



Strasbourg, 10 March 2006

Public
Greco Eval II Rep (2005) 3E

Second Evaluation Round

Evaluation Report on Cyprus

Adopted by GRECO
at its 27th Plenary Meeting
(Strasbourg, 6-10 March 2006)

I. INTRODUCTION

1. Cyprus was the twenty-fourth GRECO member to be examined in the Second Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Richard ROGERS, Senior Counsel to the Assistant Attorney General, Criminal Division, Department of Justice, United States of America; Mr Tibor SEPSI, Legal Advisor, Ministry of Justice, Department of Public Law, Hungary; Ms Michelle BUONTEMPO, Senior Manager, Company Compliance Unit and Legal Adviser to the Registry of Companies, Financial Services Authority, Malta. This GET, accompanied by a member of the Council of Europe Secretariat, visited Cyprus from 1 to 4 March 2005. Prior to the visit, the GET was provided with replies to the evaluation questionnaire (document Greco Eval II (2004) 13E) as well as copies of relevant legislation.
2. The GET met with officials from the following governmental organisations: The Unit for Combating Money Laundering (MOKAS), the Police, the Deputy Attorney General, the Co-ordinating Body against Corruption (the Chairman), Ministry of Justice and Public Order, the Public Service Commission (the President), the Public Administration and Personnel Department, the Office of the Ombudsman, the Ministry of the Interior, the District Court of Nicosia (the President), the Registrar of Companies, the Inland Revenue and the Auditor General. Moreover, the GET met with members of the following non-governmental institutions: the Bar Association (the President), Civil Servants Union and the Institute of Certified Public Accountants.
3. It is recalled that GRECO at its 10th Plenary meeting (July 2002), in accordance with Article 10.3 of its Statute, agreed that the 2nd Evaluation Round would deal with the following themes:
 - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;¹
 - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
 - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.
4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Cypriot authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Cyprus in order to improve its level of compliance with the provisions under consideration.

¹ Cyprus ratified the Criminal Law Convention on Corruption on 17 January 2001.

II. THEME I – PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

5. Confiscation is considered an “additional penalty”, according to legal theory and practice in Cyprus. It is always decided by a court and normally dealt with prior to the sentencing of an offender. The legal basis for confiscation is contained in the Prevention and Suppression of Money Laundering Activities Law (No. 61 of 1996) (“AML”) as amended.
6. According to the Anti-money laundering legislation, confiscation can be applied to any criminal act that constitutes a predicate offence for money laundering. All offences punishable with more than one year of imprisonment (Section 5, AML) are considered predicate offences to money laundering. Thus corruption offences are predicate offences. It is possible to use confiscation in some cases where there can be no conviction (*in rem confiscation*): Sections 32 and 33, AML provide that, upon application of the Attorney General, confiscation may be used when the suspected person is outside the jurisdiction or has died, provided there is *prima facie* evidence of the commission of a prescribed offence by the suspect person and indication that the property may be transferred or removed from Cyprus.
7. The use of confiscation with regard to the proceeds of crime is obligatory; the prosecutor *shall* submit a relevant application to the court and, the court *shall* after conviction, consider whether the accused acquired any proceeds from the commission of the predicate offence (Section 6, AML) and, in such a case make the confiscation order with regard to the proceeds of crime and its instrumentalities (Section 8).
8. It is stated in the AML that “*all payments which have been made to the accused or to any other person at any time...in connection with the commission of a predicate offence are deemed to be proceeds of the accused...*” (Section 7.1(a), AML). A bribe, which could also be considered as the instrumentality of a crime would be covered by this notion.
9. Confiscation of property held by a third party is possible, except for situations in which parties hold property in good faith. The law refers to situations where the offender has transferred property as gifts (transfers of property to another directly or for a value considerably lower than the actual value) (Sections 7 and 8).
10. Confiscation is possible also for secondary proceeds (transformed or converted into other property). Expenditures for gaining the proceeds cannot be deducted.
11. Value confiscation of the proceeds of crime is possible. In such a case the court may, unless presented contrary evidence, “assume” the value (Section 7, AML).
12. The burden of proof for confiscation lies initially with the prosecutor. Once an application for confiscation is made to the court, the defendant has the burden to prove that the property is not criminal proceeds. This applies with regard to any property acquired by the convicted person after having committed the particular offence or during six years prior to the offence and to any expenditure incurred or other property received free of charge, unless it is proved by the offender that the property does not belong to him/her or that a serious risk of injustice might take place (Section 7, AML). The latter is a requirement the court always has to take into account.

13. The GET was also informed that as an alternative to confiscation, the court may impose a “corresponding pecuniary penalty” by applying a summary procedure in cases where the kind and amount of the benefit may be more easily determined by an evaluation of the financial position of the accused and his/her family (Section 49, AML). The GET was informed that this possibility had never been used.

Interim measures

14. The legislation concerning confiscation of the proceeds of crime, i.e. the AML Law is complemented with regulations on interim measures, i.e. restraint orders, seizure and freezing (AML, Sections 14, 15 and 32, etc).
15. As is the case for confiscation, interim measures apply with regard to proceeds of corruption, since crimes of corruption are predicate offences for money laundering.
16. A “restraint order” is always decided by a court. This measure may be used when criminal proceedings are about to be instituted or have been instituted but not concluded. A restraint order may also be decided by a court when the prosecutor or the Unit for Combating Money Laundering (MOKAS) can show reasonable suspicion that a money laundering offence has been committed. A restraint order prohibits “transactions in any way in realisable property” and is noticed to “all persons affected by the order” (Sections 14(2) and (5), AML). It is possible to reconsider a restraint order at any time when the “real value” of the property appears to be different from the “assessed value”. A restraint order may be directed towards property held by the offender or any other person who has benefited from the offence (Section 14(3), AML). Restraint orders are possible with regard to any property, including bank, financial and commercial records.
17. Although a restraint order prohibits any transaction with regard to the concerned property, that prohibition may be subject to particular conditions and exceptions as specified in the order. A restraint order may apply to all realisable property or to specific property held by the person in question or to property transferred to a third party.
18. The AML foresees the management of property during an interim order; the court may at any time appoint a “receiver” to handle the property. This may include temporarily taking possession of the property or dealing with it in accordance with specific directions of the court (Section 14(7), AML).
19. The court may also issue an interim “charging order” on specific property in order to secure future payment to Cyprus of the amount that would have been realised under a confiscation order. Instead of a physical deprivation of the property, a charge is made against the property. A charging order is made following an *ex parte* application by the Attorney General (Section 15, AML). These orders are used particularly with regard to immovable property, certain bonds and funds in court.
20. The legislation (Section 32) also provides for “freezing orders” of property against absent suspects. These may be applied by the court upon an application by the Attorney General when the property holder is outside the jurisdiction or has died and there is *prima facie* evidence against a suspect for the commission of a predicate offence to money laundering and there is a risk that the property may be converted or transferred (Section 32). Since 2003, MOKAS (FIU) has statutory authority to give administrative instructions to financial institutions to postpone transactions; two such orders were issued in 2003 and nine in 2004.

