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## **Joint First and Second Evaluation Rounds**

## **Evaluation Report on the Russian Federation**

Adopted by GRECO  
at its 40<sup>th</sup> Plenary Meeting  
(Strasbourg, 1-5 December 2008)

## INTRODUCTION

1. The Russian Federation (hereinafter “Russia”) joined GRECO on 1 February 2007, i.e. after the close of GRECO’s First and Second Evaluation Rounds. Consequently, Russia was submitted to a joint evaluation procedure covering the themes of both the First and the Second Evaluation Rounds (cf. paragraph 3 below). The GRECO Evaluation Team (hereafter referred to as the “GET”) was composed of Mr Joseph E. GANGLOFF, Deputy Director, Office of Government Ethics (United States of America), Mr Martin KREUTNER, Director, Federal Bureau for Internal Affairs, BIA (Austria), Mr Georgi RUPCHEV, Director of International Cooperation and European Integration, Ministry of Justice (Bulgaria) and Mr Pierre-Christian SOCCOJA, Ministry of Foreign Affairs (France). This GET, which was supported by Mr Wolfgang RAU, Executive Secretary of GRECO, Mr Björn JANSON, Deputy to the Executive Secretary and Mr Michael JANSSEN of the GRECO Secretariat visited Russia from 21-25 April 2008. Prior to the visit the GET experts were provided with comprehensive replies to GRECO’s Evaluation questionnaires and supporting documents.
2. The GET met with officials from the following governmental organisations: the Ministry of Justice, the Administration of the President of the Russian Federation, Office of the Security Council, Ministry of Finance, Ministry of Internal Affairs, State Duma of the Federal Assembly, Supreme Qualification Board of Judges, Supreme Court, Supreme Commercial Court, Constitutional Court, Ministry of Economic Development and Trade, Federal Financial Monitoring Service, Federal Tax Service, Governmental Committee for Administrative Reform, Federal Security Service, Institute of Legislation and Comparative Law at the Government, Federal Anti-Monopoly Service, Ministry of Foreign Affairs, Accounts Chamber, Federal Customs Service, Public Chamber and the Prosecutor General’s Office including the Investigation Committee. Moreover, the GET met with private auditors, representatives of Transparency International, Indem Foundation (“Information Science for Democracy”), Inter-regional movement “Against Corruption, Fraud and Insincerity”, Volga river “Anti-corruption fund”, Chamber of Commerce and Industry, with regional representatives and the media.
3. It is recalled that GRECO, in accordance with Article 10.3 of its Statute, agreed that:
  - the First Evaluation Round would deal with the following themes:
    - ❖ **Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption**<sup>1</sup>: Guiding Principle 3 (hereafter “GPC 3”: authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy); Guiding Principle 7 (hereafter “GPC 7”: specialised persons or bodies dealing with corruption, means at their disposal);
    - ❖ **Extent and scope of immunities**<sup>2</sup>: Guiding Principle 6 (hereafter, “GPC 6”: immunities from investigation, prosecution or adjudication of corruption); and
  - the Second Evaluation Round would deal with the following themes:
    - ❖ **Proceeds of corruption**<sup>3</sup>: Guiding Principles 4 (hereafter “GPC 4”: seizure and confiscation of proceeds of corruption) and 19 (hereafter “GPC 19”: connections

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<sup>1</sup> Themes I and II of the First Evaluation Round

<sup>2</sup> Theme III of the First Evaluation Round

<sup>3</sup> Theme I of the Second Evaluation Round

between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;

- ❖ **Public administration and corruption**<sup>4</sup>: Guiding Principles 9 (hereafter “GPC 9”: public administration) and 10 (hereafter “GPC 10”: public officials);
- ❖ **Legal persons and corruption**<sup>5</sup>: Guiding Principles 5 (hereafter “GPC 5”: legal persons) and 8 (hereafter “GPC 8”: fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

4. The present report was prepared mainly on the basis of the authorities’ replies to the questionnaires and additional information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Russian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report presents – for each theme - a description of the situation, followed by critical analysis. The Conclusions include a list of recommendations adopted by GRECO and addressed to the Russian Federation in order to improve its level of compliance with the provisions under consideration.

## I. OVERVIEW OF ANTI-CORRUPTION POLICY IN RUSSIA

### a. Description of the situation

#### Perception of corruption

5. The term “corruption” has in Russia a broad meaning which covers a large number of offences, including disciplinary offences, administrative offences and criminal offences as well as offences according to the Civil Code.
6. The Russian authorities recognise that the level of corruption in the country is inadmissibly high and that polls held over the past years testify to widespread corruption in all public sectors, including the political level and the executive branches at various levels, law-enforcement bodies, judicial system, public procurement agencies, public health services, education system, housing and communal services etc.
7. The GET was told by several officials, during the visit, that corruption has escalated since the breakdown of the Soviet Union. The authorities acknowledge that corruption not only poses a danger to the functioning of the State institutions but also exercises a negative impact on business in general as it undermines competition between market players for goods and services and makes the Russian economy less attractive in respect of foreign investment.
8. There are statistical reports on corruption made on the basis of summary data on crime collected by the Ministry of Internal Affairs, Ministry of Justice, Judicial Department at the Supreme Court and the Prosecutor General’s Office, but there is no single public body specialised with the task of collecting, summarising and analysing statistical data which characterises the corruption situation in the country so as to provide a clear picture of the level of corruption and the level of efficiency in the fight against corruption by law-enforcement bodies and special services.

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<sup>4</sup> Theme II of the Second Evaluation Round

<sup>5</sup> Theme III of the Second Evaluation Round

9. The Russian authorities recognise the link between corruption and the political, economic and social conditions in Russia; the situation that corruption appears to be deeply rooted in the country makes it a considerably complicated phenomenon to fight against, in particular, as it interferes in many key areas of modern Russia. The former Chair of the Anti-Corruption Committee of the State Duma has referred to sociological studies, carried out in 2005 by the Indem Foundation<sup>6</sup>, in which representatives of all seven federal territories of Russia participated, indicating that almost all respondents recognise corruption as a problem in the country and that almost half of them believe that the problem of corruption of government officials is a very acute problem. The same poll indicates that a large majority blame the present situation on the lack of efficient control mechanisms in respect of the officials, the imperfection of the legislation which leaves a large margin of discretion to the officials and a crisis of moral principles. Other reasons given for the high level of corruption are customary traditions of the public management, however, only 11% of respondents referred to the low wages of the officials as a main reason for corruption. The poll also indicates that 24% of the Russians have repeatedly bribed officials and 18% had done so occasionally.
10. The OECD reported, in its Economic Survey on the Russian Federation 2006, that the state bureaucracy is inefficient, largely unresponsive to either the public or its political masters, and often corrupt. It is cited by foreign and domestic investors alike as one of the principal obstacles to investment in Russia today. Furthermore, the OECD working paper "From clientism to a client-centred orientation?" of 15 January 2007 states, *inter alia*, that public bureaucracies tend to be opaque and often suffer from endemic corruption, that endemic corruption is the most commonly cited reason for dissatisfaction with public administration and that there is a widespread consensus that corruption has been growing in recent years. *The World Bank* document "Administrative and Regulatory Reform in Russia" of 1 October 2006 notes, *inter alia*, on the basis of authoritative surveys, that corruption in Russia has significantly grown in recent years, both in terms of state capture and administrative corruption. An increase in the levels of corruption will affect both the ability of the state to complete the ambitious institutional and administrative reform, as well as negatively affect the development of a vibrant private sector, and thus endanger the sustainable economic growth Russia has experienced in the last few years. The *European Commission of the EU*, in its Country Strategy Paper 2007-2013 on the Russian Federation, *inter alia*, points out that corruption continues to be a major problem in Russia.
11. The authorities acknowledge that there is a link between corruption and organised crime in Russia as in many other states and that corruption is a component of the "shadow economy". The authorities have provided examples of established links between corrupt officials and representatives of criminal business for mutually beneficial purposes. A typical form is when public officials or public employees are closely involved in the business of commercial organisations in order to carry out measures, such as money transfers where approval is needed. The GET was informed that a law enforcement operation in the Sverdlovsk Region in 2005/2006 against organised crime where several hundred offenders were involved, led, *inter alia*, to the examination of 70 criminal cases against corrupt officials and among them 35 heads of local administration bodies and 17 officials of the regional State authority bodies were brought to justice.
12. According to the Corruption Perceptions Index (CPI) for 2008 produced by Transparency International (TI), Russia is ranked 147 (out of 180) with a score of 2.1 (out of 10). In 2007

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<sup>6</sup> Indem Foundation, NGO in Russia established in 1990.

Russia was CPI ranked 143 (out of 179) with a score of 2.3 (out of 10). Russia was, according to the CPI for 2006, ranked 121 (out of 163) with a score of 2.5 (out of 10). In terms of perception, this places Russia as one of the most corrupt countries in Europe.

#### Anti-corruption measures

13. A *Concept of the National Security of the Russian Federation* was adopted as a Presidential Decree in December 1997 (No 1300) with subsequent amendments introduced in January 2000. The Concept summarises, *inter alia*, the causes for an increase in crime, especially its organised forms and corruption. The Concept summarises not only the threats to national security but also the main lines of action to be pursued in order to ensure national security in the field of combating corruption, in particular, through legal reform and control of compliance with legislation; prevention of the causes of crime; strengthening the system of law enforcement, in particular, in respect of the units combating organised crime, involvement of State authorities in the prevention of illegal activities.
14. Addressing the Federal Assembly in 2001, *the Russian President* made the fight against corruption an important objective of the Government programme in the form of an administrative reform aiming at increasing the efficiency and transparency of public authorities, improving courts' activities and the status and professionalism of judges, protection of businessmen against arbitrariness of officials and reduction of administrative barriers (such as the provision of licenses etc.) and improving the protection of citizens subject to wrongful acts and decisions by authorities as well as criminality.
15. An *Anti-corruption Commission of the State Duma* was established in 2004 (Decision of the State Duma No. 412-IV of 20 April 2004) to prepare draft legislation, promote the ratification of international instruments, as well as their implementation into national legislation, and to interact with society at large, by means of an expert council. This Commission was also the interlocutor for two technical assistance programmes ("RUCOLA" and "RUCOLA II") funded by the European Commission and implemented by the Council of Europe, which were carried out between 2005 and 2007, with the main objectives of harmonising Russian legislation with the requirements of the Council of Europe Criminal Law Convention on Corruption and the United Nations Convention against Corruption in order to prepare for the ratification of these instruments, and of elaborating preventive, pro-active measures against corruption. The Commission submitted, in the follow-up to several activities with participation of representatives of the executive, legislative and judicial branches, civil society, scientific and research institutions, recommendations to the Administration of the President, Government, Ministry of Internal Affairs, Federal Security Service (FSB), Prosecutor General's Office, Ministry of Justice and other agencies concerned. A new State Duma Anti-Corruption Commission was established on 21 May 2008.
16. *The Security Council's Interdepartmental Commission for public security* (Decree of the President of 2005 no. 1244) is, *inter alia*, vested with the tasks of developing strategies for ensuring national security and, in this respect, designing policies against criminal and any other unlawful actions including corruption, and submitting proposals to the Security Council. This body, headed by the Minister of the Interior, considered a number of issues relating to countering corruption between 2001 and 2007: measures for improvement of the legislation on combating corruption, the status of the fight against corruption within the law enforcement agencies, tax crime, organised crime etc.

17. An *Administrative Reform Strategy in the Russian Federation for 2006-2008* was adopted by virtue of a Decree of the Government (No. 1789-p) in October 2005. The Reform strategy was supplemented by the Government in February 2008 (157-r) with measures to be implemented in 2009-2010. Broadly-speaking, the objectives of the Strategy (2006-2008) are to modernise the public sector by raising the quality and availability of the State services; to limit State interference in the economic activities of business entities, including by reducing excessive State regulation and to enhance the efficiency of the executive bodies. The current Administrative Reform strategy is further discussed in Chapter V ("Public Administration...") below.
18. The GET was also informed that a number of laws and other normative acts, which include anti-corruption elements, have been adopted in recent years, among them the Decree of the President *On general principles of the civil servants' conduct* (No. 885 of 12.08.2002), the *Law On the Public Service System* (No. 58 of 25.05.2003), *Law On the public civil service* (No. 79 of 27.07.2004), *Law On the municipal service* (No. 25 of 02.03.2007) and the *Law On placement of orders for delivery of goods, execution of work, provision of services for the public and municipal needs* (No. 94 of 21.07.2005). Moreover, the authorities mentioned the *Law On information, information technologies and protection of information* (No. 149 of 27.07.2006) as well as the *Law On the procedure for consideration of requests of citizens of the Russian Federation* (No. 59 of 02.05.2006).
19. Furthermore, the Russian authorities refer to anti-corruption programmes carried out by various agencies: the Ministry of Internal Affairs has been implementing a programme for strengthening the efficiency of the fight against corruption 2007-2008, the Prosecutor General's Office has developed a strategy to fight corruption (2006), according to which efforts by public prosecutors should include not only checks on legal compliance but also on the reasons for corruption and should become more pro-active in the investigation. In addition, the Federal Customs Service has elaborated a programme on the fight against corruption 2007-2009 within the framework of which it has studied risk groups of employees as well as the places of work most exposed to corruption, with a view to creating an anti-corruption environment.
20. In February 2007, an Interdepartmental Working Group (IWG) headed by an assistant to the President of the Russian Federation, started its work. The Group consists of representatives of the federal and regional executive bodies, the Council of the Federation and the State Duma of the Federal Assembly, supreme judicial bodies, the Public Chamber, the Council at the President of the Russian Federation for Development of the Civil Society Institutions and Human Rights, as well as leading scholars specialised in law.
21. The IWG was at the time of the visit by the GET in charge of preparing a draft law on preventing and fighting corruption. This draft legislation is intended to be based on the provisions of international anti-corruption standards incumbent on Russia. According to representatives of the IWG, the draft law will, *inter alia*, provide a number of key definitions, including an enlarged definition of corruption (extension of possible perpetrators of corruption offences), deal with the status of public officials and with the criminal liability of legal persons. It was explained that the law was expected to be adopted by the end of 2008. Moreover, the IWG was also in charge of proposing the establishment of a centralised body for the coordination of the fight against corruption. The GET was informed after its visit that the IWG ceased its functions according to a Presidential Decree in May 2008.
22. On 19 May 2008 (following the visit by the GET), the President of the Russian Federation signed a Decree (No. 815) *On the measures on counteracting corruption* through which the Presidential

Council on Counteracting Corruption was created. The Council, which replaces the IWG (see above) was given various missions: to elaborate proposals for a state policy to counteract corruption, to coordinate activities of executive bodies at federal, regional and local level in the implementation of the state policy and to control the implementation of these activities. In this function, the Council may request appropriate materials from executive bodies at all levels and invite representatives of these bodies and public organisations to attend its meetings.

23. The Presidential Council, which is chaired by the President personally, includes the Prosecutor General, the Chair of the Investigation Committee of the Prosecution System of the Russian Federation, the Director of the Federal Security Service (FSB), the Minister of Internal Affairs, the Minister of Justice, the Minister of Economic Development, the Chair of the Audit Chamber, the President of the Supreme Commercial Court, the President of the Constitutional Court, the President of the Supreme Court, heads of departments of the President's Administration and a member of the Public Chamber.
24. For the operation of the Presidential Council, a Presidium has been established under the responsibility of the Head of the President's Administration. The Presidium drafts the agenda of the meetings, creates working groups etc. For the elaboration of the proposals to counteract corruption, four working groups have been established under the Council (on legislative support, improving state management to lower levels of corruption, counteracting corruption in law enforcement bodies and international cooperation as well as on improving the professional level of legal staff and legal knowledge).
25. On 31 July 2008, after the visit of the GET, a National Anti-Corruption Plan (NACP) was adopted in the form of a Presidential Assignment (No. Pr-1568). In the preamble of the Plan, there is a reference to the on-going Administrative Reform Strategy 2006-2010 and the following statement: *"Despite the measures, corruption...still seriously hampers the normal functioning of all social mechanisms, prevents social transformation as well as improvement of the national economy, raises in Russian society serious concern and distrust in public institutions, creates a negative image of Russia in the international arena and is rightly regarded as one of the threats to security of the Russian Federation. In this regard the development of anti-corruption measures, primarily to address its root causes, and the implementation of such measures in the context of the development of the country as a whole is becoming imperative."*
26. The NACP comprises four sections, each of which lists various measures to combat corruption. Section I concerns the preparation of draft legislation, in particular, a federal law on countering corruption, which comprises a definition of "corruption as a socio-legal phenomenon", "corruption offences" (disciplinary, administrative and criminal), "anti-corruption" as coordinated activities between various state bodies. Such a law is, moreover, to contain preventive measures, for example, in appointing judges and other high officials, identification of public policy, improving authorities' structures and operation, improving anti-corruption standards (e.g. uniform system of prohibition, restrictions), fair access to justice etc. Moreover, Section I lists other measures to be introduced in various laws, such as establishment of administrative responsibility of legal persons, banning persons convicted of crimes from entering the law enforcement, conflicts of interest prevention, unspecified measures concerning confiscation, adjustment of criminal penalties for certain corruption-types of crime, ensuring transparency of the judiciary etc. Section II of the NACP on corruption prevention in public administration lists measures such as regulation of the use of public property, creating conditions for fair competition and procurement and the corresponding control, monitoring authorities' performance. This Section furthermore enumerates measures to improve the functioning of the state apparatus, including

decentralisation of state powers to regions and evaluation thereof, realisation of citizens' rights to information, civil society monitoring of public institutions, reducing the number of public employees, raising public officials' professionalism etc. Section III is about measures to improve the professional level of legal personnel (including judges) and legal education, for example, strengthening the anti-corruption component in the academic teaching in law and increasing state control over these institutions, introducing obligatory training for newly appointed judges, improving the legal culture of society as a whole and ensuring broad access to a specialised TV channel," Law TV".

27. Section IV of the NACP contains a list of priority measures for implementation. The various tasks have been divided between the Government, the Attorney General, the Presidential Council on Counteracting Corruption, the Ministry of Justice and the Ministry of Foreign Affairs. The deadlines for the various measures range from 15 September 2008 (preparation of legislation) to the end of 2009.

### Criminal legislation

28. Corruption is a wide concept in Russia and corruption offences appear in different pieces of legislation and other regulations as criminal offences, administrative offences and disciplinary offences. The Criminal Code (CC) contains the offences which are considered more serious than disciplinary or administrative offences. The following offences are reflected in the CC:
29. Active bribery in the public sector is criminalised under Article 291 CC which states that bribe giving to a functionary in person or through a mediator must be punished by a fine of up to 200 000 RUR (approx. 5 714 EUR) or by the equivalent of his/her salary or any other income for a period of up to eighteen months or by corrective labour for a term of one to two years or by arrest<sup>7</sup> for a term of three to six months or by deprivation of liberty for a term of up to three years. Moreover, bribing a functionary for the commission of illegal acts or inaction is to be punished by a fine of 100 000 to 500 000 RUR (approx. 2 857 EUR to 14 285 EUR) or with the amount of the salary or any other income of the convicted person for one to three years or by deprivation of liberty for a term of up to eight years.
30. Passive bribery in the public sector is criminalised under Article 290 CC which states that bribe taking by a functionary for acts or inaction may be punished by deprivation of liberty for a term of three to seven years with disqualification from holding specified offices or from engaging in specified activities for a term of up to three years. The actions provided for by the first or second part of this Article and committed by a person who holds a government post - at central or local level – is to be punished by deprivation of liberty for a term of five to ten years with disqualification to hold specified offices or to engage in a specified activity for a term of up to three years. In case the bribery was committed by an organised crime group, repeatedly, using extortion or on a large scale, the deprivation of liberty may be of a term of seven to twelve years with a fine amounting to one million 1 000 000 RUR (approx. 28 571 EUR) or to the amount of the income of the convicted person for five years.
31. The definition of "a functionary" in active and passive bribery in the public sector is provided in the Note to Article 285 CC and is said to cover the persons holding state positions, i.e. positions provided for by the Constitution, federal constitutional laws and federal laws, i.e. the President, the Prime Minister, Ministers, judges, Members of Parliament and other assemblies. Moreover, functionaries are also defined as persons who permanently, temporarily or within special terms of

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<sup>7</sup> Arrest is used as a form of criminal punishment



reference hold the powers to fulfil representative functions - discharging organisational, administrative and economic functions within State bodies, self-government bodies as well as within the Armed Forces.

32. The equivalent to active bribery in the private sector is, in the Russian criminal legislation covered through the offence “bribery in a profit-making organisation”, Article 204.1 and 2 CC, which provides that an “illegal transfer of money, securities or other assets to a person who discharges the managerial functions in a profit-making or any other organisation likewise the unlawful rendering of property-related services to him for the commission of acts (inaction) in the interests of the giver, in connection with the official position held by this person” is to be punished by a fine of up to 200 000 RUR (approx. 5 714 EUR) or by the amount of the salary or any other income of the convicted person for a period up to 18 months or by disqualification from holding specified offices or from engaging in specified activities for a term of up to two years, or by restraint of liberty for a term of up to two years, or by deprivation of liberty for a term of up to two years. The sanctions in respect of this offence may be considerably stronger in case the offence was committed as part of a conspiracy or by an organised crime group, to a fine of 100 000 to 300 000 RUR (approx. 2 857 to 8 571 EUR) or with the amount of the salary or any other income of the convicted person for a period of one year to two years or by restraint of liberty for a term of up to three years, or by arrest for a term of three to six months or by deprivation of liberty for a term of up to four years.
33. Passive bribery in the private sector is regulated in the CC as the offence “bribery in a profit-making organisation”, Article 204.3 and 4 CC, where it is stated that the “illegal receipt of money, securities, or any other asset by a person who discharges the managerial functions in a profit-making or any other organisation, and likewise the illegal use of property-related services for the commission of acts (inaction) in the interests of the giver, in connection with the official position held by this person” is to be punished by a fine of 100 000 to 300 000 RUR (approx. 2 857 to 8 571 EUR) or by the amount of the salary or any other income of the convicted person for a period of one to two years or by disqualification from holding specified offices or from engaging in specified activities for a term of up to two years or by restraint of liberty for a term of up to three years or by deprivation of liberty for a term of up to three years. The sanctions in respect of this offence in case the offence was committed as part of a conspiracy or by an organised crime group or involved extortion, is to be punished by a fine of 100 000 to 500 000 RUR (approx. 2 857 to 14 285 EUR) or by the amount of the salary or any other income of the convicted person for a period of one to three years, or by disqualification from holding specified offices or from engaging in specified activities for a term of up to five years or by deprivation of liberty for a term of up to five years.
34. Bribery in a profit-making organisation would, according to the authorities, cover private as well as public business (State enterprises). Only economic/tangible benefits are covered by these offences. Under Article 29 CC an attempted crime is an “uncompleted” crime, the criminal responsibility for which is provided for by an Article of the Code stipulating responsibility for an uncompleted crime. An attempt, i.e. deliberate act (inaction) of a person aimed at commission of bribery in a profit-making organisation, is an offence (Article 30 § 3 and Article 204 § 1 and 2 CC). Moreover, a promise or a request for a bribe would constitute an offence under Article 290 CC.
35. Abuse of Authority (Article 201 CC) is defined as the use of authority by a person discharging managerial functions in a profit-making or any other organisation (except State agency, local self-government body or a governmental municipal institution) in defiance of the lawful interests

of this organisation and for the purpose of deriving benefits and advantages for himself or for other persons or for the purpose of inflicting harm on other persons, if this deed has involved the infliction of substantial damage on the rights and lawful interests of individuals or organisations or on the legally-protected interests of the society or the State. This offence is to be punished by a fine of to 200 000 RUR (approx. 5 714 EUR), or by the amount of the salary, or any other income of the convicted person for a period up to 18 months or by compulsory works for a term of 180 to 240 hours or by corrective labour for a term of one to two years or by arrest for a term of three to six months or by deprivation of liberty for a term of up to three years. In case the offence has involved grave consequences, it is to be punished by a fine of 100,000 to 500 000 RUR (approx. 2 857 to 14 285 EUR) or by the amount of the salary or any other income of the convicted person for a period of one to three years or by arrest for a term of four to six months or by deprivation of liberty for a term of up to five years. If this offence has caused damage only to an exclusively profit-making organisation (i.e. not a governmental or municipal enterprise), prosecution is only possible upon the application of this organisation or with its consent. Such a requirement is not provided when a public institution is the victim.

36. Abuse of Official Powers (Article 285 CC) is defined as the use by an official of his/her powers contrary to the interests of the civil service, if this deed has been committed out of mercenary or any other personal interests and has involved a substantial violation of the rights and lawful interests of individuals or organisations or the legally-protected interests of the society or the State. This offence is to be punished by a fine of up to 80 000 RUR (approx. 2 285 EUR) or by the amount of the salary or any other income of the convicted person for a period up to six months or by disqualification from holding specified offices or from engaging in specified activities for a term of up to five years or by arrest for a term of four to six months or by deprivation of liberty for a term of up to four years. In case the same acts are committed by a person who holds a public office including a subject of the Russian Federation or by the head of a local self-government body the punishment is a fine of 100 000 to 300 000 RUR (approx. 2 857 to 8571 EUR) or by the amount of the salary or any other income of the convicted person for a period of one to two years or by deprivation of liberty for a term of up to seven years, with disqualification from holding specified offices or from engaging in specified activities for a term of up to three years or without such disqualification. If these acts entail grave consequences, the punishment may be deprivation of liberty for a term of up to 10 years, with disqualification from holding specified offices or from engaging in specified activities for a term of up to three years.
37. Bribery of various foreign public officials or members of foreign public assemblies is not criminalised as separate offences under Russian law. The GET was told that giving a bribe to a foreign public official could only be prosecuted as a private sector offence (bribery in a profit making organisation) if the act took place in the Russian Federation (Article 11 CC) or outside Russia if the bribe-giving is contrary to Russian interests (Article 12 CC).
38. Organised crime: As mentioned above, a qualifying element of the offences “bribery in a profit-making organisation” (Article 204 CC) and “bribe taking” (Article 290 CC), is that the offence has been committed in an organised form (a group of persons in a preliminary conspiracy or by an organised group). By contrast, in respect of “Abuse of authority” (Article 201 CC) and “bribe giving” (Article 291 CC) there are no such explicit qualifying elements. However, Article 63 CC refers in general terms to aggravating circumstances, such as the commission of an offence by a group of persons, a group of persons in a preliminary conspiracy, by an organised crime group or criminal community (criminal organisation). Furthermore, if the mentioned acts are committed with the use of a criminal network (a criminal community or organisation), that may also qualify the gravity of the offence, according to Article 210 CC. The establishment, management of, and

participation in an *organised crime group* is criminalised as a separate offence pursuant to Articles 35 and 210 CC. Sanctions involve imprisonment of up to 15 years and in case officials are involved in the organisation the sentence may go up to 20 years' imprisonment.

