing. I am glad that there will also be two round-table discussions where we will address certain important issues, such as the question of co-operation of international stakeholders in the fight against corruption, and discuss future challenges and emerging subject areas.

Ten years ago, in October, the first plenary meeting of the 21 states of the Council of Europe gathered in the Group of States against Corruption was held. I wish to begin by looking back ten years and more, when the idea of setting up such a group was slowly ripening. Awareness among Council of Europe member states that corruption is a serious threat to the principles of rule of law, democracy and human rights, social peace and confidence of people in state institutions, has resulted in the agreement that an effective fight against corruption requires not only legal instruments, but also appropriate follow-up mechanisms.

Convinced that a broad approach is needed for an effective fight against corruption, the Council of Europe followed the recommendations of the Conference of Ministers of Justice in Valletta and in 1994 set up a Multidisciplinary Group on Corruption. The Group immediately began working and two years later presented the Committee of Ministers with a Programme of Action against Corruption, which envisaged the development of one or more international conventions to combat corruption and the setting up of a mechanism to follow up their implementation. In 1997 at their

21st Conference in Prague the Ministers of Justice of the Council of Europe member states called for faster implementation of the programme and the provision of an effective follow-up mechanism, open to both member and non-member states on an equal footing.

The idea of the establishment of GRECO, an international anti-corruption body within the Council of Europe, was finally realised on 1 May 1999, when seventeen member states of the Council of Europe came together.

In Resolution (99)5, establishing GRECO, we decided to introduce the provision that member States and non-member States of the Council of Europe could participate on an equal footing. Today, we are proud to announce that the Group has 46 members. We would like to see this number grow, as the more we are, the stronger we become in the fight against corruption.

In 1999, we drafted the Statute of the Group where we defined its aim – to improve the capacity of members to fight corruption by following up, through a dynamic process of mutual evaluation and peer pressure, compliance with the anti-corruption measures of the Council of Europe. States that have joined GRECO have thus agreed to participate in mutual evaluation, that is to evaluate and to be evaluated.

This mechanism of evaluation reporting and following-up of the implementation of recommendations, is without doubt the basic task of GRECO; therefore allow me to discuss briefly the three evaluation rounds carried out by GRECO.

In the first evaluation round conducted from early 2000 to the end of 2002 the group evaluated 3 of the 20 guiding principles for the fight against corruption provided for in Resolution (97)24, adopted by the Committee of Ministers in November 1997. These were: independence and autonomy, specialisation of persons or bodies in charge of fighting corruption, and limitation of immunity from investigation. The first evaluation round showed a need for member states to make improvements in their substantial law and in the implementation of adopted legislation.

The second evaluation round was conducted from January 2003 to December 2006. The fields that were evaluated were proceeds of corruption, public administration and corruption, and legal persons and corruption, as provided for by the Resolution on the 20 guiding principles and the Criminal Law Convention on Corruption. This evaluation highlighted a number of fields where improvements were necessary: effectiveness of money laundering mechanisms, determination in fighting revolving doors and *pantouflage*[1], whistleblower's protection[2], and responsibility of legal persons.

The third evaluation round which started in January 2007 will provide an insight into how states carry out incriminations in corruption (provided for in the criminal law convention and its protocol) along with the degree of transparency of party funding provided for in the relevant recommendation of 2003. These findings will be most interesting, as the GRECO evaluation is the first mechanism looking into funding of political parties and electoral campaigns in member states.

Much work has already been accomplished. Reports by anti-corruption experts GRECO recommendations and the follow–up of recommendations have already yielded important results. In some member states constitutions have been amended while in others a significant number of laws have either been adopted or amended and specialised anti-corruption institutions established. It is not presumptuous to say that GRECO with its well-established follow-up mechanism and independent treatment of its members on an equal footing has become one of the most successful working bodies of the Council of Europe. 230 anti-corruption experts participating in the work of the group presents an impressive number.

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 United Nations Convention against Corruption, the Organisation for Economic Co-operation and Development, Transparency International and the

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[1] A practice where a person changes positions between the private and the public sphere and takes advantage of the position he/she held in public service to gain profit in his or her present position.
[2] A whistleblower is an employee or a third person who exposes illegal or negligent acts in an organisation, a government body or a company, when such acts are to the detriment of public interest or integrity.

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.

I have spoken about GRECO's historical background and milestones. Permit me now to look forward and discuss some of the challenges in our fight against corruption for the future. It is imperative that the Council of Europe as the guardian of human rights, democracy and the rule of law in Europe continues to be successful in its activities to combat corruption and never stops regarding this fight as a priority. We must be aware of the fact that corruption knows no state borders, is often closely connected with organised crime and is thus an international problem that requires addressing through effective international co-operation. Countries must therefore closely co-operate in their fight against corruption and also share experience and knowledge. GRECO is certainly an appropriate platform for such exchange. Equally important is co-operation and mutual assistance between international institutions engaged in the fight against corruption, as this helps prevent unnecessary duplication of effort and resources. Important objectives have already been achieved, but close co-operation will be even more important in the future, as in the uncertain global economic situation and with a general rise of crime we may expect an extension of corruption and organised crime.

Let me conclude by wishing you a successful conference. The issues that you will address are of the utmost importance, and I hope that your discussions will be fruitful and the conclusions far-reaching.

Drago KOS
President of GRECO

It gives me great pleasure to welcome you all to GRECO's anniversary conference. I am delighted to see that so many high-level representatives from member and non-member states as well as from international key institutions in the fight against corruption honour us with their presence.

I had the privilege to represent Slovenia at GRECO's first plenary meeting, which, on 4 October 1999, brought together 21 Council of Europe member States. Already at that time I was impressed by the professionalism, the thoroughness and the spirit of fairness characterising this Group of States.

It has been gratifying to witness over the years GRECO's growth, in terms of membership, experience and range of issues dealt with; and it has been an honour for me to contribute to this process as the Group's President since December 2002.

You will understand that in this capacity, my views regarding the results of the last ten years may well be slightly biased – but I am confident that you will humour me for continuing to be enthusiastic about the work completed and thrilled at the challenges ahead.

It is a remarkable achievement that almost all Council of Europe members are now subject to GRECO peer review.

The process itself generates transparency, and transparency is one of the most important tools for holding political leaders, public officials and business stakeholders accountable for their actions and to avoid impunity.

Carrying out all this work – which has in no small way impacted on the anti-corruption landscape in Europe and beyond – would not have been possible without the active commitment of our member States and the unwavering political support provided by the Committee of Ministers of the Council of Europe and GRECO's Statutory Committee.

I would also like to use this opportunity to thank both the current and the previous Executive Secretary of GRECO, Wolfgang RAU and Manuel LEZERTUA, as well as their very able team members for their invaluable input and support. They have also been a driving force behind a number of our achievements.

In addition to the commitment of our 46 member States to fight corruption, I would like to highlight some of the more technical assets which, according to my experience, contribute to the credibility of the GRECO process, namely its multidisciplinary perspective, the value attached to the collection of solid information, and the premium placed on the follow up to the evaluation work proper. Let me explain these points briefly:

Due to its wide thematic scope, which reflects the comprehensive nature of the Council of Europe's six anti-corruption instruments, GRECO has dealt with and is dealing with virtually all the key issues relevant to any sound anti-corruption policy. This range covers legislation, its practical implementation and the requisite institutional arrangements.

The quality of the reports resulting from the GRECO process relies to a large extent on the collection of solid information. On-site country visits are the backbone of this process. They enable evaluation teams to engage in thorough discussions with domestic key players, to request clarifications on-the-spot, and to shed light on often blurred and contentious issues. Moreover, on-site country visits clearly serve as a "confidence-building measure", often facilitating exchanges with the member undergoing evaluation.

Regarding the critical issue of follow up to country evaluations I am deeply convinced that the systematic verification of what members have actually done to act on our recommendations is one of our strongest points. And I will do my utmost to maintain and even to further strengthen the credibility of this process.

Nevertheless, talking about the implementation of recommendations, my overall optimistic approach is slightly mitigated when looking at the conclusions of the Second Round Compliance reports adopted to date. It can be disappointing to see that some of our member States are reticent and sometimes very slow to implement concrete measures in response to GRECO's findings. More could and should be done by a number of them to translate the Group's recommendations more vigorously into domestic legislation and practice.

That said, there is evidence of legislative and other initiatives which should eventually lead to the full implementation of the recommendations concerned – however with some delay. I would therefore wish to see more sustained efforts to step up the pace of reforms. We will not fail to encourage such efforts and to critically reflect on their outcome. Clearly, GRECO's mission is of a long-term character and I am confident that we will have the necessary political support to our important work.

I would now like to address three challenges which GRECO will have to face in its capacity as a monitoring body. Obviously, there are more challenges around, and I am sure the conference will add valuable reflections to what I have to say at this point.

Firstly, from my perspective it would be highly desirable to rethink current working procedures in order for GRECO to be in a position to provide comprehensive and up-to-date pictures of anti-corruption policies in Europe at shorter intervals, for example every 2 years. This would require a clear focus on a limited range of key-issues which should represent the core-elements of rational anti-corruption policies. I am convinced that such an approach, which would be both comprehensive and focused, would greatly assist our members as well as other international players. In this connection we should also pay attention to the critical issue of conflicts of interest regarding elected representatives which would no doubt be an essential complement to our previous work.

My second point concerns all international organisations and institutions active in the anti-corruption field. We clearly need to make a collective effort to ensure that the powerful and still growing international anti-corruption movement is not paralysing itself, by duplicating efforts, setting conflicting standards and subjecting member States to ever-increasing reporting duties; this will almost certainly generate monitoring fatigue, lead to a progressive weakening of existing and yet-to-come review processes and eventually minimise our clout.

Claims by international actors that they approach the monitoring issue from different angles do not convince me. This is more window-dressing than a sincere assessment. I can only appeal to all of us to face this threat with an open mind and in a constructive manner. The main objective must be, as expressed by the Ministers of Justice on the occasion of their 29th Conference on 18-19 June 2009 in Tromsø, to ensure "coherence, synergies and the best possible use of available resources".

The third challenge I would like to address could be termed the “central level bias” of current anti-corruption policies and monitoring. Let me explain: for obvious and legitimate reasons the international anti-corruption movement has focused its attention on national policies; in response, policy-makers at central level have generally tried to respond positively to the recommended policies. The time has come to step up our efforts to ensure that anti-corruption principles recognised and implemented at national or central level are also applied and enforced at sub-national levels, and, as a corollary, to seriously think about ways of subjecting these policies and procedures to proper monitoring.

To conclude on a more political note, it is certainly good news that the international anti-corruption movement does not show any signs of flinching. We must therefore 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). It goes without saying that local and regional authorities which often face significant corruption risks in their daily operations must be included in, and contribute to, such endeavours.

I trust that this conference will contribute to these important objectives.

Session I
The prevention of corruption – fighting corruption in public administration
The contribution of criminal law to the fight against corruption

Séance I
La prévention de la corruption – combattre la corruption dans l'administration publique
La contribution du droit pénal à la lutte contre la corruption

Aleš ZALAR
Minister of Justice - Slovenia

Welcome to this session where we will discuss the progress made under the auspices of the Council of Europe in addressing corruption – prevention of corruption, the fight against corruption in public administration and criminalisation of this phenomenon.

We must admit without exaggerating that public administration at all levels is the most infected by corruption. No country is immune to it. Even if the media do not report on it and it is not the subject of legal proceedings, this does not prove that corruption does not exist. On the contrary, the fact that it remains well hidden is all the more reason for concern.

The reasons for corruption in public administration are manifold, but one is certainly the fact that public administration through public procurement procedures interacts with the private sector, creating ample opportunity for corruption to penetrate decision-making processes. The impact of corruption in public administration is negative and long-reaching. Not only does it hamper the effective and lawful operation of public administration, it also undermines public confidence in state institutions.

Prevention of corruption and promotion of integrity, the drafting of guidelines of conduct and enhanced transparency of public administration activities, and the inclusion of the public in processes whenever possible are mechanisms that are necessary and increasingly important in the struggle to abate this destructive phenomenon. The relevant recommendations of the Committee of Ministers such as the 2000 recommendation on codes of conduct for public officials, the implementation of which is monitored by GRECO, where governments of member states are encouraged to promote (subject to national law and the principles of public administration) the adoption of national codes of conduct for public officials based on the model code contained in the annex, are extremely useful instruments. However it must be understood that besides these countries need mechanisms to discipline severe forms of corruption which is ensured as *ultima ratio* by criminal law.

