Adoption: 18 March 2016
Publication: 2 June 2016

Public
GrecoEval3Rep(2016)2
Theme I

Third Evaluation Round

Evaluation Report on Liechtenstein on Incriminations (ETS 173 and 191, GPC 2)

(Theme I)

Adopted by GRECO
at its 71st Plenary Meeting
(Strasbourg, 14-18 March 2016)

GRECO Secretariat
Council of Europe
www.coe.int/greco

F-67075 Strasbourg Cedex
☎ +33 3 88 41 20 00
Fax +33 3 88 41 39 55

Directorate General I
Human Rights and Rule of Law
Information Society and Action against Crime Directorate

I. INTRODUCTION

1. Liechtenstein joined GRECO on 1st of January 2010, i.e. after the close of the First Evaluation Round. Consequently, Liechtenstein was submitted to a joint evaluation procedure covering the themes of the First and Second Evaluation Rounds. The relevant Joint First and Second Round Evaluation Report (Greco Eval I/II Rep (2011) 1E) in respect of Liechtenstein was adopted at GRECO's 52nd Plenary Meeting (21 October 2011). This report and its subsequent reports are available on GRECO's website (http://www.coe.int/greco).

2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:

   - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (EST 173), Articles 1-6 of its Additional Protocol (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).

3. The GRECO Evaluation Team (hereafter referred to as the "GET") carried out an on-site visit to Liechtenstein on 21-24 September 2015. The GET for Theme I (21-22 September) was composed of Mrs Cornelia GÄDIGK, senior prosecutor at the Prosecution Office of Hamburg, (Germany) and Mrs Doris WOLTZ, Deputy State Prosecutor at the Prosecution Office of the district of Luxembourg (Luxembourg). The GET was supported by Mr Christophe SPECKBACHER from GRECO's Secretariat. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval III (2015) 1 - Theme I), as well as copies of relevant legislation.

4. The GET met with officials from the following governmental and non-governmental institutions or organisations: Office of Foreign Affairs and Working Group on Corruption Prevention, Ministry of Justice, Office of Justice, Office of the Public Prosecutor, the National Police (Unit for Combating Corruption), Court of Justice, the Liechtenstein Bar Association and the Liechtenstein Institute (an academic institution).

5. The present report on Theme I of GRECO's Third Evaluation Round – Incriminations – 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 measures adopted by the authorities of Liechtenstein in order to comply with the requirements deriving from the provisions indicated in paragraph 2. 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 Liechtenstein in order to improve its level of compliance with the provisions under consideration.

6. The report on Theme II – Transparency of party funding – is set out in GrecoEval3Rep(2016)2 - Theme II.

II. INCRIMINATIONS

Description of the situation

7. The Principality of Liechtenstein traditionally draws inspiration from the Austrian legal system (this applies particularly to criminal legislation) as well as from Switzerland with which it forms a monetary and customs union (as a result, a variety of Swiss laws apply in Liechtenstein as well). In addition, as a member of the European Economic Area, Liechtenstein has been part of the Internal Market for over 20 years and as such has been transposing relevant EU legislation into its domestic law. Further general background information can be found in the other part of the present report (theme II – transparency of party funding). The general situation of corruption and risk areas were already examined in the joint first and second evaluation round report and basically reiterated in similar terms during the present on-site visit[1].

8. Liechtenstein signed in November 2009 the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191) but it has not ratified these as yet. The Government has prepared in the end of 2014 a bill (with an explanatory report) to revise several corruption-related offences and provisions of the Criminal Code, which could eventually enable Liechtenstein to ratify the Council of Europe Criminal Law Convention on Corruption without any reservations. The draft also aims at implementing a series of pending recommendations issued by GRECO in the joint First and Second Round evaluation[2]. Following public consultations, the Government adopted the draft and sent it to Parliament in the autumn 2015. The latter adopted the draft in second reading on 3 March 2016. After that, the usual period of 30 days will run to enable any group of 1 000 citizens interested in the subject-matter to file a referendum against the law. The law then needs to be sanctioned by the Reigning Prince within six months, countersigned by the Head of the Government or his deputy and promulgated in the National Legal Gazette (*Landesgesetzblatt*).

Bribery of domestic public officials (Articles 1-3 and 19 of ETS 173)

Definition of the offences under the current provisions

9. Bribery offences involving domestic public officials and the public sector more broadly are contained in Section 22 of the Criminal Code (hereinafter, the CC), which criminalises acceptance of gifts by civil servants [*Beamte*] (article 304 CC), acceptance of gifts by managing employees of a public enterprise (article 305 CC), acceptance of gifts by experts (article 306 CC), acceptance of gifts by staff members and expert advisors (article 306a CC), active bribery of persons referred to under article 304, 305, 306, 306a and of foreign civil servants (article 307 CC), as well as trading in influence examined hereinafter in this report ("prohibited intervention" – article 308). The above provisions must be read in conjunction with other articles, for instance article 74 CC which contains a definition of the expression "official". The original version of the Criminal Code in German is available on-line[3].

10. The wording of the four passive bribery offences involving officials is thus as follows:

[1] See http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports(round2)_en.asp
[2] http://www.llv.li/files/srk/Vernehmlassung%20Abänderung%20Korruptionsstrafrecht_1.pdf
[3] https://www.gesetze.li/get_pdf.jsp?PDF=1988037.pdf

Current provisions of the Criminal Code

Article 304 CC Acceptance of gifts by civil servants *[Beamte]*
1) A civil servant who demands, accepts, or allows him/herself to be promised an advantage for him/herself or a third party in return for the performance or omission of an official act contrary to duty shall be punished with imprisonment of up to three years.
2) A civil servant who demands, accepts, or obtains a promise of an advantage for him/herself or a third party in return for the performance or omission of an official act not contrary to duty shall be punished with imprisonment of up to one year.
3) If the value of the advantage exceeds CHF 10,000 [approx. EUR 9,300], then the perpetrator shall be punished with imprisonment of up to five years in the case of paragraph 1 and with imprisonment of up to three years in the case of paragraph 2.
4) Anyone who accepts or allows him/herself to be promised only a minor advantage shall not be punished according to paragraph 2 unless the act is committed on a "professional basis" [Concept of Gewerbsmässige Handlung[4]].

Article 305 CC Acceptance of gifts by managing employees of a public enterprise
1) Anyone who demands, accepts, or allows him/herself to be promised an advantage for himself or a third party in return for the performance or omission of a legal act which he can perform as a managing employee of a public enterprise shall be punished with imprisonment of up to one year; however, if he does so for the purpose of performance or omission of a legal act contrary to duty, he shall be punished with imprisonment of up to three years.
2) If the performance or omission of the legal act is not contrary to duty, then the perpetrator according to paragraph 1 shall not be punished if he only accepts or obtains a promise of a minor advantage, unless the act is committed on a "professional basis" [Concept of Gewerbsmässige Handlung].

Article 306 CC Acceptance of gifts by experts
An expert appointed by a court or another authority for specific proceedings who demands, accepts, or allows him/herself to be promised an advantage for himself or a third party in return for submission of an untrue finding or opinion shall be punished with imprisonment of up to three years.

Article 306a CC Acceptance of gifts by staff members and expert advisors
1) A collaborator of a managing employee of a public enterprise who regularly influences the business conduct through information, proposals, or documentation and who in this capacity demands, accepts, or obtains a promise of an advantage for himself or a third party in return for an act aimed at influencing the performance or omission contrary to duty of a legal act by the managing employee shall be punished with imprisonment of up to one year.
2) An expert advisor performing services for compensation who significantly influences an official or a managing employee of a public enterprise in conducting official business or in managing the enterprise through information, proposals, or documentation and who in this capacity demands, accepts, or allows him/herself to be promised an advantage for himself or a third party in return for influencing the performance or omission contrary to duty of an official act by the civil servant or a legal act by the managing employee shall be punished in the same manner.

11. As one can take from the above, the different provisions cover various categories of persons, but article 304 CC represents the core provision from the perspective of the Convention (the other provisions cover managers and employees of public enterprises and experts appointed by a court or public authority). In most cases, a distinction is made between situations involving a breach of duty (which constitutes an aggravating circumstance) and situations which do not.

12. The offence of active bribery involving a civil servant and other categories of similar persons is defined in article 307 CC, which mirrors in a more synthetic manner the passive bribery provisions:

[4] Article 70 of the Criminal Code defines "Gewerbsmässige Handlung" as the conduct of the offender who seeks to use the repeated commission of the offence to generate an additional income on a "professional basis".

Current provisions of the Criminal Code

Article 307 CC Active bribery
1) Anyone who offers, promises, or grants an advantage to

1. a civil servant, a member of parliament or of a municipal council, or a foreign civil servant, in return for the performance or omission of an official act contrary to duty (article 304 paragraph 1),
2. a managing employee of a public enterprise, in return for the performance or omission of a legal act contrary to duty (article 305 paragraph 1),
3. an expert, in return for submission of an untrue finding or opinion (article 306),
4. a staff member of a managing employee of a public enterprise, in return for influencing the performance or omission contrary to duty of a legal act (article 306a paragraph 1),
5. an expert advisor performing services for compensation, in return for influencing the performance or omission contrary to duty of an official act or a legal act (article 306a paragraph 2),

for himself/herself or for a third party, shall be punished with imprisonment of up to two years.

2) Anyone who offers, promises, or grants an advantage that is not merely minor to

1. a civil servant, in return for the performance or omission of an official act not contrary to duty (article 304 paragraph 2), or
2. a managing employee of a public enterprise, in return for the performance or omission of a legal act not contrary to duty (article 305 paragraph 1)

for him/herself or to a third party shall be punished with imprisonment of up to six months or a fine of up to 360 daily rates, unless the circumstances do not warrant that the perpetrator who has offered, promised, or granted this advantage be faulted for his/her conduct.

Definition of the offences under the draft provisions in parliament

13. As mentioned in paragraph 8, draft legislation was prepared by the government and subsequently sent to parliament, in order to replace the existing offences by a new set of rules. The intended Criminal Code provisions on bribery comprise three new articles dealing with the passive form of the offence – passive bribery involving a breach of duty, acceptance of advantages involving no breach of duty and acceptance of advantages for an influence (articles 304, 305 and 306 respectively) – as well as three articles on the active form of the criminal conduct, which all mirror the respective passive bribery offences (articles 307, 307a and 307b respectively). These various bribery offences refer systematically to the new concept of a public official (*Amtsträger*) and an arbitrator, with the exception of the passive bribery offence of article 304 which also contains a reference to court experts.

New draft provisions

Article 304 – Passive bribery *[of public officials (Amtsträger), arbitrators and court experts]*
1) A public official or an arbitrator, who demands, accepts or allows him/herself to be promised an advantage for him/herself or a third person for performing or refraining from performing an official act contrary to duty shall be punished by imprisonment of up to three years. Likewise to be punished is an expert assigned by the court or another administrative body for certain proceedings who demands, accepts or allows him/herself to be promised an advantage for him/herself or a third person for delivering an incorrect evidence or expertise.
2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment from six months up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from one year up to ten years.

Article 305 – Acceptance of advantages *[by public officials and arbitrators]*
1) A public official or an arbitrator who demands an ***advantage*** *or who accepts or allows him/herself to be promised an* ***undue advantage****, for him/herself or a third person, for performing or refraining from performing an official act not contrary to duty shall be punished by imprisonment up to two years.*
2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment of up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from six months to five years.
3) Shall not be considered as undue advantages
1. advantages which may be accepted according to law, or which are granted on the occasion of an event where attendance is justified by an official interest or the relevance of the subject-matter,
2. Advantages granted in the general interest, where the public official or arbitrator has no decisive influence on their usage as well as
3. In the absence of permissive rules as in lit.1, customary tokens of courtesy as they exist at local or national level, unless the act is committed on a "professional basis" [concept of Gewerbsmässige Handlung].

Article 306 – Acceptance of advantages for an influence *[by public officials and arbitrators]*
1) A public official or an arbitrator who, in cases other than those falling under articles 304 and 305, acts with the intention to let him/herself being influenced in the performance of official duties, demands an ***advantage*** *or accepts or allows him/herself to be promised an* ***undue advantage*** *(article 305 para.3), for him/herself or a third person, shall be punished by imprisonment of up to two years.*
2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment of up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from six months to five years.
3) Accepting or allowing oneself to be promised merely a minor advantage, is not to be punished in accordance with paragraph 1 unless the act was committed with the objective of obtaining a regular benefit [concept of Gewerbsmässige Handlung].