Statistics

21. The GET was informed that during the period 2002-2004, interim measures had been applied and orders had been obtained in 36 cases, three of which concerned corruption; one regarding corruption of public officials of a land registry, one regarding public officials of a municipality (building permit) and one dealing with private corruption. In one of these cases there were five accused and 15 freezing or restraint orders were issued by the Court. The value of the property was approximately CY£ 600,000 (approximately 1,045,000 Euros) and included 19 plots of land.
22. The GET was informed that during the same period of time there had been seven cases where confiscation had been applied. Confiscation had not yet been used, however, in any corruption case. All of the aforementioned corruption cases in which interim measures were used were still pending at the time of the visit by the GET.

Mutual legal assistance: interim measures and confiscation

23. Cyprus is party to various international instruments, multilateral as well as bi-lateral, aimed at facilitating and organising mutual legal assistance in criminal matters, including the European Convention on Mutual Legal Assistance in Criminal Matters (implemented through Law No. 23(I)/2001), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. Furthermore, Cyprus has ratified the UN Convention against Transnational Organized Crime and the UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
24. The Ministry of Justice and Public Order is the Central Authority through which all requests for mutual legal assistance are channelled, whether Cyprus is the requested or the requesting State. The GET was informed that the Central Authority had received 137 mutual assistance requests in 2004, 120 in 2003 and 89 in 2002. In this period only one request concerned confiscation. The Central Authority had sent 25 requests for assistance abroad in 2004, 15 in 2003 and 24 in 2002.
25. The GET was informed that the system works satisfactorily and that the requests are generally dealt with without any delay. The Central authority works on the basis of a flexible approach and trust with other countries. For example, requests sent via telefax are dealt with without delay and the original request can be submitted afterwards.
26. The GET was informed that the fact that Cyprus law does not provide for civil forfeiture does not prevent Cyprus from granting assistance in civil forfeiture cases upon request from other countries.

Money laundering

27. Money laundering is penalised according to Section 4 of the Prevention and Suppression of Money laundering Activities Law (AML). The money laundering offence is applicable to any person who knows or ought to have known that any kind of property constitutes the proceeds of crime, and nevertheless i) converts, transfers or removes such property or ii) conceals or disguises the true nature or location of such property or iii) acquires, possesses, or uses such property or iv) assists in any of the preceding acts or v) provides false information to enable others to benefit from the commission of any predicate offence to money laundering.
28. Money laundering can be punished with up to 14 years imprisonment if committed intentionally and otherwise up to five years of imprisonment. In either instance a pecuniary penalty may be

imposed in addition to the prison sentence or in place of it. Offences of corruption are all predicate offences to money laundering, regardless of whether the corruption offence is committed in Cyprus or abroad (Section 4(2), AML).

29. In Cyprus all persons who reasonably suspect that someone is engaged in money laundering and who come across the information during their “trade, profession, business or employment” are obliged, according to Section 27, AML, to report the money laundering offence to the police or to the Unit for Combating Money Laundering Offences (MOKAS).
30. MOKAS is established by the AML (Section 53) as the FIU of Cyprus. MOKAS is a multi-agency unit, which consists of representatives of the Attorney General, the Chief of Police and the Director of the Department of Customs. The Unit is headed by the representative of the Attorney General. In addition to law enforcement staff it includes professionals, such as accountants and financial analysts. MOKAS is responsible for the gathering of information as well as the investigation of money laundering cases and co-operates closely with all Law Enforcement Authorities during investigations. According to sections 54 (3) of the AML: *“Any Report made at a police station, in respect of the commission of a prescribed offence, shall be transmitted forthwith to the Unit (FIU) by the officer in charge of the said police station.”* Furthermore, it should be noted that the FIU cooperates with the police authorities during the investigation of serious predicate offences in order to apply the relevant law on provision of measures and to ensure that appropriate money laundering charges result. (Competence for dealing with suspected terrorist financing was assigned to MOKAS in 2001).
31. The GET was informed that MOKAS is not only a law enforcement body, but is also responsible for training of its own staff, the police, prosecutors, judges, bank employees, accountants and attorneys (see also Theme III). Police are regularly trained in matters relating to money laundering and corruption.
32. During the period 2002-2004 there were four cases of prosecution for corruption (as a predicate offence to money laundering). In one of these cases the accused was acquitted, in another the perpetrator was convicted to 18 months imprisonment. The two other cases were pending before the Court at the time of the GET’s visit.

b. Analysis

33. The GET was of the opinion that Cyprus has a comprehensive legal framework in the area of confiscation of proceeds from corruption. The regulations are primarily aimed at fighting money laundering, but because all corruption offences are by definition predicate offences for money laundering, they adequately provide for confiscation in corruption matters in most cases.
34. Confiscation of the proceeds of crime is mandatory. Value confiscation is possible and property may be confiscated from a third party. Moreover, confiscation of secondary proceeds is possible and expenses for gaining proceeds of crime are not deductible. A burden shifting provision (the burden of proof that assets were legally obtained shifts to the defendant) is in place regarding the confiscation of proceeds from crime.
35. Cyprus lacks the possibility to use civil forfeiture when there is no criminal conviction. The GET was informed that civil forfeiture is not envisaged “for the time being.” However, the authorities told the GET that it simply has not had sufficient experience with the existing system to consider the adoption of such a practice, but that it is possible that civil forfeiture might be introduced in the future. In order to make the confiscation regime more powerful, the GET was of the opinion

that, although this is not an international obligation, civil forfeiture would be an important complement to the existing post conviction confiscation regime. *The GET observes that Cyprus should consider the introduction of civil forfeiture in situations where no criminal conviction can be obtained.*

36. The system of confiscation is complemented with various interim regimes to secure a confiscation order. In this regard the legal framework appears to be well developed.
37. The GET could not disregard the fact that, despite the solid legal framework, the use of interim measures and, in particular, confiscation in cases of corruption is very limited. Interim measures had only been applied in three cases during the last three years. There may be various reasons for this. One reason is no doubt the fact that there is a low level of corruption cases under investigation. There is no specialised central body with a particular responsibility for corruption and MOKAS, is primarily an FIU, responsible for money laundering and the investigation of such cases. Moreover, there is no Unit in the Police that is assigned particular responsibility for corruption offences.
38. The GET was repeatedly told that corruption is not a big problem in Cyprus as there were very few such cases. This situation may have a negative impact on alertness with regard to corruption in general. The GET was under the impression that there was not an articulated, proactive approach within the Police to seek out corruption. A higher degree of specialisation within the Police with regard to corruption could possibly lead to a higher level of suspected/detected cases of corruption in Cyprus than is the case at present. Moreover, training of the Police with respect to the investigation of corruption and the use of interim measures would also provide a more solid basis for the Police. The GET was informed that MOKAS is in charge of training and it was confirmed by representatives of MOKAS that further and deepened training would be a useful complement to the existing legislation on the use of confiscation and interim measures. Consequently, the GET **recommends to enhance the specialisation and training of the police with regard to the investigation of offences of corruption in general and the use of confiscation and interim measures in particular in order to provide for more proactive law enforcement.**
39. The GET noted that procedures are also in place for mutual legal assistance at international level and these appear to be appropriate and functional with regard to confiscations, including *in rem* requests from abroad.