39. The Criminal Code provides for criminal responsibility for evasion of tax or fees by a natural person (Article 198 CC), for evasion of tax and fees by an organisation (Article 199 CC) and for concealment of pecuniary means or property of an organisation or a private individual (Article 199.2 CC). Furthermore, the CC criminalises forgery or the use of false documents (Article 327 CC) as well as fraud (Article 159 CC).
40. Money laundering (legalisation of the proceeds from crime) is covered by the CC under a number of different offences and corruption is a predicate offence in respect of money laundering. Article 174 CC deals with the legalisation of funds and other property acquired by other persons by criminal means, Article 174.1 with the legalisation of the proceeds by the person who committed the predicate offence (self laundering), Article 175 CC deals with acquisition or sale of property knowingly obtained in a criminal manner and Article 316 CC is about concealment of crimes. These crimes may lead to sanctions reaching from a fine to up to 15 years' imprisonment in case they are considered aggravated, for example when carried out in an organised way.
41. Statutes of limitation in respect of the Criminal Code offences referred to above vary between 6 and 10 years except for the gravest form of passive bribery in the public sector (Article 290.4 CC) where the limitation period is 15 years.
42. In respect of jurisdiction over corruption offences, Article 11 CC regulates offences committed in Russia and Article 12 offences committed outside Russia. Any person who has committed a crime on the territory of the Russian Federation is to be brought to criminal responsibility under the Russian Criminal Code. Russian citizens and stateless persons who permanently reside in the Russian Federation and who have committed crimes outside the boundaries of Russia are to be brought to criminal responsibility under the Criminal Code unless these persons have been convicted in the foreign State. Foreign citizens and stateless persons who do not reside permanently in the Russian Federation and who have committed crimes outside Russia are to be brought to criminal responsibility in Russia if the crime runs counter to the interests of the Russian Federation or if provided for by an international agreement, unless they have been convicted in a foreign State and are brought to criminal responsibility on the territory of the Russian Federation. Foreign citizens who commit corruption offences outside Russia may be recognised as the subject of the crime committed by functionaries due to the fact that the crime can be regarded as actions prejudicing the Russian State in accordance with its international obligations (Article 12.3 CC).
43. The issue of criminal responsibility of diplomatic representatives of foreign States and other individuals who enjoy immunity is dealt with in conformity with the standards of international law if these persons have committed crimes on the territory of the Russian Federation.

#### Administrative offences of corruption

44. The system of administrative liability for corruption offences is governed by the Code of Administrative Offences (CAO) providing for administrative responsibility for actions which could be referred to as corruption. Furthermore, some regulations on administrative offences are

contained in the Tax Code. Administrative responsibility is also provided for in respect of certain categories of officials, such as prosecutors and judges.

45. The Code of Administrative Offences (CAO) provides for managerial responsibility for activities that can be related to corruption, for example, violation of the terms of information provision on the opening and closing of an account with a bank or any other lending institution (Article 15.4 CAO), violation of the term of a tax return submission to a tax authority or an authority of a State off-budget fund (Article 15.5 CAO), failure to submit information necessary to conduct tax control (Article 15.6 CAO) and for violations of the rules of bookkeeping and accounting (Article 15.11 CAO). Administrative responsibility provided for by the CAO applies in respect of functionaries only. Similar administrative offences are provided for in the Tax Code.
46. Administrative offences of a corruptive nature are violations of the law encroaching on the rights of citizens, in particular during preparation for and conduct of elections and referenda (Articles 5.2, 5.5 - 5.13, 5.15-5.25 CAO) and other infringements of officials of public bodies and establishments, officials of commercial and other organisations, petty misappropriation through embezzlement (Article 7.27 CAO); restriction of the freedom of trade (Article 14.9 CAO); misuse of budgetary means (Article 15.14 CAO); use of service information on the market of securities (Article 15.21 CAO); violation of the terms of consideration of applications (requests) for land or water object provision (Article 19.9 CAO).

#### Administrative investigation and adjudication of corruption

47. In conformity with Article 25.11 CAO and Article 22 of the Federal Law *On the Prosecutor's Office*, the prosecutor may initiate proceedings in cases of administrative offences, including corruption. The GET was told that corruption offences should as a main rule be dealt with as criminal offences, whereas corruption activities not qualifying as a criminal offence were to be dealt with as administrative offences and the least grave violations within the framework of disciplinary proceedings.
48. In 2007, 2603 persons were reportedly administratively punished for corruption offences in accordance with prosecutors' rulings (in 2006 – 1906 persons).

#### Disciplinary offences of corruption

49. A disciplinary offence of a corruptive nature consists in a wrongful use by an official (in civil, military and law-enforcement service) of his/her status or powers, benefits or advantages, in cases when the conduct does not constitute a criminal or administrative offence and for which disciplinary punishment is stipulated. A number of disciplinary offences are established by Federal Law, others are regulated in by-laws of federal agencies, or other public, regional, municipal, commercial institutions and organisations. Such offences are contained in the Federal Constitutional Law *On the Government*, the Federal Law *On the Foundations of the Municipal Service*, in the Regulation *On the Law-enforcement Service* and in the Federal Law *On the Public Civil Service*. The relevant disciplinary offences are participation for a fee in the activity of a managing body of a commercial organisation, entrepreneurial activity, purchase of securities for which benefits could be obtained in the cases provided by Federal Law, reception of remuneration from physical and legal persons in connection with official duties (gifts, pecuniary means, loans, services, payment for holiday, transport expenses etc.), travel abroad in connection with official duties at the expense of physical and legal persons, use of technical means or other facilities and public property, and likewise their transfer to other persons with

purposes other than those related to one's official duties. Disciplinary sanctions are provided for by the Labour Code of the Russian Federation (Federal Law of 30.12.2001 no. 197-FZ) and the *Law On the Public Civil Service*.

#### Political financing

50. Rules on political party financing (acceptance of donations by political parties and their regional divisions, categories of contributors and maximal sums of donations) and submission of documentation to authorised bodies are included in the Federal Law *On Political Parties* of 11 June 2001 (No. 95-FZ).

#### International treaties

51. Russia ratified the United Nations Convention against Corruption (UNCAC) in March 2006 and the Council of Europe Criminal Law Convention on Corruption in October the same year and became a member of GRECO as of 1 February 2007. Russia has not signed nor ratified the Council of Europe Civil Law Convention on Corruption. Russia has applied to accede to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

#### **b. Analysis**

52. All sources of information available to the GET indicate that corruption is a widespread phenomenon in the Russian Federation. The surveys and polls available – whether domestic or international – point in the same direction. This situation was also confirmed by many of the interlocutors (some 270) met by the GET during the evaluation visit, who were of the opinion that corruption has increased dramatically since the Soviet times and that it has become an omnipresent phenomenon in society. It was often said that corruption was a legacy of the past and that the rise in corruption was a result of the transition from the previous system into the modern Russia, in particular, the transformation of its economy into a market oriented one and that the present level of corruption was “the price to be paid” for this development. Moreover, information received by the GET indicates that most, if not all, public sectors are perceived as being affected by corruption, including the judiciary. Some interlocutors stated that corruption was pervading the entire political system. The various indications concerning the spread of corruption in Russia are so overwhelmingly unanimous that this phenomenon appears to be a systemic problem, which affects society as a whole, including its foundations. Not only the public administration and the business sector have been described as highly affected but also the public institutions which are in place to counteract corruption, in particular, the law enforcement bodies. Although there is a common perception of the level and spread of corruption in Russia, the GET could not disregard the fact that the information available on the level of corruption is rather general and to a large degree built on assumptions. The challenging situation prevailing in Russia would, in the view of the GET, call for a more precise description, for example, in-depth studies that would provide a more detailed insight into the scale of corruption in the country and its entities, the forms it takes and the areas and institutions affected. Moreover, such studies/surveys would ideally be carried out periodically in order to measure changing patterns and trends and would need to be built on official information, civil society input as well as know-how from the international community in order to provide a high degree of legitimacy and objectivity (cf. paragraph 59).

53. There is no doubt that the Russian authorities take the strong indications of the spread and the level of corruption seriously and consequently, the fight against corruption is recognised as an important priority at the highest political level: the fight against corruption, organised crime and other serious offences were already presented as a priority, in 1997, in the President's Concept of National Security. The recent Presidential Decree (19 May 2008 no. 815) on the Measures to Counteract Corruption, which establishes a Presidential Council on Counteracting Corruption as the overall co-ordinating body in Russia and the President's approval of the National Anti-corruption Plan (31 July 2008) further strengthen the political commitment to act rigorously against corruption and such signals are to be welcomed. Moreover, the GET has noted with satisfaction that there is a strong consensus among Russian officials for the need to introduce substantial measures against corruption beyond the mere issuing of public declarations, anti-corruption programmes and draft legislation of which there is no lack in the Russian Federation. Overarching programmes and action plans are complemented by an impressive number of "model programmes" and sectorial strategies, concepts and legislation. The numerous initiatives, strategies and reforms initiated by the Russian authorities to fight corruption cover both preventive and repressive measures; they span from general reform of the public administration to specific anti-corruption measures in the law enforcement system and a large number of institutions are concerned. Although several examples of regional anti-corruption initiatives were presented to the GET, it was difficult to gain a clear picture of the anti-corruption measures at that level, not least considering the size of the Russian Federation and the number of institutions concerned. It is clearly in the interest of effective corruption prevention and repression that a coherent and concise overall strategy is in place on which central as well as regional and sectorial strategies must be aligned.
54. Representatives met by the GET stressed that designing anti-corruption programmes is not only important domestically but also forms part of foreign policy, as corruption is widely depicted as demeaning the reputation of the Russian Federation in the world, hampering the thriving of business and harming international competitiveness. The recent accession to international anti-corruption instruments, in particular, the United Nations Convention against Corruption (UNCAC) and the Council of Europe Criminal Law Convention on Corruption as well as Russia's membership in GRECO, all in 2006/2007, are therefore significant steps in the right direction. Moreover, foreign policy is also to be viewed in respect of the future prospects of Russia acceding to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
55. In the GET's view the "programmatic" efforts abundantly displayed by the Russian authorities need to be translated into securing support from all domestic key-players, clear and binding agendas for the implementation of legislation, strategies and action plans, professional monitoring and, above all, overall coordination. From the information gathered by the GET, it would appear that the Interdepartmental Working Group (IWG) had been tasked with submitting, in the course of 2008, a draft "law on preventing and fighting corruption" designed to provide a comprehensive framework in this area, including the necessary adaptations of domestic law to comply fully with the relevant international conventions. Although little information was available during the visit on the precise content of the planned draft law and the calendar for its elaboration and subsequent consideration by the competent bodies, the GET was under the impression that the draft was meant to fulfil the function of an overall anti-corruption strategy. After the visit, the GET learned that the IWG had ceased to exist and that its functions been transferred to the Presidential Council on Counteracting Corruption; this Council has been given the task of elaborating and implementing the state policy against corruption and of coordinating the activities

of federal, regional and municipal authorities. To this end the Council has prepared the National Anti-corruption Plan (NACP), which includes an agenda for the initial implementing of activities.

56. GRECO has repeatedly called for the introduction and rigorous implementation of national anti-corruption strategies in its evaluations of various member States, as such an instrument is an important tool for providing a common approach against corruption at all levels of administration. The GET takes the view that such a plan needs to be built on a coherent vision and strategy to address the roots of corruption and be sufficiently precise in respect of the measures foreseen as well as their individual objectives; moreover such strategies would certainly need to be accompanied by a reasonable plan for their practical implementation and ongoing assessment of the progress actually achieved.
57. GRECO has constantly held that a high degree of transparency in public administration is a cornerstone for preventing corruption. The GET is firmly convinced that the development of a transparent administration accompanied by independent media needs to be given high priority in Russia. The GET is therefore pleased that these components have been integrated into the NACP. However, in the GET's view, such important pillars of a democratic society cannot only be formulated as general objectives as is the case in the current NACP, but must be rendered operational by clearly defined actions to be taken, in the short term perspective as well as in the longer term<sup>8</sup>. The GET welcomes that the NACP has a clear preventive approach, but the GET is very doubtful as to what extent the preventive measures foreseen sufficiently address the roots of the problems; they appear rather to focus on prohibitions and control mechanisms. However, certain measures such as speeding up administrative procedures and improving the quality of public services are also envisaged. The NACP deals with three main areas: legislation in any branch of society; preventive measures in public administration and professional improvement of legal personnel, including judges, but not law enforcement staff. In this respect, in particular, the GET notes that the measures envisaged are not very precise and sometimes just represent general objectives, for example, "the realisation of the rights of citizens to obtain reliable information", "increasing the independence of the mass media", "taking measures to prevent conflicts of interest". Another issue, although less of a problem, appears to be the duplication of measures already foreseen under the *Administrative Reform Strategy 2006-2010*. The measures concerning legal personnel (including judges) do not appear to address much more than educational matters and the whole area of corruption in law enforcement agencies is not dealt with more than in respect of some legislative changes. The NACP appears to be a product of a top down approach and leaves only very limited room for civil society participation, if any. The GET is of the firm opinion that the NACP does not provide a coherent anti-corruption strategy, but is rather a compilation of a variety of measures; most of which are adequate but lack precision and are therefore difficult to implement and even more so to monitor. The GET also wishes to stress that the timetable presented for the implementation of these many measures appears very ambitious, in particular in respect of the implementation of the legal reforms foreseen. The blatant risk is that the NACP in its present form will become yet another programme among others and not the overarching, powerful instrument which it is supposed to be. It should be highlighted that a priority of the NACP is to prepare a Federal Law on corruption, a task that the Presidential Council "inherited" from the IWG. As explained above, the understanding of the GET was that this law, if sufficiently precise and comprehensive, would provide an underlying anti-corruption strategy for the Russian Federation. To conclude, the GET recommends **to establish a comprehensive national anti-corruption strategy, on the basis of the National Anti-corruption Plan (NACP), covering the federal, regional and local levels**

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<sup>8</sup> Transparency of public administration and the need for legislation are further developed in Chapter V "Public Administration and Corruption".

**of the Russian Federation. The strategy should place a strong emphasis on corruption prevention and transparency of public administration and must give proper attention to civil society concerns; it should also cover all public sectors concerned, including the law enforcement, and be accompanied by a realistic and binding timeframe for its implementation. The strategy and the plan of action should be made widely known to ensure a high degree of public awareness of the strategy and the measures to be taken.**

58. The GET welcomes that the President of the Russian Federation has established a Presidential Council on Counteracting Corruption as the centralised coordinating anti-corruption body. Strong political support is demonstrated by the fact that this body is chaired by the President himself. It is also noteworthy that all relevant representatives of the federal Government, other federal authorities and the judiciary appear to be included. The GET notes, however, that the current composition of the Council does not provide for a direct input from representatives of the regions nor from civil society, although there are possibilities for establishing working groups under the Council on particular issues with a broader society representation. Nevertheless, the Council's current composition has an extremely strong federal state approach, which risks criticism for being – or being seen to be – focused on central state measures and not sufficiently wide in its scope to deal fully with the particularities of the regions and civil society at large. Therefore, the GET considers it of crucial importance that the Council, which has been designed to exercise overall responsibility for the implementation and coordination of the anti-corruption strategies of all parts of the Russian Federation be provided with a broader societal representation in addition to the current high ranking members at federal level. A wider scope in respect of the composition of the Council would not only ensure a truly multidisciplinary approach and add relevant expertise, but would also strengthen its legitimacy *vis-à-vis* the wider public as well as the international community. The GET therefore recommends **that the new Presidential Council on Counteracting Corruption be provided with a broader representation in order to better reflect the interests of the regions as well as those of civil society.**
59. The number of proclaimed anti-corruption initiatives in Russia is impressive and so is the number of legal acts and norms adopted with the purpose of counteracting corruption. This being said, the concrete implementation of these initiatives is more difficult to follow and to assess. One reason might be that the coordinating function in the past was “dispersed” throughout the system, as one of the GET's interlocutors put it. In fact, the GET did not come across much information indicating that measures taken had had a real and measurable impact on the level of corruption. On the contrary, some information received suggests that corruption in Russia has become more of a problem in recent years. Some interlocutors were of the opinion that low level corruption (“petty corruption”) had stabilised in recent years whereas high level corruption was increasing. Some representatives underlined that corruption activities in general were decreasing but that the assets involved had increased. Several international organisations suggest that the level of corruption has indeed grown in recent years. The GET was informed that some 39 000 corruption related offences were detected by the law enforcement authorities in Russia in 2007, but that this figure was just the “tip of the iceberg”. Moreover, a representative of the Investigation Committee of the Prosecutor General's Office had estimated that the total income from corrupt activities by Russian officials was more than one third of the national budget of the Russian Federation<sup>9</sup>. The GET is aware that this information is built, to a certain extent, on perception and assumptions; however, there appears to be no discernible connection between the implementation of reforms and their actual impact. The GET is also concerned that a meaningful evaluation of the real impact of various measures needs different tools and that the

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<sup>9</sup> BBC news, 6 June 2008.



full impact of, for example, legislative measures cannot be assessed until they have had time to take effect. The GET wishes to stress that effective monitoring of the impact of anti-corruption measures needs to be clearly connected to the measures taken. Such tools would preferably be elaborated within the framework of the implementation of strategies and measures by the Council on Counteracting Corruption. The GET recommends **to develop systems for monitoring in a comprehensive, objective and ongoing manner the practical impact on the various sectors concerned of the anti-corruption measures introduced, including the evolution of the levels of corruption in these sectors over time. It should be ensured that civil society is in a position to provide input to, and to make its views known on the outcome of such monitoring.** Moreover, such monitoring would doubtlessly benefit from complementary comprehensive studies on the different aspect of public and private sector corruption, including at regional and local levels.

60. The GET came across a number of details with respect to the incrimination of corruption offences provided for in the Criminal Code that need to be adjusted in order to ensure full compliance of Russian legislation with the Council of Europe's Criminal Law Convention on Corruption (ETS 173). The GET is aware that several changes to the Criminal Code are foreseen. For example, it appears questionable as to what extent private sector bribery is fully covered under current Russian law; bribery in respect of various categories of foreign public officials seems not to be sufficiently addressed; trading in influence is not criminalised as a separate offence etc. The GET wishes to emphasise that criminalising all forms of corruption in accordance with international standards would send a clear signal to the public and the international community that corruption is unacceptable in Russia and is pleased to learn that revision of the current legislation is underway. The GET recalls that the implementation of the Council of Europe Criminal Law Convention on Corruption is examined in depth in GRECO's Third Evaluation Round to which the Russian Federation will be submitted at a later stage. For this reason, and in line with standing practice, the GET refrains from issuing recommendations on this matter at this stage.
61. Another concern of the GET is the fact that corruption offences are dealt with under two different procedures; the administrative system in accordance with the Code of Administrative Offences and the criminal justice process, as set out in the Criminal Procedure Code. The current situation appears to give the authorities rather wide discretionary powers to decide which procedure to follow in individual cases and there seems to be a grey zone where the two systems overlap. Even though the GET was informed that, in theory, the administrative procedure is to be used only in cases where the criminal procedure would not be applicable, the GET strongly believes that the existence of these two parallel systems affords opportunities for manipulation, for example, to escape from the justice process. The GET recalls GRECO's approach that corruption, in all its forms, is a serious offence which threatens the proper functioning of a democratic society and needs to be dealt with, as a matter of priority, by the criminal justice system. Therefore, the GET recommends **to review the system of administrative and criminal procedures in order to firmly establish that cases of corruption are to be treated as criminal offences as a main rule.**

## II. INDEPENDENCE, SPECIALISATION AND MEANS AVAILABLE TO NATIONAL BODIES ENGAGED IN THE PREVENTION AND FIGHT AGAINST CORRUPTION

### a. Description of the situation

#### Law Enforcement bodies fighting corruption

62. The law-enforcement system comprises a number of federal executive bodies whose functions include combating corruption. However, there is no single law enforcement body exclusively responsible for the fight against corruption in the Russian Federation. The GET was informed that the law enforcement bodies take part in the development of a draft concept programme *Strengthening of the fight against organised crime and corruption for 2008-2013*. The following are the main bodies dedicated to investigating cases of corruption:

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- Ministry of Internal Affairs (MVD);
- Federal Security Service (FSB)
- Investigation Committee of the Prosecution System;
- Federal Drug Control Service.

#### *Ministry of Internal Affairs (Militia/Police)*

63. The Ministry of Internal Affairs (MVD) is the central authority of the Militia (police) of the Federation. It is headed by a Minister, who is a member of the Government. The Militia is largely subdivided into the Criminal Militia and the Public Security Militia. The Criminal Militia is subordinate to the Ministry of Internal Affairs and the Ministries of Internal Affairs of the Republics. The Public Security Militia is also subordinate to local authorities. The Criminal Militia has the tasks of prevention, detection and suppression of criminal offences that require a preliminary investigation. The Public Security Militia or local militia has the tasks of ensuring the personal security of citizens; ensuring public security; protection of public order; prevention and suppression of criminal offences and minor delinquencies and has special departments for these tasks. There are some 540 000 ordinary staff employed in the Militia and some additional 260 000 staff in the internal troops (specially trained and equipped) of the Militia. The GET was informed that there are approximately 52 000 investigators employed by the Ministry of Internal Affairs throughout Russia.

64. The criminal police has specialised departments for criminal investigations, economic crimes, for trafficking in narcotic drugs and psychotropic substances, for organised crime, operative and search departments, special technical departments and internal security departments. This structure is also reflected at constituent entity level.

65. Under Article 10 of the Law *On militia* of 1991 (No. 1026-1) the bodies of the Ministry of Internal Affairs are responsible for revealing, investigating, prosecuting and solving crimes, including corruption offences. Currently, a three-level system is in place in the Ministry of Internal Affairs to combat corruption - departments and units of the Ministry of Internal Affairs, Main Directorates of the Ministry of Internal Affairs for the federal districts of the Russian Federation and Ministries, Main Directorates and Directorates of the interior in the constituent elements of the Russian Federation. In 2007 the Ministry of Internal Affairs implemented a set of measures to improve organisational and staff support of these activities. By virtue of Order of the MVD of 2005 no. 595 anti-corruption working groups have been set up within the main departments of the Russian

MVD at the federal districts, GUVV (main internal affairs departments), UVD (internal affairs departments) at the Russian constituent entities.

66. In April 2007 the Minister of Internal Affairs issued an Order (No. 395dsp) establishing a special unit within the Ministry to fight against corruption, *the Operational Search Bureau 10*, under the Department for Combating Organised Crime and Terrorism. The main task of this unit is to reveal and prosecute cases of corruption by senior officials of federal executive and legislative bodies, authorities of the constituent elements and to suppress the links between organised crime and corrupt government officials. The Operational Search Bureau no. 10 has a broad mandate to investigate cases and to co-operate with other MVD bodies, federal bodies of the legislative and executive powers, federal ministries and agencies as well as constituent bodies of the executive powers, self-government bodies, non-governmental bodies etc, including providing these bodies with methodological support and monitoring their work. The GET was informed that the Bureau no. 10 also has regional offices and the power to request information from the regions. Furthermore, it was told that since 2007, the Bureau no. 10 has initiated investigations of 14 corruption cases. The operations of Bureau no. 10 are monitored by a unit of the Prosecutor General's Office. Criminal proceedings are not initiated by the Bureau itself, but through the Investigation Committee of the Prosecution System and the Investigation Committee at the MVD in accordance with the Code of Criminal Procedure.
67. According to Article 19 of the law "On militia" a (full) secondary education is required before entering the service. New police recruits undergo a probation period of 3-6 months depending on their previous training and the special needs of the position for which they have been hired. New recruits receive obligatory specialised professional training and retraining in educational institutions (vocational and higher education institutions) under the responsibility of the Ministry of Internal Affairs.
68. The educational institutions of the MVD incorporate anti-corruption issues into the training curricula, such as methods of investigating economic crime and bribery, the fight against corruption crimes within the State service. Advanced training and development programmes for the internal affairs officers are provided when necessary but at least once every 5 years.

*Anti-corruption bodies dealing with internal corruption in law enforcement bodies*

69. The Decree of the President of the Russian Federation *On the Ministry of Internal Affairs* of 19 July 2004 (No. 927) provides for the establishment of the Internal Security Department within the Ministry of Internal Affairs (MVD), with functions to develop measures of internal security within the law-enforcement bodies and the Federal Migration Service (FMS) against infiltration by individuals pursuing illicit purposes, to protect personnel and families of the law-enforcement bodies and to prevent and detect crimes and corrupt relations involving personnel. The functions assigned to the Internal Security Department are laid down in an internal instruction of 2004.
70. The State Customs Committee order *On progress in fighting against corruption, misconduct and internal security of customs authorities* of 1995 (No. 287) requires heads of customs authorities at all levels to conduct thorough examination and investigation of every illegal act committed by staff of the customs authorities, to take prompt action and submit information on the results of investigations within 10 days to the Office for Internal Security of the State Customs Committee.
71. Similar internal security units for fighting internal corruption exist within the Federal Penitentiary Service and the Federal Drug Control Service, the Investigation Committee of the Prosecution

System as well as the Prosecutor General's Office have divisions performing similar functions. The information on the structure and staffing of the units is confidential. The *Statute of the Law-Enforcement Service in the Authorities Dealing with Control of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances* enacted by Presidential Decree No. 613 of 2003 provides that the officers serving in these authorities have no right to accept gifts, monetary rewards, loans, services, payment for relaxation, entertainment etc in the performance of their duties. The same statute contains a long list of acts they are forbidden to perform in order to avoid conflicts of interest, such as being engaged in profitable and entrepreneurial activities etc.

#### *Federal Security Service (FSB)*

72. The Federal Security Service of the Russian Federation (FSB) acting on the basis of the Federal Law *On the Federal Security Service* of 1995 (No. 40-FZ) plays a special role among the above-mentioned bodies. It performs the functions both of a security intelligence gathering agency and of an investigative body. Under Article 10 of this law, the FSB is to take measures to reveal, prevent, investigate and prosecute cases such as espionage, terrorist activities, high treason, breach of state secrecy etc. The FSB is also empowered to investigate other types of crime, such as organised crime and corruption when there is a link to the afore mentioned offences. In accordance with Article 12 of the same law federal security bodies, in cooperation with other government agencies, develop and implement measures to combat corruption, illicit arms, drug trafficking, smuggling etc. The GET was informed that there were no types of corruption offences which fall exclusively under the competence of the FSB, and generally, investigations are carried out jointly with the Investigation Committee of the Prosecution System and/or the Ministry of Internal Affairs. The GET was told, furthermore, that the FSB has approximately 850 investigators
73. At present the major authority to deal with cases of corruption which pose a threat to the security of the Russian Federation is "Directorate K" of the FSB Economic Security Service. It is tasked with combating corruption in government bodies, providing guidance to and coordinating the activities of security territorial bodies in this sphere. Another unit whose major function is to combat corruption is "Directorate M", tasked, *inter alia*, with countering corruption in internal affairs agencies (militia), the judiciary, prosecutors' offices, civil defence and emergency services, as well as drug control and migration agencies. Other operative units of the FSB reveal and detect corruption-related crimes committed within operative support services, for example, the Ministry of Defence.
74. The GET was informed that specialised training relating to corruption fighting is provided for by the Academy of the FSB, for example, a basic course in professional training includes "the involvement of the FSB in combating corruption" (both theory and practice). Courses on "the FSB strategy in combating corruption in government bodies", "operational situation and trends in combating corruption in government bodies, in the bodies of internal affairs and in the customs service" are part of a specialised course during the graduation year. Students of investigation departments specifically study corruption-related crimes and in-service training ("refresher courses") at regular intervals.

