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Third Evaluation Round

Compliance Report on Monaco

"Incriminations (ETS 173 and 191, GPC 2)"

* * *

"Transparency of political party funding"

Adopted by GRECO
at its 64th Plenary Meeting
(Strasbourg, 16-20 June 2014)

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I. INTRODUCTION

1. This Compliance Report assesses the measures taken by the Monegasque authorities to implement the 18 recommendations issued in the Third Round Evaluation Report on Monaco (see paragraph 2), covering the following two themes:

   - **Theme I – Incriminations:** Articles 1a and b, 2 to 12, 15 to 17 and 19.1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1 to 6 of the Additional Protocol thereto (ETS 191) and Guiding Principle 2 (criminalisation of corruption).

   - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and – more generally – Guiding Principle 15 (financing of political parties and election campaigns).

2. The Third Round Evaluation Report was adopted at GRECO's 54th Plenary Meeting (20-23 March 2012) and was made public on 29 March 2012, following authorisation by Monaco (Greco Eval III Rep (2011) 5E, Theme I and Theme II).

3. As required by GRECO's Rules of Procedure, the Monegasque authorities submitted a Situation Report on measures taken to implement the recommendations. This report, which was received on 30 September 2013, formed the basis for the Compliance Report.

4. GRECO selected San Marino and France to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Eros GASPERONI, First Secretary, Ministry of Foreign Affairs (San Marino), and Mr Paul HIERNARD, judge, *Chargé de mission* to the Director of Legal Affairs, Ministry of Foreign and European Affairs (France). They were assisted by GRECO's Secretariat in drawing up the Compliance Report.

5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and makes an overall appraisal of the member's level of compliance with the recommendations. The implementation of any outstanding recommendations (partly or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of this Compliance Report.

II. ANALYSIS

Theme I: Incriminations

6. In its Evaluation Report GRECO addressed fourteen recommendations to Monaco in respect of theme I. Compliance with these recommendations is dealt with below.

7. The Monegasque authorities state that, with a view to complying with GRECO's recommendations, various legislative measures have been taken, including in particular the adoption of Law No. 1394 of 9 October 2012 reforming the Criminal Code and the Code of Criminal Procedure with regard to corruption and special investigation techniques (referred to below as Law No.1394). This law, which came into force on 13 October 2012,[1] is based on Bill No. 880 of 5 November 2010, which was presented in the Evaluation Report and was subsequently amended so as to take GRECO's recommendations into account.

[1] Following its publication in the official gazette (Journal de Monaco), No. 8090 of 12 October 2012

Recommendation i.

8. *GRECO recommended to take the necessary steps to harmonise the corruption offences in Sovereign Order 605 of 1 August 2006 in application of the United Nations Convention against Transnational Organised Crime with those of the Criminal Code, as they will result from the adoption of (draft) Bill 880 of 5 November 2010 to reform the Criminal and Criminal Procedure Codes with regard to corruption and special investigation techniques.*

9. The authorities report that Sovereign Order No. 4440 of 6 August 2013 amending Sovereign Order No. 605 of 1 August 2006 in application of the United Nations Convention against Transnational Organised Crime was published in the official gazette (Journal de Monaco) on 15 August 2013. In particular, article 2 replaces the provisions of article 6 of Order No. 605 with the following:

> ***Article 6 of Order No. 605 of 1 August 2006, as amended by Order No. 4440 of 6 August 2013***
>
> *The offences of passive and active bribery under Article 8 of the above-mentioned convention are defined in articles 113 and 113-2 of the Criminal Code.*
>
> *The offences referred to in the preceding paragraph shall carry the penalties provided for in article 122-1 of the same Code.*

10. GRECO takes note of the information provided, indicating that article 6 of Sovereign Order No. 605 of 1 August 2006 in application of the United Nations Convention against Transnational Organised Crime has been amended so that, for cases coming within its scope that involve organised criminal activity with a transnational dimension, this Sovereign Order no longer contains an autonomous definition of the bribery offences but refers to the relevant provisions of the Criminal Code (CC). GRECO considers that the harmonisation thus achieved between the two pieces of legislation now makes it possible to avoid any overlapping of offences.

11. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

12. *GRECO recommended (i) to align, as planned, the basic elements of the offences of active and passive bribery of public officials with Articles 2 and 3 of the Criminal Law Convention on Corruption (ETS 173), and in this context (ii) to ensure that passive bribery of public officials (and in the private sector) covers the act of requesting an undue advantage, and (iii) to ensure that the future offence(s) of passive bribery include the element of "accepting an offer or promise" of an undue advantage.*

13. The authorities state that Law No. 1394 introduced an article 113-2 into the CC, containing new definitions of bribery offences (in the public and private sectors) and replacing the former CC definitions of bribery, notably articles 113 and 118. Paragraph 1 of article 113-2 criminalises passive bribery, and paragraph 2 active bribery. The possible perpetrators of corruption offences are set out in the new article 113 CC and include both domestic public officials and foreign or international public officials, as well as "private officials". The new provisions of Law No. 1394 are worded as follows:

Article 113 CC

For the purposes of this paragraph a domestic public official is a person exercising public authority or carrying out public service duties or vested with an elected public office.

A foreign or international public official is a person exercising public authority or carrying out public service duties or vested with an elected public office in a foreign state or in a public international organisation.

A private official is a person who, without exercising public authority or carrying out public service duties or being vested with an elected public office, as part of a commercial activity performs a management function or works for a private sector body.

Article 113-2 CC

Passive bribery is the request, acceptance or receipt by a public or private official, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or promise of such an advantage, in exchange for acting or refraining from acting, or for having acted or refrained from acting, in the exercise of his or her functions or facilitated thereby.

Active bribery is the promising, granting or giving by any person, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, so as to induce a natural or legal person to act or refrain from acting in the exercise of their functions or facilitated thereby or in exchange for their having acted or refrained from acting in the exercise of their functions or facilitated thereby.