III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework

40. The Constitution of Cyprus contains general principles for public administration. More detailed regulations are contained in the Public Service Law, which in Section 2 provides a definition of the public service. That definition excludes from coverage the judicial service, service of the Armed or Security Forces, service in the office of the Attorney-General or the Auditor-General or their Deputies or the Accountant-General or his Deputies or service in any office provided for by other provisions of law or service by those whose remuneration is calculated on a daily basis or service by persons who are employed on a casual basis in accordance with “Employment of Casual Workers”. The Public Service Law is complemented with several regulations. Public Administration also covers regional and local authorities and any other legal person or entity of

public law (Law on General Principles of Administrative Law, Section 2). There are approximately 16,500 officials employed in the Public Administration in total, more than 3,000 of these are temporarily employed, casual staff. Public administration consists of higher independent officials appointed by the President or the Council of Ministers and in some cases with the approval of Parliament (such as the Auditor General) and ordinary public service officials/staff who are appointed by and under the authority of the Public Service Commission, which is a central Constitutional body created to provide for uniformity throughout the public service.

Anti-corruption policy

41. The authorities maintain that the level of corruption is low and there is no particular anti-corruption policy in Cyprus. Fundamental principles aiming at providing a sound public administration are laid down in the Constitution and in legislation, in particular in the Public Service Law. The GET was also informed that ethical codes of conduct were contained in the Public Service Law. Consolidated codes of conduct and guidelines concerning governmental organisations were being drafted under the responsibility of the Public Administration and Personnel Department of the Ministry of Finance. It is expected that semi-governmental organisations will follow. Moreover, the GET was told that the work and practices of the Public Service Commission contribute to the soundness and uniformity of public administration.
42. Although there is no particular anti-corruption strategy developed for the Public Administration, there is a Co-ordinating Body Against Corruption, established by the Government in 2003 (following a recommendation in GRECO's First Round Evaluation Report). The Anti-Corruption Body, which serves as an advisory body to the Government, is composed of representatives of the Deputy Attorney General (Chair), the Ministry of Justice and Public Order, the Police, the Auditor General, the Chairman of the Parliamentary Committee on Legal Issues, the Chairman of the Parliamentary Committee on Institutions and Values, the Chairman of the Bar association and the Chairman of the Institute of Certified Public Accountants. The Co-ordinating Body against Corruption meets every three months to discuss problems of corruption and examine measures against corruption, including at the international level. It submits an annual report on its activities to the Government.

Transparency

43. The GET was informed that, as a general rule, the public can have access to administrative information except confidential information kept by various Departments. There is no special law dealing with the issue of access to public information, instead the authorities referred to Article 29 of the Constitution (Freedom of Speech and Expression). The Law on the Protection of Personal Data or legislation concerning security and defence matters provides rules on confidential information.
44. The authorities pointed out to the GET that decisions not to provide information can be challenged in accordance with Article 29 of the Constitution, either to the authority concerned or to a competent court, or to both. See below ("Control of Public Administration").
45. Public authorities dealing mainly with town-planning or similar issues of public interest follow different forms of public consultations when taking decisions. For example, the relevant authority might ask in writing for the opinion of residents who would be affected by the granting of permission for developing an amusement place in a residential area. Other authorities may call

the public to an open hearing or publish their intention to take an action and await possible reactions from the public.

Control of Public Administration

46. The Public Service Commission was already in operation at the time of the establishment of the Republic in 1960. The Commission which is a Constitutional body with members appointed by the President for a period of six years, has the overall responsibility to guarantee respect for certain standards in the Public Service. According to Article 124 of the Constitution the duty of the Public Service Commission is “to appoint, confirm, emplace on the permanent or personable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of public officers”. More detailed rules of the Commission are contained in the Public Service Law (1990). The decisions of the Public Service Commission may always be appealed – through an administrative appeal – to the Supreme Court. (The Public Service Commission will be further referred to below.)
47. Administrative complaints: Article 29 of the Constitution provides that anybody may “*address a written request or complaint to any competent public authority*” and have it attended to and decided expeditiously. Moreover, it is required that “*an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days*”. Moreover, when any person is aggrieved by a decision by an authority or when no such decision is notified within thirty days, s/he may have recourse to a higher administrative authority if the law provides for such an authority or to a competent court.
48. Article 146 of the Constitution provides for the possibility to challenge administrative decisions before the Supreme Constitutional Court. Decisions, acts or omissions of any organ, authority or person, exercising any executive or administrative authority are subject to such challenge.
49. The Commissioner for Administration (Ombudsman) is an independent authority established by law in 1991. The Commissioner is appointed for a term of six years by the President of the Republic, on the recommendation of the Government and with the prior consent of Parliament. The Commissioner conducts investigations into (i) complaints against authorities or public officers² for breaches of human rights or the law or the rules of proper administration lodged by persons who are directly and personally affected, (ii) any matter concerning the functioning of any authority, upon order by the Government and (iii) any matter of general interest, *proprio motu*.
50. The Commissioner, in the course of his/her investigation, has the power to call any public officer or other person to give evidence or to furnish information or to produce documents. The Commissioner’s investigations are not open to the public. After the completion of an investigation, if the Commissioner concludes that maladministration or injustice has been done to the complainant, s/he draws up a report with a recommendation to the competent authority for redress. The Commissioner submits every year to the President of the Republic, the Government and Parliament (a special Committee responsible for the Commissioner) a report about the exercise of his/her functions with comments and suggestions. This report is published.

² The authorities excluded from the scope of the Ombudsman are the President of the Republic, Parliamentarians, the Government, the courts, the Attorney General, the Governor of the Central Bank, and the Public Service Commission in relation to actions concerning their functions under the Constitution and ministers in relation to actions concerning matters of general governmental policy and activities as members of the Government.

51. If, in the course of an investigation of a complaint, the Ombudsman comes across indications that a criminal offence of corruption may have been committed, the case is transmitted to the Attorney-General. The GET was told that the Commissioner received some 2,400 complaints in 2004 and that half of them concerned maladministration. The GET was informed that so far, the Ombudsman has never come across any case of corruption or corruption type of activity.
52. The Accountant-General is part of the Public Service. S/he is appointed by the President and has the main responsibility to manage and supervise accounting operations with respect to all government accounts and other assets (Article 127 of the Constitution). The Accountant-General heads the Treasury of the Ministry of Finance, which is an independent office. In addition there are Treasury representatives in every Ministry. These perform an *ex ante* control.
53. The Auditor General is an independent constitutional official appointed by the President. According to Article 116 of the Constitution, the Auditor General audits all disbursements and receipts and inspects all accounts of moneys, assets and liabilities incurred under the authority of the Republic. The Audit Office covers central Government bodies, local authorities and other central public organs, but not State controlled companies which fall under company legislation.
54. The Auditor General performs three distinct types of audits: Financial/Statutory audits (auditing of the financial statements of all statutory bodies, annually), technical audits and performance audits (value for money, efficiency, etc). The Auditor General reports annually to Parliament via the President. The GET was informed that the office comes across some 10 cases (however, the figure vary from year to year) of suspected criminal activity every year, which are reported to the Attorney General. One case of suspected corruption had been submitted in 2005.