#### *Public Prosecution System ("Procuratura")*

75. According to Article 129 of the Russian Constitution, the Public Prosecution System is a single centralised system in which lower prosecutors are subordinated to higher prosecutors and the Prosecutor General. The Prosecutor General is appointed to, and relieved from, the post by the

Council of Federation of the Federal Assembly upon nomination by the President for a five-year term. The Prosecution Service is divided into specialised directorates, dealing with various issues, such as crime in the customs, transport departments etc. Military matters are, however, dealt with by the military prosecutors' offices. The GET was informed during the visit that all over Russia there are some 30 000 prosecutors and some 8 000 investigators.

76. The powers, organisation and working procedure of the Prosecution System are laid down in the law on Public Prosecutions of the Russian Federation. The Public Prosecution System is entrusted with the following main tasks:
- Supervision over the execution of, and compliance with legislation and respect for human rights;
  - Prosecution in court;
  - Representation of the state or citizens in court proceedings;
  - Supervision of the observance of laws by investigative bodies;
  - Supervision of the compliance of the law by the authorities in the execution of judicial decisions in criminal cases and the application of measures of coercion related to the restraint of personal liberty of citizens.
77. Public prosecutors are not entitled to initiate criminal proceedings. The GET was informed that since September 2007, the so-called Investigation Committees of the Public Prosecution System are responsible for the investigation of crime, including corruption offences as well as for the prosecution. The changes aim to separate the functions of investigation and supervision and to give the Investigation Committee a certain autonomy (e.g. its Chair is appointed by the Council of the Federation). The system of Investigation Committees is reflected at all levels in the prosecution hierarchy in Russia.
78. The structure of investigative bodies of the Investigation Committee corresponds to the structure of the prosecutors' offices provided for by the Constitution, i.e. a uniform centralised system based on subordination. The mechanism of cooperation between investigators and prosecutors is defined by the Code of Criminal Procedure (CPC) and detailed in specific departmental regulatory instruments.
79. The GET was told that cooperation between the investigative bodies and internal affairs bodies in the detection and investigation of corruption offences is considered to be of great importance in Russia, since these offences have a high level of latency and are difficult to reveal. Each pre-trial investigation unit within the internal affairs bodies is an independent department of the Investigation Committee at the MVD that discharges the duty of revealing, detecting and investigating crime under the jurisdiction of investigators of the internal affairs bodies (Article 151.3 CPC). By virtue of an Order of the Prosecutor General's Office of 1995 (32/199/73/278), the MVD, the FSB and the Tax Police, it is possible to establish joint investigative and operative teams in complex cases, for example, when there is a need to use data held by different law enforcement bodies. The GET was also informed that the development of a draft interdepartmental order and instruction for collaboration in the detection and investigation of corruption offences is underway.
80. While the Investigation Committees and investigators are responsible for crime detection and investigation, the main objective of the Prosecutor's Office during investigation is their supervisory function. According to Article 21 of the *Law on Public Prosecutions*, this implies verifying compliance with the Constitution, legislation and regulations at various levels.

Moreover, a prosecutor's supervision of the legality of the pre-trial investigation implies that the latter may take certain measures – transmitting a request for elimination of a violation of the law, quashing an unlawful decision on initiation of criminal proceedings etc.

81. The mandate of the Prosecution Service with regard to combating corruption is exercised by specialised units (directorates and divisions) of the various Prosecutors' Offices, whether they are located in the districts, the cities or are specialised, such as military prosecutors, depending on their competences provided for by the Federal Law *On Public Prosecution System of the Russian Federation*.
82. Furthermore, the GET was informed about a Strategy of the Public Prosecution System to combat corruption which incorporates a number of documents issued in 2006-2007: an internal memorandum of the Prosecutor General on some aspects concerning the Prosecutor General's activity of combating corruption of 06.07.2006, regulations for the Department of Supervision of Compliance with anti-corruption legislation, Orders of 28.03.2007 no. 53 on the strengthening of the fight against corruption and violation of legislation on state and municipal service, of 02.10.2007 no. 154 on ratification of the Instruction for the establishment of the departments for supervision of compliance with anti-corruption legislation and bringing officers to disciplinary responsibility and instructions of 16.11.2006 no. 105/40 on the procedure of submission of materials on public Prosecution Services' anti-corruption measures for publication (with amendments of 07.12.2007 no. 196/40).
83. In July 2006, a division to control the compliance with public and municipal service laws was established within the Public Prosecution System to supervise the implementation of anti-corruption laws and public and municipal officials' compliance with restrictions and prohibitions set forth in the existing legislation. New approaches to supervision of implementation of anti-corruption laws in 2006 implied focusing prosecutors' efforts not only on measures to control the compliance with the laws on municipal and public service, but also on revealing cases of corruption, identifying their causes and underlying conditions while supervising the compliance with the federal law in general.
84. The GET was furthermore informed that specialised departments for the monitoring of compliance with anti-corruption legislation had been established in the Prosecutor General's Office, staffed by 33 persons (Order of the Prosecutor General no. 176-sh of 03.08.2007). Moreover, anti-corruption departments have reportedly been established in respect of the Prosecution Services in a large number of constituent entities (Prosecutor General, no.326-sh of 29.09.2007). Moreover, there are anti-corruption departments set up within the main military Prosecutor's Office and the Investigation Committees of the Prosecution System. By Order 26.03.2008 no. 52-sh of the Chair of the Investigation Committee of the Prosecution System, a main department for procedural control was established, which includes the department for procedural control in the field of combating corruption.
85. The GET was also informed that the Prosecutor General's Office in March 2008 created a special anti-corruption section on its Homepage devoted to the Prosecution System's anti-corruption activities with a possibility for the wider public to immediately report any form of corruption they encounter. Moreover, the Prosecutor General's Office permanently monitors publicly accessible information of the media, including the Internet in order to ensure possible detection of corrupt acts.

### *Recruitment and training prosecutors/investigators*

86. The Federal law *On Public Prosecution System of the Russian Federation* establishes the specific requirements of the appointees to the posts of prosecutors and investigators in the Prosecution Service, *inter alia*, Russian citizenship and the holding of a degree in law from a state-accredited institution of higher professional education. Exceptionally, the positions of assistant prosecutors and investigators at city or district level may – according to the law on public prosecution – be filled by law students who have completed their third year in a state-accredited higher professional education institution. However, the authorities claim that there are no serious problems in recruiting prosecutors and investigators.
87. Persons first entering the Prosecution Service are mainly subject to a probation period of six months. Current legislation does not provide for a competitive appointment to the posts of public prosecutors and investigators. However, under the Federal Law *On State Civil Service*, employment of civil servants within the Prosecution Service is effected on a competitive basis.
88. The GET was informed that a developed system of continuous education and training was in place which includes individual and group classes with special curricula, internships in superior units of the Prosecution Service, research and educational institutions of the Prosecution Service, training in regional training centres and institutes for excellence. Public prosecution supervision over compliance with the anti-corruption legislation is also studied at the Irkutsk Law Institute (branch), which is tailor-made for, *inter alia*, public prosecutors at city and district level.
89. The GET was furthermore informed that in 2006-2008, more than 60 training sessions on the fight against corruption, including qualification of corruption offences, were offered to some 800 public prosecutors and that more than 500 investigators and other staff from the Prosecution Service participated. In September 2007, a specialised training curriculum was introduced at the Institute for Development of the Executives of the Academy for 82 public prosecution officers of Russian constituent entities monitoring compliance with the legislation on State and municipal service and combating corruption; in June 2007, 73 public prosecution officers of territorial public prosecutor's offices cooperating with the legislative (representative) and executive bodies of the State and self-government bodies were offered at the same educational institutions the topics of determination of criteria of lawfulness of the legal acts and their assessment in terms of their propensity for corruption. The training was provided by, *inter alia*, representatives of the Russian Accounts Chamber, Federal Financial and Budget Monitoring Service and other federal agencies whose activities include combating corruption.
90. It is also planned to provide training of employees of the Investigation Committee based on academic programmes of the institutions of the Academy of the Prosecutor General's Office, at training centres of the Investigation Committees which are being created.

### *Statistics*

91. According to statistics submitted by the authorities, it would appear that in 2007, 39,076 corruption-related crimes were detected by all law enforcement agencies (as compared to 34,498 in 2005); 10,573 of those crimes were cases of bribery (8,830 in 2005).

## Judiciary/courts

92. The judicial system in Russia is established by the Constitution (Chapter 7) and several laws in particular *On the judicial system*, *On the Constitutional Court*, *On commercial courts*, *On courts martial of the Russian Federation*, *On bodies of judicial community*, *On the status of judges* and *On Justice of the Peace*. The judicial system is financed by the federal budget.
93. The Constitution states that justice must be administered only by courts of law and be divided into constitutional, civil, administrative and criminal procedures (Article 118). Pursuant to Article 4 of the Law *On the judicial system* (1996) there are federal courts, constitutional (statutory) courts and justices of the peace of the constituent entities which represent the judicial system of the Russian Federation.
94. According to the Constitution judges are independent and are required to obey only the Constitution and the federal law (Article 120). Moreover, judges may not be replaced and a judge may not have his/her powers terminated or suspended except under procedures and grounds established by law (Article 121). Judges possess immunity (Article 122, see also Chapter III of this report). The principle of judicial independence is also dealt with in a number of federal laws such as the Laws *On the judicial system* and *On the legal status of judges*.
95. According to the Law *On the legal status of judges in the Russian Federation* all judges have, as a general rule, the same status<sup>10</sup>. Under Article 9 of this Law, a judge's independence is ensured through:
- the law-stipulated procedure for administering justice; the prohibition, under the threat of being brought to responsibility, of anyone's interference with the administration of justice;
  - the established procedure for the suspension and termination of a judge's powers;
  - a judge's right to retire;
  - a judge's immunity;
  - the organisation of the judiciary;
  - the material and social status of a judge at the expense of the state.
96. Moreover, according to Supreme Court rulings of May 2007, judges have to avoid private relationships with parties to a case and the obtaining of any benefits that could give rise to doubt concerning their objectivity.

## *Organisation*

97. The federal courts consist of the Constitutional Court, the Supreme Court of the Russian Federation, supreme courts of republics, territorial and regional courts, courts of the federal cities, courts of autonomous regions and autonomous areas, district courts, military courts constituting the general jurisdiction courts. Moreover, there are the Supreme Commercial Court, cassation commercial courts, appellate commercial courts and commercial courts of constituent territories.
98. The courts of constituent entities of the Russian Federation comprise constitutional (statutory) courts and justices of the peace who are judges of general jurisdiction.

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<sup>10</sup> Certain categories of judges, including those of military courts, are specifically regulated by other federal laws and by laws of constituent entities of the Federation.



99. The Constitutional Court checks whether federal laws, presidential and federal decrees and directives, regional and local constitutions or laws are in compliance with the Constitution. This Court may also resolve disputes between federal and local organs of power and interpret the Federal Constitution. There are 19 judges of the Constitutional Court who are appointed by the Federation Council following nomination by the President.
100. Courts of general jurisdiction deal with administrative, civil and criminal cases. At first instance, criminal cases are considered by justices of the peace, district (city) courts, military courts, courts of the Russian constituent entities and the Supreme Court of the Russian Federation. Criminal cases' jurisdiction is determined by the Criminal Procedure Code. The total number of judges considering criminal cases at first instance amounts to nearly 30 000.
101. Under the Criminal Procedure Code, appeals against decisions of a justice of the peace are filed with a district court. Decisions and judgments of a district court may be appealed to the judicial chamber for criminal cases of the supreme court of a republic, a territory or regional court, court of a federal city, court of an autonomous region or a court of an autonomous circuit. Decisions or judgments of the supreme court of a republic, a territory or regional court, court of a federal city, court of an autonomous region or court of an autonomous circuit may be appealed to the Judicial Chamber for criminal cases of the Supreme Court of the Russian Federation, and decisions and judgments of this Judicial Chamber may be appealed to the Cassation Chamber of the Supreme Court of the Russian Federation.
102. The Supreme Court of the Russian Federation is the highest judicial body for cases of general jurisdiction, and it supervises the general jurisdiction courts, including military federal courts. It examines cases as a court of second instance and in respect of new facts of a case, and in specific cases provided for by federal law also as a court of first instance. This Court is also a superior judicial instance in relation to the supreme courts of the republics, territorial (regional) courts, courts of federal cities, courts of autonomous regions and areas and military courts). The Supreme Court of the Russian Federation consists of the Plenum, the Presidium (13 judges), the Cassation Chamber (13 judges), the Judicial Chambers for Civil and Criminal Cases and the Military Chamber. The Supreme Court establishes judicial practice issues in the manner of rulings of the Plenum which are binding upon the courts, other bodies and functionaries applying the law. In accordance with Article 57 of the Law on the Judicial System of the Russian Federation, the Plenum of the Supreme Court functions comprises the President, the Vice president and members of the Supreme Court. In addition, the Prosecutor General of the Russian Federation and the Minister of Justice participate in the Plenum. The participation of the Prosecutor General is compulsory in the meetings of the Plenum and other officials, such as judges, experts, representatives of ministries, committees, academia etc may be invited by the Supreme Court.
103. The commercial courts administer justice by way of settling economic disputes and examining other cases referred to their competence by the Constitution and legislation, i.e. the resolving of disputes arising from economic and entrepreneurial activities. These courts also resolve a range of other disputes arising from administrative and public relations, namely: challenging of legal acts, alleged violated rights and lawful interests of applicants in the sphere of entrepreneur and other economic activities; challenged concrete decisions including action (inaction) of executive authorities at federal, regional and local level, cases on administrative offences, collecting fines and other compulsory payments from individuals and organisations, performing entrepreneur and other economic activities etc. Under Article 127 of the Constitution, the Supreme Commercial Court is the superior judicial body for the resolution of economic disputes and other cases

examined by commercial courts. Moreover, this Court exercises judicial supervision over the lower commercial courts and issues explanations on matters of judicial practice. The Supreme Commercial Court, which is composed of 53 judges, is a part of Russia's unified judicial system together with the Constitutional Court and the Supreme Court.

#### *Administrative justice*

104. As mentioned above, courts of general jurisdiction and commercial courts are competent to deal with administrative justice in Russia. The establishment of an administrative court system has, however, been on the agenda for several years. A draft Bill on administrative courts was subject to a first reading by the Duma in 2000, but did not lead to any adoption of legislation. According to a ruling of the Supreme Court in 2006 no.55, a draft Code of Administrative Procedure was introduced to the State Duma. The Bill was reviewed by the State Duma in November 2007 and currently the Council of Constitutional Legislation and State Construction of the State Duma has been given the task of preparation of the draft federal law, following opinions, proposals and comments on the Bill; reportedly a draft law will be submitted to the State Duma before the end of 2008.

#### *Recruitment of judges*

105. The basic requirements for becoming a judge are contained in Article 4 of the Law *On the legal status of judges*, which states that the position of a judge can be held only by a Russian national who has a degree in law and who complies with the requirements set forth in the Constitution, federal constitutional laws and federal laws.
106. The selection of judges (i.e. before appointment) is carried out through a system of qualification boards of judges. There are 89 qualification boards of judges linked to the various subjects of the Russian Federation (republics, territories, regions, cities etc) which are part of the selection procedure of federal judges. There is also the Higher Qualification Board of Judges which is involved in the selection process to the various Supreme Courts. The Qualification Boards of judges consist of judges (elected by the Conference of Judges), representatives of the public (appointed by the legislative body at the appropriate level) and one representative of the President of the Russian Federation.
107. According to Article 128.2 of the Constitution, judges of regional courts and courts equal thereto, courts at a district (city) level, garrison military courts, judges of federal commercial courts of circuits (*okrug*), commercial appellate courts and courts of Russian constituent entities as well as judges of circuit (fleet) military courts are appointed by the Russian President on the basis of the Law *On the legal status of judges*. Article 5 of this law provides that the appointment of judges, including at the level of district/regional courts includes selection of applicants on a competition basis. The Chair of a court (at a district/regional level) where there is a vacant position is required to notify the competent qualification board of judges, which is to announce the vacant post in the media. A qualification examination is to be passed by a national who is not already a judge<sup>11</sup>. Having satisfied the aforementioned requirements, the candidate is entitled to file an application for the particular post with the qualification board, which in turn recommends one or more applicants. A decision recommending or refusing to recommend can be appealed to a court. A decision to recommend a national for the position of a judge is communicated to the chairperson of a relevant court for his/her approval. If the chairperson disagrees but the

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<sup>11</sup> The results of a qualification examination shall be considered valid for three years after the examination took place and upon appointment of a national to the position of judge – during the tenure of appointment.

qualification board maintains its original decision by two thirds of the votes of the board's members, the chairperson of the court is overruled. Applicants recommended by the qualification board of judges for the position of a judge of a federal court of general jurisdiction are to be nominated before the Russian President by the Chairperson of the Supreme Court of the Russian Federation, whereas the applicants recommended for the position of judge of a federal commercial court are to be nominated by the Chairperson of the Supreme Commercial Court of the Russian Federation before the President. The President appoints the nominee<sup>12</sup> after consulting a Presidential Commission.

108. The GET was informed that Justices of the Peace must be Russian citizens, at least 25 years old, hold a higher legal graduation, possess legal professional experience of at least five years and not be the subject of defamatory actions. For being appointed candidates have to pass a qualifying exam and be recommended by the appropriate Qualification Board. Justice of the Peace are finally elected by the legislative body of the appropriate regional authority or through the population of a "judicial site".
109. Judges of the Supreme Court of the Russian Federation and the Supreme Commercial Court of the Russian Federation are appointed for life by the Council of Federation of the Federal Assembly (Parliament) of the Russian Federation upon nomination by the Russian President and taking into account the opinions of the Chairperson of the Supreme Court and the Chairperson of the Supreme Commercial Court, respectively. The Chairperson of the Supreme Court of the Russian Federation and the Chairperson of the Supreme Commercial Court of the Russian Federation are appointed by the Council of the Federation for a term of six years upon nomination by the President, and on the basis of a positive report by the Higher Qualification Board of Judges. The same applies to the appointment of the Deputy Chairmen of these Courts with the addition that also the Chairperson of the respective Supreme court is to nominate the candidate.

#### *Training of judges*

110. The GET was not informed of any introductory training for newly recruited judges. However, judges undergo in-service training in the form of "advanced training" every three years. Such training, which may be related to corruption issues, is carried out by higher professional or postgraduate educational institutions.
111. The Supreme Court of the Russian Federation and the Commercial Court of the Russian Federation respectively, ensure advanced training for judges of federal courts at the expense of the federal budget, and for justices of the peace – at the expense of the relevant constituent entity (Article 20.1 of the Law *On the status of judges*).
112. Advanced training of judges of the commercial courts is provided depending on concrete needs. Training is approved by the Chair and other judges of the Supreme Commercial Court. The training is carried out by the Russian Academy of Public Administration under the President of the Russian Federation and by the Russian Legal Academy, which is the main educational, scientific and professional institution of the Ministry of Justice. In 2007, advanced training of judges was provided to 350 judges by the Russian Academy of Public Administration and 370 judges by the Russian Academy of Justice. The GET was informed that judges undergo professional training in the Academy of Justice, set up jointly by the Supreme Court and the

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<sup>12</sup> As a main rule, one judge is proposed for a particular position.

Supreme Commercial Court and that in 2007 2712 federal judges underwent in-service in this institution.

*Disciplinary proceedings against judges*

113. The procedure and grounds for charging a judge with a disciplinary offence are defined by the *Law On the Legal Status of Judges* and the *Law On the Bodies of the Judicial Community*. Under Article 12.1.1 of the *Law On the Legal Status of Judges*, disciplinary offences can be imposed upon a judge, with the exception of judges of the Constitutional Court of the Russian Federation, for breaking the law or the Judicial ethics. The sanctions are a warning and termination of the judicial office. If within a year of imposition of a disciplinary penalty a judge has committed no other disciplinary offence, it is deemed that s/he has never been subject to disciplinary penalties.
114. Consideration by a qualification board of judges of disciplinary responsibility in respect of a judge is possible upon nomination of the chairperson of the relevant or superior court, or at the request of a body of the judicial community, by a judge or any citizen. The applications must be considered by the qualification board of judges itself or sent to the chairperson of the competent or superior court for examination. A disciplinary penalty decision is made by the qualification board, which is authorised to address termination of powers of the judge in question as of the moment of decision making.
115. According to the law, the chairperson of any court must ensure the overall work of the court and the judges in such a way so that they can meet the requirements of Article 3 of the *Law On the Legal Status of Judges* in the fulfilment of their duties and out of service. In this connection, the chairperson of the competent or superior court, through so called *service check-ups* must submit relevant facts to the qualification board of judges for possible disciplinary action.
116. The GET was informed that in 2007, 25 judges of the commercial courts of the Russian Federation were brought to responsibility for various disciplinary offences; 6 of those were dismissed from judicial office and 19 received a formal warning.
117. According to the decisions of the qualification boards of judges, disciplinary offences of judges and the heads of courts were mainly gross or systematic violations of the standards of the procedural law and the code of judicial ethics entailing delays in the consideration of cases and infringement of the rights and legitimate interests of citizens demeaning the prestige of the judicial power and the judiciary.
118. A "*Code of Judicial Ethics*" was adopted by the National Meeting of Judges in December 2004: The Code, which is mandatory for all judges in Russia, lays down standards of ethical conduct based on values such as dignity, impartiality and neutrality. These standards pertain, *inter alia*, to the exercise of judicial functions, extra-judicial activities and the avoidance of conflicts of interest. This Code also provides for two types disciplinary penalties, namely warning and early termination of function. Moreover, the Supreme Commercial Court was in the process of drafting a legislative bill that would make it illegal for a judge to accept any rewards that are connected with his/her official status or the performance of his/her duties. Such a provision would make it possible to concretise the implementation of the provisions of the above listed legislative acts as well as the provision of Article 3 of the Judge's Code of Ethics which provides the conduct of a judge in terms, such as "to maintain personal dignity, value his honour, avoid anything that could have diminished the authority of the judiciary, damage judge's reputation and prejudice his impartiality and independence in performing the functions of judiciary".

## Criminal investigation of corruption

119. Criminal proceedings in Russia are based on a mix of the principles of discretionary and mandatory prosecution: According to Article 20 of the Criminal Procedure Code (CPC) there are different types of criminal prosecution depending on the nature and gravity of the offence. The principle of mandatory criminal prosecution is applied to corruption offences as these are considered criminal cases of public accusation and the prosecution of corruption crimes is effected on behalf of the State. According to part 2 of Article 21 of the CPC on the duty of conducting a criminal prosecution in each case of detection of criminal elements, an investigator, an inquiry officer and a prosecutor take measures to detect a crime and to identify the perpetrator. In addition, a victim, his/her lawful representative and/or representatives have the right to participate in the criminal prosecution (Article 22 CPC).
120. In cases of mandatory prosecution, criminal investigations are to be handled by investigators of the Prosecution Service or the Internal Affairs. Inquirers investigate cases which are not subject to mandatory prosecution.

### *Investigator (Articles 38 and 41 CPC)*

121. Preliminary investigations of criminal cases are to be conducted by the investigators of the Prosecution Service (or by an inquiry office of the MVD). The head of an investigative body is empowered, according to Article 39 of the CPC, to instruct an investigator to carry out a preliminary investigation, to withdraw a criminal case from an investigator or to transfer a case to another investigator, the latter accompanied with the reason for the transfer. Moreover, the head of an investigative body may, *inter alia*, decide on the creation of investigative groups and take the criminal case to his own execution, to check the substance of the criminal case and to cancel illegal decisions of an investigator, to instruct an investigator as to the direction of an investigation and about the qualification of the crime and the scope of accusation etc.
122. Moreover, it is the investigative body or the inquiry body that initiates criminal prosecution of a criminal case (and not the prosecutor, who has more of a supervisory role, see above). According to Article 151.2.1(a) CPC, preliminary investigations are to be conducted by the investigators of the Prosecution Service, in respect of the criminal offences of Abuse of Official Powers (Article 285 CC), Misuse of Budgetary Funds (Article 285<sup>1</sup> CC), Misuse of State Off-Budget Funds (Article 285<sup>2</sup> CC), Excess of Official Powers (Article 286 CC), Illegal Participation in Business Activity (Article 289 CC), Bribe taking (Article 290 CC), Bribe giving (Article 291 CC), Official Forgery (Article 292 CC) and Neglect of Duty (Article 293 CC). By contrast, investigations concerning private sector corruption (Article 204) and Abuse of Authority (Article 201) are under the purview of investigators of the Internal Affairs bodies.
123. The instructions of the head of the investigative body on the criminal case are given in writing and are binding upon an investigator. However, these instructions can be appealed to a superior investigative body. Such an appeal does not halt the execution of the instruction, except when it concerns withdrawal or transfer of a criminal case, bringing the suspected person to justice, qualification of the crime, scope of accusation, selection of preventive punishment, fulfilment of investigative actions, which are admitted only under the court decision and also in case of sending the case to the court or its termination. The investigator has the right to present in written form to the head of a higher investigative body the materials of the criminal case and his objections to the instructions given by the chief of the investigative body.

124. In case of disagreement with the demands of a public prosecutor for the elimination of infringements of the federal legislation committed in the course of the preliminary investigation, an investigator is obliged to present his/her objections in writing to the head of the investigative body, who informs a public prosecutor of that. Besides, s/he has the right to appeal against the decision of a public prosecutor made according to Article 221.1 item 1 CPC on approval of the head of the investigation body in compliance with the procedure. These rules are aimed at ensuring procedural independence of bodies of preliminary investigation when it is possible to realise public prosecutor's supervision and judicial verification of the legality of the investigator's actions and decisions.
125. The grounds for challenging acts by an investigator or a person conducting an inquiry are provided for by Article 61 CPC. Challenges may be brought, amongst others, by a victim, civil plaintiff, witness in a criminal case, juror, forensic examiner, secretary of a court session, defence counsel, legal representative of a suspect or defendant, representative of a victim.