Article 307 – Active bribery *[of public officials and arbitrators]*
1) Whoever offers, promises or grants an advantage to a public official or an arbitrator for him/herself or a third person for performing or refraining from performing an official act contrary to duty, shall be punished by imprisonment up to three years. Likewise anybody is to be punished who offers, promises or grant an advantage to an expert (sec 304 par. 1) for him/herself or a third person for delivering an incorrect evidence or expertise.
(2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment from six month up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from one year up to ten years.

Article 307a – Granting of advantages *[to public officials and arbitrators]*
1) Whoever offers, promises or grants an undue advantage (article 305 para.3) to a public official or an arbitrator, for him/herself or a third person, for performing or refraining from performing an official act not contrary to duty shall be punished by imprisonment of up to two years.
2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment of up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75.000 shall be punished by imprisonment from six months to five years.

Article 307b – granting of advantages for an influence *[to public officials and arbitrators]*
1) Whoever in circumstances other than those falling under articles 307 and 307a, offers, promises or grants an undue advantage (article 305 para.3) to a public official or arbitrator, for him/herself or for a third person, with the intention thereby to influence him/her in the performance of official duties, shall be punished by imprisonment of up to two years.
2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment of up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75.000 shall be punished by imprisonment from six months to five years.

Elements/concepts of the offence

"Domestic public official"

14. The current incriminations of articles 304, 305 and 307 CC refer to the concept of "civil servant" (*Beamter*) which is defined in article 74 paragraph 1, and articles 307a and 307 paragraphs 2 and 3 refer to the concepts of "public enterprises" and "managing employees" which are defined in article 309 CC:

> ***Current provisions***
>
> ***Article 74 CC Other definitions***
> *1) For the purposes of this Act:*
> *(…)*
> *4. "civil servant" (Beamter) means any person appointed in the name of the State, a municipal association, a municipality or another person under public law, with the exception of a church or religion community, to carry out legal acts as an organ thereof alone or together with others, or otherwise entrusted with responsibilities of the national or municipal administration.*
>
> ***Article 309 CC Public enterprises; managing employees***
> *1) A public enterprise for the purposes of articles 305 to 308 shall mean any enterprise that is operated by one or more territorial entities themselves or more than half of which is held directly or indirectly by one or more territorial entities or for which one or more territorial entities may appoint the majority of the members of the board of directors or supervision.*
> *2) Managing employees for the purposes of articles 305 to 308 shall mean employees of an undertaking in whom significant influence on the general management of a company is vested. They shall be considered equivalent to general managers, members of the board, and authorized signatories.*

15. The authorities of Liechtenstein explain that the definition of "civil servant" (*Beamter*) set out in article 74 paragraph 1(4) CC covers all those appointed (*bestellt)* "in the name of the State" including "regular" state and municipal officials and those appointed temporarily, and more generally, anyone appointed "to carry out legal acts as an organ thereof alone or together with others, or otherwise entrusted with responsibilities of the national or municipal administration". This does not include members of elected assemblies (see hereinafter the specific section on this category of persons), but it includes anyone in government. It also extends to persons holding a judicial office such as professional judges, jurors and all persons who participate in the administration of justice). As concerns acts involving members of public enterprises and their managers – as well as members of parliament or of municipal councils in the specific situation when they are appointed to the boards of such enterprises – since bribery offences involving such functions fall under articles 305 and 306a for passive bribery and specific subparagraphs of article 307 for active bribery, the definitions of article 309 CC are applicable.

16. The new incriminations contemplated by the amendments mentioned in paragraph 8 provide for a new definition of civil servants (placing foreign ones on an equal footing with domestic ones) as well as a new concept of "public official" defined broadly and placing on an equal footing domestic, foreign and international categories of public employees and office holders, whether elected or appointed:

New draft provisions

Article 74 CC Other definitions
1) For the purposes of this Act:
(…)
4. "civil servant" (Beamter) … [unchanged]
[New] *Shall also be considered a civil servant the person who is placed on an equal footing with a domestic civil servant on the occasion of duties performed in Liechtenstein, in accordance with the law of a third country or by virtue of an international agreement.*

[New] *4a. Public official: anyone who*
a) for the State, a municipal association, a municipality or another person under public law, with the exception of a church or religious community, for another State or for an international organisation performs duties as a body or employee of the legislature, administration or justice,
b) is otherwise entitled in the name of a corporate body mentioned in lit. a to conclude dealings related to the implementation of the law or
c) is acting as a body or employee of an enterprise which is run, managed or supervised by one or more domestic or foreign local public authority(ies), whether directly or indirectly and alone or in conjunction with other such authorities, as a result of the ownership of more than half of the capital stock, share capital or equity, or as a result of any financial, business and organisational arrangements implying the effective control over such an enterprise.

[New]*: 4b. Arbitrator: any person rendering a decision in an arbitration court in the meaning of articles 603 et seq. of the Civil Procedure Code, having its seat in the country or a seat which is yet-to-be determined (Liechtenstein arbitrator), or its seat abroad.*

17. The GET noted that the future passive and active bribery provisions (articles 304 and 307) would refer to acts involving a public official, an arbitrator or a court expert. The latter are only mentioned in these provisions, the various other articles dealing with offences of bribery and trading in influence (concerning the public sector) refer only to public officials and arbitrators.

"Promising, offering or giving" (active bribery)

18. Article 307 CC uses the expression "anyone who offers, promises, or grants" (an advantage to…).

"Request or receipt (of an advantage)*, acceptance of an offer or promise* (of an advantage)*" (passive bribery)*

19. Articles 304, 305, 306 and 306a CC use the expression "demands, accepts, or allows him/herself to be promised (*fordert, annimmt oder sich versprechen lässt*) an advantage (…)". The on-site discussions pointed to the fact that the concept of accepting ("annehmen") is to be understood broadly: the mere objective act of receiving is enough, i.e. the undue advantage was transferred and it stayed with the recipient.

"Any undue advantage"

20. The passive and active bribery incriminations of articles 304 and 307 CC, as well as the other provisions, all refer to the concept of "advantage". The replies to the questionnaire indicated that the concept is not defined in the law, but that the interpretation given to it includes "all monetary (material and non-material) rewards and gifts". Moreover, although the law does not spell out that the advantage must be "undue", the authorities pointed out that this advantage is always undue, either because of demanding, accepting or obtaining a promise for an official act contrary to duty in the sense of article 304 paragraph 1 CC or for a dutiful official act (article 304 paragraph 2 CC).

21. At the same time, articles 304 (4) and 307(2) CC, as well as article 305(2) CC contain a threshold-based exemption according to which the act attracts criminal liability only where the advantage is not merely "minor": gifts up to a value of 150 CHF/100 EUR would be considered to be minor and would entail no criminal liability. The GET learnt during the on-site discussions that this amount derives from the Austrian criminal law practice and regulations (from which Liechtenstein traditionally draws inspiration). The explanatory report to the draft legal package makes now an explicit reference to it.

22. This exemption does not apply, however, where the offence is committed on a "professional basis", which further qualifies the "de minimis" threshold in article 304 (4) CC. The concept of an offence committed on a professional basis" is defined in article 70 CC as follows:

> ***Article 70 CC***
> *A person shall be deemed to commit an offence on a "professional basis" if s/he commits the act with the intention of obtaining regular income by repeatedly committing the act.*

23. The draft amendments which are in the process of adoption would introduce some changes: exemptions would be reorganised in a different manner and the draft article 305 paragraph 3 lists certain conditions under which advantages shall not be considered as "undue":

> ***Draft new Article 305 para 3***
> *(…)*
> *3) Shall not be considered as undue advantages*
> *1. advantages which may be accepted according to law, or which are granted on the occasion of an event where attendance is justified by an official interest or the relevance of the subject-matter,*
> *2. advantages granted in the general interest, where the public official or arbitrator has no decisive influence on their usage as well as*
> *3. in the absence of permissive rules as in lit.1, customary tokens of courtesy as they exist at local or national level, unless the act is committed on a "professional basis" [concept of Gewerbsmässige Handlung].*

24. But the reference to the undue advantage in the future system would remain value-based with different degrees of value and aggravating circumstances. The GET noted that the incriminations of bribery involving a breach of duties refer to an "advantage", whereas those on taking/accepting an advantage not involving a breach of duties refer to an "undue advantage". Sometimes, both concepts are used, for instance article 305 paragraph 1 covers the situations where the public official "demands an **advantage** or (…) accepts or allows him/herself to be promised an **undue advantage**. The complexity of the existing and intended legal provisions could not be discussed in depth in the context of such a short visit but the GET understood that the reason for this distinction is that the draft pursues a stricter dissuasive effect by outlawing any solicitation emanating from the bribe-taker (demands), compared to situations where s/he would only respond favourably to a solicitation and offer of a benefit emanating from the bribe-giver.

"Directly or indirectly"

25. The indirect commission of the act is not explicitly mentioned in article 304 CC (passive bribery of a civil servant) and article 307 CC (active bribery of civil servants and other public persons), nor in the other provisions. The Liechtenstein authorities explain that situations involving an intermediary are nonetheless captured by the general principles of article 12 CC, according to which not only the immediate perpetrator who commits the criminal offence is criminally liable,

but also anyone who instigates another person to commit the offence or who contributes to its perpetration in any other way. Liechtenstein draws inspiration in this respect from the Austrian legislation, although it was not confirmed domestically to date, through relevant case law or interpretative or other legal sources.

> ***Article 12 CC Treatment of all participants as perpetrators***
> *Not only the immediate perpetrator shall be deemed to commit the offence, but also every person who directs another to carry out the offence or who otherwise contributes to its being carried out.*

26. The draft amendments mentioned in paragraph 8, if adopted, would not introduce changes in this respect.

"For himself or herself or for anyone else"

27. The definitions of passive bribery and active bribery of articles 304 and 307 CC (as well as the other provisions) explicitly cover all cases where the advantage is offered not only for the benefit of the public official himself/herself, but also for the benefit of a third person (third-party beneficiary). The Liechtenstein authorities explain that the third-party can be any natural person and/or entity distinct from the perpetrator and his/her/its criminal intent is irrelevant.

28. Such a reference to third parties is retained in the draft provisions.

"To act or refrain from acting in the exercise of his or her functions"

29. The definitions of passive bribery of civil servants (article 304 CC) and active bribery of civil servants and other persons (article 307 CC) explicitly cover advantages in return for the performance or omission of an official act. The same applies to passive bribery of managers and other employees of public enterprises and expert advisors (articles 305 and 306a CC).

30. The legislation distinguishes between official acts which constitute a breach of duty (articles 304 paragraph 1 and article 307 paragraph 1 CC) and acts which do not (article 304 paragraph 2 and article 307 paragraph 2 CC).

31. The authorities refer to the exemption of liability applicable in relation to active bribery for an official act not involving a breach of duty (article 307 paragraph 2 CC): "unless the circumstances do not warrant that the perpetrator who has offered, promised, or granted this advantage be faulted for his/her conduct"; They explain that this provision can be invoked for instance if the advantage was meant to "speed up" the performance of a lawful act.

32. In the draft amendments which are in the process of adoption, the reference to an action or inaction is retained in the provisions on passive and active bribery (articles 304 and 307) and those on the acceptance or granting of an advantage (articles 305 and 307a). Given the specific purpose of articles 306 and 307b – accepting and granting of an advantage for an influence on the official's duties – there is no such reference to an action or inaction.

"Committed intentionally"

33. The replies to the questionnaire indicate that active and passive bribery offences are committed in return for the performance or omission of an official act contrary or not contrary to duty. This contains the intentional element, which is otherwise not explicitly mentioned. Section 5 CC

makes a distinction between levels of criminal intent which can be translated as follows: a) the lowest is "intent" (*bedingter Vorsatz*) based on a possible realisation of the act; b) the second is "knowledge" (*Wissentlich*) that a criminal act is or has been committed; c) "purpose" (*Absichtlich*), which is based on the wilful achievement of the act or the success of the action. In Liechtenstein, the first (lowest) element is enough for most offences, except for the current incrimination of article 308 CC on trading in influence, for which the mental element is knowledge-based. The on-site discussions, including with a judge, confirmed that the prosecution can use all means to substantiate the guilt of the suspect and the judge decides ad hoc, even though there is no pertinent case-law for the time being. It was also globally confirmed that the active and passive forms of bribery and trading in influence are autonomous offences, that it is not necessary in principle to demonstrate that a solicitation was accepted for the offence to be completed and that the attempt is limited to very marginal situations.