Recruitment, career and preventive measures

55. The Public Service Law (starting at Section 30) determines the procedures for selection and recruitment of public officials. Posts in the Public Service are categorised under three groups: first entry posts (external recruitments), first entry and promotion posts (external as well as internal recruitment) and promotion posts (internal promotions). The external recruitments are always advertised in the Official Gazette of the Republic. The duties and responsibilities of a post and the qualifications required are described in "schemes of service". Furthermore, the Public Service Law describes in detail how various categories of posts are filled. In addition to basic requirements, such as citizenship, age and education, scores in written tests, performance during interview, professional qualifications and experience are taken into consideration. Moreover, the law requires that no person be appointed to the public service if s/he has been convicted for an offence involving dishonesty or moral turpitude or if s/he has previously been dismissed from the public service for a disciplinary offence.
56. One of the important tasks of the Public Service Commission is to handle recruitment to permanent posts. This centralised system covers most of the public administration and is aimed at providing a sound and objective recruitment to official posts. The recruitment of temporary staff (some 30 per cent of the total work force) is decentralised and rests with the respective departments. The GET was informed that temporary or casual staff are mainly recruited for the temporary performance of duties arising from vacant posts or in some instances for tasks requiring specialised knowledge. Their rights and duties are considerably less regulated than in the case of permanent staff.

Training

57. Newly recruited civil servants undergo induction training concerning *inter alia* the legal framework and the functioning of public administration. They are obliged to pass specific examinations during the two years following their appointment, before they are confirmed in their posts.
58. As far as the GET was informed, in-service training for already employed staff is rare. Training is rare also with regard to reforms and new procedures within the public service, instead changes, such as new legislation, are communicated by circulars and it is primarily the senior officials who are responsible to train and supervise their subordinates. The Personnel Department of the Ministry of Finance, which is in charge of several of the new reforms and related training, confirmed that there was a need for more in-service training, particularly regarding reforms and changes in laws and procedures.
59. It was mentioned, however, that sporadic anti-corruption seminars or training on ethics were sometimes organised and attended by civil servants from functions particularly susceptible to corruption.
60. The Cyprus Academy of Public Administration, established by decision of the Council of Ministers, is in charge of the organisation of training programmes addressed to public officers and – where possible – to officers from the wider public sector (semi-government organisations, local authorities).

Codes of conduct/ethics

61. Rules on the conduct and ethics of civil servants are to a large degree contained in various parts of the Public Service Law and in the Law on General Principles of Administrative Law. These regulations are *inter alia* contained in Part VI of the Public Service Law concerning “duties, obligations and rights...” and cover principles of legality, impartiality and objectivity, conflicts of interests, etc. These rules are complemented with comprehensive lists of sanctions included in Part VII of the same Law (“Disciplinary Code”).
62. The GET was informed that a consolidated Code of Conduct for all public officials was being drafted by the Personnel Department of the Ministry of Finance. Although the draft was not made available to the GET, it was informed that the draft was based on the Model Code of Conduct for Public Officials of the Council of Europe (Recommendation No. R (2000) 10). At the time of the adoption of the present report the work on the draft Code was pending.

Conflicts of interest

63. The Public Service Law provides for a range of regulations, which aim at preventing conflicts of interest. *Inter alia*, public officials are:
 - (a) to be impartial in carrying out their duties, and act based on objective criteria;
 - (b) not to undertake on a personal level to solve matters in which they or a relative has a personal interest;
 - (c) not allowed to participate in the same meeting of a collective body as a colleague or a relative;
 - (d) not entitled to receive payment for any publication or broadcast without approval of the authority (Section 62.3);

- (e) not to practice any profession or trade or employ themselves in any occupation or business other than their duties in the public service without consent from the authority Section 65(2));
 - (f) not to participate in the administration of any company or any other undertaking of a private nature or to hold any share in any non-public company or partnership without the approval of the authority (Section 65(3) a and b).
64. The law also specifies that approval may be granted where there is no interference with the efficient performance of the public officer's duties.
65. There is no legislation or rule imposing regular or periodical rotation of all staff.
66. There are no specific measures in place to control the phenomenon of public officials moving to the private sector. The GET was informed, however, that such situations will be considered in specific legislation. The authorities have added that the phenomenon of civil servants moving to the private sector is not usual in Cyprus because of the generally attractive benefits of employment within the public sector.

Gifts

67. The issue of gifts to public officials is regulated in the Penal Code (Passive bribery). Gifts are covered in more detail by Section 69 of the Public Service Law, which states the following:
- (1) *No public officer, shall either directly or indirectly, receive or give any presents in the form of money, other goods, free trips or other personal benefits, other than ordinary gifts from or to personal friends. This provision may be relaxed by the Council of Ministers in specified cases or in any special case where the Council of Ministers considers that it would be undesirable or contrary to public interest for the present to be refused.*
 - (2) *Where it would be undesirable in the public interest to refuse a present, the public officer may accept the present but shall immediately report the matter to his Head of Department, whereupon the present shall be dealt with in the prescribed manner.*
 - (3) *A public officer shall immediately report to his Head of Department the offer to him of a present made contrary to the provisions of this section and the present shall be dealt with in the prescribed manner.*
 - (4) *If a monetary or other present is offered or given to an officer in consideration of a service rendered or to be rendered by him in his official capacity, the officer must immediately inform his Head of Department.*
68. If these rules are violated, a public officer is liable to disciplinary proceedings according to the procedure laid down in the Public Service Law (see below).

Declarations of Assets

69. The Public Service Law contains a rule on declaration of assets (Section 66(2)) of civil servants. This rule has never been applied in practice. However, in 2004 a Law No.50(1)/2004 on Declaration of Assets was enacted which obliges all high-ranking public officials, including the President of the Republic, the Attorney-General, Ministers and all higher ranked public officers to declare their assets to a special committee of the House of Representatives constituted by this

law. This concerns more than 3,000 officials. The submission of a declaration is an obligation (every three years) subject to a fine or imprisonment. Assets of dependent children are to be included, however, there is no obligation to declare the assets of a spouse. The declarations are confidential.

Reporting corruption

70. As a follow-up to GRECO's First Round Evaluation Report on Cyprus (Greco Eval I Rep (2001) 6, recommendation iv), the Public Service Law was amended in December 2003 to include a clear obligation on civil servants to report to their superiors suspicions of corruption in the service. Such a report must be in written form.
71. With regard to the protection of those who report suspected corruption ("whistleblowers"), the authorities have mentioned the labour law protection that there must be objective grounds for dismissal of officials from their posts and the Civil Service Law, which provides that any officer can serve until the age of retirement and that compulsory retirement as a disciplinary measure cannot be imposed for reporting of suspected corruption. The authorities have added that Section 9 of the Law No. 7(III)/2004 provides that an official who in contravention of Article 9 of the Civil Law Convention on Corruption (ETS 174) imposes an unjustified punishment on a "whistleblower" for reporting corruption, commits an offence which may lead to imprisonment or a pecuniary penalty. Moreover, the possibility to file a civil action for compensation is always open to a "whistleblower".