*Public prosecutor (Article 37 CPC)*

126. The Public prosecutor is an official to carry out criminal prosecution and is responsible for the supervision of the procedural operation of inquiry and pre-trial investigation bodies. At the same time, the prosecutor is vested with various powers of supervision concerning procedural operations of inquiry and pre-trial investigation bodies.
127. Currently a public prosecutor is not authorised to initiate criminal prosecution, give written instructions to the investigator, permit the investigator to file in court a motion for selection, cancel or change any measures or to fulfil other procedural acts, which are the court's decisions. Neither is the prosecutor in a position to cancel illegal or unfounded decisions of the investigator concerning the criminal procedure. Nor are decisions to bring changes subject to cancellation by the prosecutor.
128. The Public Prosecutor represents the State (Government) in the proceedings of a criminal case (Article 5(6) CPC) in order to secure the legality and validity of the prosecution (Article 37(3) CPC) and s/he must participate in proceedings where the prosecution is mandatory (Article 246(2) CPC). A public prosecutor proffers evidence; pursuant to a prosecutor's motion, a court may re-examine evidence, or repeat other judicial actions (Article 246(4) CPC). Moreover, the prosecutor expresses an opinion with respect to the essence of the charge and other issues arising in the course of the trial and makes proposals to the court regarding the application of the law and the appropriate sentence (Article 246(5) CPC). The prosecutor may proceed with a civil suit in a criminal case if required to protect the rights of citizens, general or public interests (Article 246(6) CPC).

*Victims (Article 42 CPC)*

129. There are general rules on victims provided for in Article 42 CPC. Russian criminal procedure provides for a mechanism aiming at ensuring that accusations are not withdrawn as a result of illegal pressure on the persons investigating the criminal case. To this end, victims of a crime have the right, *inter alia*, to be informed of what the accused is charged with; to present evidence; to participate with the approval of an investigator, in investigative actions; to see records of investigative actions in which s/he participated and to make observations; to access all materials of a criminal case upon termination of the preliminary investigation; to examine the materials related to damage caused to the victims; to receive copies of the decisions in respect

of initiation of proceedings, termination of the criminal case, to file complaints with regard to actions (omission) and decisions of an investigator, public prosecutor and court; to appeal against the verdict etc.

130. Certain rules concerning compensation of victims and restitution of goods to victims are provided for in the Civil Code. The GET understood that a Law on Property, adopted in 1990, provided for state compensation of material damage sustained by a victim; however this possibility was suspended in 1994 for budgetary reasons. The GET was informed of a public movement "Resistance" (its Head is also a member of the Public Chamber) devoted to the protection of, or support to, victims of crime.

#### *Discontinuation of prosecution*

131. An investigator may request the discontinuation of a prosecution. An inquiry officer also has the right to request that a case be discontinued, with the consent of a prosecutor. A case may be discontinued by a court if the offender has committed a crime for the first time, the crime is of petty or average gravity<sup>13</sup> and the offender voluntarily gave himself up after the commission of the crime (which applies to active bribery pursuant to Article 291 CC) or contributed to detection of the crime (active repentance) or due to the victim's reconciliation with the defendant.
132. The GET was informed that in respect of corruption offences, discontinuation due to the victim's reconciliation with the defendant or to active repentance would appear disputable, as such offences infringe not only the interests of the parties of the crime, but the larger public. Nevertheless, in 2007 the prosecution of corruption offences (related not only to bribery, including commercial bribery but to the whole range of offences against official duties) was discontinued in 104 cases of active repentance and in 85 cases after a successful victim-offender mediation.

#### *Special investigative techniques*

133. Article 38 CPC empowers investigators to direct on their own the progress of an investigation, take decisions on investigative measures, with the exception of cases when in accordance with the CPC it is necessary to obtain a court decision and/or Prosecutor's authorisation, i.e. generally when the measures have an impact on individuals' rights and freedoms. The GET was informed during the visit that a court decision is necessary for the use of special investigative techniques, which may be authorised only from the level of crimes of "medium gravity" (i.e. punishable with 2 years of imprisonment or more). According to Article 7.3 of Federal Law No. 144-FZ of 1995 *On operational-search activity* an investigator is authorised in respect of his/her criminal cases to give written commissions for operational-search measures to bodies engaged in operational-search activities. While giving commissions for operational-search measures an investigator must establish the circumstances of the case in general and has no right to indicate what precise measures should be taken. In accordance with Article 6 of the same law there is a list of 14 measures available (however, the list may be extended by law), among them controlled delivery, surveillance of premises, monitoring of mail, telegraphic and other communications, telephone tapping and under-cover operations.

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<sup>13</sup> Criminal cases concerning minor offences (the maximum penalty for which does not exceed 2 years of deprivation of liberty) or medium gravity (intended offences the penalty for which does not exceed 5 years of deprivation of liberty) or negligent actions (the penalty for which does not exceed 2 years of deprivation of liberty) may be discontinued by the court under Article 25 CPC upon the victim's conciliation with the defendant or due to active repentance by the perpetrator under Article 28 CPC.

134. The GET was told that a whole range of special investigative techniques is available in respect of corruption offences as these are considered serious offences. In exigent cases, such as those of felony or capital offences and in the presence of data on events or acts (inaction) posing a threat to the state, military, economic or ecological security of the Russian Federation, and on the grounds of a reasoned decision of one of the heads of the bodies engaged in the operational-search activities, immediate recourse to these measures is admissible with mandatory notification of the court (judge) within 24 hours. Within 48 hours of the beginning of an operational-search measure the body responsible should obtain a court decision on the measure or stop it.

#### *Confidentiality*

135. Article 161 CPC imposes a general ban on disclosure of preliminary investigation data. A prosecutor, investigator or inquiry officer is required to inform the participants of criminal proceedings about the inadmissibility of unauthorised disclosure of preliminary investigation data that becomes known to them, and they have to make a signed statement with a reference to their criminal liability in accordance with Article 310 CC. Preliminary investigation data can only be made public with the consent of a prosecutor, investigator, inquiry officer if the disclosure does not damage the interests of the investigation, nor involve the rights and lawful interests of the parties of the investigation. The disclosure of personal data in respect of the participants in criminal proceedings is not admissible without their consent.
136. Information constituting a secret of investigation and court procedure as well as information on protected persons and public defence measures taken in accordance with the Federal Law *On state protection of victims, witnesses and other participants of criminal proceedings* and other statutory acts of the Russian Federation constitute confidential data according to the Decree of the President of the Russian Federation *"On approval of the confidential data list"*.
137. According to Article 8 of the Federal Law *"On advocacy and the Bar"* of 31 May 2002 (№ 63-FZ) any data relating to the legal assistance provided by a lawyer to his client shall constitute legal professional privilege. Furthermore, it follows from Article 49 CPC that a lawyer must take part in the criminal procedure from the moment when a decision is taken to prosecute a person, unless that person is subject to some forms of coercive measures, such as detention, in which case the lawyer takes part already at an earlier stage. According to Article 53 CPC upon the date when preliminary investigation completed the lawyer has the right to get acquainted with all materials of the criminal case, extract any amount of information from the criminal case and to copy criminal case materials. A lawyer is not allowed to disclose preliminary investigation data which became known to him/her in connection with the defence if s/he has been notified in advance, according to the procedure laid down in Article 161 CPC.
138. Bank secrecy is provided for under Article 857 of the Civil Code. Under current legislation bank information may nevertheless be disclosed to state agencies. Currently, the Federal Law on Banks and Banking Activities provides that general courts and commercial courts may receive such information with the approval of an investigation body and that banking information may be given to courts and commercial courts (judges), to the Accounts Chamber of the Russian Federation, tax or customs authorities of the Russian Federation or bodies of compulsory execution of judicial acts or acts by other agencies and officials in cases provided for by law and with permission of the investigative body, to the pre-trial investigation authorities in respect of cases dealt with by them. In this connection, it was explained to the GET that bank secrecy can only be lifted once formal criminal investigations have been initiated. Furthermore, the GET was



told that primarily, financial investigations were routinely effected in cases of money laundering and tax crimes.

139. The GET was informed that, according to a decision of the All-Russian Coordination Council of Heads of Law Enforcement (Prosecutor General of the Russian Federation, the Minister of Internal Affairs, the Director of the Federal Security Service, the Director of the Federal Service of Control over Drug Trafficking and the Head of the Federal Customs Service), draft legislation to amend the *Federal Law On banks and banking activity* was underway aiming at extending grounds for the access of law enforcement agencies to information representing banking secrecy in order to enhance the effectiveness of law enforcement agencies' efforts to fight corruption.

**b. Analysis**

*Law enforcement*

140. The law enforcement system of the Russian Federation is structured with a variety of different forces and services at central and entity levels vested with complementary functions and tasks. Moreover, within the various law enforcement agencies there is a variety of departments provided with mandates to investigate specific types of crime, such as terrorism and organised crime. As a result, several law enforcement agencies have organisational structures in order to provide for specialisation in the same field. This is particularly true in respect of corruption offences; a variety of law enforcement bodies have authority to investigate corruption offences, the main ones being the Federal Security Service (FSB), the Ministry of Internal Affairs (Militia) and the Investigation Committees of the Prosecution Service. Within the FSB, the "Directorate K" is specialised in investigating corruption in government bodies and "Directorate M", in respect of corruption within other state bodies, such as the Militia, the Prosecution Service, the Judiciary, emergency services etc. Moreover, the "Operational Search Bureau No.10", which was established in April 2007, within the Ministry of Internal Affairs is also a specialised anti-corruption unit under the Department of organised crime and terrorism, with a focus on senior officials of federal executive and legislative bodies as well as officials of constituent bodies. The GET was made aware that specialised anti-corruption structures had also been established within the Prosecution Service and that several initiatives have been launched by the Prosecutor General regarding the fight against corruption in recent years.
141. The GET noted that the fight against corruption in Russia has been given high priority in terms of the specialisation of the organisational structures of various law enforcement bodies. However, it was not possible to assess more in detail to what extent these structures represent efficient tools in practice, i.e. if they have the appropriate staffing, training arrangements etc. The GET learned, however, that some of the structures had only recently been established and some information received during the visit indicates that they were in need of further resources. The GET also noted that some of the specialised units are either tasked with additional functions or are still embedded in organisations with a much broader overall mandate, for example, to deal with organised crime and terrorism. This is particularly striking in respect of the FSB, which has a mandate to investigate certain types of corruption in addition to countering any serious crime with implications for the security of the State as well as the "classical" intelligence gathering. Similarly, the anti-corruption unit of the Ministry of Internal Affairs is a component of the department of organised crime and terrorism. Moreover, the GET noted that the anti-corruption specialisation has a clear focus on high level officials or sensitive public institutions which may have political and State security implications.

142. The GET is of the opinion that the current law enforcement system represents a highly fragmented and diversified structure where each law enforcement agency has its own legislation, providing for a broad mandate to fight corruption. The GET was made aware that the current system is bound to trigger difficulties in terms of dividing responsibilities between the various law enforcement bodies in respect of corruption investigations, a fact that has been acknowledged by the authorities. In order to remedy this situation, cooperation agreements are being established between different agencies and departments, efforts that are likely to enhance the inter agency cooperation and avoid duplication. However, in the view of the GET, another problem of the current system is that, apart from some general rules in the Code of Criminal Procedure, there is no clear regulation on how to distribute the sensitive corruption cases between the law enforcement agencies. In this respect the GET could not disregard that such corruption cases may have a political dimension and that the law enforcement system is an extremely hierarchical branch of the executive power. The GET has no doubt that a certain margin of discretion concerning the distribution of cases must be provided for, and that some cases of corruption may well affect state security and thus come under the competence of the FSB. However, the criteria for cases to be dealt with by a particular law enforcement body have to be clearly defined in order to ensure, to the extent possible, that cases are distributed to the pertinent investigative bodies based on objective criteria only. The GET therefore recommends **that precise guidelines for the distribution of corruption cases between the various law enforcement agencies/departments be established.**
143. The GET was made aware of measures aiming at improving the coordination between the various law enforcement services. It is possible, for example, to establish joint investigative and operative teams in complex cases in accordance with a Decree by the Prosecutor General. It was also informed of ongoing work in respect of inter-departmental cooperation in corruption investigations. The GET wishes to emphasise that the coordination between the competent law enforcement bodies is of the utmost importance in a situation where several law enforcement bodies are involved in investigating corruption. The on-going efforts to this end are therefore to be welcomed and merit further support. However, the GET would go beyond that and stress that the specialisation in corruption investigations needs to be further refined in order to strengthen the effectiveness of the fight against corruption. A specialised anti-corruption mechanism which only focuses on corruption investigations or their coordination would be a useful complement to the existing system. Such a mechanism could, for example, gather pertinent information on the particularities of investigating corruption offences and it could provide input to the various agencies involved. Furthermore, it could process and facilitate the sharing of data on corruption offences on a permanent basis as well as organise consultation and training of law enforcement staff concerned. The GET therefore recommends **to further enhance the coordination between various law enforcement agencies involved in investigations of corruption and to examine the advisability of developing a centralised support mechanism to assist law enforcement agencies in investigating corruption.**
144. Another feature noted by the GET is the very clear “top-down” approach which provides for a rigid hierarchical structure; the investigations are carried out in accordance with written orders and individual initiatives in crime detection within the services are subject to extensive checks by superiors within the system and also often from other agencies, for example, by the various investigation committees. The GET is fully aware of the necessity of checks and balances in any law enforcement system and does not underestimate the importance of hierarchical control in a system like the Russian law enforcement. However, in such a system, where the degree of operational independence of individual law enforcement personnel and their authorities is rather limited, there is always a risk of improper influence from within the system. Considering that

corruption in the Russian Federation is generally perceived as a widespread phenomenon, including within the law enforcement system itself, the GET considers it of paramount importance that those who fight corruption are as independent as possible in their work, i.e. that not only improper influence from outside the system is dealt with through rigorous checks, but that improper influences from within the system are eliminated to the extent possible. To this end, the GET needs to stress that strict hierarchical control within the system needs to be balanced with an appropriate level of operational independence of those who carry out corruption investigations and their agencies and, linked to that, a sufficient degree of personal accountability. In this context, the GET cannot disregard the fact that militia staff and investigators, generally appear to be working in rather poor conditions and that their remuneration was described as low in comparison with a number of other public employees. The GET, convinced that the fight against corruption would become more efficient should the law enforcement system be more oriented towards operational independence at the investigation level, and fully aware that such a shift would require a long term approach, recommends **that the operational independence of law enforcement agencies and their investigative staff be strengthened and governed by appropriate checks and balances under the Rule of Law and that the material conditions of law enforcement personnel be reconsidered in this context.**

145. The GET was informed that prosecutors are not recruited on a competitive basis and that some assistant prosecutors at city or district level were recruited among students who had only finished their third year at University. Despite the fact that the Russian authorities claimed that there were no serious problems in this area, the GET is of the opinion that the current situation merits to be carefully assessed by the authorities in order to ensure that only fully qualified persons enter the prosecution service. Moreover, it is crucial that prosecutors are subject to a competitive recruitment procedure which selects the best candidates based on objective criteria. Consequently, the GET recommends **to establish a recruitment procedure for prosecutors at all levels based on objective criteria.**

#### *The Judiciary*

146. The GET acknowledges that the establishment of an independent judiciary has been an important challenge to the Russian authorities over the last decades and that several reforms have been implemented. The Constitutional and the legal framework regulating the judiciary clearly establish that justice in Russia is to be administered only by the courts, that the judiciary is independent from the legislative and executive powers and that judges are only bound by the Constitution and the laws. To this end, particular safeguards to judges have been put in place in the Constitution/legislation: immunity, life tenure employment, salary regulated by law, social protection etc. The GET understood that more recently, there has been a general increase of judges' salaries in Russia. Such measures are to be welcomed, however, the GET was informed that the salaries of lower court judges were still rather modest and some judges worked in poor material conditions. The GET also noted that all judges are provided with accommodation in addition to their salaries; federal judges from the federal authorities and other judges from the local authorities. This system may well be considered as merely providing additional benefits, comparable to judges' remuneration, however, in the GET's view the distribution of such benefits in practice may raise concerns in respect of judges' dependence upon executive authorities.
147. Despite the establishment of a Constitutional and legislative framework of the judiciary and safeguards aiming at providing for the independence of judges, there appears to be a common understanding in Russia among officials and civil society representatives that the judiciary is broadly affected by undue influence and corruption. This follows from research (e.g. by the

“Indem Foundation”) but also from a bulk of information and numerous allegations the GET came across. Various sources suggest that judges are subject to undue influence from superior judges as well as to partisan influence from private persons and entities. The situation has been illustrated by a high level judge, who has stated that bribe taking in the courts has become one of the biggest corruption markets in Russia. Other officials would, however, take issue with such a statement. Moreover, there are allegations pointing in the direction of undue political influence over the judiciary.

148. Fair court trials play a crucial role in the fight against corruption. It is therefore of the utmost importance that the independence of the judiciary and the impartiality of judges is not only provided for in the Constitution and the law, but that it is also rigorously implemented in practice. In May 2008, the President of the Russian Federation publicly acknowledged the problem of the lack of independence of the judiciary by stating that a main goal is to achieve independence for the courts in reality. The GET shares the opinion that the practical implementation of the Constitutional principle of the independence of the judiciary, is not sufficiently secured in Russia. This calls for determined action. However, justice is not only to be done in a correct way, it must also be seen to be done in such a way in order to change the public perception which currently involves widespread mistrust *vis-à-vis* the judiciary.
149. One important aspect of the independence of the judiciary concerns the appointment of judges. The GET notes that judges of the Constitutional Court, the Supreme Court and the Supreme Commercial Court are appointed by the Federation Council following nominations by the President, whereas all other federal judges are appointed by the President following a selection and nomination process by a qualification board of judges. The qualification boards, which were initially composed only of judges, currently comprise representatives from other branches as well, the legislature and the executive power (a representative of the President of the Russian Federation). Moreover, the President finally appoints federal judges after having consulted a Presidential Commission. The GET is fully aware that judicial independence must be balanced with the necessary administrative links to the executive, however, in light of the information gathered, it can only conclude that the executive power in Russia appears to be over influential in this process. Ideally, the role of the Presidency should be limited to the formal appointment of these judges.
150. Moreover, the GET notes that the Plenum of the Supreme Court, in which not only Supreme Court judges are represented, but also the Prosecutor General of the Russian Federation and the Minister of Justice, through its rulings has the power to establish judicial practice, binding upon the lower courts. This involvement of representatives of the executive powers in the judicial process – even without a formal right to vote – is questionable as a deviation from the principle of judicial independence.
151. In conclusion, considering what has been stated in the previous paragraphs, the GET is of the firm opinion that further enhancement of the independence of the judiciary must be an important objective of a national anti-corruption strategy and needs to be given a prominent place in the National Anti-corruption Plan. In this respect, it appears particularly important to address the problem of undue influence over the recruitment system and the independence and impartiality of judges in carrying out their judicial functions. Such reforms cannot be implemented without a strong involvement of the judiciary itself. The GET recommends **that the principle of judicial independence, as provided for in the Russian Constitution and legislation, be strengthened further in practice, in particular, in respect of recruitment/promotion procedures and the exercise of judicial functions.**

152. The GET welcomes that draft legislation is under preparation in order to put beyond doubt that it is illegal for a judge to accept any rewards connected to his/her status or functions as a judge. The latter provision would need to be accompanied by appropriate sanctions. Furthermore, the GET wishes to stress that the full effect of ethical norms and codes of conduct, such as the “*Code of Judicial Ethics*” of 2004, cannot be ensured through repressive methods and sanctions alone. Another important means is awareness raising through participation in the implementation of codes of conduct by way of repeated training within the judicial system by the judges themselves. In the present situation of the Russian judiciary, where there is a high degree of perceived corruption, it would appear to be of the utmost importance to offer training on practical ethics to newly recruited judges as well as for judges at all levels and ranks. The GET is pleased to note that training of newly recruited judges is an objective of the National Anti-corruption Plan and that some in-service training of judges had already taken place. The GET recommends **that systematic introductory and in-service ethics training is provided to judges of all levels and ranks in light of the “Code of Judicial Ethics” and other pertinent norms.**
153. The GET was pleased to note that the strengthening of transparency in respect of the judiciary is a component of the federal programme “*Development of the judicial system*” for 2007-2011. Within this framework, the Supreme Court has introduced to the State Duma a draft law on securing the rights of nationals and organisations to information on judicial activity of the courts of general jurisdiction with the purpose of increasing the overall transparency of the justice process. The GET, did not examine the draft law, which at the time of the visit, had been subject only to a first reading. Moreover, transparency of the judiciary is included in the National Anti-corruption Plan. The GET welcomes this state of affairs.

### III. EXTENT AND SCOPE OF IMMUNITIES

#### a. **Description of the situation**

##### *Immunities*

154. According to the Constitution and legislation, the following categories of high-ranking officials benefit from immunity in criminal proceedings:
- the President of the Russian Federation (Article 91);
  - Members of the two Chambers of Parliament, the Federation Council and the State Duma (Article 98);
  - Judges (Article 122);
  - Members of a jury;
  - The Ombudsperson (Article 16 of the Constitutional Law on the Ombudsperson).
155. The President of the Russian Federation enjoys inviolability-immunity, according to Article 91 of the Constitution, and extended immunity following the expiry of the term of office, in accordance with law (see subsequent paragraph). The President can be impeached by the Federation Council only on the basis of charges of high treason or other grave offences brought by the State Duma and confirmed by a judicial opinion of the Supreme Court of the Russian Federation, on the elements of the offence and a judicial opinion of the Constitutional Court confirming that the established procedure has been observed. The State Duma’s decision to bring charges and the Federation Council’s decision to impeach the President is to be adopted by two thirds of the total vote in each of the chambers on the initiative of not less than one third of the deputies of the State Duma and on the resolution of a special commission set up by the State Duma. The

Federation Council's decision to impeach the President should be adopted no later than three months after the bringing of charges in order not to be considered rejected (Article 93 of the Constitution).

156. According to Article 3 of the Federal Law *On Guarantees to the President of the Russian Federation who has ceased the exercising of his Powers, and to members of his family* of 12 February 2001 (No. 12-FZ), the President who has ceased to exercise presidential powers, continues to enjoy inviolability and cannot be brought to criminal or administrative responsibility for acts committed during his/her term of office. This immunity extends to arrest, detention, search etc.
157. A President who has ceased to exercise presidential powers can, however, be deprived of the inviolability-immunity in the event of committing a grave crime "*in flagrante delicto*". In such a case, it is the Chair of the Investigating Committee at the Prosecution System who is to forward a request for lifting the immunity to the State Duma. A resolution adopted by the State Duma to lift the immunity is then submitted to the Federation Council (of Parliament) within three days and the Federation Council is to consider the same request within three months, and is obliged within three days of a decision to lift the immunity and to inform the Chair of the Investigating Committee. A decision to refuse the lifting of the immunity from any of the two Parliamentary bodies is a reason for excluding criminal proceedings and terminating the case.
158. Members of Parliament, i.e. members of the Federation Council and deputies of the State Duma (but not candidates for election) enjoy immunity (Article 98 of the Constitution). They cannot be detained, arrested, searched, save in the event of their detention at the scene of a crime and they cannot be searched except for the cases provided for by the federal Law *For Ensuring the Safety of Other People*. The issue of deprivation of MP's inviolability-immunity is to be resolved by an appropriate chamber of the Federal Assembly on a proposal of the General Prosecutor's Office according to Article 19 of the Law *On the Status of Members of the Federation Council and Deputies of the State Duma of the Federal Assembly of the Russian Federation*.
159. Judges (at all levels) enjoy immunity (Article 122 of the Constitution). A judge cannot be held criminally liable other than in accordance with the procedure established by a federal law. In accordance with Section 16 of the Law *On the Legal Status of Judges* of 26 June 1992 (No. 3132-1), the immunity extends to disciplinary, administrative and criminal responsibility. Moreover, this immunity includes a personal immunity, inviolability of his/her dwelling and office premises, personal and service vehicles, documents, luggage, property and correspondence.
160. The procedure for initiating criminal proceedings or prosecution against a judge is dependent on the type of judge. In respect of a judge of the Constitutional Court of the Russian Federation, investigation/prosecution is decided by the Chair of the Investigation Committee of the Prosecution System of the Russian Federation, based on the conclusion of a judicial board composed of three judges of the Supreme Court and with the consent of the Constitutional Court. Regarding a judge of the Supreme Court of the Russian Federation, the Supreme Commercial Court of the Russian Federation, a supreme court of a republic, a territorial or regional court, the court of a city of federal importance, the court of an autonomous region or area, a district (naval) military court or a federal commercial court, such a decision is to be taken by the Chair of the Investigation Committee of the Prosecution System based on the conclusion of a judicial board composed of three judges of the Supreme Court and with the consent of the Supreme Qualification Board of Judges. In respect of other judges, criminal prosecution/proceedings are initiated by the Chair of the Investigation Committee of the Prosecution System based on the

conclusion of a judicial board composed of three judges, respectively, of the supreme court of the Republic, of the territorial and the regional court and with the consent of the qualification board of judges of the relevant constituent entity. The judicial committees have 10 days to form their opinion and the consenting bodies yet another 10 days. Changing the classification of the elements of the offence, which may entail aggravation of the accusation against a judge, is admissible only in accordance with the procedure provided by the same rules as those on institution of a criminal case (see above).

161. The decision on the selection of a measure of restraint in the form of custodial placement regarding a judge is made on the basis of the same principles as for the initiation of proceedings. The procedure for search measures in respect of a judge would be possible with the consent of the competent qualification board.
162. A decision to bring a judge to *administrative responsibility* is subject to similar proceedings, however, such a decision is taken by the Prosecutor General of the Russian Federation following an opinion by the competent qualification board.
163. Article 12 of the Federal Law *On the Jury of Federal Courts of General Jurisdiction* of 20 August 2004 (No.113) establishes that immunity for judges granted by the Constitution also applies to the members of a jury as regards their involvement in the administration of justice.
164. According to Article 12 of the Federal Constitutional Law *On the Ombudsperson* of 26 February 1997 (No 1), the Ombudsperson enjoys immunity during the term of office. The Ombudsperson cannot be held criminally or administratively liable without the consent of the State Duma, nor can s/he be detained, arrested or searched, except in the event of arrest at the scene of a crime, nor searched, save when it is required by the federal law in order to ensure the safety of other people. The immunity of the Ombudsperson applies to his/her dwelling and office, luggage, personal and official vehicles, correspondence, communication facilities and also to the documents belonging to him/her. In case of arrest/detention at the scene of a crime, the official who has executed the detention must immediately notify the State Duma for a decision on the lifting of the immunity. If the State Duma does not give its consent to detain the Ombudsperson within 24 hours, s/he must be released immediately.
165. A member of the Federation Council, a deputy of the State Duma, a judge of a federal court, a justice of the peace and a former President of the Russian Federation, detained on suspicion of having committed a crime, except for situations of *in flagrante delicto*, are to be released immediately after their identification (Article 449 of the CPC).
166. Article 452 CPC provides that a criminal case concerning a member of the Federation Council, a deputy of the State Duma or a federal court judge is tried by the Supreme Court of the Russian Federation upon their petition.

#### *Special proceedings*

167. Article 447 CPC provides for “special proceedings” and privileges in criminal cases in respect of a number of categories of officials. “Special proceedings” imply the consent of a body/official for the use of coercive measures and for the initiation of criminal proceedings.
168. The consent to initiate a criminal case or to apply coercive measures against a member of the Federation Council, a deputy of the State Duma, a former President of the Russian Federation,

the Ombudsperson, the President, the vice-president and auditors of the Accounts Chamber is given by the Federation Council and the State Duma.