14. GRECO notes that the offence of bribery has been reformed in depth. The new provisions of the CC on active and passive bribery of public and private officials are based on the draft legislation presented in the Evaluation Report and systematically utilise terminology similar to that of the Criminal Law Convention on Corruption (first part of the recommendation). Unlike the former provisions, it is clear from article 113-2 CC that the offence is fully established as soon as an undue advantage is offered, promised or requested (second part of the recommendation). In addition, unlike the Bill presented in the Evaluation Report, the new legislation on passive bribery expressly includes the element of "accepting an offer or promise" (third part of the recommendation).

15. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

16. *GRECO recommended to take the appropriate measures (such as circulars, training sessions or additions to the explanatory report of the draft legislation) to specify or recall, according to circumstances, that the future offence(s) of bribery (and trading in influence, should it be criminalised) do not necessarily entail an agreement between the parties and that evidence of a link between the undue advantage and its consideration may also be based on objective factual circumstances.*

17. The authorities state that, in their opinion, the provisions of the new article 113-2 CC are clear and, in principle, not such as to cause difficulties of interpretation. In particular, it follows from these provisions that unilateral acts such as offering, promising or requesting an undue advantage constitute bribery offences, irrespective of whether there is an agreement between the

parties. Nonetheless, to comply with the recommendation, on 22 July 2013 the Judicial Services Directorate mailed to judges a copy of GRECO's report and recommendations, which were referred to in the explanatory report to Law No. 1394, so that they would have the fullest possible information on the spirit of this law.

18. GRECO takes note of the information provided. It points out that Monegasque prosecutors and investigating judges were traditionally required to produce evidence of a corrupt pact – that is to say a criminal intent on the part of both the briber and the bribee as demonstrated by an agreement between them. The Evaluation Report, which noted the proposed legislative changes regarding active and passive bribery, indicated that "the practitioners whom the team met showed varying degrees of awareness of the scope of the proposed changes ….".[2] In view of the importance that practitioners continued to attach to the need systematically to furnish evidence of a dual criminal intent in future, even after the changes introduced in 2012, it was indeed clear that there were real interpretation difficulties and that the situation in most cases would continue to be contrary to the Criminal Law Convention on Corruption. The wording of the recommendation referred to examples of measures deemed effective such as circulars and training (a circular was moreover issued to comply with recommendation iv below). However, as far as GRECO can ascertain, the final version of the explanatory report to Law No.1394, and the published records of the debates, do not give any additional information in this matter (whereas the Government has provided clarifications regarding other points).[3] GRECO considers that the distribution of the Evaluation Report to all judges may effectively help to change practitioners' understanding of the offences, but this action is still far from sufficient and, for lack of other measures, leaves room for differing interpretations. Monaco should therefore take more tangible measures in response to this recommendation.

19. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

20. *GRECO recommended to remove all uncertainty by specifying, by appropriate measures, that acts of bribery (and trading in influence, should it be criminalised) are offences whatever the nature – material or non-material – of the undue advantage.*

21. The authorities refer to the wording of the new articles 113-2 CC (bribery in the public and private sectors) and 113-3 CC (trading in influence), as resulting from Law No. 1394, which use the term "any undue advantage", while the former provisions on bribery used the terms "donations or gifts"[4] and "donations, gifts, commissions, discounts or bonuses".[5] The authorities also state that the Judicial Services Directorate has distributed GRECO's report and recommendations to judges (see the observations on recommendation iii above) and that, to eliminate any possible uncertainty, on 24 September 2013 that directorate sent a note to the State Prosecutor requesting that the judicial officers under his authority should be informed that the term "undue advantage" indeed covered all kinds of advantages, whether material or immaterial in nature. That was subsequently done.

[2] For further details see the Third Round Evaluation Report on Monaco, document Greco Eval III Rep (2011) 5E, Theme I, paragraphs 101 to 103.
[3] See paragraphs 24 and 47 below.
[4] See the former articles 113 and 118 CC concerning bribery in the public sector.
[5] See the former articles 115 and 119 CC concerning bribery in the private sector.

22. GRECO takes note of the information provided and concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

23. *GRECO recommended (i) to ensure that, as intended, the various offences of bribery in the public and private sectors (and trading in influence, should it be criminalised) are construed in such a way as to include the participation of intermediaries and third party beneficiaries and (ii) to specify, by the appropriate measures, that the term "or for anyone else" is interpreted broadly.*

24. Concerning the first point of the recommendation, the authorities report that the new Articles 113-2 and 113-3 CC specify that the offences of bribery and trading in influence can be perpetrated directly or indirectly and that the undue advantage may benefit the public or private official him/herself or "anyone else". Concerning the second point of the recommendation, they indicate that, so as to eliminate any possible uncertainty, the Government clarified the meaning of the law in this respect during the debate that took place in public session on 8 October 2012,[6] stating "the Government wishes to specify that the term "anyone else" can concern a natural person or a legal person."

25. GRECO takes note of the information provided. Since this information answers the concerns underlying the recommendation, GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

26. *GRECO recommended (i) to extend in an adequate manner, as planned, the definition of bribery of public officials so as to include the various categories of relevant persons, in particular members of government and mayors, in accordance with Articles 2 and 3 combined with Article 1 of the Criminal Law Convention on Corruption (ETS 173), and (ii) to criminalise, as planned, bribery of members of public assemblies, in accordance with Article 4 of the Convention.*

27. The authorities refer to the definition of a domestic public official within the meaning of the CC provisions on bribery, as set out in paragraph 1 of the new Article 113, which specifies that "a domestic public official is a person exercising public authority or carrying out public service duties or vested with an elected public office." This definition is identical to that contained in Bill No. 880 of 5 November 2010, which was presented in the Evaluation Report. With more specific reference to the first point of the recommendation, it is pointed out that, as already mentioned in the Evaluation Report, the explanatory report accompanying the draft legislation was based on the explanatory report to the Convention and stated that the new term was intended to cover the functions performed by ministers or government members, judges and prosecutors, public or ministerial officials, the director of police and mayors. Concerning the second part of the recommendation, it is pointed out that the new legislation also covers persons vested with an elected public office, whether national or local elected representatives.