Disciplinary proceedings

72. According to the Disciplinary Code embedded in the Public Service Law, a public officer is liable to disciplinary proceedings if s/he commits an offence involving dishonesty or moral turpitude or if s/he commits an act or omission amounting to a contravention of any of the duties or obligations of a public officer (Section 73).
73. When a public officer has been reported for a disciplinary matter, a departmental inquiry is made by the appropriate authority where the official is posted. The inquiry is made by a senior officer or, sometimes, by an official from another department. If the investigation discloses the commission of a disciplinary offence, the appropriate authority refers the matter to the Public Service Commission. The Commission conducts a hearing which is completed in the same way as a hearing of a criminal case in a summary trial.
74. If criminal proceedings are instituted against a public officer, disciplinary proceedings based upon any grounds that are also involved in the criminal proceedings are either not taken or are continued against the officer until the criminal proceedings have been finally disposed of (section 77 of the Public Service Law). Where a public officer has been found guilty of a criminal offence, no disciplinary proceedings can be taken against him/her on the same charge, but proceedings may be taken for a disciplinary offence arising from the conduct which, though connected with the criminal case, does not raise the same issue as that of the charge in the criminal proceedings (section 78 of the Public Service Law).
75. Disciplinary sanctions include the following measures: reprimand (oral), severe reprimand (written), disciplinary transfer, stoppage of annual increment, deferment of annual increment, fine, reduction in salary, reduction in rank, compulsory retirement and dismissal (which entails the forfeiture of all retirement benefits). In the case of the more severe sanctions, dismissal,

compulsory retirement and reduction in rank, publication of the case in the Official Gazette is required (Section 79(8) Public Service Law).

76. The Public Service Commission keeps records about disciplinary proceedings. According to the Annual Report of the Commission for the year 2003, the Commission dealt with 12 cases. The investigation was completed in 9 of them. In 6 cases, the public officers were found guilty and the following punishments were imposed: dismissal (1 case), compulsory retirement (1 case), severe reprimand (3 cases) and reprimand (1 case).
77. It should be noted that the authority or department where the official is employed has the powers to act summarily and to impose punishments for specific simple offences (such as unpunctuality and failure to perform duties, etc) without delegating the case to the Commission. No information is centrally collected concerning such cases.

b. Analysis

78. The GET noticed a general perception among public officials in Cyprus that there is little corruption and that measures against corruption do not deserve particular priority. International surveys confirm that corruption is not perceived as widespread in Cyprus. The GET heard several times the explanation that Cyprus is such a small country that it would be difficult to benefit from corruption without being discovered. It is true that the level of detected corruption is low; however, there may be various reasons for this. The GET was not convinced that a small population in itself is a deterrent to corruption. One can argue that in a small country in which people to a large extent know each other, the willingness to report activities such as corruption may be less than in a larger and more anonymous society. To this, could be added various other factors listed in the First Round Evaluation Report (Greco Eval I Rep (2001) 6, paragraphs 66 and 67) which may render Cyprus vulnerable to corruption.
79. Moreover, the GET was concerned that the general attitude within public administration - that corruption is a rather limited problem - may lead to a situation where there is a low level of alertness to indications of corruption. At the same time, the GET was aware of the fact that Cyprus has followed the recommendations of GRECO in its First Evaluation Report to a large extent and that some of the measures taken have a bearing on the prevention of corruption in public administration. Overall, the GET is of the opinion that Cyprus is rather well equipped to deal with threats of corruption. Nevertheless, there are areas where improvements could be made.
80. Public administration and its regulatory framework are well defined in the Constitution as well as in more detailed legislation, in particular the Public Service Law. Taken together, the principles contained lead to a coherent policy for a sound administration. As was already pointed out in GRECO's First Round Evaluation Report on Cyprus (paragraph 70) there is, however, room for further improvement in the direction of the formulation of an anti-corruption strategy. In the opinion of the GET this would be particularly important with regard to public administration, which has been undergoing extensive reform.
81. Cyprus should be commended for the creation of the Co-ordinating Body against Corruption, which was established in 2003 as a follow-up to one of GRECO's recommendations in the First Round Evaluation Report. The GET considers that this body, which appeared to be an advisory body without any targeted mandate and clear mission, could provide a good platform for the development of a consolidated anti-corruption strategy in public administration. To this end, the GET saw a need to make this body more orientated towards public administration and human

resources, for example, through the inclusion of representation of the Ministry of Finance (Personnel Department), which is involved in administrative reforms. **The GET recommends to make the Co-ordinating Body against Corruption place more emphasis in its work on problems of corruption in public administration and to give it a mandate to make proposals for a consolidated anti-corruption strategy for public administration.**

82. Transparency of public administration is an important tool in general for the prevention and detection of corruption. The GET was pleased to learn that the general rule in Cyprus is that anyone may access public information which is not confidential. There is no particular law dealing with access to public information and the authorities have referred to Article 19 of the Constitution, which *inter alia* states that freedom of speech and expression includes “*freedom to hold opinions and receive and impart information and ideas without interference by any public authority...*”. A request for public information can be made directly to the competent authority which has to reply within 30 days and, ultimately, appealed to a court according to Article 29 of the Constitution.
83. The GET was concerned that access to public information was not regulated in more detail and it noted that a reply to a request for information could be a rather lengthy matter. Moreover, the GET understood that civil servants could not always decide whether to give out government information without permission from the relevant minister. However, the GET was made aware of some guidelines (“Citizens’ guides”) that would assist the public in finding relevant information.
84. The GET was of the firm opinion that transparency in general and access to information in particular is an area which requires more detailed regulation than the general provisions that the Constitution provides in order to avoid decisions that are excessively discretionary and a lack of foreseeability. Moreover, the GET notes that modern legislation concerning access to public information often contains some kind of obligation upon the authorities to assist the public in obtaining information. Consequently, **the GET recommends to develop legislation on the right to access to information held by public authorities, to - subsequently - take measures to inform the public about their right to access information and to enhance transparency in public administration (including “e-government”).**
85. The GET was pleased that public administration is subject to a variety of different control mechanisms, which provide multifaceted and independent monitoring. It noted that administrative appeals are dealt with by the Supreme Constitutional Court. The Auditor General appears to be a modern institution, which carries out different types of audit and has been successful in discovering suspicions of corruption.
86. The GET was, however, surprised to hear that the Commissioner for Administration (the Ombudsman) who deals with complaints and investigations in cases concerning *inter alia* maladministration had never received any complaints concerning corruption matters. Moreover, the GET was told that the Ombudsman would never investigate “political decisions” and noted that the scope of the mandate of the Ombudsman was rather restricted as a number of public officials and institutions were excluded from his/her monitoring. **The GET recommends to clarify the mandate of the Commissioner for Administration, the Ombudsman, to the effect that s/he has the ability to investigate corruption in public administration and to raise the public’s awareness of this aspect of the Commissioner’s mandate.**
87. The Public Service has a comprehensive legal framework. Rules on the expected conduct of public officials are included in the Public Service Law. The GET was pleased to learn that an internal code of ethics was under preparation as a complement to the legislation. It stressed in

this respect that such a code should preferably cover all public officials, regardless of whether they are permanently or temporarily employed. *The GET observed that, as the elaboration of a Code of Conduct for Public Officials appeared to be a lengthy matter, more priority should be given to this work.*