169. In addition, Article 448 CPC requires a decision of the Chair of the Investigation Committee of the Prosecution System of the Russian Federation in order to commence proceedings against a Member of Parliament, the Prosecutor General, the Chair of the Investigation Committee of the Prosecution System of the Russian Federation (in which case the decision is taken here by an acting Head of the Investigation Committee), the Chairperson, the Vice President and auditors of the Accounts Chamber, a candidate for Parliament (during the election campaign), the Chairperson of the Central Election Committee (during the election period) – in all these cases the decision must be based on the conclusion of a judicial board composed of three judges of the Supreme Court. A decision of the Head of the Investigation Committee is also required in order to introduce proceedings against judges (see above for more details, under *Constitutional immunities*).
170. Moreover, a decision of the Head of a territorial investigative body of the Investigation Committee in a constituent element of the Federation is required to initiate criminal proceedings in respect of a deputy of a legislative (representative) body of a constituent element of the Federation – in this case consent must be given additionally by a judicial board composed of three judges of an appropriate judicial instance – and of a candidate for deputy of such a body, as well as in respect of a deputy, a member or an elected official of a local government body. As regards a member of the election commission and a full-voting-status member of a referendum commission in a constituent element of the Federation, the decision is taken by a prosecutor of the constituent element concerned (see also Section 29 of the Federal Law *On Fundamental Guarantees of Suffrage and the Right to Participate in a Referendum for the Citizens of 2002*).
171. Furthermore, a decision by a higher head of a competent territorial investigative body of the Investigation Committee on the basis of a conclusion of a judge of a regional or military court in a place where an action containing elements of a crime has been committed, is required concerning the institution of criminal proceedings against a public prosecutor, head of an investigative body, an investigator or a lawyer. Likewise, Section 8 of the Federal Law No. 63 “On Advocacy and the Bar in the Russian Federation (2002) provides that investigative actions against a lawyer (including living quarters and office facilities used for his/her practice) are permissible only under a judicial decision. As regards public prosecutors and investigators of the Investigatory Committee within a Prosecutor's Office, the Federal Law *On Public Prosecutions of the Russian Federation* (Article 42) contains further regulations with regard to the special procedures concerning criminal liability and establishes that the persons concerned must not be detained, arrested or inspected and that the examination of their belongings and the transport used by them are prohibited, except when provided for the Federal Law *On Security Assurance of Other Persons*.
172. The GET was informed during the visit that the consent of an official / body concerning the initiation of criminal proceedings against the aforementioned persons granted special proceedings and privileges neither affects subsequent decisions on the merits of the case which would be taken by a court, nor are investigators obliged to actually start investigations in respect of the persons concerned.



## Statistics

173. The GET was informed that in 2004, the General Prosecutor's Office of the Russian Federation instituted criminal cases against six judges. All of them were prosecuted for corruption offences. In 2005, criminal cases were instituted against eight judges and a decision to prosecute made in respect of one of them. Furthermore, 31 investigators from investigative bodies were prosecuted, 205 investigators from the Ministry of Internal Affairs, 10 investigators from drug control bodies, 20 prosecutors, 109 lawyers, 43 members of election committees, 19 deputies of legislative bodies of constituent entities of the Russian Federation and 467 deputies and members of elective bodies of local government were prosecuted. In 2006, 18 criminal cases were instituted against judges and two judges were prosecuted. Seven judges were subject to criminal prosecution for suspicion of corrupt practices (bribe taking, fraud and exceeding of official powers), some of whom were heads of regional courts. Besides, 42 investigators from prosecuting bodies, 234 investigators from law-enforcement agencies, 16 investigators from drug control agencies, 36 prosecutors, 171 lawyers, 51 members of election committees, 32 deputies of legislative bodies of constituent entities of the Russian Federation and 798 deputies and members of elective bodies of local government were prosecuted for various offences.
174. The GET was informed that in 2007, the investigative branch of the prosecution service and subsequently (after 07.09.2007) the Chair of the Investigation Committee of the Prosecution System of the Russian Federation instituted 1056 criminal cases against persons to whom a special procedure in criminal cases (persons granted special status) is to be applied. Pre-trial investigations in 783 criminal cases were carried out in respect of deputies of legislative assemblies and elected members or officials of local government bodies, members of territorial elections committees. Moreover, in 2007, 751 criminal cases were instituted against persons of this category, including 542 deputies, 189 elected members or officials of local government bodies and 20 members of territorial elections committees. One case among them was instituted against a candidate to the State Duma. 373 cases were submitted to court following the results of the investigation. Generally, offences committed by these persons were based on abuse of or excess of official powers, misappropriation of budget funds, bribe taking, etc. Twelve criminal cases were instituted against judges of various levels in 2007. Moreover, the Chair of the Investigation Committee of the Prosecution System of the Russian Federation made 5 representations to the relevant qualification boards of judges requesting permission for institution of criminal cases which were not heard in 2007, including against a judge of the Constitutional Court of one republic. In 2008, the Chair of the Investigation Committee of the Prosecution System of the Russian Federation filed 22 representations as to submission of opinion on the presence of crime in the acts of judges, and 18 on permission for the institution of a criminal case. Decisions on the institution of criminal cases or prosecution as defendants had been made against 26 judges by October 2008. In 2007, 7 judges had been convicted of corruption offences and in the first six months of 2008 a further 2 judges had been convicted for corruption. During the first half of 2008, 181 persons of special status had been convicted (10 members of the election committees, 97 deputies of regional legislative bodies and 32 members of locally elected bodies).

### b. Analysis

175. The Russian Constitution and federal laws establish a comprehensive system of immunities from criminal proceedings and detention (inviolability) concerning a large number of categories of officials. The immunities of the President of the Russian Federation, members of both Chambers of Parliament and judges are established by the Constitution; the inviolability of judges is

extended by federal law to jurors; the Ombudsperson is granted immunity on the basis of a federal constitutional law. The procedures for lifting immunities are laid down in Articles 447 to 452 of the Criminal Procedure Code which also establish “special proceedings” and privileges for further categories of officials, namely for former Presidents of the Russian Federation and candidates for the Presidency, candidates for the State Duma, deputies and candidate deputies of legislative (representative) bodies of constituent elements of the Federation, deputies, members and elected officials of elected local government bodies, members of election commissions and referendum commissions, the President, the vice-president and auditors of the Accounts Chamber, as well as the Prosecutor General of the Federation, the Chair of the Investigation Committee of the Prosecution System, public prosecutors, the heads of investigative bodies, investigators and lawyers. “Special proceedings” imply normally the consent of a body/official for the use of coercive measures and for the initiation of criminal proceedings.

176. Various interlocutors met by the GET criticised the scope of immunities which appears to be wider than ever before in Russian legislation. However, the GET was not made aware of any plans to review this legislation in the framework of current anti-corruption programmes and strategies. The GET is concerned about the large number of beneficiaries of immunities which comprises not only a wide range of holders of public office, but also, *inter alia*, candidates for the Russian Presidency and former Presidents of the Russian Federation, parliamentary candidates, candidate deputies of constituent elements, members of electoral commissions, members of referendum commissions and lawyers. The GET firmly believes, in line with GRECO’s previous pronouncements on this issue, that this wide range of immunities for categories of different persons runs counter to Guiding Principle 6<sup>14</sup> because they do not appear to be necessary for the proper discharge of the official duties and status of the holders of public office concerned. Moreover, the GET wishes to stress that inviolability of lawyers in cases of corruption goes beyond the necessary guarantees for the proper functioning of the legal profession. Consequently, the GET recommends **to reduce the categories of persons enjoying immunity from prosecution to the minimum required in a democratic society.**
177. Furthermore, the GET is concerned that the procedures for lifting immunities are unnecessarily complicated and thus entail an obvious risk to the prosecution of corruption offences. The Criminal Procedure Code differentiates between procedures for the institution of criminal proceedings and procedures for authorisation of detention and search. The special procedure for the institution of criminal proceedings is composed of several elements and appears to be particularly complicated and difficult to implement in practice with regard to the following categories of officials. Firstly, Members of Parliament and judges, against whom criminal proceedings can take place: (a) by decision of the Chair of the Investigation Committee of the Prosecution System and (b) following a conclusion of a panel of three judges of the Supreme Court concerning the existence of elements (indications) of crime; and (c) with the consent of the collegial body to which the relevant person belongs, i.e. the Chamber of Parliament concerned or the competent qualification board of judges. Secondly, prosecutors and investigators, against whom criminal proceedings can be initiated: (a) by decision of the Head of a territorial investigative body of the Investigation Committee; (b) following a conclusion of a district judge concerning the existence of elements (indications) of crime. In this connection, the GET learned that the total number of prosecutors in Russia is some 30,000, that the term “investigator” covers investigators at the Prosecutor’s Office (8,000 staff), the Ministry of Interior (52,000), the Federal Security Service (850) and the Federal Service on Control of Illegal Drug Trafficking, and that the special procedure provided for prosecutors and investigators also applies to lawyers. As regards

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<sup>14</sup> Council of Europe Resolution (97)24 of the Committee of Ministers to members states on the twenty guiding principles for the fight against corruption.

the court procedure concerning consideration of the (non-) existence of elements of crime, the court must examine *in camera* the request for institution of criminal proceedings of the Head of the Investigation Committee within ten days following its submission (Article 448.2 CPC). However, the participation of the person concerned, as well as of his/her lawyer, is explicitly mentioned as a compulsory procedural requirement and the (reasonable) non-presence of one of them during the court session can lead to a deferment *sine die* of the decision. The GET was informed of several examples of such cases during the interviews held on site.

178. Concerning immunities from detention, it should first be noted that Members of Parliament, federal judges and justices of the peace, prosecutors, the President, the vice-president and auditors of the Accounts Chamber, the Ombudsperson and a former President of the Russian Federation can not be detained, except *in flagrante delicto* (Article 449 CPC). Moreover, the law establishes a special procedure for authorising the detention (and search) of certain categories of officials, which is separate from the procedure of instituting criminal proceedings. Under Article 450 CPC, the court decision on detention or search of Members of Parliament, former Presidents, the Ombudsperson and judges can take place only after the institution of criminal proceedings according to the procedure prescribed by Article 448 CPC and with the consent of a competent body (i.e. the Constitutional Court or a qualification board of judges, or the Chamber of Parliament concerned). As regards the consent to detain or search a judge given by the Constitutional Court or a qualification board of judges, it must be obtained within five days following the request of the investigator and the respective court decision on detention. Thus it would appear that the detention or search of the above-mentioned categories of officials can take place (a) after the decision on the institution of criminal proceedings (which itself is composed of two or three elements, see above); (b) following the request of the Chair of the Investigation Committee of the Prosecution System; (c) with the consent of the competent collegial body, i.e. the Constitutional Court, a qualification board of judges or the Chamber of Parliament concerned; and (d) by court decision on detention or search. The GET is therefore led to conclude that in total, the procedure for authorisation of detention or search is composed of five or six separate elements/stages/acts. In the view of the GET, these complex procedural requirements make the detention of the persons concerned extremely cumbersome in practice.
179. The information gathered by the GET clearly suggests that the complicated procedure for lifting immunity may lead to significant delay and frustrate the collection of evidence. The GET furthermore notes with concern that such court proceedings are prescribed before the initiation of criminal (investigative) proceedings and any measures regarding detention or search can be taken. It should be noted that the procedure established in this latter case is particularly complicated and is composed of five or six separate stages, as outlined above. In the view of the GET, such procedural requirements are bound to affect significantly the efficiency and the speed of investigative and repressive actions taken by the law enforcement authorities. The GET was told during the on-site visit that the cumbersome procedure involved in lifting immunity may well lead law-enforcement agencies to “stop halfway through”. Therefore, the GET wishes to stress that the procedures established by the Criminal Procedure Code would certainly benefit from being simplified and that the introduction of appropriate guidelines for law enforcement officials and judges could no doubt contribute to the correct and efficient application of the law. It is obvious that the current highly complicated procedural system which requires the consent of several bodies, is not only cumbersome but may open up manifold possibilities for abuse and manipulation. In view of the above, the GET recommends **that the legal provisions underlying the current procedures for lifting immunity be thoroughly revised with a view to their simplification and to establish guidelines for their application by law enforcement officials and judges.**

180. Finally the GET identified another area of major concern relating to the necessary consent which is to be given, in respect of certain categories of officials, by the collegial body to which the person concerned belongs (i.e. the Chamber of Parliament concerned, the Constitutional Court or the competent qualification board of judges). As regards the initiation of criminal proceedings, such a consent is required in respect of members of Parliament, judges and deputies of legislative (representative) bodies of constituent elements of the Federation. Concerning detention or search, consent is necessary in respect of members of Parliament, former Presidents, the Ombudsperson and judges. In this connection, it should be noted that the GET was not made aware of the existence of any objective criteria, rules or guidelines applicable to the collegial body's decision to lift or not to lift immunity. Therefore, the GET recommends **to establish specific and objective criteria to be applied by Parliament, the Constitutional Court or a qualification board of judges when deciding on requests for the lifting of immunities and to ensure that decisions concerning immunity are free from political considerations and are based only on the merits of the request submitted.**

#### **IV. PROCEEDS OF CORRUPTION**

##### **a. Description of the situation**

###### Confiscation and other deprivation of instrumentalities and proceeds of crime

181. The current criminal confiscation provisions have only been in force since 1 January 2007. The legal framework for applying measures of confiscation of property are contained in the Criminal Code (CC), the Criminal Procedure Code (CPC), the Civil Code, the Arbitrary Procedure Code and in the Code of Administrative Offences of the Russian Federation. According to Chapter VI "Other criminal justice measures" of the Criminal Code, confiscation is a criminal measure, not considered a penalty and not affecting the sentence of a crime. It is a compulsory transfer to federal ownership of property, according to Articles 104-1 – 104-3 CC. Confiscation can only be decided upon by a court.
182. Confiscation of the proceeds of corruption is according to Article 104.1 CC possible only in respect of crimes provided for in Article 204.3 and 204.4 (Passive bribery in a profit-making organisation), Article 285 (Abuse of official powers) and Article 290 (Bribe-taking) CC. It is therefore excluded in respect of active bribery in the public sector and abuse of authority. The decision to confiscate the proceeds of crime is made by the court paying account to all the facts of the case. According to Article 104-1 CC not only funds and valuables acquired through the commission of a crime, but also the instruments of a crime can be confiscated. Confiscation is also possible in respect of an attempt.
183. Confiscation is, according to Article 104.1 CC, possible in respect of money, valuables and other property acquired through the commission of a crime and any proceeds from this property or such property into which the property was partially or fully transformed or converted (indirect confiscation). Moreover, money, valuables and other property, used or dedicated for financing terrorism, organised crime, illegal armed groups, and criminal organisations may be confiscated. Weapons, equipment and other instruments of crime belonging to an accused can also be confiscated. This confiscation is applicable in respect of the proceeds from crime and in relation to instrumentalities. If the proceeds of a crime were merged with legally obtained property, only the value of the part of the joint property emanating from the crime can be confiscated.

184. Proceeds of crime assigned by the convict to another person (organisation) is to be confiscated if the person who received the property knew or should have known that it was acquired through crime (third party confiscation).
185. According to Article 104.2 CC money can be confiscated instead of property. Thus, if a certain object listed in Article 104.1 CC cannot be confiscated at the moment of taking the decision on confiscation because it is in use, has been sold or lost or due to other reasons, the court can confiscate money of the amount corresponding to the value of the object (value confiscation).
186. As a main rule confiscation, according to Article 104.1 CC, is possible only when the offender has been convicted and sentenced for the offence relating to the confiscation request. This follows from Chapter 39 "Passing the sentence" of the Criminal Procedure Code. *In rem* confiscation is not available.
187. In addition, "procedural confiscation" is possible in respect of instrumentalities and proceeds from crime (direct as well as indirect proceeds) in accordance with Article 81 CPC for the purpose of being used as evidence in the proceedings. Article 81 CPC is wider than Article 104.1 CC in that it is not limited to the list of offences provided for in the latter Article. According to Article 81 CPC, any object, money, valuables that have been used as the instrument of an offence or retained traces of an offence is to be recognised as physical evidence.
188. The GET was informed that corruption proceeds can also be confiscated under Article 169 of the Civil Code, which deals with the invalidity of contracts which would violate fundamental principles of public order and morality and Article 170 of the Civil Code which concerns the invalidity of fictitious and fraudulent deals. It was explained to the GET that when a deal between two parties is based on corruption as agreed by the parties, the deal will be considered invalid. In such a situation all property emanating from this deal can be subject to confiscation in accordance with Articles 169 and 170 of the Civil Code.
189. The GET was also made aware of another form of confiscation provided for in the Civil Code (Article 243). This provision makes it possible to confiscate property from the holder who has committed a crime (including property which was not the subject of the crime) when this is specified in law. This type of confiscation is used as a sanction.
190. In addition, Article 3.7 of the Code of Administrative Offences (CAO) provides for confiscation of the instrument or object of an administrative offence. According to Articles 3.2 and 3.3 COA, this can be applied as a penalty in respect of natural and legal persons who have committed administrative offences. The decision on administrative confiscation is also taken by a court according to Chapter 25 of the Arbitrary Procedure Code and Chapter 29 of the Code of Administrative Offences.

#### Interim measures

191. Property can be seized only after a criminal action has been initiated and only for the purposes defined in Article 115 CPC, namely a) for securing execution of a criminal judgment in its part pertaining to a civil suit; b) for ensuring compliance with other pecuniary penalties and c) for ensuring potential confiscation of criminal proceeds. Seizure of proceeds from crime and instrumentalities is also possible in accordance with Article 81 CPC in order to secure "physical evidence".

192. Interim measures in respect of physical evidence as well as for paying damages resulting from a crime (according to filed civil claims in a criminal case) are allowed with regard to all corruption offences. Seizure for the sake of subsequent confiscation (Article 104-1 and 104-2 CC) is applicable only in respect of "Bribery in a profit-making organisation" (Article 204 CC), "Abuse of official powers" (Article 285 CC), and "Bribe taking" (Article 290 CC) and not in respect of active bribery in the public sector and abuse of authority.
193. Article 115 CPC provides that to secure the execution of a criminal judgment (in the part pertaining to a civil case), other pecuniary penalties, or a potential confiscation of property, a prosecutor and an inquiry officer or investigator, acting with the consent of a prosecutor, must file an official request with the court to seize property of a suspected defendant. The court is to review such a request in accordance with the procedure set out in Article 165 CPC, which implies, *inter alia*, that the court must decide on the seizure within 24 hours. In urgent cases an investigator is authorised to seize property without a court decision, but must in such a case inform the court within 24 hours of the decision.
194. Article 115 CPC also provides that seizure of property means a ban on the proprietor or the owner from disposing of the property, or a seizure of property and transfer thereof for safekeeping. Property held by other persons may also be seized if there is sufficient reason to believe that this property has been obtained as a result of criminal conduct by a suspect or defendant (whether in good faith or not).
195. Article 116 CPC provides for seizure of securities on the same principles as is provided for in Article 115 CPC, except that "bearer securities" held by bona fide purchasers cannot be subject to seizure.
196. Seizure is an *ex parte* process, but an identifying witness may participate in the proceedings. Property seized must be taken or transferred for safekeeping at the official's discretion. Seized property can be kept by the owner or holder, who is to be advised of the responsibility for keeping the property safe, with an entry to that effect being made in the official record.
197. Seizure of cash assets or other valuables kept on accounts or deposits or in safekeeping with a lending agency can be imposed by an ordinary court, commercial court, a judge, or on the grounds of a decision by the preliminary investigation authorities with the authorisation of a prosecutor (Article 27 of the Federal Law *On Banks and Banking Activity*). When cash assets or other valuables that are in accounts or deposits or in safekeeping in banks or other financial credit organisations are seized, transactions in the account must be terminated entirely or partially. The managers of banks or other financial credit institutions are obliged to provide information about the cash assets upon request from a court or prosecutor, or investigator or inquiry officer, acting with the consent of a prosecutor. Under Article 81 of the Federal Law *On Enforcement Proceedings*, lending agencies (banks etc) are to notify a bailiff as to account details of a debtor and the assets seized on each account.
198. When property is seized, an official record must be established under Articles 166 and 167 CPC. Records on property seized are kept with a particular criminal case file but there is no provision for a centralised registry as regards property seized in all criminal cases in the course of an investigation. However, the Federal Law no.122-FZ of 1997 *On State Registry of Rights for Immovable Property and Transactions Thereof* (Article 4 (1)) provides for mandatory registration of limitations of rights for immovable property. State registration is effected by making an entry in the Uniform State Register of Rights to Real Estate.

199. A seizure of property must be lifted pursuant to a ruling or finding rendered by the official or agency in charge of the proceedings in the criminal case when the application of the measure is no longer needed.
200. The Russian Federal Property Fund was established, in 2002, to organise the sale of property seized according to court decisions or enactments of agencies authorised to take decisions on confiscating property, as well as functions of the sale of seized, movable, ownerless, confiscated and other property turned into State property. In order to ensure the management and control over sales performed by the Fund a unitary system of property accounting was created. In January 2003, an electronic property registry was established whereby information concerning property sale progress is transferred to a data bank held by the Fund . The Criminal Procedure Code does not provide for the sale of property seized, but the Decree of the Government no. 260 of 2002 does regulate the sale of seized property, sale and processing (utilisation) of the property transferred to the government revenue.
201. The authorities provided the GET with the following statistics on interim measures in respect of corruption cases. In 2007, 26,844 requests for seizure of objects and documents containing information on deposits and accounts in credit agencies (2004: 7,512) and 7,909 requests for seizure of property, including assets of natural and legal persons placed in accounts and deposits or for safekeeping in credit agencies were granted (in 2004: 6,117). The submitted statistics furthermore indicate that the total value of property seized, with the aim of potential confiscation or compensation was 608 615 000 RUR (approx. 17 389 000 EUR) in 2007 (in 2004: 724 284 000 RUR) (approx. 20 693 828 EUR), the biggest share of which concerned the offences of abuse of powers (in 2007: 431 774 000 RUR) (approx. 12 336 400 EUR) and abuse of official powers (in 2007: 134 877 000 RUR) (approx. 3 853 628 EUR).

#### Mutual legal assistance

202. The Russian Federation is a party to several multilateral and bilateral agreements concerning mutual legal assistance in criminal matters. It is a contracting party to, *inter alia*, the European Convention on Mutual Assistance in Criminal Matters (ETS 030) and the Additional Protocol thereto (ETS 099), to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141) and the Criminal Law Convention on Corruption (ETS 173).
203. Russia is also a party to a large number of treaties concerning law enforcement within the framework of the United Nations and has ratified the UN Convention against Corruption (UNCAC).
204. The GET was informed that the Russian Federation has concluded 34 multilateral interstate and intergovernmental agreements on legal assistance and legal relations in the framework of the Commonwealth of Independent States (CIS), the Shanghai Organisation of Cooperation and the Organisation of the Black Sea Economic Cooperation. Russia has also concluded numerous bilateral interstate agreements in the fight against various forms of crime, including the fight against corruption and money laundering. Russia is a party to special agreements regulating legal assistance in criminal cases with 67 states. Furthermore, Russia is a party to agreements on cooperation in crime fighting at interdepartmental level (MVD, FSB Prosecutor General's Office, Federal Financing Monitoring Service), including an Agreement on the cooperation of the Prosecutor's Offices within the CIS States against corruption, signed on 25 April 2007.

205. Section XVIII, Chapter 53 of the Criminal Procedure Code contains the principle provisions on the procedure in respect of mutual legal assistance in criminal matters. Article 453 CPC and following articles deal with assistance requested by the authorities of the Russian Federation and Article 457 and following articles with foreign requests for legal assistance. The forwarding and executing requests for legal assistance are granted according to international treaty agreements or in conformity with the reciprocity principle. The absence of international treaties on legal assistance in criminal cases is not therefore, according to the authorities, an obstacle for execution of requests for legal assistance.
206. A request by a Russian authority for procedural assistance abroad is to be made via the Supreme Court if it concerns issues involved in the judicial activity of the Russian Supreme Court; via the Ministry of Justice – with regard to questions, connected to judicial activity of all other courts; Ministry of Internal Affairs, Federal Security Service, Federal Drug Control Service - concerning investigative actions which do not require a court decision or consent of the public prosecutor and by the General Prosecutor's Office in other cases (Articles 453.3 and 454CPC) regulate the content and form of a request. An outgoing request from Russia is to be translated into the language of the Foreign state.
207. When the Russian Federation is the requested State (Article 457 CPC), a court, public prosecutor or investigator is to execute the procedural actions requested by the corresponding competent bodies of the foreign states and received by the Supreme Court, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Internal Affairs, Federal Security Service, Federal Service for Control over the Traffic of Narcotics and Psychotropic Substances or the Office of the Procurator-General.
208. In executing the request the Russian authorities are supposed to apply the Criminal Procedure Code directly; however, procedural norms of the legislation of a foreign state may also be applied in conformity with international treaties to which the Russian Federation is a party or on the basis of the principle of reciprocity. Moreover, in the execution of the request a representative of a foreign state may attend if this is stipulated by the international treaty or otherwise agreed.
209. According to a reservation made by Russia in respect of the European Convention on Mutual Assistance in Criminal Matters (Article 5), Russia reserves the right to execute requests for realisation of search or expropriation only if the crime would be punishable according to the laws of the requesting country and Russian legislation and be recognised by the laws of the Russian Federation as a crime which could be subject to extradition.
210. The GET was told that under Article 1.2 CPC, the universally recognised principles and norms of international law and treaties to which the Russian Federation is a party, become a constituent part of its legislation. If an international treaty, acceded to by Russia, establishes rules different from those envisaged by the CPC, the rules of the international treaty apply. The authorities explained to the GET that based on the foregoing, rendering legal assistance for the execution of confiscation or attachment of property with regard to corruption offences irrespective of whether they are provided for in the Criminal Code of the Russian Federation or not, is possible if that is foreseen in an international treaty, such as the UNCAC.
211. The GET was provided with statistics indicating that the Prosecutor General's Office has received approximately 2 000-3 500 requests for legal assistance in the years 2004-2007, and that the Ministry of Internal Affairs received approximately 8000 requests per year during the



same period. The total number of requests in respect of corruption and money laundering offences was less than 250 per year.