Sanctions

34. Criminal law makes a distinction between the following categories of offences: a) felonies (*Verbrechen*) are criminal offences threatened with a maximum of more than 3 years imprisonment (article 17 paragraph 1 CC); b) misdemeanours (*Vergehen*) are all other kinds of criminal offences, if not stipulated otherwise in additional criminal laws (article 17 paragraph 2 CC); c) Infringements (*Übertretungen*) are set forth in separate (criminal) laws such as in the Unfair Competition Act (UCA).

35. The sanctions applicable are summarised in the following table, which includes for the sake of a global overview, the various corruption-related offences and the statute of limitation applicable to their prosecution (in accordance with the provisions mentioned in paragraph 79).

Current provisions	Current sanctions and categorisation of offences	Prosecution time limit
Criminal breach of trust (article 153 CC)	- up to 3 years imprisonment or a fine of up to 360 daily rates **(misdemeanour)** - up to 10 years imprisonment if particularly great damage **(felony)**	5 years 10 years
Inducement to breach or cancel a contract (article 4 UCA)	Financial penalty of up to CHF 100,000 **(infringement)**	1 year
Abuse of authority (article 302 CC)	- 6 months to 5 years imprisonment (art. 302 para.1) **(felony)** or - 1 to 10 years imprisonment (if committed in connection with a foreign state or international body) (art. 302 para.2) **(felony)**	5 years 10 years
Acceptance of gifts by civil servants (article 304 CC)	- up to 3 years imprisonment, in case of breach of duty (art. 304 para.1) **(misdemeanour)** - up to one year imprisonment if no breach of duty (art.304 para 2) **(misdemeanour)** - up to 5 years imprisonment, in case of breach of duty and if the value of the benefit exceeds CHF 10,000) (art. 304 para.3) **(felony)** - up to 3 years imprisonment if no breach of duty but the value of the benefit exceeds CHF 10,000 (art.304 para.3) **(misdemeanour)** - accepting or obtaining a promise of a minor benefit: not punishable unless act committed on a professional basis (art.304 para.4)	5 years 3 years 5 years 5 years
Acceptance of gifts by managing employees of a public enterprise (article 305 CC)	- up to 1 year imprisonment if there is no breach of duty **(misdemeanour)** - up to 3 years, in case of breach of duty (art. 305 para.1) **(misdemeanour)** - in case of minor benefit and the act is not committed on a professional basis: the offender shall not be punished (art.305 para.2)	3 years; 5 years
Acceptance of gifts by experts (article 306 CC)	- up to 3 years imprisonment **(misdemeanour)**	5 years
Acceptance of gifts by staff members and expert advisors (article 306a CC)	- up to 1 year imprisonment **(misdemeanour)**	3 years

Active bribery (article 307 CC)	Mirroring the above distinctions and depending on the case, bribery of a civil servant, of a member of the Liechtenstein Parliament or of a municipal council, of a foreign civil servant: - up to two years imprisonment in the circumstances of art. 304 para.1, 305 para.1, 306, 306a para. 1 and 2 **(misdemeanour)** - up to six months imprisonment or a fine of up to 360 daily rates in the circumstances of art. 304 para.2 and 305 para.1 **(misdemeanour)**	 5 years 1 year
(Passive) trading in influence (Prohibited intervention of article 308)	- up to three years imprisonment, **(misdemeanour)** - the offender is not punishable if the benefit is minor and committed on a non-professional basis, or if s/he acts within the scope of his/her powers to engage in representation against payment	5 years

36. As shown above, the sanctions vary between up to one year imprisonment and up to 5 years imprisonment for passive bribery involving a civil servant (article 304 CC) – or no sanction in cases involving a minor undue advantage, and between up to six months imprisonment (or a fine) and up to two years imprisonment for active bribery involving a civil servant (article 307 CC).

37. Pursuant to article 27 CC, a civil servant sentenced by a domestic court to imprisonment of more than one year for one or more wilfully committed offences shall be excluded from office. Disciplinary proceedings may apply, in accordance with administrative and other regulations, irrespective of criminal prosecution.

38. As indicated earlier, a legal package prepared by the government and aimed i.a. at amending the incriminations of corruption-related acts is currently in parliament. The system of sanctions in these draft provisions is re-designed in a way that the lower and upper level of sanctions is increased in several cases and that the overall consistency of sanctions is improved across the various provisions offences. In some cases, an additional level of aggravating circumstances is provided for – up to 10 years imprisonment – where the value of the undue advantage exceeds CHF 75 000:

Draft provisions	Draft provisions: sanctions and categorisation of offences	Prosecution time limit
Passive bribery of a public official, arbitrator or court expert, with a breach of duty (art. 304 CC)	- up to 3 years imprisonment (art. 304 para 1) **(misdemeanour)** - 6 months to five years imprisonment where the value of the benefit exceeds CHF 5 000 (art. 304 para 2) **(felony)** - 1 to 10 years imprisonment where the value of the benefit exceeds CHF 10,000) (art. 304 para 2) **(felony)**	5 years 5 years 10 years
Acceptance of advantages by a public official or arbitrator, without a breach of duty (art. 305 CC) and acceptance of advantages for an influence by the same (art. 306 CC)	- up to 2 years imprisonment (art. 305 para 1 and art.306 para 1) **(misdemeanour)** - up to 3 years imprisonment where the value of the benefit exceeds CHF 5 000 **(misdemeanour)** and from 6 months to 5 years where the value of the benefit exceeds CHF 75 000 **(felony)** (art. 305 para 2 and art. 306 para 2)	5 years 5 years
Active bribery of a public official, arbitrator or court expert, with a breach of duty (art. 307 CC)	- up to 3 years imprisonment (art. 307 para.1) **(misdemeanour)** - 6 months to five years imprisonment where the value of the benefit exceeds CHF 5 000 **(felony);** 1 to 10 years imprisonment where the value of the benefit exceeds CHF 75,000) **(felony)** (art. 307 para 2)	5 years 5 years; 10 years
Granting of advantages to a public official or arbitrator, without a breach of duty (art. 307a) and granting of advantages for an influence to the same (art. 307b)	- up to 2 years imprisonment (art. 307a para 1; art. 307b para 1) **(misdemeanour)** - up to 3 years imprisonment where the value of the benefit exceeds CHF 5 000 **(misdemeanour)** and from 6 months to 5 years where the value of the benefit exceeds CHF 75 000 **(felony)** (art. 307a para 2 and art. 307b para 2)	5 years 5 years
Active and passive trading in influence (prohibited intervention targeting a public official or arbitrator – art. 308)	- up to 2 years imprisonment (art. 308 para.1 and 2) **(misdemeanour)** - up to 3 years imprisonment where the value of the benefit exceeds CHF 5 000 **(misdemeanour)** and from 6 months to 5 years where the value of the benefit exceeds CHF 75 000 **(felony)** (art. 307a para 2 and art. 307b para 2)	5 years 5 years

Passive and active bribery in the business sector (art. 309)	- up to 2 years imprisonment (art. 309 para 1 and 2) **(misdemeanour)** - up to 3 years imprisonment where the value of the benefit exceeds CHF 5 000 **(misdemeanour)** and from 6 months to 5 years where the value of the benefit exceeds CHF 75 000 **(felony)** (art. 309 para 3)	5 years

Court decisions, case-law

39. There have been no court decisions or pertinent case-law that would illustrate the practical use of the provisions on bribery in the public sector, or which would specify the implications of certain concepts and (non-)liability mechanisms.

Bribery of members of domestic public assemblies (Article 4 of ETS 173)

40. The legislation of Liechtenstein does not criminalise passive bribery of members of domestic public assemblies and it criminalises active bribery of such categories of persons where it is aimed at an act or inaction which constitutes a breach of duty. This results from the wording of article 307 paragraph 1 sub-paragraph 1 which refers explicitly to "a member of parliament or of a municipal council", in addition to the civil servant since that concept (*Beamter*) is usually not understood in German language as referring also to an elected official:

> ***Article 307 CC Bribery***
> *1) Anyone who offers, promises, or grants an advantage to*
> *1. a civil servant, **a member of parliament or of a municipal council**, or a foreign civil servant, in return for the performance or omission of an official **act contrary to duty** (article 304 paragraph 1),*
> *(…)*
> *for himself/herself or for a third party, shall be punished with imprisonment of up to two years.*
>
> *2) Anyone who offers, promises, or grants an advantage that is not merely minor to*
> *1. a civil servant, in return for the performance or omission of an official act not contrary to duty (article 304 paragraph 2),*
> *(…)*
> *for him/herself or to a third party shall be punished with imprisonment of up to six months or a fine of up to 360 daily rates, unless the circumstances do not warrant that the perpetrator who has offered, promised, or granted this advantage be faulted for his/her conduct.*

41. Other elements of the provisions on passive bribery discussed previously concerning civil servants apply here as well, in particular on the form of the undue advantage, the fact that it can be for the assembly member him/herself or for a third person (whether a natural person or a legal entity such as a political party). The GET notes that since article 307 paragraph 2 only refers to "a civil servant", there is no extension of the incrimination to acts which are not contrary to duty, and the exculpatory regime in case of minor bribes does not apply.

Sanctions, relevant court decisions / case law

42. The sanctions provided for under article 307 paragraph 1 CC are up to six months imprisonment (or a fine), or up to two years imprisonment (see also the table in paragraph 35 for a global overview of sanctions). There has been no relevant court decision or case law.

43. The draft amendments mentioned in paragraph 8 (see also details in paragraphs 13 and 16) which are in the process of adoption will redefine to a large extent the logic and wording of incriminations. The various offences of articles 302 to 308 CC – thus including active and passive bribery – would in future refer systematically to public officials as opposed to civil servants. As

indicated in paragraph 16, the definition provided for in the intended article 74 paragraph 1 item 4a includes the expression "anyone who for the State, a municipal association, a municipality … performs duties as a body or employee of the legislature, administration…"

44. The GET understood that assembly members, i.e. those persons who are elected or appointed to such an assembly, would fall under the concept of "body" since the concept of "employee" is to be understood *stricto sensu*.

Bribery of foreign public officials (Article 5 of ETS 173)

45. Active bribery of foreign public officials for acts contrary to their duties is a criminal offence in accordance with article 307 paragraph 1 CC:

> ***Article 307 CC Bribery***
> *1) Anyone who offers, promises, or grants an advantage to*
> *1. a civil servant, a Member of Parliament or of a Municipal Council, **or a foreign civil servant**, in return for the performance or omission of an official **act contrary to duty** (article 304 paragraph 1),*
> *(…)*
> *for himself/herself or for a third party, shall be punished with imprisonment of up to two years.*
> *2) Anyone who offers, promises, or grants an advantage that is not merely minor to*
> *1. a civil servant, in return for the performance or omission of an official act not contrary to duty (article 304 paragraph 2),*
> *(…)*
> *for him/herself or to a third party shall be punished with imprisonment of up to six months or a fine of up to 360 daily rates, unless the circumstances do not warrant that the perpetrator who has offered, promised, or granted this advantage be faulted for his/her conduct.*

46. The concept of "foreign civil servant" is defined (broadly) in article 74 paragraph 1 subparagraph 4(a) as any person holding an office in legislature, administration or justice (*Gesetzgebung, Verwaltung, Justiz*):

> ***Article 74 CC - Other definitions***
> *1) For the purposes of this Act:*
> *(…)*
> *4a. "foreign civil servant" means any person holding an office [Amt] in legislature, administration or justice in another State, who is entrusted with a public responsibility for another State or an authority or public enterprise of such State or who is a civil servant or representative of an international organisation.*

47. The replies to the questionnaire point out that active bribery for acts which do not constitute a breach of duty is not criminalised. Passive bribery of a foreign public official is not criminalised at all.

Sanctions, relevant court decisions / case law

48. The sanctions applicable in accordance with the above provisions are the same as in the case of offences involving assembly members, i.e. imprisonment of up to two years (see also the table in paragraph 35 for a global overview of sanctions). There has been no relevant court decision or case law.