Although a series of international conventions in particular the Council of Europe conventions such as the Criminal Law Convention on corruption (ETS 173) and its additional protocol are clear as far as the incrimination of corruption offences is concerned, there still remain national legislations which have not yet been fully harmonised with them. Furthermore differences remain between national legislations regarding the liability of legal entities for such offences which are sometimes considered criminal offences and sometimes administrative offences. It is necessary to understand that approximation of criminal laws regarding incrimination in corruption offences is most important in view of mutual co-operation and confidence, so efforts to move in this direction are necessary and welcome.

Considering the extreme complexity of the phenomenon, it is clear that for effective criminal prosecution of corruption prosecution authorities need constant training, education and specialisation. Where there is no knowledge, there is no power. Still it is the state that must create the conditions for the use of special investigation methods and means, since without such means it is impossible to combat corruption particularly where it goes hand in hand with organised crime and money laundering. In this way we may address corruption with equal weapons or have at least the possibility to combat this evil.

In the process of criminal prosecution it is paramount however that the procedure against alleged corruption offenders is conducted in respect of their fundamental rights and freedoms and in compliance with the law. Again it is the state that must see to it that the immunity enjoyed by the highest state officials is sufficiently limited so that it does not represent an insurmountable obstacle to their eventual criminal prosecution.

It is also essential that states adopt such sanctions for cases of corruption that show clearly the gravity and depravity of such actions and serve as a special and general preventative. And of course states must put in place adequate mechanisms to allow them to effectively seize proceeds from corruption offences.

Although we all wish to live in a society of high moral standards where punishment would no longer be required we must face reality and understand that the current situation compels us to make use of criminal law as the last resort and the most repressive means of regulation of social relations. Today, the prevailing sentiment in Europe and worldwide remains that any legal norm without sanctions is entirely incomplete and inadequate. Criminal law thus remains the key weapon in the fight against corruption.

Let me end this short introduction by saying that I will follow the work of this session with extreme attention.

Gevorg DANIELYAN
Ministre de la Justice – Arménie

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Ivan ŠIMONOVIĆ
Minister of Justice – Croatia

It is an honour for me to participate in this high-level conference marking the 10th Anniversary of GRECO.

Croatia respects GRECO very much and has benefitted a lot from its expertise and its recommendations. With the help of GRECO, Croatia managed to align fully with the Criminal Law Convention on Corruption and it is an honour for Croatia that our representative in GRECO, Mr Mrčela, serves as Vice-President and contributes to the work of this highly important expert body.

I totally agree with Minister Zalar that criminal law is the most powerful weapon in the fight against corruption. During the course of last year, we introduced some major changes into our criminal legislation. We have amended our criminal law and introduced a new law on criminal procedure. I will not bother you with the details of this legislation but will briefly address some of the most original aspects of it. In our Penal Code, we have introduced a provision stipulating that when a person is convicted of corruption or organised crime there is a presumption that the person's total property has been obtained illegally and if a person is unable to show that it is likely that the property was obtained legally, it is confiscated. It is a pretty radical measure but we expect it to have a very powerful impact on the prevention of corruption and organised crime. We have also introduced a new law on criminal procedure which follows prevailing European trends of shifting slightly from an inquisitorial to an accusatorial system giving high powers during investigations to the prosecutor. This new legislation was introduced in December last year and we have partially started its implementation on cases of corruption and organised crime. This requires a brief explanation. In Croatia we have developed a specialised, functionally and vertically integrated system to combat corruption and organised crime, including specialised dedicated police units, a specialised branch of the prosecution service and special court chambers.

Now of course what is most interesting is what are the results of this new legislation, what is their practical impact? Of course, it is too early for final conclusions, but what we have already observed

is that our criminal proceedings are much faster, the rate of sentences has increased by 50%. Ongoing investigations include those regarding alleged perpetrators of medium and even high-level corruption. It is already clear that a powerful message has been sent to society that there is zero tolerance of corruption and that nobody is above the law.

Brigitte ZYPRIES
Minister of Justice – Germany

Thank you very much for organising this conference and for your invitation. We have come together for this event at just the right time. The international financial turbulence we are currently experiencing is not only a clear indication that the economy has gone global. In some cases it has reminded us that economic crime knows no borders either. Such offences can only be tackled properly with an international approach. This is why the work of GRECO is so important and why it was right to form this Group of States against Corruption ten years ago. I would like to thank all those who have worked for and supported GRECO since then, and congratulate the Group on its tenth anniversary.

The problem of corruption is probably as old as humanity itself. Indeed, "corrumpere" was a term known in Ancient Rome. Even two thousand years ago, this not only stood for "bribery". It was also a synonym for "ruin" and "destroy".

The lesson is clear: Even back then the dangers of corrupt practices were already well recognised. Indeed, the terrible impact of corruption goes far beyond each individual case. In order for a state to function properly, its citizens must have reason to be confident of its integrity. A good working economy requires fair competition. But corruption ruins this confidence in the state and destroys the fairness of the competition.

A company that wins a contract through bribery not only harms its customer. It also undermines the power of the market and wipes out jobs at other, honest firms in the market. In the long term, such companies damage *themselves* with their criminal practices. Those who allow corruption shatter their employees' concept of what is right and wrong and also encourage similar crimes against their *own* business. For this reason it is so important for us to intervene at an early stage to fight corruption with the help of criminal law as well. The Federal Court of Justice has just ruled in Germany that even the *creation* of an illegal fund – that is: collecting money for future bribes in a slush fund – constitutes an offence, namely a criminal breach of trust against one's own company.

Even more serious than corruption in economic life is corruption in the public sector, that is: in the fields of administration and justice. When decisions are no longer taken in accordance with the law, but based on self-interest, the consequences are terrible:

- people lose confidence in the fairness of the public service;
- taxpayers' money is misused and embezzled;
- and ultimately, decisions that have been paid for may have grave consequences – for the health of our people, for nature and the environment, or for the safety of entire nations.

All this demonstrates that the idea of corruption as a "victimless crime" is not quite correct. With corruption there may generally be no victims to testify as witnesses – but a large number of people may still suffer as a result of the corruption.

Corruption undermines the rule of law and the market economy; it is the enemy of all citizens, honest traders and consumers. This is why it is so important for companies and for the state to show great determination and commitment in the fight against crime.

I am aware that criminal prosecution is often difficult, since in corruption cases the offenders are to be found on both sides. However, we need to step up our efforts precisely *because* things are so difficult. For me, one thing is very clear: Those who do not drain the swamp of corruption in time will sink. It is therefore necessary to take action against bribery and unfair influence, *irrespective* of the person or company involved.

In Germany we recently saw the conviction of former executives at a large international company – Siemens. They had been using bribes abroad to help secure contracts for the company.

It is obvious that crime must never pay off. This maxim applies particularly when it comes to corruption. This is why the German justice system was right to act decisively in the case of Siemens: investigating, charging and convicting.

However, this can succeed only if courts and, particularly, public prosecutors have the tools and organisational means at their disposal to make sure they are not fighting a losing battle. Laws alone will not be enough. To win the fight against corruption, the justice system must have the required personnel, the right resources and the independence it needs.

The best way of fighting crime is prevention. This also applies to corruption. Codes of conduct, effective compliance and public awareness that does not accept and tolerate corruption are very important.
Public court proceedings also have a major role to play in increasing perception of the problem.

The trial in Germany that I mentioned was a major story in the media for over a year. And this was the key message to the public: Corruption is *no* petty offence that the justice system will sit back and tolerate. Corruption is a crime, and anyone who commits this crime risks everything: job, money and reputation.

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, regardless of whether there will be a monitoring mechanism on the United Nations level as well.

It would be an illusion to believe that some day we will be able to rid the world of corruption completely. As long as there are people, there will be those who break the rules. But this is why we *cannot* let our efforts slip. Furthermore, we must watch out for new developments, since the justice system must always be one step ahead of the criminals. By founding GRECO ten years ago we set off on the right course. This is a course we will have to maintain, and there are many steps still ahead of us on the way. However, I can assure you of one thing: Germany will be there as part of this undertaking.

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.

This perception may sometimes be exaggerated, but it should be taken seriously. No system of justice is effective if it is not trusted by the population. Even worse, there are indications to show that people's suspicions are in some cases well justified.

During my visits to member states of the Council of Europe I have often heard complaints about corruption affecting key components of the justice system: the judiciary, the police and the penitentiary.

Such allegations may be part of party political propaganda and are in many cases difficult to verify. Still, it has become clear to me that corruption in the justice system is a serious problem in several European countries - not only as a perception, but also as a concrete reality.

Corruption in the justice system often goes hand in hand with political interference. Ministers and other leading politicians do not always respect the independence of the judiciary and instead give underhanded signals to prosecutors or judges on what they are expected to deliver.

The distortive effect of such practices is even worse in countries where there are close links between the political leaders and big business. This is where greed really tends to triumph over justice.

Corruption threatens human rights and, in particular, the rights of the poor. Policemen are badly paid in several countries and some of them try to add to their income through asking for bribes; the result is that people without money are treated badly. I have met prisoners who have had no family visits because the relatives could not pay the unofficial fee for the entry into the prison.

Sadly, there are also cases of court officials who have been influenced by money under the table or by other less obvious favours, like career promises. This appears, in fact, to be one of the explanations for the excessively drawn out trials in some cases and for the very shortcut procedures in others.

Judges should be well paid in order to minimise the temptation for such corrupt practices. However, a higher salary level is only one aspect of this picture and not always effective – indeed, greed sometimes tends to grow with income.

What is needed is a comprehensive, high-priority programme to stamp out corruption at all levels and in all public institutions. There is also a need to react clearly on corrupt practices in private business, the consequences of which tend to spill over into the public sphere.

The basis has to be a concise legislation which criminalises acts of corruption. However, such laws can in themselves hardly address all concrete problems in this field. It is extremely difficult to define the criminal dimension of some of the corrupt practices, such as nepotism and political favouritism. Issues relating to 'conflicts of interest' must also be assessed in their contexts. In other words, more focused standards and effective follow up mechanisms are necessary.

Clear procedures for the recruitment, promotion and tenure of judges and prosecutors are a must and should confirm the fire-wall between party politics and the judiciary. The process of appointing judges should be transparent, fair and based on merit. Requirements concerning the integrity of judges should be part of their training and defined clearly and early in the recruitment process.

Codes of conduct could serve as useful tools to enhance the integrity and accountability of the judiciary. The standards should regulate behaviour in office, but also for outside activities and their remuneration. Independent disciplinary mechanisms should be established to deal with complaints against court officials. They should be able to receive and investigate complaints, protect the complainants against retaliation and provide for effective sanctions.

Relevant recommendations have been presented by the *Group of States against Corruption* (GRECO), a body initiated by the Council of Europe to fight bribery, abuse of public office and corrupt business practices. GRECO has also developed a system for regular review of anti-corruption measures among its participating member states; its reports have encouraged important reforms on a national level.

Legally binding norms for measures against corruption are set by a couple of important international treaties which should be used as inspiration for national action. The Council of Europe has adopted the *Criminal Law Convention on Corruption* and the *Civil Law Convention on Corruption* which entered into force in 2002 and 2003 respectively. There is also the *United Nations Convention against Corruption* which entered into force in 2005.

One aspect stressed in these treaties is the need to protect those individuals who report their suspicions in good faith internally or externally. Such whistleblowers have too often been hit by retaliation – dismissals or worse - which in turn may have silenced others who have had grounds on which to report misdemeanours. Even if such overt sanctions are prevented there remains a problem of how to hinder more subtle forms of retribution, for instance non-promotion or isolation.
Many corruption scandals have been exposed by the media and freedom of expression is, indeed, key in this struggle. This is one reason why it is essential to promote freedom and diversity of the media and to protect the political independence of public service media. The European Court of Human Rights has recognised that the press is one of the means by which politicians and public opinion can verify that judges are discharging their heavy responsibilities in a manner that is in conformity with the task entrusted to them.

It is also important that Freedom of Information legislation promotes governmental transparency. The public should, in principle, have access to all information which is handled on their behalf by the authorities. Confidentiality is, of course, necessary, for instance in order to protect privacy and personal data, but should be seen as exceptional and be justified. Though progress on this is being made in Europe, transparency is far from the general rule.

Not only should governments be passively transparent, they have an obligation to ensure that the public has effective access to information. The European Court of Human Rights has emphasised that the public must have information on the functioning of the judicial system, which is an essential institution for any democratic society. "The Courts, as with all other public institutions, are not immune from criticism and scrutiny".

When reporting on Ukraine I had to stress the importance of such transparency, 'With the exception of the judgments of the highest courts, only a small percentage of judicial decisions are published. Accurate and reliable records are an exception'.

Parliamentarians could play a particularly important role in the fight against corrupt practices. They should certainly set a good ethical example themselves and openly declare their income and capital assets, as well as all relevant activities carried out on the side, connections and interests. Further, they could act as watchdogs on the risk of corruption within the government administration and ask questions which others may find difficulty in answering. They could ensure that legislation and oversight procedures are in place and functioning.