88. The recruitment of new staff to permanent positions in the public service appears to be well regulated and uniform throughout the system as a result of the centralised procedures under the Public Service Commission. The GET noticed that a considerable number of recruitments of temporary staff (30%) were not centrally-operated. Induction training of new recruits appears, on the one hand, to be rather extensive and it is followed by specific tests before new permanent staff are confirmed in their posts. On the other hand, the GET noted that the training provided to the already employed staff should be improved. In-service training is in the view of the GET an important element and means for maintaining skills and for updating staff on changes in the administration. This appears to be particularly important in Cyprus as the public administration in recent years has been subject to considerable reforms. The traditional supervision by superiors and the dissemination of circulars appears to be insufficient. The GET was of the opinion that, once the new Code of Ethics for Public Officials has been adopted, it will be important to organise centralised in-service training or at least centralised training curricula for already appointed staff in addition to the existing induction training of new staff. **The GET recommends to establish regular training for all staff (permanent and temporary) on ethics in public administration.**
89. The GET took note of the regulation on gifts in the Public Service Law, which prohibits public officials from accepting gifts in connection with their duties (except for situations in which it would not be in the public interest to refuse a gift). It welcomed the fact that when it was not in the public interest to refuse a gift, a public official would - regardless of the value of the gift - still have to report the matter to his/her hierarchical authority, who would then deal with the gift in an appropriate manner.
90. The GET was informed that, by virtue of Section 369 of the Criminal Code, all citizens in Cyprus, including public officials, are obliged to report information on (possible) criminal offences to the police and that public officials could do so without the threat of having disciplinary actions taken against them. Cyprus should furthermore be commended for the newly introduced obligation on public officials to report instances of corruption to their superiors. However, the GET was of the opinion that the requirement of making the reports in writing - while it could serve as a safeguard, for example to prevent misinterpretation - could also have a negative effect on the willingness of individuals to report potential corruption. This might be particularly important in a small country where the employment market is limited. **The GET recommends to abolish the requirement that the initial reporting of corruption must be done in written form.**
91. The GET was of the opinion that Cyprus has in place a well-developed legal framework to prevent various situations of conflicts of interest in the Public Service Law. Moreover, a system for the declaration of assets has been adopted. Although it is too early to assess the effectiveness of this system, Cyprus should be commended for the establishment of a mechanism to scrutinise the declarations made by high-ranking public officials. The declarations are not open to public scrutiny. *The GET observed that this situation should be dealt with in the light of the above recommendation concerning transparency in general (cf. paragraph 84).*
92. The GET noted that there are no particular rules in place for situations in which officials move from the public to the private sector. The GET is aware that these situations may be rare in Cyprus, as they are in many other States, but recalls that this is an area of concern in a number

of GRECO reports. **The GET recommends to introduce clear rules/guidelines for situations where public officials move to the private sector, in order to avoid situations of conflicting interests.**

IV. THEME III – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

93. There is a variety of legal persons (i.e. organisations enjoying rights and duties separate and distinct from those persons who are owners/members) in Cyprus. In addition to companies, which are by far the most dominant type of legal persons (there are some 158,000 companies registered in Cyprus), there are non-profit organisations, such as charities, foundations and clubs (according to figures given to the GET, there were 3,225 clubs, 242 foundations and 91 charities). Partnerships do not enjoy legal personality in Cyprus. Companies are either limited by shares or by guarantee. Companies limited by shares are subdivided into private companies limited by shares and public companies limited by shares. Companies of limited liability by guarantee may also have a share capital.

Establishment –registration of legal persons

94. The Company Law, as amended (Chapter 113), contains the requirements for the establishment of companies in Cyprus. The minimum number of subscribers in the case of a public company, is seven, and in the case of a private company, is one. Public companies must have a minimum capital of CY£ 15,000 (approximately 26,000 Euros). The law does not provide for a minimum capital with regard to private companies, but the share capital (and the division of it into shares) shall be declared and explicitly stated in the memorandum of the company. Shareholders may be physical or legal persons, they shall be associated for a lawful purpose and subscribe their names to a memorandum of association. Public companies must have at least two directors, whereas one is enough in private companies.
95. Registration is required for a company to be established. All companies incorporated under the Company Law are required to register at the Company Register. The request for registration should be accompanied by, *inter alia*, the memorandum of association of the company which must state the name of the company, the objects of the company and, in the case of a company having a share capital, the memorandum must state the amount of share capital with which the company proposes to be registered and share holders. In addition, a statutory declaration by a practicing advocate engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, is required before registration. Such a declaration shall guarantee that the law has been followed in the establishment of the company. The information submitted to the Company Registry is subsequently publicly available together with the annual returns, etc.
96. The Company registry is divided into various sections dealing with Cyprus companies, overseas companies, partnerships (although not legal persons) and business names. (The so called “offshore companies” do not exist in Cyprus since May 2004). The Companies Register is different and separate from the Register of Bankruptcies, which is kept by the Bankruptcy section and includes the names of natural persons as well as companies in liquidation. The GET was informed that the Registrar may hinder a person from acting as director in a company if s/he has been subject to bankruptcy, however, there is no “automatic check” in this respect. Also no specific provision to this effect exists in the Company Law. In fact, Article 179(2) of the Company Law provides that if an undischarged bankrupt acts as a director without the permission of the

court, s/he shall be sentenced to imprisonment up to two years or to a fine not exceeding CY£1,500 (approximately 2,600 Euros) or to both, but this particular section of the law does not give the Registrar the power to hinder a person from acting as director if adjudged bankrupt.

97. Moreover, the GET was told that the identity of the person/s behind a partnership is not checked nor is a declaration by an advocate required. Furthermore, the origin of funds in the case of private companies and partnerships is not checked. The registry information is available to the public at the Company Registry, but was not, at the time of the GET's visit, available on the Internet; although there was an ongoing project to that end.
98. In addition to the public Company Registry, the company itself is obliged to keep a record of the current shareholders the company directors and the holders of debentures, and to make it available to the public.
99. Overseas companies (i.e. companies which are already incorporated in another country), which establish a place of business in Cyprus ("branches") are obliged to register with the Company Registry (Section 347 of the Company Law). Such companies file certain documents in order to acquire registration in Cyprus: name, legal form, place of business, seat, purpose of the company and a certificate that it is registered somewhere overseas. In the case of registration of overseas companies, the statutory declaration of an advocate is not necessary. The approval of the Central Bank of Cyprus is required for overseas companies coming from non EU member States, before they can operate in Cyprus.
100. Non-profit organisations, such as clubs, foundations and charities are registered in a separate registry kept by the Ministry of the Interior. Charities are regulated by the Charities Law (adopted in 1925). These are registered following a decision by the Council of Ministers and the Registry contains information on the objectives and the property of the charity as well as the identity of the persons behind the charity (the trustees). The GET was told that during the registration process of charities, other registries, such as police registries, were checked.
101. Clubs and Foundations are subject to the Societies and Institutions Law and are also registered by the Ministry of the Interior. The registry contains information on their aims and goals. Information on their financial resources and representatives are kept in the registry.
102. The GET understood that registries for non-profit organisations were in principle open to the public (except with regard to the annual accounts), upon request and subject to the permission of the Commission for Data Protection.

Limitations on exercising functions in legal persons

103. There is no legislation in Cyprus providing for disqualifications of persons found guilty of offences (including money laundering and corruption) from acting in a leading position in a legal person, nor is it possible to decide on trading prohibitions vis-à-vis such persons.

Liability of legal persons

104. Cyprus law provides for civil liability of legal persons. The Civil Code and the Act ratifying the Civil Law Convention on Corruption establish that legal persons can be held liable for damage caused by illegal acts, such as corruption, money laundering and trading in influence. In addition, administrative sanctions (fines, exclusion of public tenders etc.) can be imposed on legal persons for their involvement in corruption offences, money laundering or trading in influence (see below).

