

Strasbourg, 5 September 2014

Greco (2014) 11E revised

## **Review of Council of Europe Conventions**

Response to the European Committee on Crime Problems (CDPC)  
regarding the Criminal Law Convention on Corruption (ETS 173)  
and its Additional Protocol (ETS 191)

**Prepared by the Bureau of the Group of States against Corruption (GRECO)  
(Berne, 5 September 2014)<sup>1</sup>**

---

<sup>1</sup> On behalf of GRECO, pursuant to decisions 34-36 adopted by GRECO 64 (Strasbourg, 16-20 June 2014).

The Group of States against Corruption (GRECO) and its Bureau have taken note of the letter from Mr Jesper HJORTENBERG, Chair of the CDPC, of 25 March 2014 concerning the implementation of the Committee of Ministers' decision of 10 April 2013 on the review of Council of Europe Conventions and the responsibilities of the CDPC and relevant convention-based bodies in this respect. The CDPC's request for information - as far as GRECO is concerned - was related to the Criminal Law Convention on Corruption (ETS 173) – hereafter “the Convention” – and its Additional Protocol (ETS 191).

Following discussions of these matters at both GRECO and Bureau level, the CDPC is invited to take note of the following observations:

1. The Council of Europe was a pioneering standard-setter in the area of international anti-corruption standards at the time of the adoption of the Convention and its Protocol. This has been confirmed on numerous occasions, not least when the UN Convention against Corruption - which to a large extent provides equivalent provisions - was adopted several years later.
2. The Convention and its Protocol have been ratified by a large majority of Council of Europe member States: the Convention by 44 member States (and Belarus) and the Protocol by 36 member States. The three Council of Europe member States which have not as yet ratified the Convention are Germany, Liechtenstein and San Marino.
3. GRECO monitored, in great detail, some of the provisions of the Convention in its Second Round Evaluations and the bulk of the provisions of the Convention and its Protocol under its Third Evaluation Round. It should be noted that all GRECO members have agreed to such monitoring, regardless of whether they have ratified the two instruments or not. In this context, it is also worth mentioning that GRECO recommendations are not only limited to criminal law compliance with the provisions under scrutiny but, also, to the ratification of the instruments and/or withdrawal of reservations whenever appropriate.
4. GRECO's monitoring experience shows that the ratification of the two instruments did not automatically, nor in all cases, lead to a satisfactory level of alignment of domestic legislation with their letter and spirit. This is evidenced by the fact that all States that have ratified these instruments have received recommendations to address certain shortcomings and lacuna in their domestic legislation, e.g. concerning the criminalisation of members of domestic public assemblies for acts of corruption and trading in influence, sanction levels in connection with private sector bribery or dual criminality requirements for corruption offences committed abroad by citizens or residents of a given State. On the positive side, GRECO's recommendations have clearly prompted a very large number of member States to address the problems identified in a constructive manner, as shown in GRECO's impact assessments (“compliance procedures”) which, for a few member States, are ongoing.
5. Although not designed for ascertaining a possible need to revise or amend the text of the Convention or its Protocol, GRECO's monitoring work has not revealed any particular shortcomings that might need to be addressed at present nor any need for “promotional” action concerning these instruments. A detailed exchange of views regarding these matters held at its 64<sup>th</sup> plenary meeting (Strasbourg, 16-20 June 2014) confirmed this view.

6. Nevertheless, it should be recalled in this connection that the Committee of Ministers had invited the CDPC, in co-operation with GRECO and the European Partial Agreement on Sport (EPAS) to consider the feasibility of an Additional Protocol to the Criminal Law Convention on Corruption (ETS 173) which could expand the scope of application of its provisions to the private non-profit sector, notably sport. It is noteworthy in this context that the Convention aims at protecting society against corruption in both the public and private sectors. However, it defines private corruption with reference to “business activity” thus deliberately excluding any non-profit oriented activities carried out by individuals or organisations. The drafters of the Convention made this choice in order to focus on the most vulnerable sector, i.e. business activities - fully aware that this choice might well leave certain legal gaps.

7. Following a special tour de table on this subject at GRECO’s 60<sup>th</sup> plenary meeting (Strasbourg, 17 - 21 June 2013) and in light of the recent exchange of views referred to above, it would be highly desirable from GRECO’s perspective if the CDPC would commission a feasibility study (or set up a working party) on the advisability of amending the Convention or complementing it with an Additional Protocol with a view to covering the non-profit sector which has up until now not received much attention in terms of corruption risks and the applicable legal framework (e.g. private associations - including those operating at international level, foundations, labour unions, charities, churches involved in service delivery to the community, etc.). Obviously, the recently adopted Council of Europe Convention on the Manipulation of Sports Competitions would need to be taken into account in this context.<sup>2</sup>

---

<sup>2</sup> The Convention was adopted by the Committee of Ministers at its 1205th meeting, on 9 July 2014, and will be open for signature on 18 September 2014, on the occasion of the 13th Council of Europe Conference of Ministers responsible for Sport which will take place in Magglingen (Switzerland).