Some of the non-governmental organisations already play an important role in the struggle against corruption. This has now been recognised in, for instance, Ukraine and Serbia. On an international level the Berlin-based Transparency International (TI) has made major contributions and also managed to encourage the World Bank to take the problem more seriously. TI has now national sections in several countries and there are also other groups on a national level who expose bad practices and seek reforms against corruption.

Ombudsmen and other independent national human rights structures are in some countries actively working against undue influence and other corrupt practices. Examples are the Public Defenders in Georgia and Armenia who have described how poor and destitute people are damaged by such tendencies. In Latvia the mandate of the Ombudsman specifically includes work on violations against standards of good governance.

The poor need legal aid, not pressure to pay bribes. They need proof that everyone is equal before the law. They need a system of justice that is fair and unbiased. This is their right.

Giacomo CALIENDO
Sous-secrétaire d'Etat à la Justice – Italie

Premièrement je voudrais vous remercier de votre invitation à la célébration du dixième anniversaire du Groupe d'Etats contre la corruption, que j'ai beaucoup appréciée.

Dans ma brève intervention je voudrais me pencher sur certains des instruments qui, à l'avis du Gouvernement italien sont fondamentaux pour la lutte contre la corruption dans l'administration publique.

En particulier je voudrais concentrer mon analyse sur deux instruments, l'un au niveau international et l'autre relevant du droit interne de chaque Etat.
En ce qui concerne le niveau international nous estimons que l'expérience des dix premières années de vie du Groupe d'Etat contre la corruption, que nous célébrons aujourd'hui, nous permet de tirer une leçon importante.

L'évaluation mutuelle, la *peer review*, des Etats membres d'une organisation internationale sur l'application des instruments internationaux en matière de corruption, s'est révélée un choix déterminant. Sans cet outil les dispositions prévues par les instruments internationaux en matière de corruption risqueraient de rester lettre morte, de n'être qu'une trace d'encre sur le papier. L'instrument de la *peer review* et la *peer pressure* qui s'ensuit pour chaque Etat membre, oblige

par conséquent les Etats à être fidèles aux promesses faites lors de la signature et de la ratification des instruments internationaux. Nous estimons que seul par le biais de cet instrument il sera possible de combler la lacune qui parfois existe entre la ratification d'un instrument international et son application effective et fidèle dans le système juridique interne. Je voudrais attirer brièvement notre attention sur la portée de cet instrument. Jusqu'à il y a quelques années ce type d'activité aurait été considéré comme une ingérence indue des autres Etats dans les affaires intérieures, dans le domaine réservé. Une ingérence d'autant plus imposante, vu la nature de la matière en question - la corruption -, que sa liaison avec la politique interne d'un pays est évidente. Nous rejetons cette approche, qui d'ailleurs est encore soutenue dans d'autres enceintes. La *peer review* ne peut plus être considérée comme un instrument d'ingérence dans les affaires intérieures, parce que dans un monde globalisé la corruption interne d'un pays n'est plus seulement une affaire interne de ce pays, mais elle est un intérêt de tout le monde. Aujourd'hui nous sommes tous conscients que la corruption ne se borne pas seulement à saper le marché et les structures économiques d'un pays, mais, dans certaines conditions, elle peut aussi avoir des conséquences négatives sur la démocratie, sur le *rule of law* et sur la capacité de développement de ce pays.

Le Gouvernement italien est donc favorable à l'instrument de la *peer review* et accomplit les efforts nécessaires pour le soutenir dans toutes les enceintes internationales. Je me réfère, en particulier, à la Convention des Nations Unies contre la corruption (signée à Mérida au mois de décembre 2003 et ratifiée par mon pays au mois d'août de cette année). Tout le monde sait qu'au mois de novembre de cette année à Doha se déroulera la 3ème Conférence des Etats parties à cette Convention. L'effort commun, à cette occasion, devrait être de parvenir à l'adoption d'un mécanisme de révision de l'application de la convention s'inspirant autant que possible, des principes de la *peer review*. Les difficultés qui nous séparent de ce résultat ne peuvent pas être dissimulées. Nous estimons que cet objectif mérite tout notre engagement et le déploiement de toutes nos capacités.

Maintenant je passe brièvement à une considération sur le droit interne. Nous estimons qu'une condition préalable pour une lutte efficace contre la corruption est la garantie de l'indépendance de la Magistrature, surtout en ce qui concerne ses relations avec le pouvoir exécutif et politique au sens large du terme, ainsi que la formation professionnelle continue.

Il est inutile d'avoir ratifié et appliqué un acte international en matière de corruption et d'avoir adopté des normes internes cohérentes aves ces instruments, et les magistrats, qui doivent appliquer ces normes, ne sont pas en mesure d'accomplir leur travail sans des interférences du pouvoir exécutif et s'ils n'ont pas une préparation professionnelle à l'hauteur de la tâche requise.

Nous sommes particulièrement fiers de la tradition d'autonomie et de l'indépendance de la magistrature italienne et nous sommes tellement convaincus que ce modèle est efficace que nos organes institutionnels s'attachent depuis longtemps à l'exporter, au moins dans ses lignes fondamentales, vers les Pays extra-européens qui ne se sont pas encore complètement familiarisés avec la *rue of law*, ou encore les Pays qui, à un niveau plus avancé, aspirent à entrer dans l'Union Européenne, mais pour lesquels il est nécessaire de perfectionner les mécanismes de leurs systèmes judiciaires et les techniques d'enquête.

J'ai parlé d'un modèle ayant des caractéristiques très avancées, mais il ne faut pas croire qu'il soit resté sur le papier.

Au contraire, il a permis à la magistrature italienne de mener – au cours des années – des enquêtes en matière de corruption qui ont intéressé tous les niveaux de l'administration publique italienne.

Des enquêtes qui ont très souvent conduit à des résultats concrets et à des décisions jurisprudentielles qui sont à l'avant-garde dans le panorama européen et international.

A cet égard, il suffit de mentionner les décisions, déjà nombreuses, en matière de responsabilité des personnes morales pour corruption, et la conclusion de procédures judiciaires pour corruption d'officiers publics étrangers ayant des ramifications transnationales, qui nous ont valu l'approbation du Groupe Bribery de l'Organisation pour le Développement et la Coopération Economique.

Je termine mon intervention en remerciant le Groupe d'Etats contre la corruption, parce que pendant son activité décennale a placé les thèmes de l'indépendance et de la formation professionnelle au centre de son travail et de son attention.

Gytis ANDRULIONIS
Vice Minister of Justice – Lithuania

Let me congratulate all of you on the occasion of the 10th anniversary of the Group of States Against Corruption (GRECO) and express my gratitude to the Organisers for inviting me to attend this conference. At the same time, I would like to pass the greetings of Mr. Remigijus Šimašius, Lithuanian Minister of Justice, on this important occasion and apologise on his behalf for not being able to attend.

I am happy that together with other countries, Lithuania has been actively involved in the activities of GRECO since its establishment. During the decade, we have been repeatedly assessed by GRECO experts for proper compliance with the guiding principles of the fight against corruption adopted by the Committee of Ministers of the Council of Europe, as well as anti-corruption conventions of the Council of Europe. We have observed and continue to observe their recommendations, we share our experience with other states, we are searching for methods and instruments and developing joint standards in order to achieve our common goal, which is effective fight against corruption.

The question as to which anti-corruption measures would be the most effective is important to public institutions, business structures and certainly corruption-intolerant societies of every state; prevention of corruption is one of the main tasks of each democratic state in order to ensure social and economic development and decline of corruption.

Here at this conference, I am pleased to be given an opportunity to introduce the experience and new initiatives of my country in the search for effective prevention of corruption in the civil service. Even though reports of international experts claim that, from the international perspective, Lithuania's anti-corruption framework is comprehensive and ranks among the best in the new European Union member states and post-communist countries, unfortunately the results of analysis of Corruption Perceptions Index and corruption map in Lithuania suggest that the corruption situation in Lithuania has not changed materially. Lithuania's general public perceives the civil service as the most corrupt sphere. It is evident that legal measures alone –such as anticorruption legislation, strategies and programs, legislative declaration of civil servants' liability and penalties for corruption crimes and offences already committed – are unable to produce the desired results. Although I support the opinion that in order to tackle corruption, we need an integrated set of measures and co-operation among different institutions, I also believe that a conscious determination to begin fighting corruption from self-assessment of our own activities might serve as a good and promising starting point. One of the constituent parts of the reform would be changes in the civil service for greater publicity, transparency and responsibility by eliminating potential corruption opportunities, attaching greater cost to corruption risk, revising the existing legislation and administrative procedures and raising the issue of civil service ethics.

To achieve these aims, the Ministry of Justice has proposed a new corruption prevention and control measure in our country, whereby civil servants could be subjected to a corruption resistance test. All civil servants should have impeccable reputation, be honest and reliable. The draft law provides for a possibility to assess corruption resistance of civil servants whose duties are related with administrative services and control of legislation implementation. The draft law provides that during such controls, officers would be authorised to model ambiguous situations in order to check corruption resistance of a civil servant. The conclusions derived from such imitated corruption situations would be forwarded to the head of the institution. This would not result in criminal or administrative liability of the civil servant under scrutiny, but would rather be instrumental in dismissing the untrustworthy employee from his or her position. Upon assessing the findings that a civil servant is not corruption-resistant, the head of the institution would offer him or her to voluntarily resign from the position. The draft law also provides for an alternative possibility of transferring the public servant to a different position where he or she would not be involved in administrative services and control over implementation of legislative acts.

In order to achieve that the work of public institutions is open and transparent, the Ministry of Justice proposes that all public institutions publicly announce the functions carried out by public servants and the requirements applicable to their positions. Professionalism and honesty of the civil service still remains an aspiration. Abuse of power, favouritism and nepotism are still frequent

when hiring or promoting civil service employees. The information would allow the general public to know about the actual work performed by one or another civil servant as well as the requirements applicable to his or her position, and assess whether they are reasonable. The Ministry of Justice has already published this information on its website. If the proposal is approved, other public institutions will soon be under the obligation to publish this information as well.

Alongside this publicity initiative, Lithuanian public institutions are now under the obligation to publish all draft legislation in progress, information about public procurement tenders and salaries of civil servants. The increased publicity of decision-making will prompt public institutions to avoid ambiguous decisions, be more responsible with taxpayers' funds, allow for better implementation of the publicity principle in the activities of public administration bodies and keep the general public properly informed.

Subject to the Parliament's approval, information about offences at institutions and measures taken to rectify them or penalise offenders shall also be made public. In addition, we are seeking to introduce legislative provisions for unlimited pecuniary liability of civil servants for damage deliberately caused to a public or municipal institution or establishment.

Of course, I don't believe that all the initiatives shall be a panacea in tackling manifestations of corruption in the civil service; however, I am convinced that the measures could make civil servants rethink their responsibilities and seriously consider the potential consequences of their actions. These measures could contribute to the consolidation of the fundamental democratic values that are working against corruption – that is responsibility and accountability in the public administration sector. They could re-introduce honesty, integrity and consciousness as a norm of our daily lives.

Once again, I congratulate all of you on this important occasion and wish that today's discussions could result in an even more active search for new ideas and initiatives in fighting corruption.

Alexandre KONOVALOV
Minister of Justice – Russian Federation

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Michael LEUPOLD
Secrétaire d'Etat – Suisse

J'ai le plaisir et l'honneur aujourd'hui d'apporter au GRECO et à tous ceux qui s'engagent pour réaliser ses buts les félicitations du gouvernement suisse pour son dixième anniversaire. Le GRECO, qui réunit aujourd'hui pratiquement tous les Etats membres du Conseil de l'Europe, est devenu, en dix ans, un des piliers de cette institution. Il fournit une contribution essentielle aux tâches fondamentales de l'organisation, à savoir la protection et le développement des droits de l'Homme, de l'Etat de droit et de la démocratie en Europe.

Nous pouvons aujourd'hui, avec toute la modestie et la prudence qui s'imposent, constater que la lutte contre la corruption et l'importance que lui attachent la politique, les médias et l'opinion publique s'est considérablement accrue ces dernières années dans nos pays. L'apport du GRECO dans cette évolution peut assurément être qualifié d'essentiel. La méthode des évaluations mutuelles par les pairs, avec l'adoption de recommandations et le suivi de leur mise en œuvre, s'est avérée être une approche couronnée de succès. Dans tous les Etats membres du GRECO, sans exception, de nouvelles mesures, parfois très étendues, ont été prises pour lutter contre la corruption, suite aux évaluations effectuées par le GRECO. On ne peut que souhaiter que des mécanismes semblables et aussi efficaces, se développent dans toutes les autres régions du monde.