28. The authorities add that the penalties for acts of bribery committed by or in respect of a domestic public official are laid down in the new article 115 CC as follows:

[6] Published in the Journal de Monaco on 3 May 2013

Article 115 CC

Passive bribery shall be punishable by five to ten years' imprisonment and twice the fine provided for in category 4 of Article 26[7] where committed by a domestic public official.
Active bribery shall be liable to the same penalties, where committed in respect of a domestic public official.

29. GRECO takes note of the information provided and expresses its satisfaction at the use of the term domestic public official and the definition given thereof. It concludes that recommendation vi has been implemented satisfactorily.

Recommendation vii.

30. *GRECO recommended (i) to consider criminalising active and passive bribery of foreign public officials and members of foreign public assemblies, outside the context of organised crime, and in accordance with Articles 5 and 6 of the Criminal Law Convention on Corruption (ETS 173) and, as a consequence, (ii) withdrawing or not renewing the reservation to Articles 5 and 6 of the Convention.*

31. Concerning the first part of the recommendation, the authorities indicate that paragraph 2 of the new article 113 CC extends the offences concerning public officials to include foreign public officials and members of foreign public assemblies, as planned at the time of the adoption of the Evaluation Report and presented therein. Under the terms of the new article, a foreign public official within the meaning of the CC provisions on bribery is "a person exercising public authority or carrying out public service duties or vested with an elected public office in a foreign state". Concerning the second part of the recommendation, the authorities state that, following the adoption of Law No. 1394, by a letter dated 28 March 2013 addressed to the Head of the Legal Advice Department and Treaty Office of the Council of Europe they announced that they wished to withdraw the reservations to Articles 5 and 6 of the Criminal Law Convention on Corruption made in accordance with Article 37, paragraph 1 of that convention.

32. The authorities add that the penalties for acts of bribery committed by or in respect of a foreign (or international) public official are laid down in the new article 118 CC as follows:

Article 118 CC

Passive bribery shall be punishable by five to ten years' imprisonment and twice the fine provided for in category 4 of Article 26 where committed by a foreign or international public official.

Active bribery shall be liable to the same penalties, where committed in respect of a foreign or international public official.

33. GRECO takes note of this information and welcomes the fact that Monaco has not only considered the case for criminalising bribery of foreign public officials and members of foreign public assemblies, but has already implemented a reform along these lines and has accordingly withdrawn the reservations made to Articles 5 and 6 of the Criminal Law Convention on

[7] Category 4 of article 26 stipulates a fine of between €18 000 and €90 000.

Corruption. Furthermore, GRECO notes with satisfaction that the penalties prescribed are the same as for bribery of domestic public officials and that there is accordingly no difference in treatment between these two types of cases.

34. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

35. *GRECO recommended to criminalise, as planned, active and passive bribery of international public officials and members of international parliamentary assemblies, outside the context of organised crime and in accordance with Articles 9 and 10 of the Criminal Law Convention on Corruption (ETS 173).*

36. The authorities report that paragraph 2 of the new article 113 CC extends the offences concerning public officials to international public officials and members of international parliamentary assembles, as planned at the time of the adoption of the Evaluation Report and presented therein. Under the terms of the new article, an international public official within the meaning of the CC provisions on bribery is "a person exercising public authority, or carrying out public service duties or vested with an elected public office in a public international organisation." The authorities add that the penalties for acts of bribery committed by or in respect of an international public official are laid down in the new article 118 CC (see under recommendation vii above).

37. GRECO takes note of the information provided and concludes that recommendation viii has been implemented satisfactorily.

Recommendation ix.

38. *GRECO recommended to criminalise, as planned, active and passive bribery of judges and officials of international courts outside the context of organised crime and in accordance with Article 11 of the Criminal Law Convention on Corruption (ETS 173).*

39. The authorities again refer to paragraph 2 of the new article 113 CC, which defines the term international public official within the meaning of the CC provisions on bribery. This definition is identical to that contained in Bill No. 880 of 5 November 2010, which was presented in the Evaluation Report. As was stated in that report, the explanatory report accompanying the draft legislation stipulated that the new provisions were also intended to cover judges and any person exercising public authority or carrying out public service duties, thereby satisfying the requirements of Article 11 of the Criminal Law Convention on Corruption.

40. GRECO takes note of the information provided and concludes that recommendation ix has been implemented satisfactorily.

Recommendation x.

41. *GRECO recommended to criminalise, as planned, active and passive bribery in the private sector in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173), ensuring notably that the various types of relationship (employed or other) that the bribe-taker may have with the private entity are covered and that it is not possible under the offence for employers to exonerate the private agents ex post facto and improperly from their liability.*

42. The authorities state that the new article 113-2 CC, resulting from Law No.1394, places bribery in the private sector on an equal footing with bribery in the public sector. As was planned in Bill No. 880 of 5 November 2010, which was presented in the Evaluation Report, the term "private official" within the meaning of the CC provisions on bribery is defined as "a person who, without exercising public authority or carrying out public service duties or being vested with an elected public office, as part of a commercial activity performs a management function or works for a private sector body" (see the third paragraph of the new article 113 CC. The authorities add that the penalties for acts of bribery committed by or in respect of a private official are laid down in the new article 117 CC as follows:

> ***Article 117 CC***
>
> *Passive bribery shall be punishable by five years' imprisonment and the fine provided for in category 4 of Article 26 where committed by a private official.*
>
> *Active bribery shall be liable to the same penalties, where committed in respect of a private official.*

43. GRECO notes that the amendments to the CC provisions on bribery in the private sector, as already presented in the Evaluation Report, have now entered into force. The shortcomings of the former legislation have therefore been remedied. In particular, the amended offences apparently cover bribery of any person acting on behalf of a private sector body (without necessarily requiring that they be an employee or manager of that body) and no longer require that such a person should have acted "without his or her employer's knowledge or consent", as was the case prior to the reform with regard to passive bribery (former article 115 CC).

44. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

45. *GRECO recommended (i) to consider criminalising trading in influence, as planned, and thus withdrawing or not renewing the reservation relating to Article 12 of the Criminal Law Convention on Corruption (ETS 173) and (ii) to ensure, in this context, that the future definition of the active and passive forms of the offence reflects the terms of Article 12 of the Convention and, in particular, covers the acceptance of a promise or offer (of an undue advantage) and the various "target persons" referred to in Articles 2, 4 to 6 and 9 to 11 of the Convention, as well as situations in which the influence is intended to secure a failure to act, in which the influence does not lead to the intended result or in which the perpetrator of (passive) trading in influence is not a public official.*

46. Concerning the first point of the recommendation, the authorities state that Law No.1394 introduced an article 113-3 into the CC, which establishes trading in influence as an autonomous offence, as well as articles 119 and 120 CC laying down the penalties incurred. The new provisions on trading in influence are worded as follows:

Article 113-3 CC

Passive trading in influence is the request, acceptance or receipt by any person, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, including an offer or promise of such an advantage, to abuse, or for having abused, his or her real or supposed influence over a decision taken by a public official, as defined in article 113, concerning distinctions, posts, procurement contracts or any other favourable or unfavourable decision.

Active trading in influence is the offering, granting or giving by any person, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, to induce a natural or legal person to abuse his or her real or supposed influence, or for having abused such influence, over a decision taken by a public official, as defined in article 113, concerning distinctions, posts, procurement contracts or any other favourable or unfavourable decision.

Article 119 CC

Active trading in influence shall be punishable by five to ten years' imprisonment and twice the fine specified in category 4 of article 26.

Article 120 CC

Passive trading in influence shall be punishable by eight to fifteen years' imprisonment and three times the fine specified in category 4 of article 26 when it is committed by a judge to the benefit or detriment of a person subject to criminal proceedings.

The authorities add that, following the adoption of Law No. 1394, by a letter dated 28 March 2013 addressed to the Head of the Legal Advice Department and Treaty Office of the Council of Europe they announced that they wished to withdraw the reservation to Article 12 of the Criminal Law Convention on Corruption made in accordance with Article 37, paragraph 1 of that convention.

47. Concerning the second point of the recommendation, the authorities indicate that, so as to eliminate any possible uncertainty, the Government clarified the meaning of the law during the above-mentioned debate in public session on 8 October 2012 (see under recommendation v above), stating that, so as to act upon the recommendation, the Government had proposed certain clarifications of the constituent elements of trading in influence offences. The Government had inter alia specified that the definition of passive trading in influence indeed covered "the act of requesting an undue advantage, but also the acceptance of an offer or promise of an undue advantage, as well as situations in which the influence is intended to secure a failure to act, in which the influence does not lead to the intended result or in which the perpetrator of trading in influence is not a public official."

48. GRECO takes note of the information provided and welcomes the fact that Monaco has not only considered the case for criminalising trading in influence, but has already implemented a reform along these lines and has accordingly withdrawn the reservation made to Article 12 of the Criminal Law Convention on Corruption. GRECO notes that the draft legislation submitted at the time of the Evaluation Report has been amended to take into account the concerns underlying the second part of the recommendation. In view of the wording of the new provisions of article 113-3 CC and the explanations given by the Government during the debate in public session, it is clear that these provisions cover, in particular, the acceptance of an offer or promise (of an undue

advantage) and the various "target persons" referred to in the convention, as well as situations in which the influence is intended to secure a failure to act, in which the influence does not lead to the intended result or in which the perpetrator of (passive) trading in influence is not a public official.

49. GRECO concludes that recommendation xi has been implemented satisfactorily.

Recommendation xii.

50. *GRECO recommended (i) to criminalise active and passive bribery of domestic and foreign arbitrators and jurors, while ensuring and making clear, in an appropriate manner, that the wording of the proposed new provisions of the Criminal Code reflects the various elements of Articles 2 to 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and (ii) to sign and ratify the said Protocol as soon as possible.*

51. Concerning the first part of the recommendation, the authorities indicate that domestic arbitrators and jurors are covered by the term "domestic public official", as defined by the first paragraph of the new article 113 CC, and foreign arbitrators and jurors by the term "foreign public official", as defined by the second paragraph of the same article. The authorities explain that these categories of persons contribute to the performance of acts pursuing a general-interest aim[8] and therefore come within the scope of the CC provisions on bribery. More specifically, arbitrators (both domestic and foreign) are deemed to be "carrying out public service duties" and jurors to be "exercising public authority" within the meaning of paragraphs 1 and 2 of article 113 CC. The authorities add that the new definition of a public official was intended to broaden the scope of the CC provisions on bribery and not to restrict it; arbitrators who, prior to the reform, were covered by a specific offence (under the former article 114 CC) are therefore in any case considered to be included in the new definition. As for jurors, the authorities point out that they are mentioned in the new article 116 CC concerning the penalties incurred in aggravated cases of passive bribery, which, they contend, shows that this category of person is included in the new definition of a public official. The new article 116 CC, deriving from Law No. 1394, is worded as follows:

> ***Article 116 CC***
>
> *Passive bribery shall be punishable by eight to fifteen years' imprisonment and three times the fine provided for in category 4 of article 26 when committed by a judge or juror for the advantage or to the detriment of a person subject to criminal proceedings.*

52. Concerning the second part of the recommendation, the authorities point out that Monaco signed and ratified the Additional Protocol to the Criminal Law Convention on Corruption on 10 July 2013 without making any reservation. The protocol was promulgated in the Principality by the publication of a Sovereign Order in the official gazette, the Journal de Monaco, following its entry into force on 1 November 2013 in accordance with its Article 11.