### Money Laundering

212. As mentioned above, money laundering is established as a criminal offence in Articles 174.1 and 175 CC (“legalisation of funds...”) and (“concealment of crimes”), Russia follows the “all crimes approach” which makes all the corruption offences provided for in law predicate offences to money laundering. However, current Russian legislation does not criminalise the bribery of foreign officials. Moreover, there is no corporate liability for money laundering.
213. As a consequence, on the one hand, active bribery of domestic public officials (Article 291 CC), passive bribery of domestic public officials, bribery of members of domestic public assemblies (Article 290 CC), active bribery in the private sector (Article 204.1/204.2 CC), passive bribery in the private sector (Article 204.3/204.4 CC) are all predicate offences in respect of money laundering. On the other hand, bribery of foreign public officials, members of foreign public assemblies, bribery of members of international parliamentary assemblies, bribery of officials of international organisations, and bribery of judges and officials of international courts are not criminalised and cannot be predicate offences to money laundering. The GET was informed, that a draft Federal Law *On Introducing Amendments to the Criminal Code* in order to provide for criminal responsibility of foreign officials and officials of international organisations for such offences was in the process of being elaborated by the Interagency Task Force.
214. The Federal Financial Monitoring Service was established in 2001 as the central authority for combating money laundering in the Russian Federation, now called the Federal Financial Monitoring Service or “Rosfinmonitoring”. This Rosfinmonitoring has been a member of the Egmond Group since 2002. The Federal Financial Monitoring Service operates directly under the Prime Minister and is tasked with reporting to the law enforcement authorities any possible corruption cases, if there are sufficient grounds to assume that an operation or deal is connected with the laundering of criminally gained income or with financing of terrorism which is, in turn, obliged to report back, including information on the outcome of court cases. By contrast, the GET was informed that Rosfinmonitoring is not obliged to identify predicate offences.
215. Between 2005 and 2007, the Russian Financial Monitoring Service received the following number of suspicious transaction reports (STR) 3,206 266 (2005), 6,234 336 (2006) and 8,573 733 (2007). During the first three months of 2008 2,313 611 STRs were received. The GET was told that altogether around 250 staff were involved in the analysis of STRs (33 at Headquarters and approximately 20 at the seven regional units).

#### **b. Analysis**

216. Confiscation of the proceeds of crime and instrumentalities is provided for in the Code of Criminal Procedure as well as in the Criminal Code. While the confiscation regime, established under Article 81 CPC, has long been in place, and covers both confiscation of instrumentalities and the proceeds of crime, the new legislation contained in Article 104.1-3 CC, which entered into force only in 2007, is limited to the proceeds of crime. It should be noted that these provisions reintroduced confiscation under the Criminal Code as a measure, but not as a punishment as was the case until 2003 (it appears that until 2003, confiscation was not limited to instruments and proceeds of crime but could be extended to the whole property of the offender).

217. Article 104.1 CC is rather complete in terms of the proceeds as such; it covers confiscation of direct as well as indirect proceeds, value confiscation is possible and so is third party confiscation. The burden of proof always lies with the prosecution and this type of confiscation is possible only on the basis of a conviction by a court. On the other hand, Article 104.1-3 CC has a limited scope of application in terms of the offences covered. The Article contains a list referring to a number of serious offences. The GET was concerned, however, that as far as corruption offences are concerned, the list is rather limited as it only covers passive bribery in the public and private sectors and abuse of official powers, but no form of active bribery or abuse of authority. Furthermore, this Article is not applicable to a number of other offences, such as fraud, tax crimes and money laundering, which may well be interlinked with corruption offences. This is in the view of the GET a major shortcoming of the new provision of the Criminal Code. This being said, it appears that the “procedural confiscation” as provided for in Article 81 CPC is wider in this respect as it has an “all crimes” approach. However, this type of confiscation is primarily aimed at securing evidence through confiscation. Moreover, the procedural confiscation, although it covers both proceeds of crime and instrumentalities, is narrower in its approach in that it does not appear to cover some other aspects, such as third party and value confiscation. *In rem* confiscation is not possible under the criminal justice confiscation provisions. However, the GET was informed that in situations where there was no criminal verdict, civil law compensation could be obtained on the basis of Articles 169 and 243 of the Civil Code. Overall, it should be added that the relation between criminal and procedural confiscation and civil law compensation appears to be somewhat blurred and the GET was told by some high level officials that the system works in practice, while other officials were rather critical, particularly regarding the limited scope of Article 104.1-3 CC. It should also be noted that this Article is subject to discussion, including at the Duma, and it would appear that these discussions may lead to future amendments. The GET welcomes the fact that there is a clear distinction between procedural confiscation primarily aimed at securing evidence and the confiscation provided for in the Criminal Code with the only objective of depriving offenders from the gains of a crime. With such a clear distinction, the GET regrets that the scope of Article 104.1-3 CC is so narrow that some corruption offences as well as related offences linked to corruption are not covered. Even if Article 81 CPC may to a large degree be applied in relation to such offences, it is not as far going in all respects. It appears that seizure as an interim measure in respect of the two types of confiscation is adequately provided for in law; however, the same restrictions as described in respect of confiscation in accordance with Article 104.1-3 apply to seizure of the proceeds from certain offences. Consequently, the GET recommends **that Article 104.1-3 of the Criminal Code be amended in order to provide for confiscation of the proceeds from corruption in respect of all corruption offences of the Criminal Code as well as other offences which may be connected with corruption and to provide for efficient seizure in such cases and that the introduction of *in rem* confiscation under the criminal legislation be considered.**
218. The GET was not provided with precise figures clearly indicating to what extent confiscation is used in practice in cases of corruption. However, the information gathered by the GET indicates that confiscation does not appear to be used to the extent possible. Some representatives met indicated that the system certainly had the potential of being much more efficient. In this context, however, it must be taken into consideration that the current legislation is partly new and that more time is needed for its full implementation in practice and that specific and targeted training and guidelines for the law enforcement officials concerned are lacking. Moreover, the GET takes the view that the new confiscation regime would merit continuous evaluation of its functioning in practice and, to this end, the collection of precise statistics would appear to be appropriate. The GET therefore recommends **to design training courses and guidelines for those who apply confiscation and interim measures in cases of corruption, and to assess the efficiency of**

**the confiscation regime based on the collection – on an on-going basis – of appropriate and detailed information and statistics.**

219. The money laundering offence in Russia is broadly defined and all corruption crimes as provided for in the Criminal Code are predicate offences for money laundering. A loophole in this respect is the current situation that bribery of foreign officials is not yet criminalised. However, this has been dealt with earlier in this report (cf. paragraph 61; changes in this respect are underway).
220. The anti-money laundering system provides for a central FIU in Russia (Rosfinmonitoring) which is also represented at regional level. Its main tasks are to receive, analyse and send Suspicious Transaction Reports (STRs) to the competent authorities, which to a large extent are the same law enforcement bodies as those that are involved in the investigation of corruption offences, i.e. the Prosecution Service (investigation committees), the Federal Security Service, Ministry of the Interior etc. The FIU is not specialised in detecting corruption offences nor obliged to identify predicate offences, this being the task of the competent law enforcement agencies. Considering the particular difficulties inherent in the detection of corruption as well as the generally high level of corruption in Russia (including within the law enforcement agencies themselves) the authorities consider it desirable to provide the FIU with a certain degree of expertise in how to identify suspicions of corruption. Such competence could be obtained through training of existing staff or through the establishment of specialised functions within the service. The GET welcomes this approach.

**V. PUBLIC ADMINISTRATION AND CORRUPTION**

**a. Description of the situation**

*Constitutional provisions*

221. The Constitution determines the principle that state powers must be exercised on the basis of the separation of the legislative, executive and judicial branches and that the bodies of these branches shall be independent from each other (Article 10).
222. The Russian Federation consists of republics, territories, regions, federal cities, autonomous regions and autonomous areas. The republics have their own constitutions and legislation. The federal structure is based on its state integrity and uniform system of state power (Article 5).
223. State power is exercised by the organs of state authority and formed by them. The scope of authority and powers of the bodies of state authority are delimited under the Constitution, Federal and other Treaties (Article 11). Local self-government is recognised in the Constitution, it operates independently and is not part of the state power bodies (Article 12).
224. Under the Constitution, the Head of the State is the President who is elected for a term of 4 years. The President is also the Supreme Commander-in-chief of the Armed Forces of the Russian Federation. The Federal Assembly (the Parliament of the Russian Federation) which consists of two Chambers, the Council of the Federation and the State Duma, is the representative and legislative body of the Russian Federation. The executive authority is the Government of the Russian Federation, which is headed by the Prime Minister, who is appointed by the President with the consent of the State Duma.

225. There are 85 constituent elements of the Russian Federation. An integration process in the constituent elements has been under way since 2004; all of them have the right to develop their own laws and are equal in rights in terms of their mutual relations with the federal State power. The republics within the Russian Federation have their own constitutions, and the remaining constituent elements of the Federation have their own statutes. Each of the constituent elements of the Federation has its own legislation.
226. In 2000, seven federal districts (South Federal District, Central Federal District, Far Eastern Federal District, Privolzhskiy Federal District, North-Western Federal District, Sibirskiy Federal District, Uralskiy Federal District) were created under the Decree of the President of the Russian Federation of 2000 (No. 849).
227. A municipal unit is an urban or rural settlement, municipal area, urban district or intra-urban territory of a city of federal significance. Local government institutions are elected directly by the population and (or) formed by a representative body of a municipal unit. Since 1 January 2006, the municipal units have been dealing with local issues according to the principles established for a three-year transitional period by the Federal Law *On the General Principles of Organisation of Local Government in the Russian Federation* of 2003 (No. 131).
228. There is no particular Constitutional definition of a governmental administration, or public administration. However, the meaning of this concept is specified in the provisions of Article 114 of the Constitution, which deals with the main functions of the Government, *inter alia*, to develop and execute the state budget, implement a financial policy and implement a uniform state policy in the fields of culture, science, education, health, social security, defence, state security etc.

#### *Legislation*

229. Under the Constitution, the legal and institutional foundations of the Russian Federation's state service, including the system of governmental management and control are set forth in the Federal Law *On the Public Service System* of 25 March 2003 (No. 58-FZ). This law establishes that the public service system includes 1) the governmental civil service; 2) the military service and 3) the law enforcement service. The state civil service is divided into federal state civil service and state civil service of a constituent entity of the Russian Federation. The state civil service is a form of the state service representing the professional official activity of citizens holding state civil service posts ensuring powers of the federal state bodies, state bodies of constituent entities of the Russian Federation, persons holding public office of the Russian Federation and persons holding public office of constituent entities of the Russian Federation. (Article 5.1 of the above law).
230. Specificities of the legal status of state civil servants are defined by the Federal Law *On the Public Civil Service* No. 79-FZ of 27 July 2004. Article 6 of this law provides for inter-linkage between the state civil service and the state service in respect of the basic conditions and wages, social protection, limitations and obligations in performing state service. The difference in legal status of state civil servants and persons holding official public posts results from specific requirements, prohibitions and limitations of their functions. Entry into and performance in the public civil service are regulated by the same law and labour activity is regulated by the Labour Code.
231. Matters of legal regulation and institutional establishment of the federal government civil service are under the jurisdiction of the Russian Federation. The legal regulations of the civil

governmental service in the Russian Federation constituent elements fall under the common jurisdiction of the Russian Federation and the constituent elements, while its institutional establishment is exclusively under the jurisdiction of the constituent elements.

232. The stated principles of the establishment and functioning of the public service system are federalism, legality, supremacy of human rights and civil freedoms, citizens' equal opportunity in terms of their access to governmental service, integrity of the legal and institutional foundations of governmental service, interconnection between the governmental service and municipal service, transparency of governmental service, professionalism and competence of governmental officials and protection of governmental officials' against illegitimate interference. These principles also apply at the level of local administrations.

#### Anti-Corruption Policy

233. *The Administrative Reform Strategy in the Russian Federation for 2006-2008* was approved by virtue of a Decree of the Russian Government in October 2005 (no. 1789-r). By virtue of a new governmental decree in February 2008 (no. 157-r), the Administrative Reform Strategy for 2006-2008 was supplemented with measures to be implemented in 2009-2010. The main objectives of the reform are, *inter alia*, to raise the quality, efficiency and availability of State services; limiting State interference in the economic activities of business entities and limiting State regulation. To that end a number of measures are foreseen, for example, the introduction of the principles of results-based management; development and introduction of standards in State services and administrative regulations; automatised systems of monitoring of the efficiency of State bodies and self-government bodies; creation of multifunctional centres for provision of State and municipal services; ensuring the provision of State services in electronic form; introduction of mechanisms for countering corruption; increased cooperation with civil society; and modernisation of the information system.
234. The GET was informed that the administrative reform is to be coordinated and implemented by a Government Commission, established in 2003, and that the implementation is to be monitored by the Ministry of Economic Development and Trade. Criteria and methods for assessing the efficiency of governmental anti-corruption policy are yet to be developed within the framework of this reform.
235. With respect to administrative reform, at federal level two model anti-corruption programmes were introduced in 2007; the *Exemplary Anti-Corruption Programme of the Federal Executive Authorities for 2007-2008* and the *Exemplary Anti-Corruption Programme of the Russian Federation Constituent Elements' Supreme Executive Authorities for 2007-2008*. These programmes lay down the principal measures to be taken; expected results (interim and final); efficiency assessment indicators; and implementation control. In 2007, the Ministry of Culture, Aeronautical Service, Federal Agency for Water Resources, Federal Forestry Agency, Federal Service of Defence Contracts and the Federal Migration Service approved interdepartmental programmes for countering corruption. This also happened at the constituent entity level.
236. A draft model provision on a multifunctional centre developed by the Ministry of Economic Development and Trade was approved in July 2007. The main idea behind the creation of multifunctional centres is that many State services are of an interdepartmental nature, that some administrative procedures by various agencies are similar and the data required for the provision of State services (ID documents, certificates etc.) are identical. Consequently, multifunctional centres have the potential to serve both the administration and the public. It was reported by the

authorities that 18 projects for the creation of multifunctional centres in 16 entities were implemented in 2007.

237. The GET was told that one of the focal areas of administrative reform is standardisation of public services and regulation of the execution of all public functions at federal and entity level. The efforts undertaken in this respect are aimed at the elaboration of administrative regulations as well as the improvement of those already in place, as well as the creation of new efficient mechanisms of out-of court systems for complaints against decisions and actions of executive public authorities and their officials. The objectives in this respect are to reduce officials' opportunities to make decisions at their own discretion and in their own self-interest and to reduce opportunities to create artificial administrative barriers.
238. The GET was also informed that in the course of administrative reform, the implementation of over 450 drafts of administrative regulations on execution of state functions and service rendering have been elaborated between 2006 and 2008; more than 200 administrative regulations have been approved by orders of federal execution bodies and registered by the Russian Ministry of Justice; over 2,000 administrative regulations have been worked out regionally; all with the aim to reduce corruption in the operations of the executive bodies. Furthermore, the GET was informed during the visit that 2,600 out of 5,600 functions carried out by the administration before the reform process had already been changed or given up, that there was a significant decrease in the number of state enterprises, in order to reduce costs and risks of corruption, and that efforts to minimise personal contact of officials with the public were being deployed in order to reduce risks of corruption.
239. Pursuant to Executive Order No. 124 of 25 April 2007 by the Head of Russia's Federal Anti-Monopoly Service (FAS) "*Programme of Russia's FAS Anti-Corruption Activities in 2007-2008*" was adopted along with a plan for its implementation. Pursuant to departmental Executive Order No. 56-r of 10 July 2007, the Committee for Anti-Corruption Activity was established within the Federal Service of Defence Contracts. Anti-corruption programmes by 12 other federal government executive authorities were scheduled for 2007.
240. The GET was also informed that government administrations in a number of Russian regions have adopted their own anti-corruption programmes, for example in Nizhegorodskaya Oblast a where a programme had been established in respect of land property (1999) and procurement (2006); an anti-corruption programme had been adopted in the Republic of Tartarstan (2006), anticorruption committees had been established in the Yamalo-Nenetsky Autonomous District and in Bryanskaya Oblast; an anti-corruption programme (2004-2006) in Vladimirskaya Oblast; a governmental anti-corruption programmes were being implemented in the Republic of Komi and in Tomskaya Oblast; anti-corruption committees had been established in the Republic of Buryatia and in Irkutskaya Oblast. Regional anti-corruption programmes had been drafted in six constituent elements of the Russian Federation (specifically the republics of Buryatia, Karelia, Udmurtia along with Kurganskaya, Saratovskaya and Tomskaya Oblasts).

#### Transparency

241. Access to official information is regulated in the Constitution. Article 24 establishes that the bodies of state authority, the bodies of local self-government and the officials thereof must provide each citizen with access to any documents and materials directly affecting his/her rights and liberties unless otherwise provided for by law. Moreover, Article 29.4 of the Constitution gives everyone the right to seek, obtain, transfer, produce and disseminate information by any

lawful means. The list of information constituting state secrets must be established by federal law.

242. Information in Russia is categorised as freely accessible or subject to limited access. Information of limited access is either classified as state secrets (according to the State Secret Law, 1993) or confidential information. There are more than twenty types of limited or prohibited access (commercial secrets, personal life secrets, professional secrets, confidential secrets, official secrets, banking secrets, communication secrets etc). All these limitations are specified in a number of legal acts and regulations.
243. There is no federal law on freedom of information in Russia. Despite several attempts - in 1996, 2002 and in 2004/2005 - there is no single piece of legislation to complement the basic provisions of the Constitution and which would regulate which information held by central or local administrations is accessible to the public. A recent attempt to establish such legislation was made in March 2007 when the State Duma carried out a first reading of the legislative Bill No. 386525-4 *On Granting Access to the Information on the Governmental and Municipal Authorities' Activity*". The Bill had been subject to an expert examination by Russia's Public Chamber, which supported the general concept of the Bill but proposed a number of amendments to be introduced. According to the decision by the State Duma, the above Bill was supposed to be given further consideration. The Bill was subject to a second reading on 18 April 2007 which did not lead to the adoption of a law.
244. The Federal Law *On Information, Information Technologies and Protection of Information*", adopted on 27 July 2006, regulates the searching for, obtaining, transfer/transmittance, production and dissemination of information as well as the application of information technologies and data protection. Pursuant to Article 8 of this law, citizens and organisations (legal entities) have a right to conduct a search for, and to obtain, information in any form and from any sources under the condition of compliance with the requirements laid down in this or any other legal acts.
245. The Federal Law No. 59-FZ of 2 May 2006 *On the Procedure for Consideration of the Requests of the Citizens of the Russian Federation*" provides for the right to file an appeal to governmental and municipal authorities in respect of freedom of information. This law makes it illegal to persecute a national on the grounds of his request (Article 6). A governmental or municipal authority or individual official has an obligation to take appropriate measures with a view to reinstating or preserving the violated national's rights, freedoms and legitimate interests, as well as to ensure an impartial, comprehensive and timely consideration of an appeal with the participation of the national who filed it, when necessary. The law also makes it obligatory for a governmental / municipal authority or individual official concerned to submit a written reply pertaining to the claims within a 30-day period (this period can be extended by 30 days).

#### Challenging administrative decisions

246. Article 46 of the Constitution provides that everyone must be guaranteed protection of his or her rights and liberties in a court of law and that decisions and actions (or inaction) of state organs, organs of self-government, public associations and officials can be appealed in a court of law.
247. The legislation of the Russian Federation also provides for the possibility to appeal administrative decisions in court and it is possible to make administrative appeals against certain decisions of certain authorities, for example, in respect of the federal Bailiff's office and criminal justice authorities, according to the Criminal Procedure Code. However, there is no general

administrative appeal procedure in place against administrative decisions. The GET was informed that draft legislation on uniform administrative procedures, on the creation of administrative courts and judicial administrative procedures was under consideration by the State Duma. The information gathered by the GET during the visit suggested that the prospects for adoption of such legislation are not very clear.

### Control mechanisms

#### *The Ombudsperson/Commissioner on Human Rights*

248. The Ombudsperson institution is regulated in the Federal Constitutional Law on the Commissioner on Human Rights, adopted by the State Duma in 1996, and approved by the Federation Council in 1997. The Commissioner is appointed to, and dismissed from, the post by the State Duma by majority vote (secret ballot). The candidates to the post of the Commissioner can be nominated by the President of the Russian Federation, by the Federal Council of the Federal Assembly, by the deputies of the State Duma and by groups of deputies in the State Duma. The Commissioner is appointed for 5 years and the same person cannot be appointed to that post for more than two terms in succession.
249. The Commissioner cannot be a public official nor be engaged in any other paid or unpaid activity, with the exclusion of creative or lecturing activity. S/he enjoys immunity throughout his/her term of office and cannot be made answerable before the courts in criminal or administrative cases without the approval of the State Duma.
250. The Commissioner investigates complaints about decisions or actions (inaction) of state bodies, local self-government institutions, officials and state employees. The Commissioner is not authorised to deal with complaints concerning the bodies of the legislative power. The Commissioner considers appeals filed by individuals and may also initiate investigations *ex officio*. In the course of conducting an inquiry the Commissioner is empowered, *inter alia*, to visit unimpeded all governmental and municipal authorities, to attend meetings and to obtain information and/or documents from these bodies, to conduct independently or jointly with the relevant governmental authorities, officials and employees inspections and enquiries. The Commissioner may file an appeal to a court; request governmental authorities to initiate disciplinary or administrative proceedings or a criminal case against an official, file with a court or a prosecutorial authority an application to examine a court ruling, sentence, or judge's decision.
251. The Commissioner submits an annual report about his/her activities to the President of the Russian Federation, Federation Council, State Duma of the Federal Assembly, Government, Constitutional Court, Supreme Court, Supreme Commercial Court and the Prosecutor General of the Russian Federation. Annual reports are published in the "Rossiyskaya Gazeta". The Commissioner may address reports to the State Duma on specific issues relating to human rights and the safeguarding of freedoms.

#### *The Accounts Chamber*

252. The Accounts Chamber was established in 2005 for the purpose of exercising control over the implementation of the federal budget. The Chair and his/her deputy of the Accounts Chamber are appointed for a term of 6 years by the State Duma and the Federation Council following a proposal by the President of the Federation.



253. The control and audit activity of the Accounts Chamber covers the execution of revenue and expenditure items of the federal budget and the state off-budget funds; the effective and appropriate use of state property; control over domestic and foreign debt of the Russian Federation and control over the lawfulness and timeliness of money movements in the federal budget and in the federal off-budget funds with the Central Bank of the Russian Federation, authorised banks and other financial and credit institutions (Article 2 of the Federal Law *On Accounts Chamber of the Russian Federation*). The control authority of the Accounts Chamber extends to all state organs and offices in Russia, banks, insurance companies and other financial and credit institutions. In addition, the control exercised by the Chamber applies to the work of public organisations, non-state funds and other non-state non-commercial organisations when these have received state funding or use federal property.
254. The GET was informed that the Accounts Chamber cooperates with law enforcement agencies and is legally obliged to report suspicions of irregularities to law enforcement authorities (Articles 15 and 23 of the Federal Law *On the Accounts Chamber of the Russian Federation*) which, in turn, report back on the basis of cooperation agreements. The GET was told that since 2003, around 900 cases relating to criminal offences “of a financial nature” (including account offences) had been initiated by law enforcement authorities on the basis of information and material submitted by the Accounts Chamber.
255. All organs of state power, organs of local authorities, the Central Bank, enterprises and organisations, regardless of their form, are obliged to make available, whenever requested by the Accounts Chamber, the information required.
256. The Chamber has the duty to carry out control, audit and other analyses. According to statistics submitted by the Chamber, it has carried out, since its establishment, 303 audits and thematic checks on 400 objects and thereby revealed a damage of a total amount of 5.8 trillion RUR (approx. 0,16 trillion EUR) From 1995–2007, altogether 5,348 control actions were accomplished, and between 2002–2007 non-targeted use of budgetary funds to the amount of 11.7 billion RUR (333.3 million EUR) was revealed; in total, legal violations involving a total amount of 1,277.6 billion RUR (36.4 million EUR) were revealed including violations of fiscal legislation of 132.3 billion RUR (3.8 billion EUR) in 2007.
257. The staff of the Accounts Chamber includes 12 auditors who are appointed by the Federation Council (six auditors) and the State Duma (six auditors), at the proposal of the President of the Russian Federation, for a term of six years. The Chamber has some 1150 employees. The Chamber reports to Parliament and the results of its audits are published on its homepage.
258. The GET was informed that in 2006, the “Higher School of State Audit of MSU” was established in order to enhance education of expert auditors, which includes anti-corruption measures in its curriculum. Moreover, 19 standards of financial control exercised by the Chamber have been elaborated, seven of which contain anti-corruption norms.

#### *The Public Chamber*

259. The Public Chamber of the Russian Federation was set up under the Federal Law *On the Public Chamber of the Russian Federation* of 4 April 2005 (No. 32). The Public Chamber has established a Commission which carries out public control over the activity of law-enforcement bodies, power structures and the reform of judicial and legal systems. The Commission is in charge of both prevention and detection of corruption offences. Citizens’ complaints concerning

suspensions of corruption are referred to the competent law-enforcement bodies; however, the GET was told that well-founded corruption allegations – and their subsequent referral to law enforcement authorities – were rare. Furthermore, a specialised Subcommittee on Counteraction to Corruption was created which associates the expert community and analyses information on anti-corruption activities. The GET was informed that the subcommittee involves public authorities including law enforcement, experts and more than 35 NGOs; it is also represented in the IWG.

#### *Public Procurement / Federal Anti Monopoly Service*

260. The Federal Anti Monopoly Service supervises the application of public procurement legislation on the basis of the Federal Law no. 94/2006. The GET was informed that legislation in this field has been evolving towards establishing a system of open bids and free access to information, and that the whole procurement procedure has become more transparent via the Internet, at federal and regional level. It was furthermore stated that the reform process is intended to be continued, current reflections for further improvements reportedly focus on expanding the list of goods and services to be supplied by open tenders, making the bidding process anonymous, establishing a common platform by setting up, by 2011, a single dedicated website for all public procurement procedures – covering the whole of the Russian Federation and introducing the registration of bad bidders, bans on participating in public tenders, blacklists etc.

#### Recruitment, career and preventive measures in public administration

261. The *Law On the Public Civil Service* defines each form of state service mentioned above and also provides for the possibility of employment on a contractual basis for every type of state service. According to Article 12 of the Law, persons who possess a good command of the official language of the Russian Federation and are of the age required for a specific category of state service have the right to engage in state service on a contractual basis.
262. According to Article 16 of the *Law On the Public Civil Service*, a national is considered ineligible to a governmental service when found incapable or partially capable by an effective court decision; when sentenced to a punishment precluding the possibility of the fulfilment of professional duties; when refusing to undergo a clearance procedure; when suffering from an ailment impeding the civil service employment; when in a close relationship (parents, spouses, children, siblings, as well as spouses' siblings, parents and children) with a civil servant when a specific position of the civil service is related to a direct subordination or answerability of one of them to the other; when rejecting the citizenship of the Russian Federation or obtaining the citizenship of another State; when a national of other State/s without a relevant international treaty; when presenting counterfeit documents or otherwise providing knowingly false information in an attempt to obtain civil service employment etc.
263. Under Article 8 of the *Law On the Public Civil Service*, the categories of office of public service are to be defined by the federal laws on constituent entities of the Russian Federation respectively. For instance, the Federal Law of 27 July 2004 no. 79-FZ *On the Public Service System of the Russian Federation* refers to four categories of offices, namely “executives”, “assistants (advisers)”, “experts” and “ensuring experts” and five groups of offices, namely higher, main, leading, senior and junior offices of the public civil service.
264. Pursuant to Article 22 of the *Law On the Public Civil Service*, recruitment to the civil service is conducted according to the results of a competition, except for the cases provided for by the law,

i.e. the appointment of replacements for a specified term of office, the nomination of “executives” and “assistants (advisers)” including by the President of the Government.