De plus, le GRECO a toujours su travailler de manière constructive et positive, fidèle en cela à la tradition de coopération amicale chère au Conseil de l'Europe, en lieu et place de recourir à des

procédés menaçants et à des listes noires, qui peuvent s'avérer potentiellement contre-productives. Car le but ultime du GRECO doit en effet rester le soutien de ses Etats membres dans leurs efforts de lutte contre la corruption et sa prévention.

Le besoin d'un tel soutien existe dans tous les pays et bien entendu également dans le mien. En conséquence, nous avons pris très au sérieux les recommandations que le GRECO nous a adressées lors de l'évaluation de la Suisse l'année passée. Le Conseil fédéral, notre gouvernement national, s'est saisi du rapport d'évaluation, a explicitement salué l'utilité de ses recommandations et a adopté un plan de route pour leur mise en œuvre.

Il va de soi que déjà par le passé les standards du Conseil de l'Europe ont influencé de manière importante le dispositif suisse de lutte contre la corruption. Ainsi, nous avons modifié en 2006 notre droit pénal, pour pouvoir adhérer à la Convention pénale contre la corruption du Conseil de l'Europe. Cette révision a en particulier renforcé nos dispositions contre la corruption privée, y compris celles relatives à la responsabilité pénale des entreprises dans ce domaine. Mais déjà auparavant, nous avions modernisé notre dispositif pénal en plusieurs étapes. Il vaut la peine de mentionner à cet égard l'introduction en l'an 2000 de normes concernant l'octroi ou l'acceptation d'un avantage. Celles-ci vont bien au-delà des exigences fixées dans les divers instruments internationaux pertinents, dans la mesure où l'avantage obtenu par l'agent public ne doit pas forcément avoir un lien avec un acte concret ou déterminable de ce dernier. Il suffit que l'avantage soit offert ou sollicité en vue de l'accomplissement par l'agent public de sa fonction. Ainsi, les difficultés bien connues pour pouvoir prouver le lien entre l'avantage et un acte spécifique de l'agent public sont évitées et l'efficacité de la poursuite pénale de la corruption s'en trouve passablement renforcée.

Une autre étape importante pour un Etat fédéral comme la Suisse fut l'effort de centralisation des instances judiciaires et policières chargées de la lutte contre la corruption et le renforcement de leur spécialisation qui s'en est suivi.

La philosophie helvétique de la lutte contre la corruption en matière de droit pénal est empreinte d'une approche pragmatique, selon laquelle, en fin de compte, l'application efficace et effective du droit pénal est prépondérante. Les normes pénales les plus strictes et les plus vastes ne servent guère si elles restent lettre morte et si elles ne sont pas effectivement appliquées. Nous partageons dès lors l'opinion selon laquelle l'examen de l'application concrète et de l'efficacité des mesures prises par les Etats dans la lutte contre la corruption doivent continuer de jouer un rôle important dans les futurs cycles d'évaluation du GRECO.

Si le taux de corruption en Suisse peut être qualifié de relativement faible et que l'intégrité des institutions constitue largement la règle alors que leur corruptibilité reste l'exception, cela est aussi dû à notre système de démocratie directe et de fédéralisme ainsi qu'à notre système de milice, dans lequel nombre de charges et de fonctions publiques sont généralement assumées à titre volontaire et extraprofessionnel. Dans un tel système, le citoyen n'est pas seulement un administré, mais également un acteur de la politique et des institutions. Ces piliers institutionnels ainsi que l'échelle réduite de notre pays, dont découle un certain contrôle social, constituent un rempart important contre la corruption. Nous sommes toutefois également pleinement conscients que ces circonstances n'entraînent pas seulement des avantages, mais peuvent impliquer également certains dangers. Non pas tant des risques de corruption au sens étroit, mais surtout des risques marginaux d'imbrication des intérêts et des relations. Il est dès lors d'autant plus important pour nous de pouvoir s'inspirer des différents systèmes et des idées de nos partenaires au sein du GRECO. Car la prévention et la lutte contre la corruption est certainement aussi un apprentissage permanent et réciproque entre Etats, bénéfique pour tous.

Ce processus d'apprentissage n'est d'ailleurs pas terminé. En ce sens, la journée d'aujourd'hui marque seulement une étape du GRECO et certainement pas son aboutissement. La mise en œuvre complète des instruments de lutte contre la corruption du Conseil de l'Europe dans tous nos pays reste un objectif ambitieux. A cette fin, des cycles d'évaluation supplémentaires seront nécessaires et cela, dans des domaines sur lesquels le GRECO n'a pas encore eu l'occasion de se pencher. A cet égard, une place importante devrait être accordée, comme je l'ai déjà mentionné, à l'application concrète des règles et à l'efficacité des mesures prises par les Etats. En outre, les futurs cycles d'évaluation et les recommandations en résultant doivent continuer de respecter le principe central de l'égalité de traitement des Etats membres. Même s'il est opportun et utile d'aborder les particularités des différents pays examinés, les thèmes d'évaluation et les recommandations doivent continuer de s'orienter selon des standards communs et valables pour tous.

Je suis convaincu que le GRECO va continuer de fournir, dans les années à venir, un travail très fructueux et couronné de succès. Je peux vous assurer du soutien loyal et engagé de la Suisse dans ces efforts.

Ergin SADULLAH
Minister of Justice – Turkey

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Session II
The transparency of political financing

Séance II
La transparence du financement politique

Tuija BRAX
Minister of Justice – Finland

First of all, I would like to express my thanks to GRECO for organizing this conference. The theme of this session is important and highly topical for Finland both for the better and the worse.

The themes selected for the third evaluation round were the transparency of political financing and incriminations. By selecting this theme 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.

The importance of transparency in political financing cannot be over-emphasized. A democratic society is based on trust – a lack of transparency may, therefore, raise suspicions of misconduct. Even though some may think that political financing is basically a national matter, it has proved to be an issue where the concerns are shared and where we have much to learn from one another.

I believe that GRECO's role in the national debate is great, as Finland's example will show.

Traditionally, Finland has scored very high in Transparency International's Corruption Perceptions Index (CPI). Therefore it came as a shock or at least a surprise for many when we in 2008 dropped to fifth in rank from the top position. The drastic drop in the score was considered to result from shortcomings in the transparency of campaign financing and a lack of clarity in political financing in general.

Finland has very little or no corruption in the sense that a judge, a policeman or civil servant could be bought. At least we have no evidence of such conduct.

This may be one of the reasons why Finland has in the past pursued a policy in which regulation of election financing has been light. The first law concerning the transparency of a candidate's election financing – the Act on the Disclosure of a Candidate's Election Financing – was enacted in 2000, relatively late. However, except for the past year or two, public debate on political financing has been fairly lame in Finland. Yet election expenditure is relatively high, which increases the need for funding, both among individual candidates and the political parties.

Finland was the first country in which the third evaluation round concerning political financing was carried out. It attracted extensive media coverage and GRECO became well known in Finland as a result of the process.

In December 2007, GRECO gave Finland ten recommendations regarding increased transparency of party funding and greater efficiency in its monitoring, and seven recommendations regarding incriminations.

A lively public debate ensued in Finland during the spring of 2008 concerning candidates' campaign funding. It transpired that all MPs – in fact quite a number of them - had not disclosed their sources of funding as required by the regulations then in force. The debate on campaign and party funding is still intense.

In spring 2008, the Finnish Ministry of Justice appointed a committee to prepare the reform of campaign and party funding legislation in order to implement the recommendations issued by GRECO.

A new law on candidates' election funding was enacted in spring 2009, containing stricter provisions than the previous piece of legislation. For one thing, the threshold of donations above which the identity of the donor is to be disclosed, were lowered and supervision was tightened by introducing substantial supervision in addition to the earlier formal control.

As far as party funding and incriminations are concerned, the preparations for a legal reform are still underway. Another committee was appointed in autumn 2008 to prepare the implementation of the recommendations concerning incriminations. The key issue in the legal reform is stricter provisions concerning bribery of members of the Finnish Parliament. Both committees are making good progress with the proposals for legal amendments and proposals are expected before the end of this year.

It may be said that the 18-month timetable set for the implementation of the recommendations is ambitious. But then, it is the imposition of deadlines that makes GRECO's work dynamic. As leader of this process, I can say that we have worked very hard to stay within the deadlines – give or take a month or two.

It is safe to say, already at this stage, that political financing in Finland has become clearly more transparent. The implementation of GRECO's recommendations has had – and will have – a lasting impact on Finnish political culture. GRECO has made a difference.

However, it is clear that all issues cannot be resolved through legislation. We must not think that everything that is not specifically forbidden is permissible. The significance of a political culture and morals cannot be ignored in the efforts to secure the transparency of funding. Of equal importance is that extra caution is taken in decision-making when the interests of the financiers are involved.

Recusal is an option that should possibly be exercised more often. Here, the old rule applies – the judge must not only be impartial but also appear so. For one thing, the debate currently being waged in Finland and the foreseen future developments will certainly see to it that decision-makers will not be – and will not seem to be – too closely tied to parties that have an interest for example in city planning.

The media has played a central part in the debate in Finland. Without the media's active role, many an important point could have been missed.

GRECO's unique monitoring system based on peer review is something that we can be truly proud of. Hopefully, GRECO's extensive experience can be drawn upon in monitoring the implementation of the United Nations Convention Against Corruption.

The financing of a wider circle of political actors will be made more transparent in Finland than in the past. Aside from the funding received by political parties and candidates, more information is required on donations given to local party associations or campaign trusts. We will establish a threshold – say 2,000 Euros – for funding that needs to be disclosed in an online register accessible to the public. This will apply not only to political parties but also to associations established for the purpose of raising campaign funding.

At the same time, we will also intensify efforts to recognize structural corruption built into the system. For example, anonymous donations to political parties will be banned. Additionally, measures are being taken by the Ministry of Justice in close co-operation with the Ministry of Interior to improve capabilities for fighting economic and financial crimes.

I am happy that I had this opportunity to share Finland's experiences from reforming legislation on political financing. My belief is – and I have first hand experience of this - that GRECO will continue to play a vital role in the debates being conducted in the member states and that it will serve as an important forum for highlighting major issues. Finland is on its way to being number 1 again in Transparency International's Corruption Perceptions Index!

Jean-Marie BOKEL
Secrétaire d'Etat à la Justice – France

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Julia PITERA
Secretary of State – Poland

It's an honour and pleasure for me to participate in this conference marking the 10th anniversary of GRECO.

As you can see from the dates, the election statutes followed the reforms. 1998 was the year of the second self-government reform introducing two additional levels of local self-government: voivodship and poviat. 2002 introduced Direct Election of the Village, Town and City Administrator. Up until 2002 election was indirect and conducted by self-government councils. In 2004 in connection with Poland's accession to the European Union, the Statute on Elections to the European Parliament was adopted.

Each of these laws regulates the financing of election committees and political parties. Following public claims of business mixing with politics, new regulations were introduced in 2001 and 2002 to separate the business world from politics and protect election committees and political parties from becoming dependent on individual donors. Under the new laws, corporations were not allowed to support election campaigns and donations could only be made to a specific limit. Despite the good intentions, the new laws suffered some shortcomings as was demonstrated in the new election campaigns and the legislator failed to understand all the risks involved.

Election committees and political parties can receive donations from citizens of Poland only with one individual allowed to pay the maximum of fifteen times the minimum monthly wage. Election committees and political parties can pay for their expenses using funds they have accumulated. Members of election committees are fully, jointly and severally liable for liabilities incurred during the campaign. If any of the liabilities have not been paid on time, they must be reported in the committee's report. However, the election statute says that financial supervision over the finances of election committees ends when the committee becomes dissolved. To become dissolved, committees are not required to have their financial report approved.

Because there is nothing in the elections statute to regulate how the liabilities should be paid, they are subject to the civil code. Consequently, the restrictions set out in the elections statute do not apply any more because the election committee has already been dissolved. Committee members become the debtors and creditors - the committee's contracting parties - can recover the debt in a civil suit. Bills of exchange can be realised to satisfy creditors. The bills can be issued by not only a natural person but a corporation as well. What is more the civil code allows debts to be repaid by a third party, including foreign nationals, which is expressly prohibited in the elections statute. No limits on donations will apply either. And creditors may not refuse to accept such payment.

The loopholes open up another possibility. Election committees can take out bank loans which they do not have to repay by financial report day. All they have to do is identify loans in the report. Whatever happens to the liability incurred by the loan is not a matter the election body can control. The liability could very well be repaid by one of the committee's guarantors. As a result, the loan could be guaranteed by a corporation which is one more opportunity to circumvent the elections statutes.

As you can see from the analysis, while the objective was to build transparency and protect against abuse by putting limits on payments and allowing only natural persons to be the donors, the new regulations have in fact opened a new avenue for unrestricted party financing by skillfully applying the law.