49. The draft amendments currently under consideration aim to align the legislation on the Convention in this respect by using a new concept of "public official" (instead of "civil servant") – article 74 paragraph 1 item 4a – which covers anyone who "a) for the State, a municipal

association, a municipality or another person under public law with the exception of a church or religious community, **for another State** or for an international organisation **performs duties as a body or employee of the legislature, administration or justice, b) is otherwise entitled in the name of a corporate body mentioned in lit. a to conclude dealings related to the implementation of the law or c) is acting as a body or employee of an enterprise which is run, managed or supervised by one or more domestic or foreign local public authority(ies)**, whether directly or indirectly and alone or in conjunction with other such authorities, as a result of the ownership of more than half of the capital stock, share capital or equity, or as a result of any financial, business and organisational arrangements implying the effective control over such an enterprise." The future provisions and penalties of articles 304 to 308 CC concerning domestic public officials would apply accordingly.

50. The new wording would also strengthen the consistency of the incriminations by placing on an equal footing the foreign public official with the domestic one.

Bribery of members of foreign public assemblies (Article 6 of ETS 173)

51. The Liechtenstein authorities indicated in their replies to the questionnaire that the legislation contains no incrimination of active or passive bribery of members of foreign public assembles. As pointed out in paragraph 45, only active bribery of foreign officials is criminalised to some extent. The GET understood that the reason for Liechtenstein's standpoint above stems from the fact that domestic members of parliaments and municipal councils are basically treated as a category of officials distinct from civil servants under article 307 paragraph 1(1). Therefore, whereas foreign civil servants are clearly mentioned in the same sentence, this is not the case of members of foreign parliaments and local assemblies. At the same time, it should be pointed out that the definition of a "foreign civil servant" of article 74 paragraph 1 item 4(a) CC (see paragraph 46) does include a reference to any person holding an office (*Amt*) in "**legislature, administration or justice in another State, who is entrusted with a public responsibility for another State…**" . A logical consequence of Liechtenstein's standpoint would be that the concept of office is thus to be understood narrowly; the intended amendments – see below – tend to comfort *a contrario* such an interpretation. In their latest submission, the authorities took a different view and indicated that by reference to Austrian legal theory, the expression "office" used in article 74 paragraph 1 item 4(a) CC would also capture tasks performed by an elected member of legislature.

52. The draft amendments currently under consideration aim to align the legislation on the Convention in this respect by using a new concept of "public official" (instead of "civil servant") – article 74 paragraph 1 item 4a – which covers anyone who "a) for the State, a municipal association, a municipality or another person under public law with the exception of a church or religious community, **for another State** or for an international organisation **performs duties as a body or employee of the legislature**, administration or justice, b) is otherwise entitled in the name of a corporate body mentioned in lit. a to conclude dealings related to the implementation of the law or c) is acting as a body or employee of an enterprise which is run, managed or supervised by one or more domestic or foreign local public authority(ies), whether directly or indirectly and alone or in conjunction with other such authorities, as a result of the ownership of more than half of the capital stock, share capital or equity, or as a result of any financial, business and organisational arrangements implying the effective control over such an enterprise." The future provisions and penalties of articles 304 to 308 CC concerning domestic public officials would apply accordingly.

Bribery in the private sector (Articles 7 and 8 of ETS 173)

Definition of the offence

53. Private sector bribery is criminalised / prosecutable under the provisions on criminal breach of trust (article 153 CC) and those on the Inducement to breach or cancel a contract (article 4) of the Unfair Competition Act – UCA.

> ***Current incriminations***
>
> ***Article 153 CC Criminal breach of trust***
> *1) Anyone who knowingly abuses the authorisation granted to him by law, official mandate, or legal transaction to dispose of third-party assets or to obligate another person and thereby inflicts a pecuniary disadvantage on the other person shall be punished with imprisonment of up to six months or with a fine of up to 360 daily rates.*
> *2) Anyone who brings about damage exceeding 5,000 francs through the offence shall be punished with imprisonment of up to three years, and anyone who brings about damage exceeding 75,000 francs shall be punished with imprisonment of one to ten years.*
>
> ***Article 4 – Unfair Competition Act - UCA***
> *Inducement to breach or cancel a contract*
> *Unfair practices are committed in particular by anyone who*
> *a) induces purchasers to breach a contract in order to conclude a contract with those purchasers himself;*
> *b) attempts to gain advantages for himself or someone else by granting or offering employees, representatives or other auxiliary persons of a third party benefits that those persons are not entitled to and that are likely to induce those persons to violate their official or commercial duties;*
> *c) induces employees, representatives or other auxiliary persons to betray or spy out manufacturing or business secrets of their employer or client;*
> *d) causes a buyer or borrower who has concluded a purchase on account, a prepayment purchase, or a consumer credit contract to revoke the contract or who causes a buyer who has concluded a prepayment purchase to cancel that purchase in order to conclude such a contract with the buyer himself.*
> *Anyone wilfully committing such an offence shall, upon application and pursuant to article 22 UCA, be punished with a fine of up to CHF 100'000.*

54. In particular, article 4b covers those situations where the bribe-giver seeks to obtain an advantage "*by granting or offering employees, representatives or other auxiliary persons of a third party benefits that those persons are not entitled to and that are likely to induce those persons to violate their official or commercial duties*". Because of the significant divergences with the definitions of the Convention, most elements which are specific to bribery are missing. The authorities point out that the concept of "persons who direct or work for private sector entities, in any capacity", is however reflected in article 153 CC.

Sanctions, relevant court decisions / case law

55. As indicated above, the sanctions can be imprisonment of up to six months or a fine of up to 360 daily rates under article 153 CC, and a fine of up to CHF 100'000 under articles 4 and 22 UCA. There has been no relevant court decision or case law.

56. The draft amendments currently under consideration in Parliament provide, under a new article 309 CC, for new incriminations which are specifically about private sector bribery offences. At the same time, the existing provisions of article 153 CC will remain unaffected since they continue to pursue a broader objective than just the prevention and repression of bribery, and article 4 paragraph b) would be repealed.

Draft new provisions of the Criminal Code

Article 309 – Passive and active bribery in commercial matters
1) The employee or agent of a business entity who, in the context of commercial dealings, demands, accepts or allows him/herself to be promised an advantage for him/herself or a third person in return for performing or refraining from performing an act in violation of his/her duties shall be punished by imprisonment of up to two years.
2) Shall be punished in the same way whoever offers, promises or grants an advantage to the employee or agent of a business entity, in the context of commercial dealings, for him/herself or a third person, for him or her to perform or refrain from performing an act in violation of his/her duties.
3) Whoever commits the act in relation to a benefit in excess of CHF 5 000 shall be punished with imprisonment up to three years, and where the benefit is in excess of CHF 75 000 francs, with imprisonment from six months to five years.

57. The above draft incrimination of article 309 CC provides for a penalty of up to two years imprisonment. Where the value of the advantage exceeds CHF 5 000, the ceiling is raised to three years and in case of bribes in excess of CHF 75 000, the act attracts a penalty of 6 months to five years imprisonment.

Bribery of officials of international organisations (Article 9 of ETS 173);

58. The replies to the questionnaire indicate that active bribery of officials of international organisations for acts contrary to their duties is a criminal offence in accordance with article 307 paragraph 1 CC, combined with Article 74 CC which defines the concept of "foreign civil servants" in a way that it also refers to a civil servant or representative of an international organisation:

Article 307 CC Bribery
1) Anyone who offers, promises, or grants an advantage to
*1. a civil servant, a Member of Parliament or of a Municipal Council, **or a foreign civil servant**, in return for the performance or omission of an official **act contrary to duty** (article 304 paragraph 1),*
(…)
for himself/herself or for a third party, shall be punished with imprisonment of up to two years.
2) Anyone who offers, promises, or grants an advantage that is not merely minor to
1. a civil servant, in return for the performance or omission of an official act not contrary to duty (article 304 paragraph 2),
(…)
for him/herself or to a third party shall be punished with imprisonment of up to six months or a fine of up to 360 daily rates, unless the circumstances do not warrant that the perpetrator who has offered, promised, or granted this advantage be faulted for his/her conduct.

Article 74 CC - Other definitions
1) For the purposes of this Act: (…)
*4a. "foreign civil servant" means any person holding an office in legislature, administration or justice in another State, who is entrusted with a public responsibility for another State or an authority or public enterprise of such State **or who is a civil servant or representative of an international organisation**.*

59. The above provision does not criminalise active bribery for acts which do not constitute a breach of duty. Passive bribery of an official of an international organisation is not criminalised at all.

Sanctions, relevant court decisions / case law

60. The sanctions applicable in accordance with the above provisions are the same as in the case of offences involving foreign civil servants, i.e. imprisonment of up to two years (see also the table in paragraph 35 for a global overview of sanctions). There has been no relevant court decision or case law.

61. The draft amendments which are being adopted aim to align the legislation on the Convention in this respect by using a new concept of "public official" (instead of "civil servant") – article 74 paragraph 1 item 4a – which covers anyone who "a) for the State, a municipal association, a municipality or another person of public law with the exception of a church or religious community, for another State or **for an international organisation performs duties as a body or employee of the legislature, administration or justice**, b) is otherwise entitled in the name of a corporate body mentioned in lit. a to conclude dealings related to the implementation of the law or c) is acting as a body or employee of an enterprise which is run, managed or supervised by one or more domestic or foreign local public authority(ies), whether directly or indirectly and alone or in conjunction with other such authorities, as a result of the ownership of more than half of the capital stock, share capital or equity, or as a result of any financial, business and organisational arrangements implying the effective control over such an enterprise." The future provisions and penalties of articles 304 to 308 CC concerning domestic public officials would apply accordingly.

Bribery of members of international parliamentary assemblies (Article 10 of ETS 173); Bribery of judges and officials of international courts (Article 11 of ETS 173)

62. The authorities indicated that there are no incriminations in the legislation of Liechtenstein to cover bribery involving these categories of persons.

63. The draft amendments which are under consideration by Parliament aim to align the legislation on the provisions of the Convention in this respect by using a new concept of "public official" (instead of "civil servant") – article 74 paragraph 1 item 4a – which covers anyone who "a) for the State, a municipal association, a municipality or another person of public law with the exception of a church or religious community, for another State or **for an international organisation performs duties as a body or employee of the legislature, administration or justice**, b) is otherwise entitled in the name of a corporate body mentioned in lit. a to conclude dealings related to the implementation of the law or c) is acting as a body or employee of an enterprise which is run, managed or supervised by one or more domestic or foreign local public authority(ies), whether directly or indirectly and alone or in conjunction with other such authorities, as a result of the ownership of more than half of the capital stock, share capital or equity, or as a result of any financial, business and organisational arrangements implying the effective control over such an enterprise." The future provisions and penalties of articles 304 to 308 CC concerning domestic public officials would apply accordingly.

Trading in influence (Article 12 of ETS 173)

64. Trading in influence is currently criminalised by article 308 CC as follows:

> ***Article 308 CC Illicit intervention***
> *1) Anyone who knowingly and directly or indirectly exerts influence so that a civil servant, a managing employee of a public enterprise, a Member of Parliament or a Municipal Council, or a foreign civil servant*

performs or omits an official act or legal act falling within his scope of responsibilities on behalf of a party, and if the person demands, accepts, or allows him/herself to be promised a benefit for himself or a third person in return for this exertion of influence, shall be punished with imprisonment of up to three years.
2) Anyone who only accepts or obtains a promise of a minor benefit shall not be punished under paragraph 1 unless the act is committed on an "professional basis".
3) A person shall not be punished under paragraph 1 if s/he acts within the scope of his/her powers to engage in representation against payment.

65. This article covers only the passive form of trading in influence as it misses the trilateral approach of the Convention (the influence peddler, the one who pays for his/her influence and the official who is meant to be the target of the influence). The technical elements of the definition are similar to the passive bribery offence of article 304 (form of the intention and of the personal benefit as well as third party beneficiaries). The GET notes that the concept of "asserting or confirming that one is able to exert an improper influence over the decision-making" is not reflected and the definition of the offence suggests that the influence must have been exerted. Article 308 CC also does not spell out explicitly that it is irrelevant whether the influence leads to the intended result or not. The authorities indicated after the visit that the offence is completed as soon as the influence is exerted but the actual result of this intervention is immaterial. Article 308 CC lists a series of categories of persons who can be the target of the influence. Contrary to the bribery provisions, there is a reference to the element of "directly and indirectly" but it appears to refer to the way the influence is exerted and not to the way the undue advantage is paid or the offer is made.