265. The competition procedure is regulated by the President’s Decree (2005, no. 112). By the decision of a representative of an employer, the competition for a vacant post in the public service system is to be announced by means of one or more periodical publications and also on the website of the state body concerned. A competition commission acting on a permanent basis must be created by a legal act of the pertinent state body and the members of the commission, terms and order of their operation and also methods of conduction of the competition are regulated by the decision of the state body.

### Training

266. Pursuant to the Law *On the Public Civil Service* and the Decree of the President of 28.12.2006 no.1474 *On Supplementary Professional Education of State Civil Servants of the Russian Federation*, professional preparation of staff for the civil service is to be conducted in educational institutions of higher professional education.
267. Supplementary professional education of civil servants must include professional retraining, advanced training and other training courses to be held throughout the whole service period. The GET was informed that instruction in the basic principles of professional conduct and governmental service-related ethics could be conducted within the scope of the programmes of refresher training and professional upgrading of governmental employees arranged during the entire period of service when appropriate, although not less than once every three years. The GET was informed that in accordance with the President’s Decree, the Secondary Professional Education for the Governmental Civil Servants of the Russian Federation was enacted and that work has started for the elaboration of programmes of special professional education of governmental civil employees, including on matters of anti-corruption.

### Conflicts of interest

268. Regarding the prevention of conflicts of interests, the Russian authorities refer to limitations and restrictions pertaining to the persons appointed to governmental service positions, as laid down in Articles 16 and 17 of the Law *On the Public Civil Service*. Thus, in particular, a governmental employee has no right to engage in entrepreneurial activities, purchase, in cases stipulated in the federal legislation, dividend-bearing securities, be an agent or represent third parties’ interests in a governmental authority, where s/he has been appointed to a civil service position, accept rewards from natural persons and legal entities in connection with his/her official duties’ performance Furthermore, pursuant to Article 15.12 item 1 of the same law, a governmental civil servant has an obligation to report to his employer’s representative any personal interest in performing official duties that could result in a conflict of interests and take appropriate measures to prevent such a conflict. Therefore, when a conflict of interest occurs, a special committee must be established to solve this specific case. The Statute on the committees for the control of the Russian Federation governmental civil servants’ professional conduct and settlement of conflicts of interests was enacted by the President’s Decree *No. 269 of 3 March 2007*.

### *Rotation of staff*

269. There are no specific requirements with regard to the regular rotation of public employees in governmental administration authorities. Nevertheless, pursuant to Article 60 of the Federal Law

*On the Public Civil Service of the Russian Federation*, the job mobility regarding civil servants is considered to be one of the guideline principles of a governmental administration establishment.

#### *Revolving doors / “pantouflage”*

270. With a view to preventing the abuse of the connections, knowledge, and expertise developed during the period of governmental service, Article 17 of the above-mentioned law lays down that a national within a two-year period after his/her governmental civil service has no right to be appointed to positions, nor to conduct work on the basis of a civil agreement, in organisations, provided that his/her previous official duties involved specific functions of governmental administration in respect of these particular organisations. In addition, after having left the governmental service a national has no right to disclose or use in the interests of either organisations or natural persons the sensitive data or official information obtained through his/her previous official duties' performance.

#### *Declaration of assets*

271. The GET was told, during the visit, that civil servants have to submit their annual income tax declarations to the personnel department of their administration and that it is common practice to make them available to the media at the end of the year (with the consent of the civil servants concerned), even without any such obligation which only exists for persons holding political office; declarations of Members of Parliament are made known once during election campaigns (i.e. once every 4 years), but family members' assets are not included. Moreover, the GET was informed of a draft law – prepared by the Supreme Commercial Court – regarding the declaration of assets by commercial court judges, including those of family members but not referring to disclosure of declarations before the Duma or via the Internet; however, according to this draft law the media would have a right to request such information

#### Gifts

272. Matters related to the acceptance of gifts by governmental officials are regulated by Article 575 of the Civil Code, which provides that no gifts can be presented to officials except for “ordinary ones”, whose value does not exceed five minimum wage rates, as established under current legislation, i.e. 500 RUR (14 EUR). Such gifts can be given in certain situations, i.e. to staff of medical and educational institutions, social protection institutions, and other similar institutions by citizens who use their services, as well as by the spouses and relatives of these citizens. The same applies to governmental and municipal officials in connection with their official status or performance of official duties as well as relations between commercial organisations.
273. Furthermore, Article 17 of the *Law On the Public Civil Service* provides that a civil servant, who performs his/her duties, has no right to accept rewards from natural persons and legal entities in connection with the performance of his/her official duties (in the form of gifts, monetary rewards, loans, services, payment for relaxation, entertainment, transportation costs and other rewards). The gifts received by a civil servant in connection with protocol events, official journeys and other official events shall be regarded as federal property or property of a constituent element must be handed over to a governmental authority where s/he has been appointed to a civil service position. Moreover, a civil servant has no right to travel outside the Russian Federation in connection with his/her official duties at the expense of natural persons and legal entities, except for official journeys or for purposes unrelated to his official duties.

274. The Law *On the Public Civil Service* also envisages certain limitations pertaining to the acceptance of other possible benefits by governmental employees. Thus, pursuant to Article 18.1, a civil servant has among other things an obligation not to grant a favour to any public or religious association, professional or social group, organisation or person, as well as an obligation to refrain from taking any actions influenced by any personal, material (financial), and other interests impeding the appropriate performance of his/her official duties.

#### Codes of conduct/ethics

275. The basic principles of governmental employees' professional conduct were enacted by the President's Decree No. 885 of 12 August 2002. The GET was told that the Decree was issued with a view to building up public trust in governmental institutions, creating preconditions for the conscientious and efficient performance of official (professional) duties by governmental employees, and precluding the possibilities of abuse relating to governmental service. The Decree has been considered effective since the day of its signing pending the adoption of the Federal Laws on the governmental service categories. Thus, at present, pursuant to the provisions of the Federal Law *On the Public Civil Service*, the requirements pertaining to the professional conduct of a governmental civil servant are related to the obligations of a civil servant (Article 15), rights of a civil servant (Article 14), limitations (Article 16), and restrictions (Article 17). The GET was told that all the various texts, i.e. the aforementioned law as complemented by altogether 19 presidential and governmental decrees, constitute – according to the authorities - a code of ethics. Furthermore, the GET was informed that some federal agencies such as the Federal Customs Service dispose of specific Codes of Ethics and that the Public Chamber has drafted a Code of Ethics for the civil service.

#### Reporting corruption (whistleblowing)

276. The legislation of the Russian Federation does not provide for an obligation to report the professional misconduct (suspicions of corruption) encountered in the course of performance of official functions.

277. The authorities furthermore referred to general rules, contained in the Criminal Code, which establish liability for harbouring serious crimes without a preliminary agreement (Article 316), although among these crimes only one, contained in Article 290.4, is related to corruption. In addition, the authorities mentioned regulations contained in the Law *On the Public Service System*, according to which a civil servant is prohibited from fulfilling an unlawful instruction and must, in case of doubt, submit a written substantiation of wrong to the responsible head of division. The GET was also told that civil servants are required to report cases of bribes proposed to *them* to their superior (*President's Decree no. 269 of 3 march 2007*).

#### Disciplinary proceedings

278. In accordance with Articles 57 and 59 of the Federal Law *On the Public Service System*, an official inquiry must be conducted prior to imposing a disciplinary punishment execution, based on a decision made by a person representing the interests of a governmental employer or a written appeal filed by a civil servant. An official inquiry must be conducted by a unit within the governmental authority concerned and responsible for matters of governmental service and human resources policy; the enquiry also involves representatives from a legal counsel unit and the elected trade union committee of the governmental authority in question.

279. Disciplinary punishments are to be applied with regard to governmental employees by an authority or an executive official having a right to appoint a governmental employee to a governmental service position. Disciplinary proceedings or punishment do not preclude the possibility of a criminal investigation and prosecution according to the Criminal Procedure Code. In such a situation, the materials collected in the course of disciplinary inquiries can be used in the course of a subsequent criminal investigation. In accordance with Article 57 of the Law *On the Public Service System* the following disciplinary sanctions are available: notification, reprimand, warning on incomplete official correspondence, release from a civil service post, dismissal from the civil service. Disciplinary sanctions are also provided for under the Labour Code (Federal Law of 2001 no. 197-FZ).
280. The GET was not provided with any statistics concerning the use of disciplinary measures in public administration.

**b. Analysis**

281. Currently, Russia is undertaking comprehensive reform in order to modernise its public administration. The reform, as presented to the GET, has the overall objective to create an efficient public administration based on pillars such as professionalism, quality and accessibility. In the GET's view the measures contained in the Administrative Reform Strategy 2006-2008, which was extended with an implementation phase 2009-2010 and which more recently has been confirmed also in the National Anti-corruption Plan, provide for a clear anti-corruption policy which aims at attacking the roots of the problem. In addition, as was suggested by officials met by the GET, grey areas ("corruption niches") must be identified within the public administration in order to effectively combat corruption. The GET noted that the reforms planned or underway, to a large degree, concern the adoption of or amendments to legislation. It goes without saying that the implementation of vast reforms like the ones needed in Russia cannot be limited to the promulgation of legislation but would call for a large scale implementation phase. Considering the complexity of the Russian public administration and the number of staff concerned, it is clear that fundamental reforms must necessarily be given a long term approach. In view of this, the GET is of the opinion that the indications given on the timing of the implementation process appear overoptimistic. The efficient implementation of the administrative reforms, including the monitoring of achievements, is now the main challenge for the Russian authorities. This concern has already been expressed in Chapter I of this report ("Overview of anti-corruption policy in Russia") where it has been recommended, *inter alia*, to develop systems for effectively monitoring the impact of anti-corruption measures in the various sectors concerned. Obviously, the public administration, as distinct from the law enforcement and the judiciary is such an important sector (cf. paragraph 60).
282. The GET was not provided with a precise definition of concepts such as "civil servants" or of "public officials", although not all public employees are civil servants. It appears, however, that some administrative laws do not apply to certain high-ranking officials and it remains unclear whether there is an overarching concept of "public official" (it was mentioned though that a list of persons falling within the category of "public official" was provided in a presidential decree). In order to ensure that the administrative reforms apply as widely as possible the authorities will need to clearly define the status of all public employees/officials concerned. In this context the GET recommends **to ensure that public administration reforms to fight corruption are applicable to a wide range of public employees/officials – and not only to the narrow category of civil servants.**

283. The Constitution explicitly refers to the transparency of public administration and the access to public information. This important matter is also dealt with by some complementary laws and regulations, however, there is no uniform and detailed legislation in place to fully regulate this matter. A draft law on the access to information was, at the time of the GET visit, not adopted. The GET was informed that there had been several attempts to adopt such legislation, in 1996, in 2002 and in 2004/5 and more recently, following two readings by the State Duma, in 2007 and April 2008 respectively. However, the GET did not obtain concrete information on the precise content of the draft law.
284. Officials met provided information suggesting that although the general transparency is improving in some respects (for example, through the display of public information via the Internet), access to information for the public at large is still quite difficult in practice and even if there are possibilities to submit complaints when information is being refused, very few use that opportunity, as it may be a cumbersome and lengthy process. Moreover, according to officials met and some representatives of the media, access to information by the media is regulated separately and is therefore less of a problem at least at the federal level.
285. The GET wishes to stress that transparency is a major tool in the fight against corruption and that the adoption of comprehensive legislation on access to public information is an important objective to pursue in Russia. Firstly, such legislation must be clear as to what information is to be considered as public in order to avoid, to the extent possible, excessive discretion by the authorities in their application of the law. Secondly, such legislation needs to be accompanied by adequate measures to provide for the possibility of challenging authorities' refusal not to give out information, through an independent mechanism. Moreover, legislation on access to public information must apply indifferently to all representatives of the larger public, including the media. The putting into place of such legislation needs to be followed by a phase of implementation, which probably would call for massive training of staff concerned throughout the public administration, at central as well as regional and local levels. Consequently, the GET recommends **that comprehensive and precise legislation on the access to public information is adopted as a matter of priority and that adequate measures for the implementation of such legislation throughout the public administration, including proper supervision of the implementation, be provided following the adoption.**
286. Regarding the issue of administrative justice, there are, at present, no courts specialised only in administrative justice in Russia. Instead, administrative cases are dealt with by the general courts and – regarding business and entrepreneurial disputes – by the commercial courts. The establishment of administrative courts has been discussed for years and two draft laws have been prepared by different institutions. A number of interlocutors took the view that the existing system – where administrative matters are dealt with by general courts and commercial courts with a certain degree of specialisation – is insufficient. This is all the more so as administrative legislation and procedures are being refined and public administration structures designed to foster good governance, which is increasingly likely to result in more complex cases calling for specialised legal knowledge on the part of judges. The GET understands that the establishment of administrative courts would require careful planning and extensive resources. The GET therefore recommends **to pursue efforts to improve procedures of administrative and judicial appeals against acts and decisions of public administration and to consider, as a long term objective, the establishment of a specialised administrative court system.**
287. Another area of critical concern – which was also raised by officials met by the GET – is the recruitment of staff to the public administration. The GET noted that the regulations concerning

the recruitment to the civil service appear to be of an appropriate standard, i.e. vacant posts must be publicly announced and the selection and recruitment of civil servants is to be based on competition. Moreover, there are specific rules to disqualify candidates, such as when a candidate is convicted for a criminal offence or refuses to undergo a clearance procedure, when presenting counterfeit documents or when there is a conflict of interest, for example, in situations when a close relative is already employed in a connected post. On the other hand, the GET was confronted with information that these rules are often disregarded in reality and noted, moreover, that other forms of public employment, including contractual employment, are less regulated. The GET noted that the National Anti-corruption Plan foresees, *inter alia*, to introduce special requirements for public employment. Representatives of the Public Chamber stated that the recruitment procedures in practice were generally unsatisfactory and did not guarantee the selection of the best candidates; they stressed that measures should be taken to create a “cleaner administration”. The GET recommends **that the authorities take determined measures to ensure that recruitment to the civil service in practice is based on the principles contained in pertinent legislation (e.g. announcement of vacant posts, fair competition between candidates and avoidance of conflicting interests) and that these principles be applied, as appropriate, also in respect of other types of employment in the public administration.**

288. The federal legislation contains a range of rules to prevent conflicts of interest already at the recruitment stage, as discussed above, as well as in-service rules; for example, regulating side incomes and entrepreneurial activities of civil servants. Conflicts of interest are also an important part of the reform underway, for example, in respect of the lack of a general rotation system for staff. Some rotation is practiced in respect of certain positions in high risk areas and within certain public agencies such as the Customs and Tax Services. The GET welcomes that the possibility of the introduction of a regular rotation system appears to be included in the National Anti-corruption Plan. By contrast, currently, there are rules in place on post employment restrictions (“revolving doors”), contained in the *Law On the Public Service System of the Russian Federation*, aiming at preventing civil servants from occupying certain positions in the private sector for a period of two years after leaving the civil service. The GET is not in a position to refer to all individual measures already in place or still missing for the prevention of conflicting interests. However, it cannot disregard that the main criticism submitted by public officials as well as civil society representatives was that some of the rules were not sufficiently wide in scope to cover the relevant public functions, officials and their close relatives and, more importantly, that the rules were often not used in practice. Another aspect raised with the GET by officials was that the existing control mechanisms were clearly felt to be insufficient; for example, the restriction in respect of post employment (“revolving doors”) was not connected to sufficient control and sanctions in case of non-respect. As far as the disclosure rules concerning the economic interests of civil servants is concerned, the GET was told that civil servants have to submit a summary of their annual income tax declarations to their administration and that it is an obligation upon senior officials to make them available to the media at the end of the year. The GET did not obtain sufficient information in order to examine the scope of individuals who are actually subject to asset disclosure, what particular assets are to be disclosed and to what kind of controls the declarations are subject. In view of the above, the GET recommends **to review the current measures designed to prevent conflicts of interest in order to clarify their scope of application in respect of public officials and their relatives, to remedy the shortcomings identified and to ensure that the necessary measures are fully implemented in practice.**

289. As far as acceptance of gifts is concerned, several legal acts contain restrictions. The focus of attention during discussion with the Russian authorities were the provisions concerning the



acceptance of gifts as contained in Article 575 of the Civil Code which provides for the general rule that no gifts may be accepted except for “ordinary ones” whose value does not exceed five minimum wages (approximately 500 RUR (14 EUR)). This rule recognises the longstanding Russian tradition of offering and receiving gifts in certain situations, for example to staff in medical, educational or social protection institutions. Aware of the principle established by GRECO in this respect, the GET has misgivings about the existing arrangements where the acceptance of gifts of a certain value can easily be seen to be encouraged by current legislation. As a consequence, the GET recommends **to eliminate the practice of accepting substantial gifts of any form in the public administration and to consider abolishing the legal justification for such gifts as contained in Article 575 of the Civil Code.**

290. There is no legislation or any other rule which would establish a general reporting obligation for civil servants or other public officials regarding suspicions of corruption, nor is it planned to alter this situation in the framework of the ongoing reform. The provision of Article 316 CC (Harbouring of serious crimes) was mentioned in this connection, but the latter is limited to certain offences (corruption offences, save passive bribery in the public sector, as criminalised under Article 290 CC) and presupposes a positive act of concealment on the part of the person detaining information. The Russian authorities also indicated that according to the President’s decree no. 269 of 3 March 2007, civil servants are obliged to inform their superior about bribes proposed to them. Furthermore, the GET was informed that given that the legislation of the Russian Federation does not oblige civil servants and other public employees/officials to report all known facts of professional misconduct, including those with a corruption potential, there are no specific measures laid down in legislative and other regulatory legal acts to protect public employees who provide such information from disguised discrimination and other damage including in respect of their career. However, the authorities emphasised that such persons come under the full effect of the general provisions on the protection of victims, witnesses and other participants in criminal proceedings.
291. The detection of corruption offences is one of the major difficulties to the fight against corruption in any state and GRECO has repeatedly held that member States should encourage public officials to report corruption and other related wrongdoings they come across in their daily work. Such encouragement is of critical importance in order to change the culture of silence that corruption can breed and to strengthen staffs’ sense of accountability at all levels of public administration. The GET is of the firm opinion that this is equally important in the case of Russia (even if it was understood by the GET that “whistleblowers” are called “informers” in Russia, which has – understandably – a rather negative connotation). Reporting of suspicions of corruption can be formulated as an obligation; however, reporting of corruption may not necessarily be a mandatory requirement. While imposing a duty to report would highlight the importance of providing specific protection for those who report, such protection is an important requirement even when the reporting is not mandatory. Moreover, training programmes and awareness building concerning reporting obligations and reporting modalities are indispensable in this respect. The GET recommends **to introduce clear rules/guidelines requiring public employees/officials to report suspicions of corruption, to introduce specific protection of those who report suspicions of corruption in public administration in good faith (“whistleblowers”) from adverse consequences and to provide systematic training to all staff concerned.**
292. Codes of conduct/ethics are important supplements to legislation and other norms in setting the standards for expected conduct in public administration. A code of ethics or code of conduct provides for the possibility of collecting norms and standards which follow from legislation and

practice and to present these standards in a positive way on how to behave as opposed to legal provisions which rather deal with prohibited conduct. As evidenced by practice followed by a number of GRECO members, codes of conduct/ethics are useful tools for public employees/officials in their daily activities and need to be easily understood. Moreover, such soft law instruments must be living instruments and tailored to each service and be accompanied by appropriate training and retraining. The GET took note of the Russian view that the Law *On the Public Service System* and 19 presidential and governmental decrees together form “the code of ethics” of public administration in Russia. Nevertheless, the GET is firmly convinced that a general model code of conduct/ethics drafted in the light of the Constitution, legislation and other relevant norms – and clearly setting out in positive terms the behaviour to be displayed, would be a useful tool for all public employees/officials, in particular considering the substantial reform envisaged for the public administration. The GET recommends **to elaborate and promulgate a model code of conduct/ethics for public employees/officials, including civil servants, which can be adjusted in light of the particular needs pertaining to different sections of public administration, and to ensure its implementation in practice, including offering adequate training to all staff concerned.** The GET recalls in this respect the usefulness of the Council of Europe Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on model codes of conduct for public officials.

## VI. LEGAL PERSONS AND CORRUPTION

### a. Description of the situation

#### Definition of legal persons (legal entity)

293. The Civil Code of the Russian Federation provides the basic regulation in respect of the relations between citizens and legal entities. The State and its subjects as well as the municipal entities may also be parties of the relations regulated by the Civil Code.
294. Legal entities holding legal capacities are either profit-making organisations or non-profit organisations. Legal entities that are profit-making organisations can be set up in the form of economic partnerships and production cooperatives, as well as state and municipal unitary enterprises. Legal entities which are non-profit organisations can be established in the form of consumer cooperatives, public or religious organisations (associations), financed by the owner of the institution or by charity and other funds, and also in other forms laid down by law. Non-profit organisations can engage in business activity only in so far as it helps them to achieve their goals, under the name in which they have been established, and in a way that corresponds to these goals.
295. In accordance with Article 48 of the Civil Code a legal entity is recognised as an organisation, which has in its ownership, economic management or operative management set-apart property and which is answerable to its obligations with this property and which may on its own behalf acquire and exercise property and personal non-property rights, discharge duties and act as a plaintiff and as a defendant in court. Legal entities must have an independent balance or an estimate.
296. According to Article 49 of the Civil Code a legal entity enjoys the civil rights that correspond to the goals of its activity, as stipulated in its constituent documents, and has to discharge the duties related to this activity. The legal capacity of a legal entity emerges upon its creation and terminates when deleted from the Unified State Register of Legal Entities.

297. The most important types of *profit-making* legal entities in Russia are as follows:

- Economic partnerships and companies (Article 66 of the Civil Code)
- General partnerships (Article 69 of the Civil Code)
- Limited partnerships (commandite partnerships) (Article 82 of the Civil Code)
- Limited liability companies (Article 87 of the Civil Code)
- Additional liability companies (Article 95 of the Civil Code)
- Joint-stock companies, opened or closed (Article 96 of the Civil Code)
- Affiliated and dependant companies (Articles 105 and 106 of the Civil Code)
- Producers' cooperative (Article 107 of the Civil Code)
- State and municipal unitary enterprises (Article 113 of the Civil Code)

298. The legal status, procedure of creation, activity, reorganisation and liquidation of non-profit organisations as legal entities, the creation and disposal of their property, founders' rights and obligations, management and possible support from State and municipal bodies are provided for by the Federal Law *On Non-profit Organisations* of 12 January 1996 (No. 7-FZ).

299. The most important types of *non-profit organisations* in Russia are the following :

- Consumer cooperatives are (cf. Federal Law On Credit Consumer Cooperatives of Citizens of 7 August 2001 (No. 117-FZ) and Federal Law On Housing Accumulative Cooperatives of 30 December 2004 (No. 215-FZ).
- Homeowners' associations (cf. Housing Code of the Russian Federation (2004).
- Public and religious organisations (associations) (cf. Civil Code, Federal Law "On Freedom of Conscience and Religious Associations" of 26 September 1997 (No. 125-FZ) and Federal Law "On Public Associations" of 19 May 1995 (No. 82-FZ).
- Funds (Article 118 of the Civil Code)
- Institutions (cf. Civil Code by Federal Law "On Autonomous Institutions" of 3 November 2006 (No. 174-FZ).
- Amalgamations of legal entities (associations and alliances):

#### Establishment - registration

300. According to Article 52 of the Civil Code, a legal entity is to operate on the basis of the rules, or of the constituent agreement and the rules, or only of the constituent agreement. A legal entity, which is not a non-profit organisation, may operate on the basis of the general provisions on the given type of organisations. The constituent agreement of a legal entity must be signed, and the rules are to be approved by its founders (participants). A legal entity created in conformity with the Civil Code by one founder is to operate on the basis of the rules approved by this founder.

301. In the constituent instruments of a legal entity must be indicated the name of the entity (and its organisational form), the place its seat, the way in which the legal entity's activity is managed, and other information, required by the law for legal entities of the corresponding type. In the constituent instruments of a non-profit organisation and of unitary enterprises, and in law-stipulated cases – also of other profit-making organisations - must be defined the object and the goals of the legal entity's activity. In the constituent agreement, the founders have to assume the obligation of creating the legal entity, have to delineate the order of their joint activities, involved in its creation, and the terms for the transfer to it of their property and for their participation in its activity. The agreement must also define the terms and procedure for the distribution of profits

and losses among the participants, for the management of the legal entity's activity and for the founders' (the participants') withdrawal from its structure.

302. Amendments, made in the constituent instruments, come into force in respect of third persons from the moment of their State registration, and in certain cases, established by the law – from the moment of notifying such amendments to the body performing the State registration. However legal entities and their founders (participants) do not have the right to refer to the absence of the registration of such amendments in their relationships with third persons, who have taken into account such amendments.
303. A legal entity is subject to registration with the authorised State body in conformity with the procedure specified by the law on the State registration of legal entities. The data on State registration is to be entered into the Unified State Register of Legal Entities, which is open to the general public (Article 51 of the Civil Code). In accordance with the Resolution of the Government of 2002 no. 438 on the Unified State Register of Legal Entities, the website of the Federal Tax Service contains the data on legal entities, such as the name of the entity; its identification number as a taxpayer; the public registration number and date of its entry in the registry and address.
304. A legal entity is considered to be created from the day when the respective record was made in the Unified State Register of Legal Entities. State registration of legal entities is regulated by the Federal Law *On State Registration of Legal Persons and Individual Businessmen* of 2001 (No.129-FZ). According to this law (Article 1) the State registration of legal entities are acts by an authorised federal executive body, which are effected by means of including in the State Register information about the creation, reorganisation or liquidation of legal entities. According to the Government Resolution *On the Adopting of the Regulations on the Federal Tax Service* of 30 November 2004 (No. 506), the Federal Tax Service and its territorial bodies are authorised to register legal entities.
305. State registration of a legal entity is to be effected within five working days after the date when documents are filed with the registration body at the location of the permanent executive body specified by the founders in their State registration application, or if there is no such executive body, at the location of another body or person entitled to act in the name of the legal entity with no powers of attorney pursuant to Article 8 of the Federal Law *On State Registration of Legal Entities and Individual Businessmen*). State registration (as an act of entry into the Unified State Register of Legal Entities) is under the sole responsibility of the tax authorities. However, in accordance with the Federal Law *On State Registration of Legal Entities and Individual Businessmen*”, a special order of registration of certain legal entities can be established by federal laws. For instance, in compliance with the federal laws on banks and banking activity, or on non-profit organisations, a special order of registration exists. In such cases, the registration application is decided upon by the competent body (e.g. the Bank of Russia, or Rosregistration) but the action to enter data into the registry is carried out by the tax authority.
306. The following natural persons are entitled to represent a legal entity at registration: the head of a permanent executive body of the legal entity or another person entitled to act in the name of the legal entity with no powers of attorney, an incorporator (incorporators) of the legal entity, the head and founder, a competition administrator or the head of a liquidation commission (liquidator) at the liquidation of the legal entity, another person acting under powers stipulated by a federal law or an act of a State or municipal body specifically authorised to do so. The application presented to the registering body is to be certified with the signature of the applicant,

which must be certified by a notary. The applicant has to indicate the data of his/her identification document.