The proposed changes include a regulation that will stop the taking over of financial liabilities by third parties, in particular the taking over of debts or releasing from debt. This is to stop the evasive practices in election financing. Transferring liabilities will be liable to a fine. There is a problem however as regards Polish citizenship of donors. It is not possible to hold a person liable for knowingly making a misstatement and making a donation even though they hold the citizenship of another country.

As recommended by GRECO the relevant regulations will be implemented to Polish law by 30 June 2010. However, I would like to point out that this will not apply to the presidential elections in Poland. While the current president's term of office finishes in November 2010, the election calendar is set out in the Constitution and cannot be changed. The amended election code changes the elections statutes without changing the dates.

Article 128 of the Polish Constitution provides that the President's term of office begins when the President takes office. This date is defined in Article 130 of the Constitution which expressly states that the President takes office when he has taken the oath before the National Assembly (combined chambers of the Parliament). Article 130 also gives the text of the oath. The date of Poland's presidential elections is set by the Speaker of the Sejm to be not earlier than 100 days and not later than 75 days before the end of the term of office of the current President of the Republic of Poland. The election day must be on a holiday. The Statute on the Election of the President states that the newly elected President of Poland takes the oath before the National Assembly on the last day of office of the outgoing President whose work finishes when President -elect has taken the oath.

Because the head of state is elected by direct popular vote, voters just like political parties and election committees must be familiar with the relevant laws. Elections statute cannot be changed a few months before the country's head of state election without observing vacatio legis. This is why the change will only be ad hoc to prevent abuse of law such as public collections and debt repayments. Apart from this, work is under way to develop the Election Code, new legislation to clarify and keep uniform financing rules for all election campaigns. This is to accomplish the goal which is transparency of political financing. If adopted, the new law will meet the recommendations of the "Evaluation Report on Poland – Theme II: Transparency of Party Funding". The Report recommends to harmonise the provisions on political financing, increase the National Electoral Commission's oversight of political financing, ensure that regulations are not circumvented when taking out loans, change the disclosure and reporting of funds rules and ensure a pro-active auditing and monitoring of financial reports.

Thank you for your attention. I wish GRECO further success on the way to improving European systems.

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

The transparency of political financing in the United Kingdom

Introduction

I wish to thank the Council of Europe for inviting the UK Secretary of State for Justice, the Rt. Hon Jack Straw MP, to attend this event and speak about the transparency of political party financing in the United Kingdom. The Justice Secretary is sorry that he is unable to attend due to other commitments. I am the official within the Ministry of Justice with responsibility for the law on the financing of political parties. I am delighted to be here today, on his behalf, to congratulate GRECO on its 10th anniversary and to briefly share the United Kingdom's experience.

I would also like to take this opportunity to thank GRECO for its recent Evaluation Report on party funding in the United Kingdom. Examination of this important issue makes a real contribution to the evidential base on ways in which we can improve the system.

Background

It is self evident that political parties are integral to the democratic system in the United Kingdom, and in mature democracies the world over. The rules that govern how political parties raise their funds and spend their money matter because this influences how they compete to serve the public interest.

Just as each democracy has its own traditions and political culture, so different jurisdictions approach the issue of funding political activity differently. Political parties in the United Kingdom are principally financed through the income that they generate from subscriptions and donations. Although political parties also receive some degree of direct and indirect state support - for example broadcasting time at elections - there is no general system of state funding.

There is general acceptance in the United Kingdom that political parties require significant funds to enable them to develop policy and place their competing visions before the public. However, for the health of democracy, it is vital that the way in which they raise and spend that money is open and transparent.

Transparency

Until the last decade, there was no general framework regulating donations in the United Kingdom, and although spending by candidates was controlled, there was no limit on what parties could spend nationally.

In 1998, a cross-party committee examined the whole system. That Committee diagnosed what it called an "arms race" between the major political parties, driven by the pressure to spend increasing sums of money at elections, and in turn driving a need to raise increasing amounts through donations. The Committee also found that, although concerns that donations bought influence were largely unjustified, there was a case for the public to know more about when donations were made. The Committee did not recommend placing any cap on the amount that an individual could donate.

Virtually all of these recommendations were accepted by Government. With agreement across the political spectrum, they were enacted in the Political Parties and Elections Act in 2000. Among the most significant steps taken in that law were:

- the creation of an independent Electoral Commission to regulate compliance with a new regime of funding rules; and the creation of a series of criminal and civil penalties to promote that compliance;
- a new bar on donations over £200 to parties or candidates being made by individuals or companies or any other organisation that did not have a connection to the United Kingdom;
- a requirement that any donation above £5000 to a national party, or £1000 to a local party, should be reported to the Electoral Commission and made public;
- and finally, a limit on what parties could spend in the year before a general election.

The resulting regime therefore sought to inject transparency into party funding arrangements in the United Kingdom; regulate the source of donations; and curb spending increases.

The case for further reforms

We think that the light shone on political party finance in the United Kingdom has been positive. The Act passed in 2000 was a landmark in party funding arrangements for us, and is still the basis of the system.

But, while the transparency put in place was better than what had gone before, it was not perfect. The law did not require that loans had to be declared by those receiving them; and there were allegations, and public concern, that loans provided by individuals to some parties could have been linked to the award of honours. Legislation in 2006 made all loans subject to the same rules as donations.

The Government established an independent review of the whole system in 2006. In broad terms, that Review concluded that the measures we took in 2000 had real success in making funding more transparent, but that the spending controls had not curbed spending by the main political parties.

The review recommended a fundamental change, tighter and more comprehensive spending controls and caps on donations – closely linked to an increase in state funding to mitigate the effects of that cap. It also argued for reform of the Electoral Commission to make it a still stronger regulator. Talks during 2007 between the major parties did not produce agreement on these proposals.

A number of other independent bodies have reviewed the performance and priorities of the new Electoral Commission to ensure that it is producing the results intended. The Government supports this approach of review and scrutiny and, of course, GRECO has played its own part in that

The independent Committee on Standards in Public Life, which had originally recommended the establishment of the Commission, produced a thorough review of its work three years ago. The Committee concluded that the Commission needed to become a more effective regulator, be better focused on its core remit; be restructured to better understand the political parties that it regulated; and be given stronger tools to investigate and punish breaches of the rules itself. GRECO's evaluation report reached many of the same conclusions.

The Political Parties and Elections Act 2009

The Government regards it as fundamental that reforms to the regime for political party funding should attract consensus if they are to be accepted as fair and legitimate: that was the guiding principle in 2000 and the guiding principle for all reform since. So while there was no general agreement among the major political parties about overhauling the system entirely, the Government did resolve to act where there was agreement, including to reform the Electoral Commission.

The result was the Political Parties and Elections Act 2009. The Act was only passed three months ago, and I am delighted to say that my memories of its passage are still fresh. The Act further reforms the arrangements for party financing and expenditure in three main ways

First it reforms the Electoral Commission's governance and powers. It enables the Commission better to understand those it regulates through the addition of a minority of Commissioners with recent political experience who have retired from active politics. The Commissioners are always in the minority and are required to act in a non-partisan way. This is vitally important to ensure that the Commission's independence cannot be compromised.

The Commission's powers were extended to give it a much broader and stronger range of means of investigating, allowing it to require access to financial records both to monitor parties and to investigate wrongdoing. The Commission may now apply civil sanctions directly for breaches of the 2000 Act as amended, although the original offences remain, in cases of serious wrongdoing. The sanctions include financial penalties and requirements for parties to take particular steps to repair breaches that they have committed.

Second, the Act contains measures to bring greater transparency to the regime. It requires a declaration to be made by all people giving a donation above a certain threshold, requiring the donor to assert whether or not the money is their own, making it harder for donors to claim ignorance of the requirements that apply. The Act also prevents non UK taxpayers from giving political donations above a threshold – strengthening the 2000 Act's principle that all donors should give money in a way that is transparent and that is linked with the United Kingdom. The Act also updates the current reporting thresholds in the 2000 legislation, to ensure that we maintain the correct balance between transparency and ease of compliance for parties and regulated individuals.

Third and finally, the new law limits candidate expenditure in the event of a Parliament running for its full term. Assuming an election is not held in the next two months, then there will be a new spending limit for all electoral purposes on candidates after 1 January 2010.

All these reforms should be seen in context. Although the regime originally introduced ten years ago has required some reform in the light of experience, it has brought huge benefits in terms of transparency and openness, and the role of the independent Electoral Commission is now

embedded in public life in the United Kingdom. It is, of course, far too early to say how the further changes made months ago will affect the overall picture. But the thread that runs through all of these reforms is the key principle on which the framework first put in place a decade ago rests – that of transparency. And it is that same principle on which, I think, all of the work that GRECO does in this area must rest as well. So the Government believes that the changes we have made which the Act puts in place will further strengthen the regime for regulation of party funding and expenditure to ensure that it can command public confidence.

ROUND TABLE 1
Cooperation of international stakeholders in the fight against corruption

TABLE RONDE 1
Coopération des acteurs internationaux dans la lutte contre la corruption

Philippe BOILLAT
Directeur général, Direction générale des droits de l'Homme et des affaires juridiques, Conseil de l'Europe

Je suis honoré d'avoir le privilège de présider cette table ronde 1 consacrée à la coopération des acteurs internationaux dans la lutte contre la corruption. Mais avant de débuter cette table ronde, j'aimerais vous faire quelques observations liminaires. Tout d'abord pour vous dire que je suis vraiment impressionné de la qualité de la participation à cette manifestation du GRECO qui célèbre son 10ème anniversaire. Il y a près de 20 ministres ou secrétaires d'Etat qui participent à cet événement et je crois que cela indique bien l'attachement profond de nos Etats membres à la lutte contre la corruption et je crois, en même temps, qu'ils manifestent leur confiance au GRECO.

La thématique de cette table ronde s'impose, je crois, d'elle-même. Dans un monde globalisé qui génère, il va sans dire, une multitude d'opportunités pour le crime transnational, l'établissement de réseaux réunissant les personnes et les organisations engagées dans la lutte contre la criminalité est, de toute évidence, d'une importance cruciale. C'est la raison pour laquelle, du reste, le GRECO s'efforce depuis des années de développer davantage encore la coopération avec les autres acteurs internationaux engagés dans la lutte contre la corruption.

Le fil conducteur de cette table ronde pourrait être le suivant : comment assurer au sein de la communauté internationale les synergies, la cohérence des actions anti-corruption et l'utilisation optimale des ressources pour lutter contre la corruption. Et pour engager les discussions sur cette problématique importante, nous avons la chance et le privilège d'être entourés de sept éminents intervenants.

Tout d'abord M. Drago Kos que je ne vous présente pas parce que dans le monde de la lutte contre la corruption tout le monde connait le M. Kos qui préside le GRECO depuis maintenant 7 ans et il est également le Président de la Commission anti-corruption de la Slovénie.

Le deuxième intervenant sera M. Mark Pieth, que j'ai beaucoup de plaisir à retrouver car il y a plusieurs années déjà nous étions collègues au sein du Ministère suisse de la Justice. Aujourd'hui, M. Pieth est professeur de droit pénal et de criminologie à l'Université de Bâle et il préside depuis de longues années déjà le Groupe de travail sur la corruption dans le cadre de transactions commerciales internationales de l'OCDE. Et vous le savez, l'OCDE est l'une des deux organisations internationales qui bénéficient du statut d'observateur auprès du GRECO.

La second organisation internationale qui bénéficie de ce statut sont les Nations Unies, représentées par l'Office des Nations Unies contre la drogue et le crime (ONUDC) et j'ai le grand plaisir d'accueillir parmi nous Mme Brigitte STROBEL-SHAW qui va peut-être également nous parler de l'organisation de la Troisième Conférence des Etats Parties à la Convention contre la Corruption des Nations Unies qui se tiendra prochainement, du 9 au 13 novembre à Doha au Qatar. L'un des principaux objectifs de la conférence sera de trouvé un accord sur les moyens pouvant être déployés pour conduire à l'évaluation de la mise en œuvre de la convention des Nations Unies.

Le quatrième intervenant aurait dû être M. Franz-Hermann BRUNER, qui malheureusement est malade mais j'ai le grand plaisir d'accueillir son conseiller, M. Paul Lachal ROBERTS, Conseiller du Directeur Général de l'Office européen de lutte anti-fraude (OLAF). Je voudrais souligner ici que depuis l'échange de vues qui a eu lieu en décembre 2007 entre M. BRUNER et le GRECO, les contacts et les échanges de vues entre les deux organismes sont devenus beaucoup plus fréquents. Cette évolution est à saluer, c'est une évolution positive, notamment pour la mise en œuvre du Mémorandum d'accord entre le Conseil de l'Europe et l'Union européenne.