53. GRECO takes note of the information provided and welcomes the ratification by Monaco of the Additional Protocol to the Criminal Law Convention on Corruption. Concerning the criminalisation of active and passive bribery of domestic and foreign arbitrators and jurors, GRECO regrets that

[8] In this connection, the authorities make specific reference to articles 940 and 955 of the Code of Civil Procedure (for arbitrators) and articles 269 and 290 of the Code of Criminal Procedure (for jurors).

the new CC provisions on bribery do not deal specifically with these categories of persons, apart from passive bribery of jurors. GRECO takes note of the authorities' arguments to the effect that all the cases addressed by the recommendation would be covered by the new legislation, but it would have expected the authorities to take tangible measures – legislative or other – to dispel the doubts expressed by GRECO in the Evaluation Report.

54. GRECO concludes that recommendation xii has been partly implemented.

Recommendation xiii.

55. *GRECO recommended to extend in an appropriate manner the statute of limitation for the prosecution of the bribery and trading in influence offences.*

56. The authorities report that Law No. 1394 introduced a new article 13 ter in the Code of Criminal Procedure providing for an extension of the time-limit for prosecuting bribery and trading in influence offences from three years to five years. The new article is worded as follows:

> ***Article 13 ter of the Code of Criminal Procedure***
>
> *Notwithstanding the provisions of the previous articles, prosecution of the offences stipulated in articles 113-2 and 113-3 CC shall be time-barred after a period of five years from the date of their commission.*

57. GRECO takes note of the information provided and concludes that recommendation xiii has been implemented satisfactorily.

Recommendation xiv.

58. *GRECO recommended (i) to consider establishing the jurisdiction of the Principality of Monaco with regard to offences of corruption and trading in influence committed by public officials or members of assemblies whatever their nationality, and to offences committed by foreign nationals and involving Monegasque public officials, members of Monegasque assemblies or Monegasque citizens vested with functions at international level, in accordance with Article 17 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173); (ii) to consider abolishing the restrictions on jurisdiction established in law (dual incrimination, need for the authorisation of the prosecuting authorities and need for a complaint from the injured party or an official report from the foreign authorities) and, therefore (iii) withdrawing or not renewing the reservation to Article 17 of the said Convention.*

59. The authorities report that, in view of the scope of this recommendation, the Government has decided to consult its legal advisers on these questions.

60. GRECO takes note of the information provided and concludes that, at this early stage in the discussion process initiated by the authorities, recommendation xiv has not been implemented.

Theme II: Transparency of party funding

61. In its Evaluation Report GRECO addressed four recommendations to Monaco in respect of Theme II. Compliance with these recommendations is examined below.

62. The authorities indicate that, on 21 June 2012, the National Council (Parliament) passed a law on funding of election campaigns, which was published in the Journal de Monaco on 6 July 2012 as Law No. 1389 of 2 July 2012 and which came into force on 7 July 2012[9] (referred to below as Law No. 1389). This law establishes six fundamental principles: a legal limit on campaign expenses; reorganisation of electoral campaigning based on an extension of the duration of the "official" campaign and the "pre-campaign"; appointment of financial agents by candidates; the keeping, by these agents, of campaign accounts in which all expenses linked to the election campaign must be recorded in detail and on a daily basis; the establishment of an autonomous consultative authority to scrutinise the funding of election campaigns, the Campaign Accounts Supervisory Commission; the existence and effective imposition of sanctions, particularly against candidates who breach the rules laid down in the new legislation. In addition to the information contained in the Situation Report, the authorities refer to the Draft Law No. F-1-14 of 4 June 2014 which was submitted to the National Council on 17 June 2014. This draft law provides for amendments to Law No. 1389 and is directed at reinforcing the implementation of international recommendations, in particular those made by GRECO. While this initiative is generally to be welcomed as a step in the right direction, GRECO is not in a position to assess the draft legislation – which was presented at a very late stage – in the present report. It was agreed that the authorities would keep GRECO informed about the reform process in the on-going compliance procedure.

63. This recent reform does not address the general funding of political parties. On this subject the authorities underline certain particularities of Monegasque politics, including the limited number of voters,[10] the key role played by Members of Parliament (National Councillors) outside election campaign periods and the predominance of candidate lists during elections, which weakens the influence of political parties. The latter reportedly have no significant permanent structures or salaried staff and have only scant funding needs apart from when campaigns are in progress. As stated in the explanatory report to Law No. 1389 they accordingly escape "to a certain extent from being classified as political parties proper, traditionally understood to constitute permanent "links" between a broad body of voters and their parliamentary representation".

Recommendation i.

64. *GRECO recommended (i) to introduce full and adequate rules concerning political party and election campaign accounts; (ii) to ensure that income, expenditure and the various assets and liabilities are presented in the accounts in adequate detail, in full and in a coherent form and (iii) to ensure that political party and election campaign accounts are made accessible by the public in an easy and timely way.*

65. Concerning the general funding of political parties, the authorities state that there are no specific accounting requirements for associations apart from the rules applicable to recognised associations coming under Law No. 1355 of 23 December 2008 on associations and federations of associations. Those associations must produce accounts for the current financial year and the previous three financial years and are subject to the provisions of Law No. 885 of 29 May 1970

[9] Following its publication in the Journal de Monaco, No. 8076 of 6 July 2012
[10] In the 2013 national elections 6825 people were registered to vote.

on the financial control of private law bodies receiving state subsidies. In this connection, the authorities refer to the specific features of Monegasque politics, as described above (see paragraph 63), and draw attention to the fact that the political bodies existing in Monaco cannot be qualified as "parties" in the proper sense.