66. The offence of illicit intervention under article 308 CC requires that the person acts with knowledge [*wissentlich*], as the first paragraph mentions it explicitly (see also para 33 on the categorisation of criminal intent under article 5 CC). As in the case of certain bribery offences, where the advantage is merely minor, this constitutes an exemption of liability. An exemption applies also where the offender commits the criminal act within the scope of his/her powers to engage in representation against payment. The GET understood that this is to draw a demarcation line with legitimate forms of lobbying.

Sanctions, relevant court decisions / case law

67. Prohibited intervention attracts a penalty of up to three years' imprisonment. As indicated above, article 308 CC also provides for two circumstances of total exemption of liability. There has been no relevant court decision or case law.

68. The draft amendments which are in the process of adoption pursue two objectives as regards the incrimination of trading in influence. Article 308 CC would be redrafted to bring it closer to the requirements of article 12 of the Convention, including by introducing the active form of trading in influence and by abolishing the requirement that the influence was actually exerted:

Draft new provisions of the Criminal Code

Article 308. Illicit intervention
(1) Whoever demands, accepts or allows him/herself to be promised an advantage for himself/herself or for a third person for exercising improper influence on the decision-making of a public official or an arbitrator shall be punished by imprisonment up to two years.
(2) Likewise, shall be punished whoever offers, promises or grants an advantage to someone for him/her to exercise improper influence on the decision-making of a public official or an arbitrator.

(3) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment up to three years, whereas who commits the offence with regard to the value of the advantage exceeding CHF 75.000 shall be punished by imprisonment from six months up to five years.
(4) The influence over the decision-making of a public official or an arbitrator is considered improper where its purpose is the performance or refraining from performing a legal act contrary to duties or where it involves the offering, promising or granting of an undue advantage (article 305 para. 3) to the public official or for him/her through a third person.
(5) The perpetrator is not to be punished according to the provisions above if the act is punishable with a more severe punishment according to other legal provisions.

69. The intended provision refers to the influence on the decision-making of a "public official" or an arbitrator. The draft amendments which are in parliament and aim to align the legislation on the Convention, lower the intentional element to the first level ("purpose") since the reference to the word "knowingly" is abandoned. It uses a new concept of "public official" (instead of "civil servant") – article 74 paragraph 1 item 4a – which covers anyone who "a) for the State, a municipal association, a municipality or another person of public law with the exception of a church or religious community, for another State or for an international organisation performs duties as an organ or employee of the legislature, administration or justice, b) is otherwise entitled in the name of a corporate body mentioned in lit. a to conclude dealings related to the implementation of the law or c) is acting as a body or employee of an enterprise which is run, managed or supervised by one or more domestic or foreign local public authority(ies), whether directly or indirectly and alone or in conjunction with other such authorities, as a result of the ownership of more than half of the capital stock, share capital or equity, or as a result of any financial, business and organisational arrangements implying the effective control over such an enterprise." The authorities of Liechtenstein also explain that the new provisions capture the act of trading in influence at an early stage, in accordance with the Convention: whether the influence was exerted or not (and thus leads to the intended result or not) would be immaterial in future.

70. Moreover, as indicated in the earlier paragraphs on the incrimination of bribery of public officials, the draft amendments foresee the introduction of new offences under articles 306 and 307a which contain an element of exertion of influence (active and passive). These provisions should be seen as a complementary form of bribery since the intended definition of the offences does not refer to the core element of an influence peddler.

Bribery of domestic and foreign arbitrators (Articles 1-4 of ETS 191)

71. Active and passive bribery of domestic or foreign arbitrators are not criminalised in Liechtenstein legislation.

72. The draft amendments currently in parliament would change this situation since the intended wording of the draft articles 304 to 308 CC actually addresses bribery and trading in influence of a public official or arbitrator. The latter is mentioned explicitly in the various offences of bribery and trading in influence, together with the concept of public official, as subjects of the offence with the same provisions and penalties. The draft amendments, if adopted, would also introduce under article 74 paragraph 4(b) a definition of arbitrator which goes as follows: "arbitrator: any person rendering a decision in an arbitration court in the meaning of articles 603 et seq. of the Civil Procedure Code, having its seat in the country or a seat which is yet-to-be determined

(Liechtenstein arbitrator), or its seat abroad."[5] This definition thus covers both domestic and foreign arbitrators.

Bribery of domestic and foreign jurors (Article 1, and Article 4 and 5 of ETS 191)

73. The Liechtenstein authorities indicate that domestic jurors are considered as civil servants, just as judges, in the meaning of Section 74 paragraph 1 subparagraph 4 CC as they discharge tasks of justice as an organ for the country. In combination with article 304 CC (passive bribery of a civil servant) and article 307 paragraph 1 CC (active bribery of civil servants and other persons). The legal situation is thus the one described before on bribery of domestic civil servants. In the same vein, foreign jurors are considered foreign civil servants in accordance with article 74 paragraph 1 subparagraph 4(a). The legal situation is thus the one described before on bribery of foreign civil servants. There has been no relevant court decision or case law.

Other offences and questions

Other provisions on corruption

74. The GET noted that the Criminal Code contains further offences which comprise an element of bribery, in particular manipulation of restructuring and bankruptcy proceedings – article 160 CC (*Umtriebe im Nachlassvertrags- oder im Konkursverfahren*)[6]: the definition of the offence lacks the element of "offering" and the form of the undue advantage can only be monetary in certain cases.

Participatory acts

75. Article 12 CC (Treatment of all participants as offenders) covers aiding and abetting, facilitating and counselling:

> ***Article 12 CC Treatment of all participants as perpetrators***
> *Not only the immediate perpetrator shall be deemed to commit the offence, but also every person who directs another to carry out the offence or who otherwise contributes to its being carried out.*

Effective regret

76. As to possible special defence mechanisms[7] which can be invoked in relation to the offences discussed in this report, the authorities refer to the general provisions of article 10 CC on "exculpatory situations of necessity", which might be applicable under certain circumstances and would lead to the discontinuation of proceedings. In the opinion of the GET, this mechanism – which also exists in other jurisdictions – fulfils another purpose, different from the logic of "effective regret" which GRECO is examining in the Third Evaluation Round. The GET notes that provisions on "effective regret" (*tätige Reue*) as such do exist in Liechtenstein for various offences, including money laundering, but not bribery. That said, article 167 CC provides for a list of offences for which it can be invoked, including breach of trust which is currently used to criminalise / prosecute private sector bribery offences:

[5] Link to the Code in the Lilex database
[6] As in other countries, the Criminal Code also addresses bribery in the context of an election or referendum – article 265 CC (*Bestechung bei einer Wahl oder Abstimmung*).
[7] For example, provisions exempting an individual from criminal liability if s/he has consented to the solicitation for a bribe by an official but reports it to the relevant authorities or if the bribe was given under threat.

Article 167 – Effective regret

(1) Liability for (…) breach of trust [article 153 CC] is extinguished as a result of effective regret.

(2) The offender enjoys the benefit of effective regret if prior to the authority (article 151 paragraph 3) becoming aware of the offence, even following a complaint by the victim but without the offender being forced to denounce him/herself, he/she

1. provides compensation for the whole damage caused by his/her action or

2. commits him/herself contractually to provide within a certain time full compensation for the damage incurred by the injured person. In the latter case, the punishability revives again if the culprit does not keep to his/her obligation.

(3) The offender is also not to be punished if, in the course of self-denunciation revealing his/her responsibility to the authority (Section 151 paragraph 3), he/she repairs the whole damage resulting from the act by making a consignation with the authority in question.

(4) The offender who has made due efforts to compensate for the damage, is not to be punished either if a third party acting in the offender's name, or if another person who participated in the offence, repairs the whole damage resulting from the offence, under the conditions stated in paragraph 2.

Jurisdiction (article 17 of ETS 173)

77. The jurisdiction of Liechtenstein for criminal offences is laid down in articles 62 et seq. of the CC. Article 62 CC "classically" provides that the criminal laws of Liechtenstein apply to all acts committed in Liechtenstein. Article 65 CC deals with situations of extra-territorial jurisdiction involving a dual criminality requirement: it stipulates that Liechtenstein legislation shall apply, provided that the offences are also punishable according to the laws of the place where they are committed, (1) if the perpetrator is a Liechtenstein national at the time of the offense or acquired Liechtenstein citizenship later and still retained it at the time when criminal proceedings were initiated; (2) if the perpetrator who is a foreign national at the time of the offense, is caught/apprehended in Liechtenstein, and s/he cannot be extradited abroad for reasons other than the type or nature of the act. The offence shall not be punished, however, (1) if the offense is no longer punishable under the laws of the place where it is committed; (2) if the perpetrator has been acquitted by a final judgment or the prosecution has otherwise been dropped before a court of the State in which the crime is committed; or (3) if the perpetrator has been convicted by a final judgment before a foreign court and the sentence has been enforced in its entirety or, to the extent it has not been enforced, the perpetrator has been released or enforcement of the sentence has become time-barred under the law of the foreign State.

78. Finally, article 64 CC addresses extraterritorial jurisdiction without dual criminality requirement. The draft legal package currently in parliament aims to amend this article; for the sake of clarity, the text below shows the intended amendments:

Draft new provisions of the Criminal Code

Article 64 CC - Offences abroad that are punished irrespective of the laws of the place where they are committed

1) The Liechtenstein criminal laws shall apply to the following acts committed abroad, irrespective of the criminal laws of the place where the act is committed:

(…) [offences of high treason, acts against the highest State bodies, the military security etc]

2. offences which are committed against a Liechtenstein civil servant (§ 74 paragraph 1 item 4), ***a Liechtenstein public official (§ 74 paragraph 1 item 4a) or a Liechtenstein arbitrator (§ 74 paragraph 1 item 4b)*** *during or because of the implementation of his/her duties, and which are committed by someone acting as a Liechtenstein civil servant, as a Liechtenstein public official or a Liechtenstein arbitrator.*

2a. Apart from the item 2. above, punishable breaches of the official duties, corrupt acts and similar criminal acts (§ 302 to 309) when

a) the offender was a national of Liechtenstein at the time when the offence was committed or
b) the offence was committed to the benefit of a Liechtenstein public official or arbitrator
(…)
4. extortionate kidnapping (art. 102), delivery to a foreign power (art. 103), slave trade (art. 104), trafficking in human beings (art. 104a), breach of a business or trade secret (art. 122), spying out a business or trade secret (art. 123), spying out a business or trade secret for use abroad (art. 124), cross-border trafficking for prostitution (art. 217), counterfeiting money (art. 232), counterfeiting specially protected securities punishable under art. 232 (art. 237), preparation of counterfeiting money, securities, or official stamps (art. 239), criminal organization (art. 278a paragraph 1), and crimes against the provisions of the Narcotics Act if the perpetrator is not extradited or if the act violates Liechtenstein interests;
(…)
6. other offences which the Principality of Liechtenstein is required to prosecute, irrespective of the criminal laws of the place where the offence is committed, even if they are committed abroad;
7. offences that a Liechtenstein citizen commits against another Liechtenstein citizen, if both have their residence or usual abode in Liechtenstein;
(…)
9. participation (art. 12) in an offence committed by the immediate perpetrator in Liechtenstein, as well as handling stolen goods (art. 164) and money laundering (art. 165) with respect to a (predicate) offence committed in Liechtenstein;
(…)
2) If the criminal laws enumerated in paragraph 1 cannot be applied merely because the act is an act punishable with a more severe penalty, then the act committed abroad shall nevertheless be punished in accordance with Liechtenstein criminal laws, irrespective of the criminal laws of the place where the act is committed.

Statutes of limitation

79. The statute of limitations for the prosecution of offences is determined in article 57 CC. Except for offences which are punishable with life imprisonment or imprisonment of ten to twenty years or life imprisonment and which are not subject to any statute of limitations in principle (paragraph 1), the limitation periods for other offences are defined according to the level of punishment (paragraph 3). An overview is available in the table of paragraph 35.