Je salue comme cinquième intervenant, Mme Huguette LABELLE, qui aujourd'hui représente la société civile. La société civile sans laquelle la lutte contre la corruption serait vaine. C'est pour cette raison que Mme Labelle, comme Président du Conseil d'Administration de *Transparency International*, va probablement nous parler de l'indice mis en place par TI l'Indice de Perceptions de la corruption, ainsi que des autres travaux de grande valeur menés tant à l'échelle internationale que dans chacun des chapitres nationaux.

Les deux derniers intervenants sont presque de la maison. Tout d'abord, M. Lorenzo SALAZAR qui est Directeur du Bureau des Affaires pénales et des Affaires internationales au Ministère de la Justice italien. Il a présidé le GMC, le fameux Groupe Multidisciplinaire sur la Corruption qui, comme vous le savez sans doute, a jeté les bases du GRECO. Quant à mon cher collègue Manuel LEZERTUA, il assumait à l'époque le Secrétariat du GRECO et on peut dire qu'il était la force motrice, au sein du Secrétariat, de l'évolution de tous ces travaux et aujourd'hui, en sa qualité de Jurisconsulte du Conseil de l'Europe, il est régulièrement sollicité pour des avis sur des questions juridiques parfois très complexes concernant le GRECO.

Avant de donner la parole à M. Kos, je ne voudrais pas manquer de remercier très chaleureusement les deux délégations qui sont, en quelque sorte, les sponsors de cette manifestation. D'une part, la délégation de Monaco, que je salue, et la délégation de la Slovénie. Sans les contributions volontaires de ces deux délégations, nous aurions eu quelques difficultés matérielles à organiser cet événement donc qu'elles en soient ici chaleureusement remerciées.

Drago KOS
President of GRECO

When speaking of cooperation at international level, first we have to ask why we cooperate. Because of the needs of the individual member States of international organisations? Because of the needs of the organisations themselves? Or, just because we wish to look good in the eyes of our citizens? Despite their multinational composition, sooner or later, organisations develop their own identity. The consequences can be positive. Practice shows that international organisations are very much behind drives for improvement within their member States.

The final goal of cooperation is clear, we would like to build a unified front against corruption. If we act separately nothing will change, we have to work hand in hand. In this we have been successful only to a certain extent and there are many ways in which we could make further progress. But, before getting there, let us take a look first at what have been the main features of international cooperation.

I have already said that for a great number of countries in order to set things in motion the pressure from international organisations has been decisive. Nothing would have been achieved in many cases without the pressure from international organisations. This may sound harsh, but it is the sad truth. There are a lot of cases, not only in GRECO, we can refer for example to the EU accession process, the process within the OECD, etc. But in countries, despite the external pressure and influence, the most important influence comes from national political circumstances. There have been so many cases of countries which are moving in the right direction but then due to internal political problems, the process is reversed or stopped. This is an element that we have to take into consideration when talking about international cooperation.

I have had enough experience of participating in international fora to see that not all countries have the same aim when joining international anti-corruption efforts. Whereas some genuinely want to see change, some think only of projecting a positive image.

Another problem we face is that of different standards. Europe is seen as being composed of three parts : first, the European Union, second, the Council of Europe and third, non-EU members including some that are not even members of the Council of Europe. Geographically, they are all part of Europe. I believe that when we talk of international cooperation, such separations within Europe are not constructive. We must not split European anti-corruption efforts into three or more regions. We have to all work together.

From time to time we are lacking a clear expression from the European Union in the fight against corruption. It is active during accession processes but once those processes are over, countries are left to themselves. It is therefore a good sign that some developments are underway in order to ensure that new EU member States take their pre-accession commitments seriously, despite much evidence to the contrary.

We must also be aware of the fact that the organisations represented at this conference have different roles, standpoints and interests and have reached different stages in their respective work programmes. Therefore, to combine all these heterogeneous interests will almost certainly prove very difficult.

What can be done to address the situation in this area? First, and since all the organisations involved have their own secretariats and management structures, I think that day to day working relations could be improved. By way of an example, this week, three important meetings are taking place in Europe: GRECO's Anniversary Conference, the OECD Working Group on Bribery and UNODC negotiations on the monitoring system of the UN Convention. With proper planning and cooperation, this could have been avoided. Joint actions could be organised. There have been some attempts at this in the past and one future example is the organisation by the OECD Working Group on Bribery of an event to launch the OECD Global Awareness-Raising Campaign on Foreign Bribery which will be held on the occasion of International Anti-Corruption Day (9 December 2009) and in which the Secretariat and myself have been invited to participate. When planning our specific actions we should improve the exchange of information. Such coordination efforts will also enhance our credibility. Realistically though, coordination can be difficult in practice. In the past we have made attempts to coordinate our on-site monitoring visits with the OECD Working Group on Bribery but this did not prove possible because we wanted to move from our GRECO system and from the OECD system into something that could be called a unified system but the constraints of each methodology, mandate and programme meant that this turned out not to be feasible. Over a longer period of time I hope that it might well be possible to develop some synergies. Finally, the different players could try to act as one single entity – of course with clear limitations as regards the areas covered by each and a clear definition of powers and responsibilities but with one single and final aim : to ensure a unified fight against corruption. I believe the possibility to work in such a way is there but it might take time to make full use of it.

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

I would like to thank you very much for your kind invitation to the birthday party of GRECO. In the name of one of its sister organisations, the OECD, I would like to congratulate the Council of Europe, and the GRECO in particular, on its achievements. Its 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. And obviously cooperation is needed, maybe more than practised to date.

Allow me, though, to go a little beyond my best wishes.

Even though, the international organisations and MDBs are making considerable efforts to combat bribery, the task remains immense and, frankly, in many areas of the world we are not yet near our target.

Talking of the OECD, our own experience with 38 of the most developed nations as a constituency the track record is rather mixed.

We can be proud, I believe, that many countries have changed their laws and are raising awareness, and again the work of the Council of Europe helps a great deal in this process.

However, it needs to be said, that some countries find it really difficult to reach the standards

Some Eastern European Countries and also Latin American States still lack adequate corporate liability. The same applies, however, also for at least two key countries in Europe. Obviously the pressure we are applying is high.

Some countries have even slipped back. We have been able to convince one country that had abolished corporate liability to reintroduce it. Another country has just recently been engaged in a very awkward backsliding, potentially offering itself as an international corruption haven: It has reduced the scope of coverage of so called para-statals considerably.

Finally, I think our friends from GRECO would agree that all organisations are struggling when it comes to the application and enforcement of the laws.

Even if I know of 345 investigations of transnational bribery running somewhere in the OECD-world currently, far fewer ever reach indictment and yet substantially fewer the courts.

On a concrete level we are battling especially in the defence area and here many countries have proven less than pro-active, especially because they tend to protect their national interests. One country has just closed a significant defence-corruption-investigation, even though the senior prosecutor had to admit that he had absolutely insufficient resources at hand. In another country new legislation protecting potentially also locations, including corporate headquarters, from law enforcement is being developed. Finally, two OECD countries are trying to get their act together on mutual legal assistance in a defence case, but the procedures are advancing very slowly.

Let's face it, there is pushback and it will only be overcome, if organisations like GRECO and the OECD stand firm, if they cooperate, and if the UN also develops the necessary muscle.

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

It is my pleasure to represent today the Executive Director of UNODC, Antonio Maria Costa, and the Secretariat of the Conference of the States Parties to the United Nations Convention against Corruption. While the UNCAC is only celebrating its fourth birthday this year, we believe that its youth and vigour has the potential to galvanize and revitalize other anti-corruption instruments and actors.

I wish to present to you today the UN Convention against Corruption as an ambitious, far-reaching and yet concrete tool for preventing and criminalizing corruption and for facilitating countries working together to recover stolen assets and bringing guilty parties to justice, thus contributing to the rule of law and good governance.

UNCAC is more than a moral force and a charter of responsibility. It is the first global instrument to combat a global problem. It provides a concrete blueprint for a worldwide anti-corruption regime and is a call to action.

However strong it may be, like all Conventions it remains well-meaning paper until and unless it is implemented. Conventions are necessary but not sufficient conditions for results. Something else is needed: namely political will from society at large and commitment from political leaders.

As many speakers before me have already stated here today, worldwide the willingness to fight corruption is growing. The key is to harness general dissatisfaction with the current situation into effective anti-corruption measures. The number of States Parties to the UNCAC has recently overtaken the number of its signatories. But signing and ratifying is the easy part. The real challenge is implementation.

UNODC helped to broker the Convention and is not only its guardian but also assists States in implementation, through practical technical and legal assistance, including in helping create independent anti-corruption units and designing anti-corruption legislation and strategies.

UNODC carries out its work on anti-corruption, not only in isolation, but as part of efforts to strengthen the world crime control regime. Corruption does not occur in a vacuum: it is most likely

in the presence of poor governance, inadequate rule of law and unhealthy mixing of business and politics.

There is ample evidence worldwide of how corruption creates instability and is linked to other crimes -- border insecurity due to the bribery of officials; money laundering or terrorist financing using stolen assets; corruption has spawned and spread in criminal justice organization, including the judiciary; corruption fosters organized crime, and vice versa -- and the list could go on

The international crime control regime is taking shape. In this Millennium, there has been a UN Convention against Transnational Organized Crime, supplemented by three protocols (against human trafficking, smuggling of migrants, and manufacturing of firearms). The UNCAC is another vital building block towards establishing a world anti-crime regime. Let's call these treaties the *legislative* branch, considering that these international instruments have to be applied at the national level.

What is the *judicial* branch of this international crime control regime? There is none yet. What is needed is a functional and credible implementation review mechanism to ensure that States are able to live up to their commitments.

For almost two years, Member States have worked hard to find agreement on the terms of reference for this mechanism. Considerable progress has been achieved, building on the key attributes that the Conference of the States Parties to the Convention has decided that the mechanism should have, including that it should be transparent, efficient, non-intrusive, inclusive and impartial while at the same time providing opportunities to share good practices and challenges.

All States have made significant efforts to bridge differences and find solutions. The constructive and positive spirit that prevailed during these meetings brought us much closer to an agreement on a mechanism that will have as its main goal to assist States parties in effectively implementing the Convention. Nevertheless, there continue to be several outstanding issues, including the sources of information, the possibility of country visits, the outcome of the review and not least of all the sources of funding.

We are at the eve of the Conference's third session in Doha. Will we live up to the promises made when the Convention was born? The adoption of a strong, innovative and effective mechanism to review the implementation of the Convention would take us forward in the fight against corruption and would ensure the success of the Convention.

Most recently, the importance of reaching a decision on the establishment of the review mechanism has been reflected in the G20 Leaders' Statement of the Pittsburgh Summit which called for the ratification of the Convention and for the adoption during the third session of the Conference of the States Parties in Doha of an effective, transparent, and inclusive mechanism for the review of its implementation.

At UNODC, both during the elaboration of the Convention, as well as in our work related to its implementation we were fortunate to be able to build on the considerable activities and achievements of the organizations represented in this panel and I am particularly honoured to be here with them today. They have led the way in terms of norms and standards to fight corruption. They have put in place strong monitoring mechanisms to review their Member States' compliance with their conventions.

Despite these successes, the challenge for the UN remains great as we are to create a global regime which is to serve the interests of all UN Member States.

We believe it is possible to create this regime. The key is to work together. It is our hope that all States and interested parties will actively contribute to the discussions ahead of us in Doha in order to ensure our common goal, which is global agreement on an appropriate and effective review mechanism.

In his introductory statement before the Plenary of the General Assembly, adopting the UN Convention in October 2003, then Secretary-General Kofi Annan stated that "If fully enforced, (the Convention) can make a real difference to the quality of life of millions of people around the world... It is a big challenge, but … together we can make a difference."

We look forward to the 3rd session of the Conference of States Parties in Doha bringing us one step further towards a robust anti-corruption regime.

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

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Huguette LABELLE
Chair of the Board of Directors, Transparency International

Thank you very much for this opportunity to speak to you today as we celebrate the successes of GRECO's past 10 years, and look ahead to the challenges before us. This gathering of leaders, is representative of how the anti-corruption movement, through our collective knowledge, efforts and commitment to a corruption-free world has gained momentum.

Congratulations on these exceptional 10 years. GRECO has been a leader in the fight against corruption within the Council of Europe. Your instruments and processes are state of the art and are a model on the involvement of member countries.

By its very nature, it is clear that any attempt to effectively tackle corruption cannot be accomplished alone. The successes of Transparency International were made possible through the partnerships and cooperative efforts we have had with many of you as well as other institutions.