66. Concerning the funding of election campaigns, the authorities refer to articles 14 and 15 of Law No. 1389 du 2 July 2012. These articles require candidates' financial agents to keep campaign accounts, which replace the former "statement of campaign expenses" and in which all expenses linked to the election campaign must be recorded in detail and on a daily basis. These accounts, which must be certified as accurate by the candidates and countersigned by an accountant, are submitted to the scrutiny of the Campaign Accounts Supervisory Commission. The new provisions on campaign accounts are worded as follows:

> ***Article 14 of Law No. 1389***
>
> *Campaign accounts shall include a detailed statement of all electoral expenses incurred on behalf of a candidate or list and information on the manner of commitment of each expenditure item. Mention shall also be made of the use value of property and equipment during the election campaign, calculated according to accounting rules on depreciation.*
>
> *To this end, the financial agent shall keep a journal in which expenses paid or committed during the election campaign are entered on a daily basis, identified by the invoice numbers and references for the means of payment, the payment beneficiaries, the dates and amounts of payments, and the person who made the payments.*
>
> *The campaign accounts shall record expenses paid directly by a candidate, those settled by the financial agent and those paid by natural or legal persons who support the candidate or list.*
>
> *All supporting documents for electoral expenditure shall be appended to the campaign accounts.*
>
> ***Article 15 of Law No. 1389***
>
> *The financial agent shall submit the campaign accounts to the Campaign Accounts Supervisory Commission within two months of the publication of the final results of the election and in accordance with the following formal requirements:*
>
> *- campaign accounts shall be dated, signed and certified as accurate by the candidate or by all candidates on the list before they are filed with the Campaign Accounts Supervisory Commission;*
> *- they shall be countersigned by an accountant who is not the financial agent for the list or the candidate;*
> *- supporting notes shall be appended;*
> *- the accounts shall be sent by registered mail with return receipt requested to the President of the Campaign Accounts Supervisory Commission or shall be delivered by hand to the secretariat of the Campaign Accounts Supervisory Commission, which shall issue a receipt for them.*

67. GRECO expresses satisfaction at the adoption of Law No. 1389 of 2 July 2012 on funding of election campaigns, which expressly stipulates the content of political parties' campaign accounts. Unlike the former "statement of campaign expenses", campaign accounts must now include a detailed record of all expenses incurred on behalf of a candidate or list and indicate the manner of commitment of each expenditure item. They are to kept by a financial agent, countersigned by an accountant and submitted to a supervisory authority. GRECO considers that

these new rules constitute a significant step in the right direction, but regrets that under the rules campaign accounts solely include electoral expenditure, whereas the recommendation required that income, assets and liabilities should also be recorded, and that they are not made public (only the reports on campaign accounts drawn up by the supervisory authority are published), as called for in the recommendation. Inclusion of income is of key importance to guarantee the transparency of political financing and prevention of corruption. GRECO also very much regrets the failure to introduce accounting rules for political parties. It takes due note of the particularities of politics in Monaco, but reiterates that, as stated in the Evaluation Report and in accordance with Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, rules governing the accounts of political parties are necessary to guarantee a satisfactory degree of transparency in the financing of politics as a whole, and not just election campaigns, while taking care that new obligations are "designed in a sufficiently flexible manner to ensure that they do not place an excessive burden on small, relatively unprofessional parties". GRECO invites the authorities to pursue the reform process and to take into account all the elements of the recommendation.

68. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

69. *GRECO recommended (i) to provide a regulatory framework for political party and campaign finances which will inter alia address donations – including donations in kind, which must be assessed at their real market value – loans and contributions from elected members and candidates; (ii) in this connection, to introduce a ban on donations from individuals or institutions that fail to disclose their identity to the political party or candidate, and (iii) to make provision for publication in due course of donations above a certain level and the donor's identity.*

70. The authorities reiterate that "political associations" and, when without legal personality, "political groupings" finance themselves freely, while nonetheless complying with the provisions of ordinary law on associations. Article 9 of Law No. 1355 of 23 December 2008, regarding associations and federations of associations, prescribes that for a declared association to accept a donation or a legacy, it must be authorised by sovereign order following an opinion from the Council of State. For donations made directly by individuals or companies, the law provides that associations may receive such donations without the need to observe particular formalities. Political associations receive no state subsidies. Candidates' personal contributions make up a significant proportion of electoral campaign funding.

71. GRECO notes that no measure has been introduced to meet the requirements of the recommendation[11] and concludes that the recommendation has not been implemented.

Recommendation iii.

72. *GRECO recommended to ensure the effective and independent public monitoring of political party and campaign financing, in accordance with Article 14 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.*

73. The authorities report that articles 16 to 21 of Law No. 1389 of 2 July 2012 introduced the monitoring of campaign accounts – for both national and municipal elections – through a new

[11] It is to be noted, however, that a draft law amending Law No. 1389 was submitted to the National Council on 17 June 2014 (see paragraph 62 above) which is aimed at addressing, *inter alia*, the concerns underlying recommendation ii.

autonomous consultative body, the Campaign Accounts Supervisory Commission (*Commission de verification des comptes de campagne)*. This non-permanent commission meets after every election and is made up of the president of the public accounts committee (*Commission Supérieure des Comptes*) (who chairs the Commission), a state councillor (appointed by the president of the Council of State), two members of the public accounts committee (appointed by the president of this committee), a member of the Court of Appeal (appointed by the president of this court), an individual appointed by the Crown Council (outside its membership) and an individual appointed by the Minister of State who is not part of the Council of Government. The secretariat of the Campaign Accounts Supervisory Commission is provided by the general secretariat of the public accounts committee. Verification of electoral campaign accounts and production of the reports on these accounts are governed by articles 17 to 19 of Law No. 1389, as set out below. An extract of the final report on a candidate's or a list's electoral campaign accounts is published in the *Journal de Monaco.* For a period of 15 days following the date of this publication, any voter can, at their expense, obtain a copy of the full report. The report is sent to the Minister of State by the president of the Campaign Accounts Supervisory Commission and, in the event that the commission has made findings that could constitute a criminal offence, to the State Prosecutor. The authorities add that the commission fulfilled this role during the national elections of 10 February 2013 and published its reports in the issues of the *Journal de Monaco* dated 7 and 28 June 2013.