105. Moreover, the law also provides that legal persons can be criminally liable for corruption offences (Law 37(III)/2003, which ratifies the Convention on the Protection of the Communities' Financial Interests, the Prevention and Suppression of Money Laundering Activities Law (AML), Law 2(III)/2004, which ratifies the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union). The conditions, which are provided for in the aforementioned texts, are similar and cover active bribery, trading in influence and money laundering. The act must be committed for the benefit of or on behalf of the legal person. When the offence for the benefit of or on behalf of the legal person is committed by a natural person, that person must occupy a leading position in the legal person, or that person's act must be based on an authorisation/power to represent or act on behalf of the legal person, or to make decisions on behalf of the legal person, or to exercise control within the legal person. Furthermore, a legal person may be found guilty even in cases where the lack of adequate control or supervision within the legal person on behalf of one of the leading persons enables or facilitates the commitment of an offence – for the benefit of the legal person - by a person who is under the control or supervision of the legal person.
106. Criminal liability covers not only instances in which the benefit is effectively realised, but also situations in which the benefit is only potential (Article 9 of the Ratifying Law and Articles 2 and 3 of the First Protocol of the Convention on the Protection of Communities' Financial Interests, as well as Articles 5 and 6 of Ratifying Law 2(III)/2004, which embodies the provisions of the Convention on Corruption). Moreover, the Criminal Code (Chapter 154) provides that the benefit does not need to be realised; it is enough that it is potential (Article 100).
107. The GET was informed that it is possible to assign liability to a legal person whether a physical perpetrator has been convicted or not and that the liability of legal persons does not exclude criminal proceedings against physical persons in cases of active bribery, trading in influence or money laundering. The liability of legal and physical persons would normally be considered in the same proceedings.

Sanctions

108. According to Article 11 of Law 37(III)/2003, which ratifies the Convention on the Protection of the Communities' Financial Interests, if a legal person is held liable, by virtue of the provisions for the liability of a natural person acting in a leading position in a legal person, for active bribery, it is subject to a penalty or a fine not exceeding CY€ 10,000 (approximately 17,500 Euros). It may also be subject to a permanent or temporary prohibition from any commercial activity, or exclusion from any public procurement or state aid or to a judicial decision to wind-up the legal person. Furthermore, according to Article 59 of the AML, a legal person found guilty of not applying preventive measures for money laundering, may be subject to a fine not exceeding CY€ 2,000 (approximately 3,500 Euros). For money laundering offences the fine is unlimited.
109. According to statistics submitted to the GET, convictions of legal persons were as follows: during 2002, 283 legal persons were convicted, during 2003, 205 and during 2004, 161. The GET was informed that no conviction had been obtained with regard to corruption in respect of legal persons. Moreover, there is an internal police record of convicted legal persons.

Tax deductibility and fiscal authorities

110. The GET was informed that “facilitation” payments as well as bribes or other expenses linked to corruption offences are not tax deductible under the Cyprus tax legislation. Reference was made to the Income Tax Law, Section 9, which contains a list of costs which are deductible.
111. The Inland Revenue Department is responsible for the application and enforcement of tax legislation and the application of double taxation agreements between Cyprus and other countries (aiming at the avoidance of double taxation) and may instigate criminal prosecution for tax offences. It is not however directly involved in the detection and reporting of criminal offences such as corruption and money laundering.
112. There is no basis for direct access of the law enforcement to tax records. Information contained in tax records is treated with confidentiality by virtue of tax legislation, the Income Tax Law, the Assessment and Collection of Taxes Law, the Public Service Law and the Processing of Personal Data Law. However, tax legislation stipulates that information contained in tax registries may be disclosed to other authorities, such as the police, subject to the approval of the Minister of Finance. Information may also be provided, following a disclosure order by court.

Account offences

113. According to the Assessment and Collection of Taxes Law, accounting records or books must be kept for a period of at least seven years after the completion of the documents or transactions to which they relate, unless the Director of Inland Revenue notifies the interested persons to the contrary. Moreover, any person who provides to the tax authorities incorrect information, certificates, documents, records, statements or declarations may be subject to an offence according to the same law and to a fine not exceeding CY£ 10,000 – approximately 17,500 Euros - (as from 1.1.2005) or imprisonment for a period not exceeding five years (as from 1.1.2005) or to both fine and imprisonment. In addition, s/he has to pay the tax loss resulting from the false action and the court may impose a further monetary penalty not exceeding four times the tax that would normally have been paid (as from 1.1.2005). Failure to provide accounting records constitutes an offence and may lead to a fine not exceeding CY£ 10 (approximately 18 Euros) per day of delay or to imprisonment for a period not exceeding one year or to both penalties (as from 1.1.2005).
114. There are also account offences provided for in the Criminal Code (Chapter 154); fraudulently appropriating or keeping fraudulent accounts or falsifying books or accounts (Section 311), false statements (Section 312), fraudulent false accounting (Section 313) and false accounting by public officers (Section 314).

Role of accountants, auditors, and legal professionals

115. In Cyprus, all persons - not only certain professionals such as accountants - are obliged to report instances of money laundering they come across, according to the AML (Section 27): “*A person who knows or reasonably suspects that another person is engaged in laundering offences, and the information on which that knowledge or reasonable suspicion is based, comes to his attention in the course of his trade, profession, business or employment, shall commit an offence if he does not disclose the said information to a police officer or to the Unit as soon as is reasonably practicable after it comes to his attention.*” There are no exceptions to this rule with regard to accountants and auditors, however, “privileged information” which has come to the attention of an advocate is not covered by this offence.

116. The Institute of Certified Public Accountants of Cyprus (ICPAC) is a self-regulating body, which was appointed in 2000 by the Council of Ministers as the Supervisory Authority for accountants and auditors in Cyprus. ICPAC was established as a follow-up to the AML. ICPAC is a member of the International Federation of Accountants (IFAC) and follows IFAC standards and codes of ethics. The GET was informed that ICPAC had issued guiding notes for accountants and auditors in Cyprus in 2004 and the Lawyers had issued guidance in 2005. ICPAC has a representative in the “Co-ordinating Body Against Corruption” (see Theme II). The GET was informed that ICPAC, in co-operation with the Unit for Combating Money Laundering Offences (MOKAS) provides annual seminars for accountants on the reporting of money laundering and that corruption as a predicate offence is part of the curriculum.

b. Analysis

117. The GET noted that companies in various forms are the most common type of legal person in Cyprus. In the course of its preparations for membership in the European Union, Cyprus has modernised the Companies Law extensively and it is generally considered a modern legal framework. For example, Cyprus no longer has any “offshore companies” and there are clearly defined domestic company forms (companies limited by guarantee or shares, private or public). Moreover, all types of companies based in Cyprus are obliged to register at the Company Registry and the founders have to submit adequate information to the Registry. The Registry does not check the identity of the persons behind the company, nor does it control that the share capital has been paid. However, a declaration ensuring that the law is followed during the incorporation is required in the registration process for domestic legal persons. The GET noted that the registration process in Cyprus is of a formal nature and that no material checks are carried out on the correctness of the information submitted. The GET was fully aware of the fact that there is a balance to be struck between the efficiency of the registration system and the interest to avoid that companies become vehicles for criminal activity. In this respect, the GET was informed that there is a system of declaration, according to which only an advocate who practices law in Cyprus may certify that the incorporation is legally correct. However, the Companies Law, Cap. 113, section 17(2) states that also “*a person named in the articles as a director or a secretary of the company*” may be accepted by the registrar. The GET concludes that the registration process of companies should contain sufficient checks to prevent domestic companies from being used as vehicles for criminal activity and *observes that Cyprus should consider making it obligatory that a declaration that the law has been followed during the incorporation of a company is made only by an advocate.*

118. The GET noted that the Company Law does not give the Registrar of the Company Registry the power to automatically disqualify a person from acting as director if adjudged bankrupt. The GET was of the opinion that such a measure would further strengthen the role of the registration process. Consequently, *the GET observes that Cyprus should consider the possibility of introducing disqualification from acting as a director in a legal person if the natural person concerned has been adjudged bankrupt as well as if s/he has been convicted of corruption.*

119. The information kept by the Company Registry is open to the public. The GET was pleased that the authorities were in the final stages of making information contained in the Company Registry available on the Internet.