Important advances for the anti-corruption movement were born from our collaborations, like the strict debarment system and standards for public procurement that we worked on with the World Bank. Many of our TI National Chapters are also actively fulfilling civil society's role in multi-stakeholder projects across the world by monitoring projects run by the government or development banks. Tools and initiatives developed by TI, like our Integrity Pacts, national Integrity System, and our Business principles against Corruption contribute to the shared knowledge base of corruption reform, and have been adopted by governments, businesses and civil society organisations around the world.

International cooperation has made a difference in a number of areas, let me cite some of these.

Perhaps the two greatest achievements that we have accomplished together are the OECD Anti-Bribery Convention and the UN Convention Against Corruption. Through these Conventions, we have made great strides forward in changing policies and attitudes about corruption on an international scale. But our work is far from done. Commitments and ratifications will soon turn hollow without effective enforcement, and in this respect, we are facing great challenges.

UNCAC Civil Society Coalition
The implementation of UNCAC is becoming an increasingly urgent issue. With the upcoming Conference of State Parties in Doha this November, it is imperative that the parties can find an agreement on a robust and credible review mechanism. Such a mechanism must include:

- Country visits by peer review teams
- A transparent process with public release of country reports and recommendations;
- Opportunity for inputs from non-governmental sources, including civil society and the private sector;
- An Implementation Review Group composed of distinguished experts to assist the Secretariat and the Conference of States Parties;
- Adequate and dependable funding; and
- Technical support to developing countries to assist in the implementation of UNCAC

The UNCAC Civil Society Coalition[3] has been pulling together all of its members to advocate for a comprehensive and effective review mechanism. Uniting over 50 organisations to work towards the effective implementation of the UNCAC, the coalition provides civil society with a much stronger and louder voice than any one of its members could achieve alone. Yet, we must add to their chorus of voices to ensure that their call is not ignored. Recently, the ICC, UNGC, WEF and TI have joined forces to seek support from private sector leaders. Talks in Vienna this past August failed to produce an agreement on a review mechanism. We cannot allow another failure at Doha.

GOPAC

The Global Organisation of Parliamentarians against Corruption[4] (GOPAC) will also be present at Doha this November. With over 900 members, this international coalition is the only parliamentary network with a singular focus on combating corruption. Moving beyond dialogue, the network brings together international perspectives to seek results. TI is proud to have worked with GOPAC, combining our expertise with their insider knowledge to draft codes of conduct and ethical standards, as well as rules on conflicts of interest and disclosure by parliamentarians.

OLAF

Here in the EU, TI has been working together with OLAF towards a more robust and powerful public debarment system. Such a system would protect EU financial interests by listing and facilitating the exchange of information on potential beneficiaries who have been excluded from receiving EU monies because of fraud, corruption and other forms of serious misconduct. Although the current early warning system is useful, public blacklisting will help ensure that public monies are used efficiently and transparently. We look forward to continuing our work with OLAF on this initiative.

When it comes to more specific aspects of corruption, international coalitions have proven essential in identifying the most critical issues as well as in developing strategies that reach from the local to the global.

WIN

Water, for example, is fundamental to the crops we grow, a generator of power, fundamental to hygiene, and a basic resource vital for our daily existence. Yet investment into water infrastructure and management has been besieged by poor governance and corruption. The wide range of stakeholders, both geographically and across sectors, mean that sustainable water management can only be realised through coordinated, cooperative action. Thus in 2006, Transparency International played an integral role in the development of the Water Integrity Network in collaboration with the IRC International Water and Sanitation Centre, the Stockholm International Water Institute and the Water and Sanitation Program. Forging coalitions between stakeholders in the water sector across the globe, networks like these can offer valuable insight to leaders gathering in Copenhagen this December.

EITI

Turning to a different sector, 3.5 billion people live in countries rich in oil, gas and minerals. While this presents an incredibly valuable opportunity for poverty reduction and the improvement of life quality for the population; when poor governance reigns, it can also open the door to corruption and conflicts. We are becoming all too familiar with the "resource curse": watching as revenues are diverted to military spending or the enrichment of the privileged few, while health and education programmes continue to scramble for budgetary hand-outs.

The Extractive Industries Transparency Initiative is working to end that curse. As a global standard that promotes revenue transparency, the initiative has already garnered the involvement of over 30 countries, 40 of the world's largest oil, gas and mining companies, and 300 NGOs worldwide. Governments working to implement the initiative benefit from a standardised and internationally recognised procedure for transparent natural resource management. Companies benefit from the improved investment climate shaped by transparency and good governance. And society will finally reap the benefits of its natural riches.

[3] http://www.uncaccoalition.org/index.php?option=com_content&view=category&layout=blog&id=1&Itemid=1&lang=en

[4] http://www.gopacnetwork.org/main_en.htm

Looking to the future

As we move forward we need to find additional ways of enhancing our cooperation and mobilizing our collective energy in order to ensure:

1. that the enforcement of laws and institutional frameworks match the commitments taken by state and business leaders.
2. that in our work to prevent corruption that both transparency and integrity be given their full potential in all institutions and programs. That we make the educational system a new ally in building ethics in the curriculum of schools around the world so that our youth develop a strong moral compas.
3. that efforts being undertaken at national level be extended to the sub-national level of government. The potential to multiply corruption is huge as program and resources are devolved to local governments without the necessary local institutions and capacity to prevent and tackle corruption. Local government capture can be as devastating, if not more, than it is at the national government level. New tools are required to address this devolution.
4. that we protect losses form corruption with the infusion of trillions US to deal with the financial crisis, the mitigation and adaptation to climate change and the massive need for infrastructure especially in developing countries.
5. that the commitments of the G20 to deal with fiscal havens be sustained and the OECD's work be well supported. These electronic highways for the world movement of illicit money make it possible for corruption to thrive.
6. that we find additional ways of improving the expertise of the police, investigators, prosecutors and judges who deal with economic crime. In this regard, the Interpol Anti-Corruption Academy deserves are full support.

Finally, TI has also enjoyed a strong relationship with our host, GRECO, but there is still great potential to be tapped. 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.

Lorenzo SALAZAR
Directeur des affaires législatives et internationales
(*Ufficio I*), Ministère de la Justice (Italie)

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Manuel LEZERTUA
Directeur du conseil juridique et du droit international public, Jurisconsulte, Conseil de l'Europe

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ROUND TABLE 2
GRECO – Future challenges and emerging subject areas

TABLE RONDE 2
GRECO – Défis futurs et thèmes émergents

Topic 1: Lobbying and corruption
Thème 1: Lobbying et corruption

Topic 2: Private sector bribery
Thème 2: Corruption dans le secteur privé

Michael LEVI
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In 1621, the Lord Chancellor of England - Francis Bacon – was found guilty by Parliament of taking 28 bribes and was imprisoned in the Tower of London. Bacon claimed he took bribes from both sides, but decided the case according to the evidence. His defence was not considered sufficient legal excuse or sentencing mitigation.

The GRECO Secretariat chose wisely in proposing these two topics – lobbying and private bribery – as key areas for the future. The nature of organised and economic crime prevention points us clearly towards targeting 'crime enablers' – the features of our economic and social organisation that make crime possible or significantly easier – if we are to reduce serious crime.

Lobbying is a way of pressing the cause of particular interests. In our more transnational society, where democratic participation and the ideals of the founders of the Council of Europe can be quite remote and indirect, lobbying arguably is necessary. How else can the umbrella of interests placed in the flexible term 'civil society' be heard? When, for example, do official 'research visits' involving expensive hotels and travel become 'bribes'? – a problem faced or avoided by many sectors - and transparency/Codes of Practice on public officials are the key here.

As for private sector bribery, if bribery is socially bad and leads to mis-allocation of resources, then private sector bribery is also bad. Companies bribe (a) when they expect others to do so and thereby win contracts they ought to lose, or (b) if they know they have an inferior product and that bribery is the only way they can win an order (though they may rationalise (b) as being (a)). For Mutual Legal Assistance purposes, almost always necessary in the investigation and prosecution of such cases, legislative compatibility is crucial. The category of 'private sector bribery' often includes other offences including false accounting, fraud, and even blackmail. As is the case with money laundering, this is one of many reasons why looking at legal categories in recorded criminal statistics is a poor guide to what is going on.

The essence of the concern about lobbying is the pressure on politicians and other public officials to act in ways that they would not from that hard-to-operationalise term 'the public interest'. However, one reason why people vote for one party rather than for another is that the former are expected to act in their particular interests in ways that the other would not – so what's the difference? Is it one of transparency? Or of active bribery or even blackmail, in the sense of demanding money with menaces that their money will lead people to support other candidates, or hurt one's career in some way? When health insurance interests pay out $1.5 million to the *political* fund of the chair of the appropriate Senate committee, this looks bad *even if we know it has happened*. If the alternative is that they pour money into his *opponent's* political campaign and the Senator knows this, what is the difference between this and bribery or blackmail? Yet to ban all donations would be absurd. And a recent statistical correlation study by Campos and Giovannoni suggests that there may be an inverse relationship between corruption and lobbying, with the latter being a preferable broader interest base for special interest groups to get their voices heard.

In a relationship involving three persons or parties, somebody with influence on a third person trades this influence against an undue advantage from another person. *What distinguishes trading in influence from regular lobbying is that the influence must be improper and contain a corrupt intent*. *Legal* forms of corruption have been defined as the privatization of public policy: but the difficulty here is that just as Oscar Wilde defined morality as simply "the attitude we adopt towards people whom we personally dislike", so too may be 'legal corruption'.

One way out of this definitional quagmire is the joint OECD/EC model illustrated by the European Transparency Initiative, aiming at registration not just for official lobbyists but also NGOs, Think Tanks and other bodies that through which special interest funds can be routed in an apparently more neutral way. However without a North American style sanctions regime, the take up rate for voluntary registration of the ETI remains very low. In all such regimes what is needed is critical mass and the clear understanding that non-transparent lobbying and political financing will generate negative impacts additional to the mere fact of disclosure. Again, coming back to the Obama health insurance initiative, the amount of spending by the private health sector may be transparent to those who have an interest, but transparency did not stop the political backlash and the watering down of the proposals: most of the media did not treat these payments as a reason for critiquing the insurance industry, who pay for much crucial advertising. So transparency is not a cure-all.

A well-meaning paper by Rogier Chorus of the Society of European Affairs Professionals (2008) argues for self-regulation. However even if we accept the absence of revelations of wickedness as evidence of goodness, SEAP members constitute a tiny proportion of Brussels lobbyists. It is not clear what the sanction actually is and – unlike 'fit and proper person' authorisation in financial services, one can still practise in the lobbying business without being a member – though if one is sufficiently notorious, others won't invite you to functions or meet with you. We have to be realistic. Of course companies and other bodies will spend money producing papers that advance their interests and will try to organise settings which push those interests. What all these have in common may be the problem of identifying 'beneficial ownership' of payments and support via apparently neutral mechanisms. We would do well to look at the pharmaceutical industry as a particular example of requirements to disclose financing from the private sector in published journals.

The main problems with lobbying are secrecy, deception, imbalances in resources and preferential access for corporations.... The question of transparency is one for the public at large not simply for lobbyists and their targets. Asking lobbyists to register and identify their clients, their expenditures, and their contributions at least gives the public, and the legislature, the opportunity to see who is doing what and potentially why.

In private sector bribery, we also come back to covert beneficial ownership of corporate and other vehicles that are used to disguise the true connection with the bribe payer and the bribe-taker or bribe-demander. It would be astonishing if we ever cracked that issue totally, but we need to focus our energies on promoting transparency and what JK Galbraith once termed 'countervailing powers' which keep excesses in check.

Jane LEY
Deputy Director, US Office of Government Ethics – OGE (USA)

I would like to congratulate the organizers of this celebration for an excellent program and to thank them for inviting me to participate on this panel. I feel honored to represent the experience of my fellow evaluators for this and past rounds for purposes of looking forward to future topics to be taken up by GRECO.

I, too, was asked to discuss lobbying and corruption as a possible future topic of evaluation. While "lobbying" and "lobbyist" to some are words that conjure up visions of backroom deals, lavish gifts and government capture by vested interests, there is nothing inherently wrong with lobbying or being a lobbyist. Basically, lobbying is the transfer of information to public officials with the intent that the information be considered by the public official when developing legislation or policy. A public official's consideration of information from a balanced variety of sources is important to informed decisions; lobbyists often serve as an important information link between public officials

and those who will be affected by or have an interest in their official decisions. However, when the transfer of information from lobbyist to decision maker and vice versa is not done in a transparent fashion, when access to policy makers is unfairly limited, and when lobbyists and policy makers do not have clear and enforceable personal conduct and conflict of interest standards, lobbying activities can easily lead to corruption. The problem isn't caused by just the lobbyist; inappropriate or corrupt lobbying activities take two actors.