Article 17 of Law No. 1389

The Campaign Accounts Supervisory Commission shall be responsible for producing a report on the campaign accounts of each list of candidates or each candidate not standing on a list.
The report's aim shall be to check whether electoral spending has exceeded the limit and to identify any other irregularities, including in particular:
- failure to file campaign accounts within the specified time-limit or in the form laid down in article 15;
- failure to declare expenses;
- the absence, or inadequacy, of documentary evidence of expenditure;
- evidence, in the campaign accounts, of expenditure which is not for electoral purposes;
- findings which constitute a criminal offence.

Article 18 of Law No. 1389

Within one month of the filing of the campaign accounts or, failing that, the expiry of the time-limit specified in article 15, the Campaign Accounts Supervisory Commission shall produce a preliminary report on the accounts.
The preliminary report shall be sent to the financial agent of the candidate or the list of candidates.
They shall then inform the Campaign Accounts Supervisory Commission of any observations within 15 days.
When this deadline has passed, the Campaign Accounts Supervisory Commission shall produce its final report on the campaign accounts within 15 days.

Article 19 of Law No. 1389

Every natural or legal person who has incurred an electoral expense on their own or someone else's behalf, shall be obliged to provide the Campaign Accounts Supervisory Commission, at the latter's request, with all documents, information and evidence relevant to that expense.

74. GRECO welcomes the implementation of campaign accounts monitoring through a newly created independent commission. GRECO notes that this commission is empowered to check whether lists of candidates and candidates not standing on a list have filed full accounts within the time-limit specified and whether these accounts show any irregularities, and that this commission makes its reports public. GRECO regrets, however, that this reform, which is clearly consistent with the recommendation, is currently only partial. As was stated in the Evaluation Report, Recommendation Rec(2003)4 advocates the monitoring of both electoral campaign accounts and political party accounts; it also advocates the monitoring of income as well as expenses. The authorities are therefore invited to complete the reforms they have initiated. Lastly, GRECO hopes that the powers and resources allocated to the commission will allow it to exercise real and proactive oversight; GRECO encourages the authorities to give this matter close follow-up.

75. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

76. *GRECO recommended that the future rules on political party and election campaign financing be accompanied by effective, proportionate and dissuasive sanctions for breaches of the various requirements of these rules.*

77. The authorities report that articles 24 to 29 of Law No. 1389 prescribe a range of sanctions, which can be imposed upon candidates who fail to observe the rules set out in the new legal provisions on electoral campaign funding. The authorities point out that these sanctions, which have been devised both to prevent and to punish infringements of the law, are proportionate to the seriousness of the breaches concerned; they can consist of administrative penalties (some or all of the campaign expenses not being refunded), criminal penalties (imprisonment, fines, disqualification from standing for election) or electoral penalties (complete or partial annulment of the election). The new legal provisions are as follows:

> ***Article 24 of Law No. 1389***
>
> *Should the Campaign Accounts Supervisory Commission's report find that electoral expenses of a candidate or a list of candidates have exceeded the limit laid down by law, or that there are other irregularities, the Minister of State may, after seeking the opinion of the general controller of expenditure, refuse to grant, in full or in part, a requested refund of electoral expenditure.*
>
> ***Article 25 of Law No. 1389***
>
> *Within eight days of the publication of the report, if the report should find that the legal limit for electoral expenditure has been exceeded by a candidate or a list of candidates or that they have failed to file campaign accounts, any duly declared candidate shall be entitled to petition the court of first instance to annul the election of the candidate or candidates concerned on these grounds. The Minister of State may, under the same conditions, refer the matter of these elections to the same court. Articles 54 to 58 of Law No. 839 of 23 February 1968 on national and municipal elections, as amended, shall apply.*
> *The complete or partial annulment of the election shall be declared by the court of first instance should the purpose or effect of exceeding the legal limit on electoral expenditure have been to create inequality between candidates and to compromise the integrity of the election and should any failure to file campaign accounts have been aimed at impeding the oversight exercised by the Campaign Accounts Supervisory Commission.*

Article 26 of Law No. 1389

Any candidate whose campaign accounts contain knowingly understated accounting data or data based on materially inaccurate information, so that the accounts do not exceed the limit specified in article 5 or that campaign costs are unduly refunded, shall be liable to the penalties provided for in article 103 CC.

Article 27 of Law No. 1389

In the case provided for in the preceding article, the court of first instance may also disqualify a candidate from standing for election for a period of six years.

Article 28 of Law No. 1389

Anyone who has incurred an electoral expense on behalf of a candidate or a list of candidates, without acting on their request or without their approval, shall be liable to the penalties provided for in article 26.

Article 29 of Law No. 1389

A financial agent who contributed to the commission of the offences referred to in articles 26 and 28 shall be liable to the penalties provided for in article 26.