307. For registration purposes, the following documents are to be submitted: a State registration application signed by the applicant, in which the applicant must confirm that the documents filed comply with the standards required by law, a decision whereby the legal entity is incorporated (minutes, agreement etc), the articles of association (originals or copies certified by a notary), extract from the registry of foreign legal entities in case of a foreign legal entity being an incorporator and a document confirming that State duty has been paid. According to Article 23 of the *Law On State Registration of Legal Entities and Individual Businessmen*, State registration may be refused in case documents necessary for registration are have not been presented, provision of documents with an improper registration body, changes made in constituent documents of a legal entity subject to liquidation or if the founder is a legal entity subject to liquidation or registration of legal entities that appear as a result of its reorganisation.
308. Pursuant to Article 24.1 of the *Law On State Registration of Legal Entities and Individual Businessmen*, officials of registration authorities are held liable for groundless refusal of State registration, failure to grant State registration within specified periods or other violation of the order of State registration established by the Federal Law and also for unlawful refusal of provision or untimely provision of data and documents contained in the State register or other documents as laid down by Federal Law. This regulation is a reference rule: the responsibility for the relevant offences has been established by other laws, such as the Code of Administrative Offences (untimely or incorrect entries about a legal entity into the Unified State Registry) which may lead to fines and disqualification from public office. The GET was informed by the authorities that there are not so many such disputes pending in commercial courts, as there are only three grounds for refusal of State registration and as a result of the fact that a registration authority does not make any legal interpretation of documents produced for State registration.
309. Moreover, pursuant to Article 169 of the Criminal Code, illegitimate refusal to register a legal entity by an official is punishable by a fine or by deprivation of the right to hold specified offices or by compulsory work. The same acts, committed in violation of a judicial decision that has come into legal force, and likewise causing large damage, are punishable by deprivation of the right to hold specified offices or to engage in specified activities, with a fine, by compulsory works for a term of 180 to 240 hours, or by deprivation of liberty (two years). According to the Law on State registration of legal entities and individual businessmen, a registration authority has to reimburse the damage inflicted by the refusal of State registration when a fault has been committed (Article 24). The legislation does not provide for special rules of reimbursement of such damage; in this regard, general provisions of the Civil Code apply. The same law (Article 25) provides that applicants, legal entities and/or individual businessmen are to be held liable for non-provision or untimely provision of data necessary for the State register and also for provision of unauthentic data.
310. The State register comprises information on the formation, reorganisation and liquidation of legal entities, the acquisition by natural persons of the status of an individual businessman, the termination by natural persons of activity as individual entrepreneurs, other information about legal entities and individual entrepreneurs as well as supporting documents. Information and documents contained in the registry are open and accessible to the public, with the exception of information with limited access. In this connection, the GET was told that any person has open access and may thus request, at their own expense, information from the registry without any specific interest being proven; the freely accessible FTS website of the Federal Taxation Service

contains less comprehensive information on the Unified State Registry (which is composed of two registries: “legal entities” and “individual entrepreneurs”). Information about the number, date of issue and about the body which has issued the document, certifying the identity of natural persons, information about bank accounts of legal entities and individual businessmen may be submitted solely to the organs of State power and the organs of State extra-budgetary funds in cases and in the procedure established by the Government which is not public.

#### Limitations on exercising functions in legal persons

311. The Criminal Code (Article 47) establishes the disqualification from holding specified offices (in public administration) or engaging in specified activities as a criminal sanction. The disqualification could be imposed as main sanction for a period from one up to five years or as an additional sanction for a period from six months up to three years. In the case where the disqualification is imposed as an additional sanction it starts to be enforced following the expiry of the period of the main sanction, e.g. deprivation of liberty. In the Special Part of the Criminal Code disqualification is explicitly provided for as a main or additional sanction for a number of corruption related offences, including active and passive bribery in the private sector (Article 204 CC), misuse of official duty (Article 285 CC) and passive bribery (Article 290 CC) and serious forgery (Article 292, para.2 CC). The provisions dealing with the punishment of money laundering (Art.174 CC) and active bribery (Article 291 CC) do not provide for disqualification sanctions. However, under the general rule of Article 47 para.3 CC, the disqualification may be imposed as an additional sanction also for crimes for which it is not explicitly provided for in the Special Part of the Criminal Code if the court considers such measure appropriate. Furthermore, the Code of Administrative Offences establishes the disqualification from acting in a leading position in a legal person as an administrative sanction which could be imposed by court for a term from six months to three years (Articles 3.2 and 3.11CAO). Moreover, administrative fines are provided for in situations where disqualified persons are engaged in the management of a legal entity (Article 14.23 CAO).

#### Liability and sanctions of legal persons

312. Pursuant to the general rules contained in Article 19 CC only physical persons can be subject to criminal liability. The authorities indicated that there are no immediate moves in Russia to make legal persons criminally liable for criminal offences.

313. However, according to Article 1068 of the Civil Code a legal entity may bear civil or (pecuniary) responsibility for the harm caused by its employees while performing official duties, including for actions related to bribe taking or bribery in a profit-making organisation, regardless of whether a bribe taker bears criminal responsibility or not. According to Articles 28-29 of the Civil Code, legal persons are independently liable for their obligations. Thus a legal entity can be sued for damages. Moreover, provisions on unreasonable enrichment (Articles 1102, 1103, 1107 of the Civil Code) can be applied in respect of legal entities, and both parties may be deprived of all their benefits relating to corrupt activities in case a business deal is against or inconsistent with the law and order or morality and therefore is null and void (Article 169 of the Civil Code).

314. Legal persons can also be subject to administrative liability in respect of administrative offences. Administrative liability of legal entities is established in the Code of Administrative Offences (CAO). According to Articles 2.10 and 3.2 CAO, legal persons are subject to responsibility for administrative offences. At present, there are plans to make certain amendments to the Code

which will establish administrative liability of a legal person for corruption offences committed on behalf or to the benefit of legal persons, as reflected in the National Anti-corruption Plan.

315. The current principles for legal persons' administrative responsibility are established by the CAO or by the laws on administrative offences adopted in the various regions of the Federation. According to Article 3.2 CAO, the available administrative sanctions which can be imposed on legal persons include: warning, administrative fine, confiscation of the crime instrument or the subject of the administrative offence, administrative suspension of the activity.
316. According to Article 13 of the Federal Law *On Combating Legalisation (Laundering) of Proceeds of Crime and Financing of Terrorism of 7 August 2001* (No. 115-FZ), the licence of the organisations which conduct transactions with funds or other assets and operate on the basis of a licence, may be withdrawn. If a legal person violated the legislation on money-laundering, the legal person can be brought to administrative responsibility according to Article 15.27 CAO.

#### Tax deductibility

317. The legislation of the Russian Federation on taxes and duties does not provide for any deductions or other reduction of tax base in connection with bribes and "facilitation payments". All grounds for the reduction of tax base have been established by the Tax Code; the application of such grounds must be documented. None of the grounds specified by the Code relate directly or indirectly to bribes and "facilitation payments".

#### Tax authorities

318. The tax and internal affairs bodies are to inform one another in the order defined by the agreements between them of the available materials on breaches of the legislation on taxes and fees and tax offences, about measures taken, about the tax inspections carried out by them and also exchange other necessary information (Article 82 of the Tax Code). Article 30.4 of the Tax Code establishes that the tax authorities, federal executive bodies, regional executive bodies, local authority bodies and the agencies of the governmental extra-budgetary funds must discharge their functions and cooperate with each other by exercising their authority and fulfilling obligations established by this Code or other legislation.
319. The process by which internal affairs bodies gain access to the tax documentation is laid down in a number of laws, on the militia, on public prosecutors, on accounting and on money laundering.
320. The GET was informed that the Federal Tax Service together with the Federal Security Service of Russia conducted 5 joint operations in banks in 2006-2007. The aim of the operations was to reveal persons involved in money laundering, converting capital into cash and as a consequence tax avoidance. The transactions of 51 organisations were suspended as a result of these operations.
321. According to the Federal Law *On Operational-Search Activity* of 12 August 1995 (No.144-FZ) and Chapter 11 of the Criminal Procedure Code, law enforcement bodies (prosecutors, investigators, inquiry officers) are entitled to request necessary information, applications, documents and their copies, including secret tax information.
322. According to Article 102 of the Tax Code, any information regarding a taxpayer received by the tax authorities, internal affairs bodies, an agency of a governmental extra-budgetary fund or the

customs authorities are to be considered confidential. The access to such information and its storage is controlled in a special way. Access to the data covered by tax secret is granted to the officials included on the lists determined by the federal executive bodies which are, authorised to fulfil functions of supervision and control in the sphere of taxes and fees, in the sphere of internal affairs, or to fulfil functions of supervision and control in the sphere of custom procedures.

#### Accounting rules

323. The Federal Law *On Accounting* of 21 November 1996 (No.129-FZ) provides for the basic rules in this area. All legal entities have to compile bookkeeping reports on the basis of their accounting data. The bookkeeping reporting papers must be signed by the head and the chief accountant of the organisation (Article 13). The accounting year for all organisations follows the calendar year - from 1 January to 31 December (Article 14).
324. The entities concerned are required to keep the primary account documents, accounting ledgers and bookkeeping reporting information within the terms established in accordance with the rules for State archive organisations, however, at least for five years (Article 17).

#### Account offences

325. Account offences in the Russian Federation are mainly dealt with under the Code of Administrative Offences (CAO). According to Article 15.11 CAO, a gross violation of the rules of bookkeeping and of submitting accounting documents, as well as of a procedure and terms of keeping accounting documents entails the imposition of an administrative fine on officials to the amount of between twenty and thirty times the minimum wage.
326. According to Article 120 of the Tax Code, a gross violation (i.e. absence of primary documents, invoices, book-keeping registers, repeated twice and more times during a calendar year, untimely or incorrect coverage of business transactions, monetary funds, tangible assets, intangible assets and financial investments of a taxpayer in the balance sheet accounts and in reporting) of rules of accounting for income and (or) expenditure and (or) objects of taxation, if these actions were committed within one tax period, in the absence of signs of a tax offence, carries a fine of 5 000 RUR (approx. 142 EUR).
327. The Criminal Code of the Russian Federation does not establish account offences. However, accountants may be held liable in the light of corruption crimes under Article 292 of the Criminal Code (Official forgery against public officials) and also under Articles 174 and 174-1 of the same Code for laundering of proceeds of any corruption crimes.

#### Role of accountants, auditors and legal professions

328. The Federal legislation sets forth the duty of accountants, auditors and/or representatives of other professions in the sphere of consulting, to inform law enforcement bodies about suspicions of offences related to the laundering of criminally gained proceeds and financing terrorism: , According to the Federal Law *On Combating Legalisation (laundering) of Proceeds of Crime and Financing of Terrorism of 7 August 2001 (No. 115-FZ)* if a lawyer, notary or any person occupied in the sphere of legal and bookkeeping services has any grounds to consider the deals and transactions indicated in Article 7.1.1 of this law to be aimed at laundering criminally gained proceeds or financing terrorism, s/he should be obliged to inform an authorised body. Accountants and auditors met by the GET reported on their obligation to make suspicious



transactions known to Rosfinmonitoring, on the existence of guidelines for communication and cooperation with Rosfinmonitoring and on mandatory training focusing on current reporting obligations, but they stressed that their present legal remit did not allow them to check accounts with a view to discovering corruption.

329. Article 144 of the Criminal Procedure Code provides that an inquiry body, inquiry officer, investigator and prosecutor are entitled to demand explanations from the persons who rendered consulting services to the legal entity when checking a report of a crime.

**b. Analysis**

330. The Civil Code provides for a broad range of different legal persons, profit making entities as well as non profit associations. The legislation is comprehensive and adequate. All forms of legal persons are subject to state registration and the data on each legal person will appear in the Unified State Registry of Legal Entities, which is kept by the Federal Tax authority (FTS) and open to the public. The FTS is competent for the registration of all legal entities in the State Registry; however, the decision on registration is made, in respect of non-profit associations by the Ministry of Justice and in respect of credit organisations, by the Banking Council. The registration of all other legal persons is decided upon by the FTS itself. There are detailed rules on who may represent the applicant entity (e.g. the incorporator, the executive etc) at registration and the authorised person has to sign the application, which must be certified by a notary. The GET is of the opinion that, overall, this registration process, although rather formalistic, provides for a reasonable level of verification. Moreover, the GET was pleased to learn that the registered information was open to the public.

331. The GET was informed that there are possibilities under the law to disqualify persons convicted for corruption offences from acting in a leading position in a legal entity under the Criminal Code (criminal sanction) as well as under the Code of Administrative Offences (CAO). Although it appears that these rules mainly aim at barring convicted persons from entering the public administration, they seem to cover the private sector as well. The GET was informed that the Ministry of the Interior keeps a register of the disqualified persons and that all personnel departments, both in public and commercial organisations, are required to consult the registry when appointing personnel (Order of the RF Ministry of the Interior, dated 22 November, 2006, No. 957). The GET has doubts that such an obligation can properly work in respect of private companies and is of the opinion that information on disqualified persons, to the extent that it has a bearing on legal persons, could usefully also be recorded in the Unified State Registry of Legal Persons and be taken into account by the Registration authority in registration matters (e.g. registration of legal persons and change of leading persons).

332. Currently, liability of legal persons for criminal offences is not provided for in Russian legislation. Some of the interlocutors met by the GET argued that the administrative and civil liability, as established by the Code of Administrative Offences (CAO) and the Civil Code, provide sufficient tools in this respect. The GET notes that under the CAO legal persons are subject to administrative responsibility for administrative offences (but not for any criminal offence). The GET also notes that sanctions can only be imposed for violations of the administrative requirements under the legislation, but not for the criminal offences. The Russian authorities claim that the Civil Code establishes civil liability of legal persons in cases where they are involved in crimes. In particular, reference was made to the provisions under which an illegal transaction is declared null and void and the subject/benefit of such transaction is forfeited by the state (Article 169 CC). However, it appears to the GET that the above-mentioned measure is not

more than a civil law consequence of the invalidity of the illegal transactions and not a sanction of a crime and clearly does not meet the requirements of Articles 18 and 19, paragraph 2 of the Criminal Law Convention on Corruption. It should also be mentioned that the Russian authorities are in the process of considering the possibility to establish administrative liability of legal persons for criminal offences, including corruption, and that this issue forms part of the National Anti-corruption Plan. In view of the above, the GET recommends **to adopt the necessary legislative measures in order to establish liability of legal persons for corruption offences and to provide effective, proportionate and dissuasive sanctions in these cases, including monetary sanctions, in compliance with the requirements of the Criminal Law Convention on Corruption (ETS 173).**

333. Tax deductibility for “facilitation payments”, bribes or other expenses linked to corruption offences is not explicitly prohibited by tax legislation. However, the Russian authorities stated that the Tax Code does not provide for the possibility of deductions in respect of payments which would constitute a criminal offence. The GET recalls in this respect that bribery of foreign public officials is not criminalised under Russian criminal law and it would therefore appear to be a significant lacuna in respect of the prohibition. However, the GET notes that the criminalisation of bribery of foreign public officials is currently being considered by the authorities and will examine this matter in its Third Evaluation Round.
334. The GET also notes that there is an obligation for the tax authorities to report violations of tax legislation to the law enforcement authorities, within ten days following the revealing of the relevant circumstances (Article 32, paragraph 3 of the Tax Code). Besides that, the Tax Code provides for reporting obligations in respect of breaches of tax legislation and the exchange of information between tax authorities, customs authorities and law enforcement authorities and that such interagency cooperation, according to the Code, should be subject to memoranda of understanding between the competent authorities (Article 82, paragraph 3 of the Tax Code). However, the GET takes the view that without appropriate training or guidelines in this respect it would be difficult for the tax authorities and their staff to effectively contribute to the fight against corruption. Therefore, the GET recommends **to provide special training and/or establish suitable guidelines for the tax authorities concerning the detection of corruption offences and their reporting obligation under the law.**
335. Current criminal legislation does not provide for criminal liability in case of infringements of accounting rules. Instead, the CAO and the Tax Code contain provisions dealing with the administrative liability (fines) for account offences. Such sanctions are imposed by courts exclusively. This situation appears to be compatible with the standards of Article 14 of the Criminal Law Convention which allows contracting parties to choose between criminal law and administrative law sanctions for account offences.
336. Russian law does not establish a general obligation to report suspicions of crimes to law enforcement authorities which could be applied also to advising professionals in case of suspected corruption offences. On the other hand, according to Article 7.1 of the *Law On Combating Money Laundering and Financing of Terrorism*, lawyers, notaries, legal advisors and accountants should report suspicions of money laundering and financing of terrorism to the competent authorities, but the scope of the reporting obligation is restricted to cases where the aforementioned professionals accomplish specific managerial tasks or transactions. Besides that, the Code of Ethics of the Russian auditors provides only for optional reporting in case of suspicions of crime. The GET takes the view that the lack of any concrete steps to increase the awareness of auditors and other advising and legal professions and to establish reporting

obligations for them is likely to affect the potential role they could play in detecting corruption offences. The GET believes that this issue could be addressed by establishing guidelines and special training. The Ministry of Finance, through its power to approve the training and qualification programmes for auditors, could certainly, play a significant role in this process. The GET recommends **to encourage auditors and other advisory and legal professions to report suspicions of corruption to the appropriate authorities.**

## **CONCLUSIONS**

337. Corruption is a widespread systemic phenomenon in the Russian Federation which affects the society as a whole, including its foundations and more specifically the public administration and the business sector, as well as the public institutions in place to counteract corruption, such as the law enforcement agencies and the judiciary. There is no doubt that the Russian authorities take these problems seriously and consequently, the fight against corruption is recognised as a priority at the highest political level. A Presidential Council on Counteracting Corruption was established in May 2008 as the overall co-ordinating body and the President approved in July 2008 a National Anti-corruption Plan (NACP), which further strengthens the political commitment to act rigorously against corruption. Moreover, there appears to be a strong consensus among officials for the need to introduce substantial measures against corruption beyond the mere issuing of declarations, programmes and legislation of which there is no lack. To this effect, the NACP needs to be complemented with a clear and coherent anti-corruption strategy and a detailed plan of implementation. Moreover, the involvement of regional and local authorities as well as civil society in the overall coordination of anti-corruption measures needs to be strengthened.
338. The law enforcement system of the Russian Federation is structured with a variety of different forces and services at central and entity levels, with varying degrees of specialisation to deal with the investigation of corruption offences, however, often in combination with other special tasks; as a result, several law enforcement agencies have organisational structures which provide for specialisation in the same field, which are likely to affect the proper distribution of cases as well as the coordination between different agencies. Enhanced interdepartmental cooperation is therefore required. Reforms of the law enforcement system are, however, not included in the NACP.
339. The legal framework concerning confiscation of the proceeds from crime, including corruption, has only recently come into operation. Minor amendments to this framework as well as training to those applying the relevant provisions are required. That said, the existing confiscation regime has the potential of fulfilling its statutory purpose.
340. It must be acknowledged that the consolidation of an independent judiciary has been an important challenge in the Russian Federation over the last decades and a number of reforms have been accomplished in this area. The existing Constitutional and legal framework clearly establishes independence from the legislative and executive powers. Nevertheless, there are indications that further improvements in this respect are called for in order to come to terms with the common understanding in Russia that the judiciary is affected by undue influence and corruption.
341. The Russian Constitution and federal laws establish a comprehensive system of immunities from criminal proceedings and detention concerning a large number of categories of officials. These

categories need to be reduced to the minimum required in a democratic society and procedures for lifting immunity be thoroughly revised.

342. The Russian Federation is currently undertaking a comprehensive reform specifically aimed at modernising public administration. The reform is based on professionalism, quality and accessibility. The measures as foreseen in the ambitious Administrative Reform programme 2006-2010, aim at attacking the roots of the problem of corruption. Moreover, these reforms – underway or planned – concern to a large extent the adoption of, or amendments to, legislation. It goes without saying that the implementation of vast reforms like the ones needed in Russia cannot be limited to the promulgation of legislation but clearly require determined implementation. A major reform which has been underway for a long time concerns access to public information. This calls for comprehensive and precise legislation and swift implementation in order for Russia to meet European standards. Other issues to be addressed concern the management of conflicts of interest, public employees'/officials' duty to report corruption, and the elaboration of a model code of conduct for all those employed in the public administration.
343. The Civil Code provides for a broad range of different legal persons which are all subject to state registration and the data on each legal person is available to the public. Although rather formalistic, the existing registration modalities provide for a reasonable level of verification. Currently, liability of legal persons for acts of corruption committed on behalf, or for the benefit, of legal persons up to the standards of the Criminal Law Convention on Corruption (ETS 173) is not provided for in Russian legislation. However, reform to this effect appears to be underway.
344. In view of the above, GRECO addresses the following recommendations to the Russian Federation:
- i. **to establish a comprehensive national anti-corruption strategy, on the basis of the National Anti-corruption Plan (NACP), covering the federal, regional and local levels of the Russian Federation. The strategy should place a strong emphasis on corruption prevention and transparency of public administration and must give proper attention to civil society concerns; it should also cover all public sectors concerned, including the law enforcement, and be accompanied by a realistic and binding timeframe for its implementation. The strategy and the plan of action should be made widely known to ensure a high degree of public awareness of the strategy and the measures to be taken (paragraph 57);**
  - ii. **that the new Presidential Council on Counteracting Corruption be provided with a broader representation in order to better reflect the interests of the regions as well as those of civil society (paragraph 58);**
  - iii. **to develop systems for monitoring in a comprehensive, objective and ongoing manner the practical impact on the various sectors concerned of the anti-corruption measures introduced, including the evolution of the levels of corruption in these sectors over time. It should be ensured that civil society is in a position to provide input to, and to make its views known on the outcome of such monitoring (paragraph 59);**
  - iv. **to review the system of administrative and criminal procedures in order to firmly establish that cases of corruption are to be treated as criminal offences as a main rule (paragraph 61);**

- v. that precise guidelines for the distribution of corruption cases between the various law enforcement agencies/departments be established (paragraph 142);
- vi. to further enhance the coordination between various law enforcement agencies involved in investigations of corruption and to examine the advisability of developing a centralised support mechanism to assist law enforcement agencies in investigating corruption (paragraph 143);
- vii. that the operational independence of law enforcement agencies and their investigative staff be strengthened and governed by appropriate checks and balances under the Rule of Law and that the material conditions of law enforcement personnel be reconsidered in this context (paragraph 144);
- viii. to establish a recruitment procedure for prosecutors at all levels based on objective criteria (paragraph 145);
- ix. that the principle of judicial independence, as provided for in the Russian Constitution and legislation, be strengthened further in practice, in particular, in respect of recruitment/promotion procedures and the exercise of judicial functions (paragraph 151);
- x. that systematic introductory and in-service ethics training is provided to judges of all levels and ranks in light of the “*Code of Judicial Ethics*” and other pertinent norms (paragraph 152);
- xi. to reduce the categories of persons enjoying immunity from prosecution to the minimum required in a democratic society (paragraph 176);
- xii. that the legal provisions underlying the current procedures for lifting immunity be thoroughly revised with a view to their simplification and to establish guidelines for their application by law enforcement officials and judges (paragraph 179);
- xiii. to establish specific and objective criteria to be applied by Parliament, the Constitutional Court or a qualification board of judges when deciding on requests for the lifting of immunities and to ensure that decisions concerning immunity are free from political considerations and are based only on the merits of the request submitted (paragraph 180);
- xiv. that Article 104.1-3 of the Criminal Code be amended in order to provide for confiscation of the proceeds from corruption in respect of all corruption offences of the Criminal Code as well as other offences which may be connected with corruption and to provide for efficient seizure in such cases and that the introduction of *in rem* confiscation under the criminal legislation be considered (paragraph 217);
- xv. to design training courses and guidelines for those who apply confiscation and interim measures in cases of corruption, and to assess the efficiency of the confiscation regime based on the collection – on an on-going basis – of appropriate and detailed information and statistics (paragraph 218);

- xvi. to ensure that public administration reforms to fight corruption are applicable to a wide range of public employees/officials – and not only to the narrow category of civil servants (paragraph 282);
- xvii. that comprehensive and precise legislation on the access to public information is adopted as a matter of priority and that adequate measures for the implementation of such legislation throughout the public administration, including proper supervision of the implementation, be provided following the adoption (paragraph 285);
- xviii. to pursue efforts to improve procedures of administrative and judicial appeals against acts and decisions of public administration and to consider, as a long term objective, the establishment of a specialised administrative court system (paragraph 286);
- xix. that the authorities take determined measures to ensure that recruitment to the civil service in practice is based on the principles contained in pertinent legislation (e.g. announcement of vacant posts, fair competition between candidates and avoidance of conflicting interests) and that these principles be applied, as appropriate, also in respect of other types of employment in the public administration (paragraph 287);
- xx. to review the current measures designed to prevent conflicts of interest in order to clarify their scope of application in respect of public officials and their relatives, to remedy the shortcomings identified and to ensure that the necessary measures are fully implemented in practice (paragraph 288);
- xxi. to eliminate the practice of accepting substantial gifts of any form in the public administration and to consider abolishing the legal justification for such gifts as contained in Article 575 of the Civil Code (paragraph 289);
- xxii. to introduce clear rules/guidelines requiring public employees/officials to report suspicions of corruption, to introduce specific protection of those who report suspicions of corruption in public administration in good faith (“whistleblowers”) from adverse consequences and to provide systematic training to all staff concerned (paragraph 291);
- xxiii. to elaborate and promulgate a model code of conduct/ethics for public employees/officials, including civil servants, which can be adjusted in light of the particular needs pertaining to different sections of public administration, and to ensure its implementation in practice, including offering adequate training to all staff concerned (paragraph 292);
- xxiv. to adopt the necessary legislative measures in order to establish liability of legal persons for corruption offences and to provide effective, proportionate and dissuasive sanctions in these cases, including monetary sanctions, in compliance with the requirements of the Criminal Law Convention on Corruption (ETS 173) (paragraph 332);

**xxv. to provide special training and/or establish suitable guidelines for the tax authorities concerning the detection of corruption offences and their reporting obligation under the law** (paragraph 334);

**xxvi. to encourage auditors and other advisory and legal professions to report suspicions of corruption to the appropriate authorities** (paragraph 336).

345. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the Russian Federation to present a report on the implementation of the above-mentioned recommendations by 30 June 2010.

346. Finally, GRECO invites the authorities of the Russian Federation to authorise publication of this report as soon as possible, translate it into the national language and publish this translation.