Article 57 CC Limitation of punishability

1) Offences carrying a penalty of imprisonment for life or a penalty of imprisonment of ten to twenty years or for life shall not be subject to a limitation period. After expiry of a period of twenty years, however, a penalty of imprisonment of ten to twenty years shall replace penalties of imprisonment for life. Paragraph 2 and § 58 shall apply mutatis mutandis to the time period.
2) The punishability of other acts shall be subject to limitation. The limitation period shall commence as soon as the activity carrying a penalty has been completed or the conduct carrying a penalty has ceased.
3) The limitation period shall be twenty years, if the act carries a penalty of imprisonment of ten to twenty years or for life, or if it does not carry a penalty of imprisonment for life but does carry a penalty of imprisonment of more than ten years; ten years, if the act carries a penalty of imprisonment of more than five years, but at most ten years; five years, if the act carries a penalty of imprisonment of more than one year, but at most five years; three years, if the act carries a penalty of imprisonment of more than six months, but at most one year; one year, if the act carries a penalty of imprisonment of not more than six months or only a monetary penalty.
4) Once the limitation period has expired, deprivation of enrichment, forfeiture, and preventive measures shall also become impermissible.

80. As a result, bribery and trading in influence offences are subject to a statute of 1, 3 or 5 years (see table in paragraph 35)

81. The statute of limitation applies as soon as the punishable activity is concluded or the punishable conduct has come to an end. According to article 58(2) CC, the statute of limitations is extended if the perpetrator commits another offence during the period covered by the statute of limitations and the offence arises from the same harmful inclination. The time during which criminal proceedings are pending in court is not to be taken into account for the calculation of the limitation period (article 58(3) CC). The authorities take the view that even extended enquiries as part of international mutual legal assistance in criminal matters therefore do not have a negative effect on the prosecution. They also explain that a case which was transmitted by the prosecutor to an investigative judge is considered to be in court: as indicated above, the statute of limitation is thus suspended and the law does not provide from that moment on for any limitation until the end of the procedure.

82. The statutes of limitation for the enforcement of decisions are laid down in articles 59 and 60 CC; in a nutshell, the period is fifteen years a) if a sentence of imprisonment of more than one year, but not more than ten years was imposed; b) ten years, if a sentence of imprisonment of more than three months, but not more than one year was imposed, or a monetary penalty subject to an alternative term of imprisonment of more than three months was imposed; c) five years in all other cases.

Statistics

83. The following data is made available on the number of investigations, prosecutions and convictions for all of the offences discussed earlier, over the last three years.

2012 / 2013 / 2014	Investigations	Prosecutions	Convictions
article 153 StGB	0	0	0
article 302 StGB[8]	1 (2012) 8 (2013) 12 (2014)	1 (2014)	0
article 304 StGB	0	0	0
article 305 StGB	0	0	0
article 306 StGB	0	0	0
article 306a StGB	0	0	0
article 307 StGB	3 (2012)[9]	0	0
article 308 StGB	0	0	0
article 309 StGB	0	0	0
article 4, 22 UWG	0	0	0

Legislative amendments, reforms planned

84. As indicated in paragraph 8, a legal package entailing *inter alia* a series of amendments to the incriminations of bribery and trading in influence, and to enable the country to ratify the Convention and its Protocol, is in the process of adoption.

[8] According to information collected on-site by the GET, these cases were triggered within the police forces for misconduct of officers but they did not necessarily involve an undue advantage for the offender (or at least there was no evidence of a bribe), e.g. unjustified access to police databases. One of these was a large case involving a group of six persons.

[9] According to information collected on-site by the GET, these cases were triggered by foreign requests for assistance concerning assets located in Liechtenstein; cases were opened in Liechtenstein for the underlying predicate offence to facilitate assistance.

III. ANALYSIS

85. The GET recalls that Liechtenstein has been a member of GRECO since 1 January 2010 and that it signed in November 2009 the Criminal Law Convention on Corruption (ETS 173) (hereinafter: the Convention) and the Additional Protocol thereto (ETS 191). Liechtenstein is one of the very few GRECO members which have not yet ratified these two instruments. Nevertheless, Liechtenstein, like any other member of GRECO, is subject to peer review according to the standards of the Convention and its Additional Protocol which are under examination in the Third Evaluation Round, together with Guiding Principle 2 of Resolution (97) 24 on the twenty guiding principles for the fight against corruption ("to ensure co-ordinated criminalisation of national and international corruption"). The authorities of the country recognise that for the time being, the domestic criminal law provisions on bribery and trading in influence diverge quite significantly from the two Council of Europe instruments. Draft legislation was prepared by the government and subsequently submitted to Parliament and as pointed out in paragraph 8, the legal package was finally adopted on 3 March 2016. After that, the usual period of 30 days will run to enable any group of citizens interested in the subject-matter to file a referendum against the content of the law. Eventually, the Prince will then have six months to formally approve and promulgate the law. This would enable the country to ratify the Convention and its Protocol. The authorities explained that for the time being, there are no plans concerning the possible use of reservations. The GET welcomes the existing draft legislation, which was taken into account for the elaboration of the present report. It considers that if it was adopted in the wording available at the time of the on-site visit, it would bring significant improvements to the domestic legislation, in line with the above instruments. It would also provide Liechtenstein's with better tools for the repression and prevention of corrupt acts. **GRECO recommends that Liechtenstein proceeds swiftly with the ratification of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191).** As GRECO has pointed out before in similar national contexts, attention is drawn to the formal Appeal by the Committee of Ministers to States, made at its 103rd Ministerial Session on the occasion of the adoption of the text of the Criminal Law Convention on Corruption (4 November 1998), to limit as far as possible the reservations that they declare pursuant to the Convention, when expressing their consent to be bound by the Convention. On the same occasion the Committee of Ministers appealed to States "which nevertheless find themselves obliged to declare reservations, to use their best endeavours to withdraw them as soon as possible." The recommendations contained in the following paragraphs of this report are without prejudice to the right of Liechtenstein to enter declarations and reservations pursuant to articles 36 and 37 of the Convention and Article 9 of its Additional Protocol.

86. The current incriminations of bribery of domestic public officials are laid down in articles 304 to 306a (for passive bribery) and article 307 for active bribery. These cover acts involving civil servants, managing employees of public enterprises and their subordinates as well as court experts. The definitions of these crimes reflect many of the requirements of articles 2 and 3 of the Convention and they treat both situations involving a breach of duties (which is an aggravating circumstance) and situations which do not. Some gaps are more apparent than real: indirect bribery is implicitly covered, and prosecutable in combination with the provisions of the general part of the CC on instigation and accessoryship. On the other hand, the coverage of the various categories of officials concerned is not consistently addressed for both the active and passive forms of bribery. For instance, passive bribery under article 304 CC only covers acts involving civil servants, whereas the active form of bribery under article 307 CC refers to civil servants but also members of parliament and of municipal councils. At the same time, the logic of the definitions of a "domestic civil servant" and of a "foreign civil servant" under article 74 paragraph 1 item 4 and 4a CC respectively, diverge strongly. The former adopts a broad functional

definition: *any person appointed in the name of the State, a municipal association, a municipality or another person under public law… to carry out legal acts as an organ thereof…, or otherwise entrusted with responsibilities of the national or municipal administration*. The latter is more specific with regard to the types of functions (*any person holding an office in legislature, administration or justice*). The authorities take the view that with the concept of "public official", the current provisions cover all the relevant categories of domestic public officials, in line with article 1 paragraph a) of the Convention. But the GET finds the current legal framework unnecessarily complex and a source of legal insecurity[10]. The lack of consistency in the above core provisions results reportedly from the desire of Liechtenstein to be able to provide international legal assistance, but it also has implications for other categories of domestic and foreign officials – see the subsequent paragraphs. As pointed out above, a legal package is currently in the adoption process. If adopted, it would amend to a large extent the existing incriminations of corruption, trying to align these on those of the Austrian legislation from which Liechtenstein traditionally draws inspiration in the criminal law area. As a result, the intended incriminations pursue a different approach from the one currently in place. The passive bribery offences (305 and 306 CC) and the active bribery offences (article 307, 307a and 307b CC) deal with acts involving public officials and arbitrators. They aim to incriminate bribery involving a breach of duty as the basic mechanism (articles 304 and 307 CC). Additional offences would cover the granting or taking of advantages (articles 305 and 307a) which are defined as not involving a breach of duty. An additional set of incriminations cover the granting and taking of advantages specifically for the exertion of an influence (articles 306 and 307b). They refer to a new concept of "public officials" which is defined in broad terms and covers basically anyone performing at state or municipal level functions in the legislature, administration or justice, as a body thereof or as an employee (article 74 paragraph 1 new item 4a). In the GET's view, the intended provisions would constitute a clear improvement, if adopted. **GRECO recommends improving the consistency of the incriminations of bribery of domestic public officials as is already foreseen, so that all the pertinent categories of persons are clearly reflected, in line with articles 2 and 3, combined with article 1, of the Criminal Law Convention on Corruption (ETS 173).**

87. The existing incriminations of bribery and trading in influence are particularly problematic when it comes to the "undue advantage" and the GET recalls the absence, to date, of any pertinent court cases. First of all, the incriminations examined in the present report often spell out that minor advantages entail no criminal liability for public sector bribery offences which involve no breach of duties, unless the act is committed on a "professional basis", i.e. "with the intention of obtaining a regular income by repeatedly committing the act" (article 70 CC). This is the case for instance of article 304 paragraph 4 CC on passive bribery of civil servants, and article 307 paragraph 2 CC on active bribery of civil servants and members of the management of public business entities. No domestic penal law source (or jurisprudence) spells out how the concept of minor advantage is to be understood[11]. It was explained to the GET that by reference to the Austrian criminal law sources and practice – from which the country traditionally draws inspiration – this refers to benefits which have a value of approximately 150 CHF; this corresponds in principle to 100 EUR in Austria but the exchange rate of the Swiss currency, which is used in Liechtenstein, has considerably evolved in recent years. Some practitioners met on site shared the GET's concerns

[10] For instance as to whether domestic judges are actually captured despite the absence of an explicit reference to members of the judiciary (as is the case for foreign judges under the current wording of article 74 para.1 item 4a). The authorities stressed after the visit that there is no doubt in Liechtenstein that domestic judges are to be treated as civil servants for the purposes of the criminal provisions on corruption.

[11] The authorities point out that nonetheless the law on State personnel and the respective Government ordinance contain an absolute prohibition for civil servants to accept monetary gifts and spell out what kind of non-monetary advantages are to be understood as minor.

that a value-based exemption of liability might not be a satisfactory approach, especially since such amounts can have different implications for different categories of public officials possibly involved in corrupt schemes. The GET also considers that amounts in the range of 100 to 150 CHF can well be used to influence not only the lower earning categories of public officials, depending how strict the existing legal safeguard (unless the act is committed "with the intention of obtaining a regular income by repeatedly committing the act") would be applied. Moreover, such a clear exception opens the door to the practice of facilitation payments, i.e. payments made for instance to speed-up the processing of cases. The Convention makes no exception for facilitation payments, even as a one-off act. In connection with this, the authorities explained that any benefit is always inappropriate hence the absence of any other adjective such as "undue" to qualify the benefit. The GET could not agree with this explanation, which is clearly at variance with the logic of the incriminations, at least those which treat minor advantages as an exempting circumstance, as seen above.

88. Secondly, the GET is concerned by the fact that the incriminations of bribery and trading in influence are construed in a way that benefits must have, or can be attributed a financial value. The above-discussed exemption for minor gifts is an illustration thereof. But the entire system of sanctions is designed on the assumption that undue advantages have a monetary value since the aggravating circumstances are defined by reference to the amount of the bribe. GRECO has already pointed out, in respect of other country evaluations, that the objective of the Convention is to outlaw any form of bribery. The Liechtenstein authorities indicated that there is no definition of the concept of benefit used in the incriminations; they pointed out that in principle it covers "all monetary (tangible material and non-material) rewards and gifts". The GET could not get a clear view as to what kind of benefits are actually covered. Some practitioners met by the GET acknowledged that valuating certain forms of benefits can indeed be problematic. The GET recalls that countries need to be able to prosecute bribery and trading in influence where the offence involves any form of bribe, including less tangible benefits like honorific distinctions, favours of all kinds including a preferential treatment, a professional opportunity etc. What is important is the damage caused by corruption and the trust in the institutions, rather than the importance of the benefit for the bribe-taker. The absence of any domestic case law on bribery and trading in influence cases does not allow to gain a clear view as to how intangible advantages are actually taken into account at all in judicial practice, and how some of them would be valued for the purposes of determining the applicable penalty.