78. The authorities add that the Campaign Accounts Supervisory Commission submitted reports on the expenses incurred by the three lists which competed in the national elections in February 2013 to the Minister of State, in accordance with these provisions. Two out of these three lists did not exceed the statutory cap of €400 000, while the third list exceeded the cap on spending by €1 708.50, a situation which the commission considered to be due more to disorganisation than to a deliberate intent to overspend. Taking this opinion into account and that of the general controller of expenditure, who was consulted in accordance with the above-cited provisions of Article 24, the Minister of State decided to authorise reimbursement of the full fixed amount (€80 000) in respect of the electoral expenditure of the three lists of candidates.

79. GRECO notes that the new rules on electoral campaign funding have been accompanied by sanctions for breaching their various requirements, although, at the same time, the regulations on transparency currently cover neither electoral campaign income nor the financing of political parties as a whole. GRECO welcomes the fact that its proposals to introduce sanctions have been acted upon and is confident that these sanctions – which are administrative, criminal and electoral in nature – will prove, in practice, to be effective, proportionate and dissuasive. This said, GRECO considers that it would unquestionably have been more appropriate for the Campaign Accounts Supervisory Commission to be able to impose these sanctions directly. Lastly, GRECO deems it self-evident that, with the introduction of appropriate rules governing the transparency of electoral accounts as a whole (including the various kinds of contributions) and the accounts of political parties, sanctions will need to be provided for, as required by the recommendation, in the event that any of these rules are violated.

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

III. CONCLUSIONS

81. **In view of the above, GRECO concludes that Monaco has implemented satisfactorily or dealt with in a satisfactory manner eleven out of the eighteen recommendations contained in the Third Round Evaluation Report.** Of the remaining recommendations, five have been partly implemented and two have not been implemented.

82. As regards Theme I – Incriminations, recommendations i, ii, iv to xi and xiii have been satisfactorily implemented, recommendations iii and xii have been partly implemented, and recommendation xiv has not been implemented. As regards Theme II – Transparency of Party Funding, recommendations i, iii, and iv have been partly implemented and recommendation ii has not been implemented.

83. As regards incriminations, Monaco has undertaken a substantial reform in which almost all the recommendations have been addressed. Monaco has adopted a new legal framework, which is in line with the standards of the Criminal Law Convention on Corruption (ETS No. 173). The new legislation now in place clearly criminalises all the various forms of corrupt behaviour, it covers any undue advantage – whether material or non-material and whether it be for the bribee him/herself or for anyone else – and it also applies to acts of bribery committed indirectly, via intermediaries. Moreover, the scope of the relevant provisions has been broadened to cover all national, foreign and international public officials. The offence of bribery in the private sector has also been significantly amended – including extending its scope to cover any individual who, as part of a commercial activity, performs a management function or works for a private sector body – and new provisions have been introduced into the Criminal Code to make trading in influence a criminal offence. Furthermore, the limitation period for the prosecution of bribery or trading in influence offences has been extended from three to five years. Finally, GRECO welcomes the fact that Monaco has withdrawn several of its reservations regarding the Convention and has ratified the Additional Protocol (ETS 191). At the same time, GRECO invites the authorities to specify, through appropriate measures, that the offence of bribery does not necessarily require the existence of an agreement between the parties and that it unambiguously covers all national and foreign arbitrators and jurors, in accordance with the aforementioned Protocol. GRECO also invites the authorities to continue to discuss the issues of extending Monaco's jurisdiction over acts of bribery and trading in influence – including those committed by foreign public officials or by foreign nationals in respect of Monegasque public officials – and withdrawing its reservation to the Convention on this point.

84. As regards the transparency of party funding, GRECO welcomes the adoption of Law No. 1389 of 2 July 2012 on electoral campaign funding, which introduces a whole range of measures aimed at increasing the transparency of political funding, for example through the introduction of a legal cap on campaign expenditure; the reorganisation of electoral campaigns whereby the official campaign and the preliminary campaign periods are lengthened; the appointment, by electoral candidates, of a financial agent; the keeping by this agent of campaign accounts, which must contain a detailed daily record of all expenses attributable to the campaign; the creation of a Campaign Accounts Supervisory Commission; and finally, the implementation of sanctions for candidates who breach the rules set out in this new legislation. GRECO is of the view that this reform constitutes significant progress concerning political funding in Monaco. However, GRECO regrets that this reform is currently only partial, given that campaign accounts solely include electoral expenses (while the recommendation also called for the inclusion of income, assets and liabilities), that the accounts are not publicly accessible (only the reports on campaign accounts, as produced by the monitoring body, are published) and that no measure has been taken to

regulate in greater detail either donations (such as prohibiting anonymous donations and requiring the publication of donations exceeding a certain amount and donors' identities) or other sources of funding, as was recommended. Furthermore, GRECO regrets that the recent reform does not address the general funding of political parties. By not including financial contributions and other forms of support received from society in political accounts, the reform has failed to meet one of the fundamental objectives of efforts to ensure the transparency of political funding and prevent corruption. While acknowledging the specific features of Monegasque politics (see paragraph 63 above), GRECO is of the view that they cannot be a hindrance to achieving transparency in public affairs. In this context, it is to be noted that a draft law amending Law No. 1389 which is directed at reinforcing the implementation of GRECO's recommendations has recently been submitted to the National Council. GRECO welcomes this initiative and invites the authorities to pursue the reform process as proposed in the recommendations.

85. In view of the conclusions set out in paragraphs 81 to 84, GRECO congratulates Monaco on the significant reforms undertaken with regard to the two themes under evaluation, reforms which show that Monaco has already implemented more than half of the recommendations issued in the Third Round Evaluation Report. GRECO encourages the Monegasque authorities to pursue their efforts in order to implement the pending recommendations within the next 18 months. GRECO invites the Head of the Monegasque Delegation to submit additional information regarding the implementation of recommendations iii, xii and xiv (Theme I – Incriminations) and recommendations i to iv (Theme II – Transparency of Party Funding) by 31 December 2015 at the latest.

86. Finally, GRECO invites the Monegasque authorities to authorise the publication of this report as soon as possible.