120. As regards non-profit organisations, which also enjoy legal personality, it was more difficult for the GET to have a clear picture of the situation. The legislation governing these bodies was old and, although the registration process appeared to be adequate, the GET was of the opinion that

this process was less well-defined and, above all, the transparency of this registry – kept by the Ministry of the Interior - appeared to be less available and transparent than the one concerning companies. The GET received no information about the future availability of information from this registry on the Internet. *The GET observes that Cyprus should consider revising the legislation relevant for the establishment and transparency of legal persons in the form of non-profit organisations (charities, clubs and foundations), in particular, with regard to public access to information contained in pertinent registries.*

121. The legislation in Cyprus provides for civil and criminal liability of legal persons in cases concerning corruption, including active bribery, trading in influence and money laundering. In addition to this, administrative sanctions can be imposed upon legal persons for their involvement in these offences. The various requirements of article 18 of the Criminal Law Convention on Corruption appear to be fulfilled in this respect.
122. Legal persons are subject to a fine upon conviction for corruption offences and money laundering. In the case of corruption, the fine is limited to CY£ 10,000 (approximately 17,500 Euros). The legal person may be subject to exclusion from a commercial activity (public procurement, etc), and subject to a judicial winding-up decision. In the case of not applying preventive measures for money laundering the fine could be up to CY£ 2,000 (approximately 3,500 Euros).³ The GET was of the opinion that the stipulated fines available for legal persons appeared to be low. This view was shared by officials met. The possibility to wind up a company could be used in extreme cases, but the GET was not informed of any case where this possibility had been applied in a criminal proceeding against a legal person. The GET was therefore of the opinion that the sanctions – leaving aside the possibility of winding up a company which must be considered as an extraordinary measure - did not appear to be effective, proportionate or dissuasive. **The GET recommends to strengthen the sanctions applicable to legal persons convicted of corruption offences with a view to making them more effective, proportionate and dissuasive.**
123. The GET noted that there are no legal measures in place to prevent a physical person convicted for an offence committed through a legal person from carrying out further business through legal persons. The GET took the view that such measures in respect of persons in leading positions in legal persons could be a useful complement to the existing sanctions in order to prevent legal persons from shielding criminal activities, including corruption. Consequently, **the GET recommends to consider the possibility of establishing bans on business activities for physical persons following their conviction for offences, such as corruption.**
124. The authorities stated that facilitation payments, such as bribes, or other similar expenses were not deductible from income for tax purposes and that this was not a problem in Cyprus. Nevertheless, the GET was not convinced that the Tax Law, Section 9, which contains a list of income tax-deductions, excludes all facilitation payments as the list was not exhaustive. Neither did the list refer to payments that were not allowed. This situation appear to somewhat unclear, at least from the view of the general public. *The GET therefore observes that Cyprus should consider amending the legislation in order to make it clear that tax-deductibility for undue advantages and facilitation payments are not allowed.*
125. The GET found that the police is sometimes dependent upon the fiscal authorities in detecting offences such as corruption and money laundering. In this respect, it was noted that the Inland Revenue Department is directly involved in the detection of tax offences, but not with regard to

³ For money laundering offences the fine is unlimited.

other offences such as corruption, which are solely a matter for the Police. Moreover, there is no direct access for the Police to tax records; their access to such information is subject to the approval of the Minister of Finance or a court in each case. The GET considered the strict division between the Police and the tax authorities with regard to access to tax records unnecessarily cumbersome. **The GET recommends to strengthen co-operation between the Police and the tax authorities in the investigation of cases of corruption, in particular, in respect to the reporting of suspicions of corruption and with regard to access to tax records.**

126. The legislation on account offences appears to fulfil the requirements as set out in article 14 of the Criminal Law Convention on Corruption. Moreover, the co-operation between ICPAC and the Unit for Combating Money Laundering Offences (MOKAS) appeared to be particularly promising and the GET was reassured that the regular training of accountants on money laundering also covers aspects relating to the prevention and fight against corruption.

V. CONCLUSIONS

127. Cyprus has a comprehensive legal framework for using interim measures and confiscation. Even if corruption in Cyprus appears not to be on a high level, an anti-corruption policy would be advantageous in the process of the modernisation, and the existing Co-ordinating Body against Corruption could play a major role in this respect. Access to information held by public authorities should be laid down in law. The Company Law is generally well-developed, but legislation concerning non-profit organisations, such as foundations, should be modernised and, the penal sanctions available in respect of legal persons (companies) should be strengthened.

128. In view of the above, GRECO addresses the following recommendations to Cyprus:

- i. **to enhance the specialisation and training of the police with regard to the investigation of offences of corruption in general and the use of confiscation and interim measures in particular in order to provide for more proactive law enforcement (paragraph 38);**
- ii. **to make the Co-ordinating Body against Corruption place more emphasis in its work on problems of corruption in public administration and to give it a mandate to make proposals for a consolidated anti-corruption strategy for public administration (paragraph 81);**
- iii. **to develop legislation on the right to access to information held by public authorities, to - subsequently - take measures to inform the public about their right to access information and to enhance transparency in public administration (including “e-government”) (paragraph 84);**
- iv. **to clarify the mandate of the Commissioner for Administration, the Ombudsman, to the effect that s/he has the ability to investigate corruption in public administration and to raise the public’s awareness of this aspect of the Commissioner’s mandate (paragraph 86);**
- v. **to establish regular training for all staff (permanent and temporary) on ethics in public administration (paragraph 88);**

- vi. **to abolish the requirement that the initial reporting of corruption must be done in written form** (paragraph 90);
- vii. **to introduce clear rules/guidelines for situations where public officials move to the private sector, in order to avoid situations of conflicting interests** (paragraph 92);
- viii. **to strengthen the sanctions applicable to legal persons convicted of corruption offences with a view to making them more effective, proportionate and dissuasive** (paragraph 122);
- ix. **to consider the possibility of establishing bans on business activities for physical persons following their conviction for offences, such as corruption** (paragraph 123);
- x. **to strengthen co-operation between the Police and the tax authorities in the investigation of cases of corruption, in particular, in respect to the reporting of suspicions of corruption and with regard to access to tax records** (paragraph 125).

129. Moreover GRECO invites the Cypriot authorities to take account of the observations made in the analytical part of this report (paragraphs 35, 87, 91, 117, 118, 120 and 124).

130. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Cypriot authorities to present a report on the implementation of the above-mentioned recommendations by 30 September 2007.