Any evaluation of lobbying needs to focus on both the lobbyist and the official who is lobbied. Globally, elected officials are often one half of the lobbying equation. GRECO has only skirted the issue of standards of conduct and conflicts of interest for elected officials in previous rounds. If that topic is not reviewed before lobbying, it has to be included at that time to gain the full picture.

The challenge to GRECO would be how to approach lobbying as a topic. GRECO could look at inappropriate actions arising from lobbying as a matter of criminal law enforcement, or it could start by looking at lobbying as a transparency and governance issue.

Criminal Law Enforcement Evaluation

A purely criminal law evaluation of inappropriate actions arising from lobbying activities as corruption would, I believe, result in a number of repeats of topics already reviewed by GRECO. The overlaps from the first three rounds would include the extent to which the bribery statutes would apply to the favors bestowed by lobbyists and requested or taken by public officials, extortion of advantages from lobbyists by public officials, conflicts of interest, immunities, and trading in influence. Because lobbying deals with the transfer and exchange of information and the perceived abuses of the capture of public policy by vested interests, it would seem reasonable that the review would also have to include any statutes dealing with the disclosure and use of information that is not readily available to the public, and with restrictions on official decisions taken outside standard procedural requirements. The extent to which the latter two topics would be covered by criminal statutes is probably limited, however. A review of inappropriate actions arising from lobbying activities as a purely law enforcement matter may prove too narrow to address the concerns inherent in the topic.

Good Governance and Transparency Evaluation

On the other hand, if GRECO were to take up the subject of lobbying primarily as one of transparency and public governance, the scope of evaluation could include the transparency of the system, the inclusiveness (or exclusiveness) of access to public officials, the rules related to disclosure of pre-decisional information, the procedures for decision-making processes themselves, and the enforceable conduct standards of both lobbyists and public officials. Yes, this would be the type of evaluation and a subsequent report that would make those involved in law enforcement as excited as if they were watching paint dry. It may seem dull, but it is important.

This would not be an easy evaluation to conduct. To review the systems for transparency and accountability in lobbying first requires an understanding of who each GRECO member might legitimately view as a lobbyist subject to reporting. A few quick questions help illustrate that point. Is a lobbyist only an individual who has been paid specifically to make representations to policy makers? What about an officer of a legal person who speaks to decision makers about policy concerns of importance to his or her business? What about a spokesperson for a community group or an NGO? Are representatives of trade unions or other organizations which for years have been included at the table in policy discussions as a part of a country's social partnership, lobbyists?

Once a lobbyist is defined, what information should be publicly available about his or her lobbying activities and when? Does every reporting system need to include who is representing what views, on whose behalf, to which decision makers, and for how much money? Or, rather than require disclosure by lobbyists, should public officials be required to report who has spoken to them, on what issues, and to the extent known, whose interests that individual was representing. Should systems for reporting campaign finance need to specifically identify lobbyist-donors? How much disclosure is too much for constitutional concerns, issues of privacy and rights to petition government, or just sheer reporting overload?

Outside of the transparency and reporting issues, however, a full good governance evaluation of lobbying activities might include a review of the general procedural safeguards for government decision making. Are there clear rules for decision makers on the disclosure of still confidential, pre-decisional information that does not rise to the level of national security information? Are there

rules about making decisions outside of standardized processes? Are there specific rules regarding the receipt by public officials, including elected officials, of gifts and favors including those from lobbyists? Do individuals who consider themselves lobbyists have a code of conduct or standards that protect not only governmental processes but their clients from their own personal conflicts?

I believe it is an important consideration for GRECO, at least at this time, to be aware that, based on information gathered by the OECD Public Governance Directorate in their excellent work on lobbying, very few GRECO members, possibly no more than 6, currently have government regulatory/registration systems for lobbyists. These limited numbers alone seem to warrant postponement to a future date of a GRECO-style review of government-imposed regulatory systems and the governance systems that support them. While there are some jurisdictions where the lobbying profession has instituted a self-regulatory system, what practical outcome could GRECO pursue in evaluating these systems when they are not designed or accountable to a government?

In sum, an evaluation of criminal law in the special context of lobbying and lobbyists will overlap previous GRECO work to a degree that might make other, competing topics more worthwhile. On the other hand, a critical mass of Members have not yet developed their own view of the need for, or style of government regulation of lobbyists or lobbying contacts to make a transparency and good governance evaluation worthwhile, at least in the near term. What does stand out as an important and timely topic is an evaluation of the codes and statutory standards of conduct including conflicts of interest for elected officials. The perception of an entire government's integrity is often set by the actions of its elected officials and senior leadership. I believe an evaluation of conduct standards for elected officials is worth serious consideration for any future round, possibly the next. That evaluation will set a foundation for a subsequent review of the private half of lobbying.

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

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François VINCKE
Président de la Commission anti-corruption, Chambre de commerce internationale (CCI)

1.- *Captatio benevolentiae.-*

J'eus l'honneur de m'adresser à la 42ème session plénière du GRECO le 13 mai de cette année et ai pu constater une nouvelle fois à cette occasion combien les Etats membres de votre prestigieuse organisation montrent de la détermination dans la lutte contre la corruption sous toutes ses formes, y compris la corruption privée.

Pour le monde des affaires, le Conseil de l'Europe, en général, et le GRECO, en particulier, représentent une garantie de haut niveau du respect du droit dans la poursuite de notre objectif commun, c'est à dire - en combattant la corruption et l'extorsion - assurer une plus saine concurrence dans les marchés et partant un plus haut niveau moral dans la conduite des affaires.

Nous appelons de nos vœux une coopération toujours plus grande et plus forte entre les organisations, tant publiques que privées, qui luttent contre la corruption, afin qu'elles fédèrent leurs forces et confortent leurs ressources.

2.- L'approche ICC.-

Je vous disais, il y a quelques mois, que chez nous, à l'ICC, nous sommes persuadés que non seulement il fallait valider et proclamer les grands principes devant mener à une saine pratique des affaires, encore fallait-il mettre en place les instruments et les procédures afin de veiller à leur

bonne mise en œuvre et réaliser une prévention efficace. Nos publications en font foi. Elles vous sont connues.

En parallèle à nos trois éditions du manuel "*Fighting Corruption",* nous avons mis en chantier des Principes directeurs qui devraient aider les entreprises de façon concrète à aborder les situations mettant en péril leur intégrité.

A la fin de cette année, nous rendrons publics nos nouveaux "Principes directeurs en matière de recours aux intermédiaires" (*Guidelines on the use of third parties),* après avoir publié l'an dernier nos "Principes directeurs sur les dispositifs d'alerte éthique" *(Guidelines on whistleblowing).* Et nous avons l'intention de mettre en chantier des Principes concernant les dons et marques d'hospitalité *(Guidelines on gifts and hospitality).*

Pour nous, toutes les formes de corruption sont condamnables, parce qu'elles détériorent les conditions de concurrence. La corruption privée est condamnée de la même façon que la corruption publique, la première affectant le respect qui est dû aux devoirs fiduciaires et la seconde ruinant la confiance qu'il faut avoir dans l'autorité.

3.- Remise en question.-

Notre pratique d'autorégulation est fondatrice de notre action et nous avons même un peu la prétention d'en avoir jeté les bases.

Mais nous faisons cette affirmation néanmoins avec un tantinet de modestie et - en tout cas - avec une certaine retenue, puisqu'aussi bien nous savons que l'autorégulation est de nos jours rudement critiquée, soit comme étant inefficace, soit comme étant arrogante - parce que prétendument captatrice de l'autorité étatique - soit encore comme étant hypocrite. Dans une étude récente, rapportant les résultats d'une enquête menée par une grande firme internationale d'audit, il apparaît que 54 pour cent des répondants sont demandeurs de normes étatiques plus étoffées et plus efficaces et non d'autorégulation. Nous avons connu des succès plus éclatants…

4.- *Oratio pro domo.-*

Face à cette critique, je voudrais ici, en quelques mots, faire une *oratio pro domo* pour l'autorégulation, telle que nous la pratiquons, et développer devant vous l'idée que l'autorégulation dans le domaine de l'intégrité n'a nullement vocation à supprimer ou à supplanter les instruments internationaux, tels que ceux que vous confectionnez avec tant de soin, ou les lois nationales qui ont force contraignante dans les Etats membres, mais bien à les conforter, à en augmenter la portée et l'efficacité et, ce faisant, à créer un *continuum* entre d'une part la norme issue de la souveraineté populaire et d'autre part la pratique telle que les dirigeants d'entreprise soucieux de leurs responsabilités sociales tendent à la formuler. Souvent, ce que le droit conventionnel ou étatique ne peut exprimer - sauf à descendre dans un détail infime, ce qui n'est pas son rôle - nos entreprises et associations, du fait de leur proximité avec le terrain, peuvent l'articuler de façon souple et originale dans leurs textes "cousus main". Un dialogue riche entre le management et la base, entre les différents métiers et mêlant les différentes fonctions, permet d'atteindre des résultats de grande qualité.

Il ne peut dès lors être question, comme cela s'est vu dans les domaines où la crise économique et financière a brutalement frappé, de bannir ou d'écarter la norme étatique et impérative, mais bien de l'accompagner, à certains moments de la précéder et en tout cas de la soutenir. De brillants auteurs ont parlé à cet égard d'une partie de ping pong constante. L'image est belle et le concept est juste.

5.- Cette crise qui nous frappe tous…

Je faisais allusion à la crise et je ne peux cacher que celle-ci a, ou pourrait avoir, un effet négatif sur les bonnes pratiques d'entreprise. Ainsi, on a pu lire dans le rapport que je viens de citer que 47 pour cent des personnes interrogées n'hésiteraient pas, confrontés aux écueils auxquels leur entreprise devra faire face à cause de la crise, à adopter l'un ou l'autre comportement illicite; 42 pour cent de ces mêmes personnes ajoutaient que, d'après elles, les échelons supérieurs de leur organisation seraient la menace de fraude la plus importante dans l'entreprise. Encore une fois, nous avons reçu des compliments plus flatteurs…

L'intégrité serait-elle battue en brèche par les risques et périls de la crise ? La probité cèderait-elle le pas devant la nécessité économique ? D'une étude qu'ICC a menée au mois d'août de cette année avec l'institut de recherche économique Ifo, il est apparu que le monde des affaires avait- en réalité - des vues divergentes sur ce sujet. Une majorité s'est dégagée parmi les personnes interrogées pour affirmer qu'il n'y aurait pas de recul dans les efforts menés dans ce domaine, une minorité non-négligeable a pris néanmoins le point de vue opposé.

Serons-nous à nouveau confrontés à nos vieux démons? La corruption pourrait-elle à nouveau pourrir les relations commerciales et déséquilibrer les marchés? On ne peut l'exclure et cela nous encourage à redoubler encore nos efforts.

6.- La pérennité des textes fondateurs.-

Il faut souligner que les grands textes anti-corruption, auxquels tant votre organisation, que l'OCDE et l'ONU ont contribué, doivent constituer un point de non-retour. Pour que leurs dispositions s'inscrivent de manière pérenne dans la réalité de la vie administrative et économique, il faut - mais il ne suffit pas - que leur application soit scrupuleusement auscultée sur le terrain dans chaque Etat signataire. A défaut de cet examen de l'application (*implementation review)*, les textes restent lettre morte et les principes, une fois déclarés, se délitent.

Ayant personnellement à trois reprises participé à ces examens d'application, je peux témoigner de mon admiration pour le sérieux, la rigueur et la détermination de vos examinateurs. Je salue en particulier l'expertise et le professionnalisme des responsables et des personnels du GRECO. Leur intervention est porteuse de progrès.

Le monde des affaires est dès lors persuadé que ces examens approfondis (et différenciés selon les organisations) sont nécessaires. Et c'est bien pour cette raison qu'une série de grands capitaines d'industrie ont - à l'initiative d'ICC, du Global Compact, de PACI, et de Transparency International - envoyé au Secrétaire Général des Nations Unies une lettre plaidant avec ardeur pour l'instauration, lors de la Troisième Conférence des Etats Parties à Doha, d'un vrai examen de l'application de la Convention Anti-Corruption des Nations Unies. Et ils l'ont fait dans des termes fort proches de ceux employés par les chefs d'Etats réunis à Pittsburgh les 24 et 25 septembre, puisque ceux-ci ont appelé de leurs vœux dans leur Déclaration des Leaders «l'adoption d'un système d'examen de l'application effectif, transparent et inclusif». Il est à nos yeux clair que ces procédures d'examen, différenciées mais coordonnées (et dans lesquelles les ressources de tous sont mises à profit) sont essentielles et pourront à l'avenir contribuer à façonner de manière claire ce marché équitable, transparent et sans obstacles auquel nous aspirons tous.

ICC tient à féliciter le GRECO pour l'impressionnant travail accompli et souhaite porter notre coopération à des niveaux toujours plus fructueux.