89. The legal package currently in parliament, which aims at amending the provisions, would not bring all the desirable improvements in the above areas, if it is adopted. The exemption for an "advantage which is not merely minor" in case of active bribery (in the current article 307 CC) is maintained in a different manner in the draft provisions of article 306 and 307b concerning bribery for an influence. Moreover, the intended article 305 on taking advantages not connected with a breach of duty already contains a series of exceptions concerning hospitality, tokens of courtesy and other advantages. The GET is concerned that due to these many exceptions, the incriminations of bribery would not deliver the right message and could keep the door open to problematic practices. Also, the draft articles 304 to 308 CC would generalise the value-based approach concerning the undue advantage and the scale of punishment. The explanatory report to the future law stresses that undue advantages can be material or non-material such as honorific distinctions, which is an important step in the right direction. But there is still a clear risk that cases involving intangible advantages (or those which cannot be valued with precision) could in future be treated as basic corruption offences sanctioned with the lowest penalty, i.e. in a way which does not appear to be proportionate to the seriousness of the offence. In view of the considerations contained in the above paragraphs, **GRECO recommends to examine whether additional initiatives need to be taken to ensure that the incriminations of bribery and**

trading in influence adequately capture all forms of undue advantages and those of an intangible nature including for the determination of the appropriate level of punishment.

90. Bribery of members of domestic public assemblies is currently criminalised under article 307 paragraph 1 subparagraph 1 CC, which refers to the active bribery of "*a civil servant, a member of parliament or of a municipal council, or a foreign civil servant*". The incrimination is affected by some important gaps, in particular passive bribery is completely lacking and active bribery constitutes an offence only insofar as it involves a breach of duty, which constitutes a superfluous restriction in comparison to article 4 of the Convention. The GET could not find any explanation as to why the provisions of article 307 CC, which were modified last in the year 2000, miss completely the passive bribery element and appear imbalanced compared to the way bribery of domestic civil servants is treated. It is clear that Liechtenstein needs to fill the gaps. The GET is pleased to see that the draft legislative package currently in parliament foresees to treat domestic assembly members equally to public officials under the future articles 304 to 307b CC in combination with the intended new definition of a "public official" which is to include "*anyone who* (…) *performs duties as a body* (in German: *Organ*) *or employee of the legislature, administration or justice for the State, a municipal association, a municipality or another person of public law, with the exception of a church or religious community, for another State or for an international organisation*" (article 74 paragraph 1 new subparagraph 4(a) CC). The GET understands that this broad expression is meant to cover any category of domestic public assembly members . The explanatory report to the legal package in parliament underlines that individual parliamentarians and mayors are covered by the concept of "body"[12] and a logical consequence of this would be that also individual members of other elected assemblies (municipalities) are equally covered. Moreover, the future provisions would cover situations involving a breach of duty and those which do not. These changes are welcome. **GRECO recommends that the criminal law provisions be amended, as is already foreseen, to the effect that both active and passive bribery of domestic assembly members established under article 4 of the Criminal Law Convention on Corruption (ETS 173) are adequately reflected in Liechtenstein law.**

91. The situation is similar for bribery of foreign public officials. Only active bribery is currently incriminated under article 307 paragraph 1 subparagraph 1 CC, and it is limited to situations involving a breach of duties, as it was mentioned in the above paragraph. The current wording of article 74 paragraph 1 subparagraph 4(a) defines the concept of "foreign civil servant" broadly as "*any person holding an office in legislature, administration or justice in another State, who is entrusted with a public responsibility for another State or an authority or public enterprise of such State or who is a civil servant or representative of an international organisation*": this clearly covers the various categories of foreign public officials insofar as they are appointed (in German: "*bestellt*"). It is also considered that this covers members of government and mayors: the authorities explained after the visit that by reference to Austrian legal theory, the modalities of designation are immaterial and therefore mayors would normally need to be seen as "civil servants" in the current incriminations. Turning to members of foreign public assemblies, the situation is not entirely clear. The authorities initially took the view that both active and passive bribery involving such persons are not criminalised under Liechtenstein's current legislation. In their latest submission, they appear to take a different standpoint on the grounds that the above definition of foreign public officials refers to "an office in legislature" (for further details, see the descriptive part). Notwithstanding this open issue, the Convention takes a broader approach as it refers to members of any elected assembly, including those which have no legislative powers. The draft provisions in parliament would address most gaps thanks to the use of the unified and

[12] Pages 49 and 50 of the document available at:
http://www.llv.li/files/srk/Vernehmlassung%20Abänderung%20Korruptionsstrafrecht_1.pdf

broad concept of public official, which places on an equal footing domestic and foreign office-holders and employees (see in the previous paragraph, the new wording contemplated for article 74 paragraph 1 subparagraph 4(a)). **GRECO recommends that the criminal law provisions be amended, as is already foreseen, to the effect that both active and passive bribery of foreign public officials and members of foreign public assemblies established under article 5 and 6 of the Criminal Law Convention on Corruption (ETS 173) are properly covered under Liechtenstein law and take into account all pertinent categories of persons.**

92. As for bribery involving any of the categories of persons referred to articles 9, 10 and 11 of the Convention, in a nutshell the situation is as follows: bribery of officials of international organisations is an offence only insofar as the active form of the offence is concerned and provided the act involves a breach of duties; the definition of "foreign civil servant" of article 74 currently refers to civil servants and representatives of international organisations, which would allow to also cover senior representatives, experts and seconded personnel who may not necessarily be employees / civil servants of the organisations. Bribery involving members of international assemblies, and bribery of judges and officials of international courts are totally absent from the current legislation. The draft legal package in parliament aims to align the legislation on the Convention in this respect by using a new concept of "public official" (instead of "civil servant") which covers also any person "who performs duties as a body or employee of the legislature, administration or justice for an international organisation" according to the new wording of article 74 paragraph 1 subparagraph 4(a). **GRECO recommends that the criminal law provisions be amended, as is already foreseen, to the effect that both active and passive bribery of officials of international organisations, members of international assemblies, and bribery of judges and officials of international courts established under articles 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173) are implemented in Liechtenstein law.**

93. Turning to private sector bribery offences, the draft in parliament provides for an entirely new provision (draft article 309 CC) which would transpose almost word for word the offences of active and passive bribery of articles 7 and 8 of the Convention. It deals with situations involving a breach of duties and with business transactions, and it covers as bribe-takers any person paid / employed by or hired to represent the business entity, in line with the Convention. For the time being, it is clear that article 153 CC on breach of trust and article 4 of the Unfair Competition Act do not constitute a satisfactory alternative to the specific incrimination of bribery acts in the context of private sector business. The specific purposes of these provisions – which have little to do with bribery – leads to the absence of many elements of the Convention and they do not follow a systematic mirroring approach for the active and passive forms of the offence. The introduction of the new intended provisions would also enable Liechtenstein to put in place a sound framework covering both private sector business (article 309 CC) and public sector business through the specific provisions of the draft new articles 305, 306 and 306a CC. Liechtenstein may wish to ensure that there are no unnecessary discrepancies since the latter refer specifically to bribery involving managers and employees of businesses, as well as experts, collaborators and advisors etc. Finally, Liechtenstein has provisions on effective regret. To some extent, these can be relevant in the context of the prosecution of acts of bribery and trading in influence since article 167 CC provides for a dispense of liability in case of breach of trust (article 153 CC) and some other offences against property if certain conditions are fulfilled: for instance, where the offender compensates for the damage before the authorities become aware of the criminal act, or where s/he reports the matter spontaneously to the authorities and agrees to pay the compensation. The GET recalls that article 153 CC is currently used to prosecute bribery offences in the private sector. In principle, with the introduction of new specific provisions on active and passive bribery in the private sector, effective regret under article 167 CC will become

irrelevant for the purposes of the bribery and trading in influence offences examined in the present report. On the understanding that the intended new incriminations on private sector bribery (draft article 309 CC) are effectively introduced, the GET therefore refrains from recommending additional measures to prevent the abuse of effective regret. But as mentioned above, the incriminations of private sector bribery need to be improved. In view of the above considerations, **GRECO recommends that adequate incriminations of active and passive bribery in the private sector be introduced, as is already foreseen, to the effect that articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173) are implemented in Liechtenstein law.**

94. Article 308 CC criminalises "Illicit intervention" in a way which diverges significantly from the concept of trading in influence of article 12 of the Convention, and there has been no case-law to possibly fill certain gaps. In particular: a) article 308 CC covers only the passive form of the offence; b) acts are prosecutable only where the influence was actually exerted and where the undue advantage was subsequently offered/paid; c) article 308 CC does not spell out that it is immaterial whether the influence peddler has actually the ability to exert influence or not, and whether the influence was successful (and generated the intended result) or not; d) the provision does not list all the relevant categories of domestic, foreign and international officials who can be a target of influence in accordance with articles 2, 4 to 6 and 9 to 11 of the Convention – article 308 CC only refers to "a civil servant, a managing employee of a public enterprise, a member of parliament or of a municipal council, or a foreign civil servant". Article 308 CC also contains an additional limitation: in order to be prosecutable, the intervention must be aiming at a specific act or inaction. Article 12 of the Convention does not provide for such a limitation as it refers, generally, to the exertion of influence over the decision-making of the official concerned. It would appear that the revised wording of article 308 CC, contained in the legal package currently in Parliament (see paragraph 8) will bring the necessary improvements. In particular, it incriminates both (active and passive) forms of trading in influence, the target of the influence is redefined in a way which is more consistent with the requirements of the Convention, the influence would not need to be effectively exerted or to achieve the intended result and so on. The explanatory report to the draft legislation also makes it clear that the purpose of the new offence is to criminalise the illicit behaviour right at the beginning and that the actual exertion of the influence (or not) is irrelevant. It also points out that the future revised offence will be based on the lowest intentional element. The draft refers to an "improper" influence[13] and the GET considers that it pursues the same objective as the wording of article 12 of the Convention. In view of the above, **GRECO recommends that article 308 of the Criminal Code on illicit intervention be amended, as is already foreseen, so that the various elements of the offences of active and passive trading in influence established under article 12 of the Criminal Law Convention on Corruption (ETS 173) are implemented in Liechtenstein criminal law.**

95. As for offences involving the categories of persons addressed by the Protocol to the Criminal Law Convention on Corruption (ETS 191), as indicated in the descriptive part (paragraphs 71 et seq.), jurors are normally equated to civil servants and therefore, any desirable improvement of the existing draft legislation in their respect would be taken care of by measures implementing earlier recommendations on the incriminations of bribery of domestic and foreign public officials. That said, Liechtenstein currently does not incriminate bribery involving arbitrators (whether domestic or foreign). The draft amendments in parliament, if adopted, would fill those gaps since the various draft provisions on bribery and trading in influence of articles 304 to 308 CC would

[13] Article 308 paragraph 4 in the draft provisions defines it as follows: "*The influence over the decision-making of a public official or an arbitrator is considered improper where its purpose is the performance or refraining from performing a legal act contrary to duties or where it involves the offering, promising or granting of an undue advantage (article 305 para. 3) to the public official or for him/her through a third person*."

refer explicitly to arbitrators in addition to public officials. Moreover, article 74 paragraph 1 item 4b would contain a new definition of arbitrator which appears broad enough to cover arbitration domestically and abroad, involving nationals or foreigners. The GET supports these changes. They would allow to prepare the ratification of the Protocol and would contribute to strengthening the country's legal framework on corruption involving also persons dealing with alternative dispute settlements in commercial and other matters. **GRECO recommends that the criminal law provisions be amended, as is already foreseen, to the effect that bribery of domestic and foreign arbitrators established under article 3 to 4 of the Protocol to the Criminal Law Convention on Corruption (ETS 191) are implemented in Liechtenstein law.**

96. Under the provisions currently in force, the sanctions for bribery and trading in influence often are not "effective, proportionate and dissuasive", contrary to the requirement of article 19 of the Convention; for an overview, see the table in paragraph 35. For instance, in case of active bribery concerning the public sector in accordance with article 307 CC, the maximum penalty is imprisonment of up to six months or a fine, or imprisonment up to two years, depending on the case. Under article 308 CC, trading in influence does not attract a penalty higher than imprisonment up to three years. Concerning private sector bribery offences prosecuted under article 4 of the Unfair Competition Act, the applicable penalty is no more than a fine. By contrast, the new intended provisions always provide for a maximum penalty which is at least of five years' imprisonment. Higher penalties (10 years' imprisonment) would be available in respect of passive and active bribery in the public sector in accordance with the future articles 304 and 307 CC, but not for private sector bribery and trading in influence. This is regrettable and GRECO has repeatedly underlined that private sector bribery is of no lesser importance for society than public sector bribery. But overall, the future scale of sanctions would come closer to that of many other GRECO member countries. As a consequence of the scale of sanctions in the current legislation, the statute of limitation for the prosecution of offences of bribery and trading in influence can be as low as one year or three years: this is clearly not a satisfactory situation even though the authorities stress that the calculation is suspended once the case is in court or in the hands of an investigating judge. The GET recalls that bribery and trading in influence are, by nature, secretive offences and that financial investigations aimed at substantiating the corruption scheme and bribes can be very difficult. As a result of the sanctions contemplated in the draft amendments in parliament, the various offences contained in the new articles 304 to 309 CC would imply that the future limitation period amounts to at least five years in all cases, and ten years for the most serious forms of passive and active bribery. This would clearly constitute an improvement. As pointed out earlier, the GET is concerned that the value-based approach used in Liechtenstein to determine the applicable sanctions may not always lead in practice to the criminal justice response that a significant corruption-related damage for society would normally warrant. But from the strict perspective of the level of sanctions and that of adequate limitation periods, the new draft provisions on sanctions are a step in the right direction. Therefore, **GRECO recommends that the penalties incurred for acts of bribery and trading in influence be increased, as is already foreseen, and thereby i) ensuring these are effective, proportionate and dissuasive and ii) extending the one-year and three-year limitation periods for the prosecution of these offences.**

97. The figures provided by Liechtenstein on the number of criminal proceedings and the absence of convictions left the GET with doubts as to the effectiveness in practice of the provisions on bribery and trading in influence. The GET is aware that the absence of convincing figures which would demonstrate the quality of the criminal justice response to corruption cannot be read in the same way as in countries with a much larger population. At the same time, the close social relationships which characterise a country of that size creates an ambivalent situation: on the one side, social control can be stricter but on the other side, it can make the revelation of possible

corruption-related acts more difficult. Interlocutors from the police referred to the specialised police unit which was established by a government directive of 4 December 2007 on organisational measures to implement the fight against corruption. This unit is explicitly entitled to receive directly tips and reports on possible cases, by derogation to the usual hierarchical channel. The unit is also responsible for organising training and awareness-raising events for the general public administration and it has received positive echoes and responses to date. There was also an assumption that the recent cases reported from within the police itself concerning integrity problems could be a consequence of these efforts (see table with statistics in paragraph 83 and the corresponding footnotes). But at the same time, the on-site discussions showed that the 2007 directive is not used to its full potential, including due to limited awareness. Bearing in mind the current lack of convictions and the characteristics of the country (see link in footnote 1), the GET considers that Liechtenstein needs to pursue actively awareness raising efforts and other initiatives with a view to facilitate the disclosure of corrupt behaviour. **GRECO recommends to take further measures (for instance specialised training, circulars or other initiatives) to raise awareness of the Directive of 4 December 2007 on organisational measures to implement the fight against corruption, and ultimately of the yet to be enacted criminal law provisions concerning bribery and trading in influence.**

98. Regarding jurisdictional issues, it would appear that in accordance with articles 62 et seq. CC the country can prosecute all offences committed by nationals and foreigners on its territory; thus bribe-givers and bribe takers, active and passive influence peddlers acting in Liechtenstein are prosecutable domestically; this concerns also acts which can be linked to Liechtenstein in accordance with article 67, which reflects the specific requirement of article 17 paragraph 1a of the Convention that the act was committed "in whole or in part on [the country's] territory". For offences committed abroad by nationals or domestic officials and other categories of persons addressed in the Convention and its Protocol, jurisdiction would be limited by dual criminality requirement and by the fact that the offender would need to be a national. The GET wishes to recall that Liechtenstein makes broad use of Austrian, Swiss and other nationals in the public sector: even if these are treated as domestic civil servants for incrimination purposes, jurisdiction rules are something different and the legislation clearly needs to be improved in this respect. As for acts of active bribery and active/passive trading in influence committed abroad which would target a domestic official, article 64 CC provides for a list of situations where the dual criminality requirement ceases to apply, especially in paragraph 2 where "offences are committed against a Liechtenstein civil servant" (*Beamter*). However, it remains unclear whether the expression "against" would cover acts of bribery and trading in influence and in any event, the concept of civil servant is, once again, too narrow to cover all the relevant categories of persons who are domestic officials. The GET noted that article 64 paragraph 1 subparagraph 6) seems to provide for the automatic jurisdiction of Liechtenstein, without dual criminality requirement, where this is required by an international treaty: in principle, this general provision has the potential to cover all jurisdictional requirements of article 17 of the Convention, provided of course Liechtenstein becomes a Party to it. Some practitioners had misgivings about this solution. On the other side, the authorities consider that Liechtenstein has a monistic system and therefore the general principle is that international treaties do not need to be transposed into domestic law as they become part of the domestic legal system from the moment of their entry into force for Liechtenstein. This shows that there is a need for legal clarification.

99. The above probably contributes to explain why the draft amendments to the CC aim at inserting new wording in article 64 paragraph 1 subparagraph 2 to extend jurisdiction to offences committed not only against domestic civil servants (as is currently the case), but also against a Liechtenstein public official (*Amtsträger*) or Liechtenstein arbitrator (*Schiedsrichter*) in the meaning of article 74 paragraph 1 items 4a and 4b respectively. The explanatory report to the

draft law (page 47) spells out clearly that this provision applies also to corruption-related offences. Moreover, the GET noted that a new draft subparagraph 2(a) would be added to extend jurisdiction specifically for all offences of articles 302 to 309 where the offender was a national at the time of the offence and where the offence was committed to the benefit of a Liechtenstein public official or arbitrator. Although these amendments would complement the existing rules in a way as to cover most circumstances mentioned in article 17 paragraph 1 of the Convention, Liechtenstein should be aware that it is required to establish jurisdiction also with regard to acts committed by foreigners which would involve Liechtenstein nationals serving as officials of international organisations, members of international parliamentary assemblies and officials of international courts (articles 9 to 11 of the Convention). As regards bribery acts involving arbitrators, the intended amendments of article 64 establish jurisdiction for offences committed abroad and without dual criminality requirement only in respect of "Liechtenstein arbitrators" and those who are nationals. This could be problematic for the prosecution of acts of (active) bribery committed by a national entrepreneur against a foreign arbitrator, for instance. In view of the above, **GRECO recommends to broaden jurisdictional rules in accordance with article 17 of the Criminal Law Convention on Corruption (ETS 173) and its Protocol (ETS 191), as is already foreseen, and thereby ensuring that they cover i) acts of bribery and trading in influence committed abroad by foreigners, but involving Liechtenstein nationals serving for instance as officials of international organisations, members of international parliamentary assemblies and officials of international courts; ii) acts of active bribery involving foreign arbitrators.**

IV. CONCLUSIONS

100. Liechtenstein joined the international anticorruption efforts at a late stage and it is one of the four GRECO member states which, to date, has not ratified the Criminal Law Convention on corruption and its additional protocol. Overall, the pertinent provisions of the Criminal Code, i.e. articles 304 to 308, are affected by many gaps as they do not cover (or only partly) bribery involving assembly members, foreign and international public officials and trading in influence involving public officials. As result, for instance, a parliamentarian or a local council member cannot be prosecuted for having taken a bribe. In the same vein, paying someone to exert an illicit influence on a public decision-maker is not a criminal offence. At the same time, bribes are defined exclusively by reference to a financial value. In the absence of any domestic court practice, it thus remains questionable whether corrupt payments taking the form of favours, honorific titles and so on can at all be prosecuted and how intangible benefits would be valued for the purposes of applying the corresponding sanction. Liechtenstein also needs to review the scale of sanctions for the various offences since they are sometimes excessively low and thus not sufficiently effective, proportionate and dissuasive. A consequence of the inadequate system of sanctions is that the statute of limitation for the prosecution of corruption-related offences is sometimes excessively short (sometimes three years or even one year). Given the secretive nature of corruption, this is not a satisfactory situation. On the positive side, GRECO is pleased to see that ambitious amendments have been prepared by the government in 2015 to address many of the above issues. Additional efforts will still be needed on certain issues, for instance the value-based system of sanctions. The final adoption and promulgation of this legislation is likely to occur shortly after the adoption of the present report. These changes are part of the progressive introduction of anticorruption measures in Liechtenstein. For instance, a specialised police unit was established by virtue of the 2007 *Directive on organisational measures to implement the fight against corruption* and it is entitled to receive direct notifications from anyone without the need to follow the usual hierarchical route. Promoting the above Directive and other recent anticorruption tools appears to be a necessity since even with these new arrangements, there have been no convictions for corruption up to now.

101. In view of the above, GRECO addresses the following recommendations to Liechtenstein:

i. **that Liechtenstein proceeds swiftly with the ratification of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191)** (paragraph 85);

ii. **improving the consistency of the incriminations of bribery of domestic public officials as is already foreseen, so that all the pertinent categories of persons are clearly reflected, in line with articles 2 and 3, combined with article 1, of the Criminal Law Convention on Corruption (ETS 173)** (paragraph 86);

iii. **to examine whether additional initiatives need to be taken to ensure that the incriminations of bribery and trading in influence adequately capture all forms of undue advantages and those of an intangible nature including for the determination of the appropriate level of punishment** (paragraph 89);

iv. **that the criminal law provisions be amended, as is already foreseen, to the effect that both active and passive bribery of domestic assembly members established under article 4 of the Criminal Law Convention on Corruption (ETS 173) are adequately reflected in Liechtenstein law** (paragraph 90);

v. **that the criminal law provisions be amended, as is already foreseen, to the effect that both active and passive bribery of foreign public officials and members of foreign public assemblies established under article 5 and 6 of the Criminal Law Convention on Corruption (ETS 173) are properly covered under Liechtenstein law and take into account all pertinent categories of persons** (paragraph 91);

vi. **that the criminal law provisions be amended, as is already foreseen, to the effect that both active and passive bribery of officials of international organisations, members of international assemblies, and bribery of judges and officials of international courts established under articles 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173) are implemented in Liechtenstein law** (paragraph 92);

vii. **that adequate incriminations of active and passive bribery in the private sector be introduced, as is already foreseen, to the effect that articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173) are implemented in Liechtenstein law** (paragraph 93);

viii. **that article 308 of the Criminal Code on illicit intervention be amended, as is already foreseen, so that the various elements of the offences of active and passive trading in influence established under article 12 of the Criminal Law Convention on Corruption (ETS 173) are implemented in Liechtenstein criminal law** (paragraph 94);

ix. **that the criminal law provisions be amended, as is already foreseen, to the effect that bribery of domestic and foreign arbitrators established under article 3 to 4 of the Protocol to the Criminal Law Convention on Corruption (ETS 191) are implemented in Liechtenstein law** (paragraph 95);

x. **that the penalties incurred for acts of bribery and trading in influence be increased, as is already foreseen, and thereby i) ensuring these are effective, proportionate and dissuasive and ii) extending the one-year and three-year limitation periods for the prosecution of these offences** (paragraph 96);

xi. **to take further measures (for instance specialised training, circulars or other initiatives) to raise awareness of the Directive of 4 December 2007 on organisational measures to implement the fight against corruption, and ultimately of the yet to be enacted criminal law provisions concerning bribery and trading in influence** (paragraph 97);

xii. **to broaden jurisdictional rules in accordance with article 17 of the Criminal Law Convention on Corruption (ETS 173) and its Protocol (ETS 191), as is already foreseen, and thereby ensuring that they cover i) acts of bribery and trading in influence committed abroad by foreigners, but involving Liechtenstein nationals serving for instance as officials of international organisations, members of international parliamentary assemblies and officials of international courts; ii) acts of active bribery involving foreign arbitrators** (paragraph 99).

102. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Liechtenstein to present a report on the implementation of the above-mentioned recommendations by 30 September 2017.

103. Finally, GRECO invites the authorities of Liechtenstein to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation available to the public.