Strasbourg, 23 March 2012

Public
Greco Eval III Rep (2011) 5E
Theme I

Third Evaluation Round

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

(Theme I)

Adopted by GRECO
at its 54th Plenary Meeting
(Strasbourg, 20-23 March 2012)

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

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

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

I. INTRODUCTION

1. Monaco joined GRECO in 2007. GRECO adopted the Joint First and Second Evaluation report on Monaco (Greco Eval I/II Rep (2008) 1E) at its 39th Plenary Meeting (10 October 2008). The aforementioned evaluation report and the corresponding compliance report are available on GRECO's homepage (http://www.coe.int/greco).

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

   - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).

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

3. The GRECO Evaluation Team (hereafter referred to as the "GET") carried out an on-site visit to Monaco from 12 to 16 September 2011. The GET for Theme I (12-13 September) was composed of Mrs Claudia Santos, Assistant Professor, Faculty of Law of the University of Coimbra, Portugal, and Mrs Cornelia Vicleanschi, Prosecutor, Head of the General Section, Office of the General Prosecutor of Moldova. The GET was assisted by Ms Lioubov Samokhina and Mr Christophe Speckbacher of the GRECO secretariat. Prior to the visit the GET experts were provided with replies to the evaluation questionnaire (document Greco Eval III (2011) 7F, Theme I) and the relevant legislation and regulations.

4. The GET met members and representatives of the following government institutions: Directorate of Legal Affairs, Directorate of Judicial Services, Court of Appeal, Court of First Instance, investigating judges, the prosecution service (including the Office of the Prosecutor General), Financial Information and Monitoring Department – SICCFIN (the Principality's financial information unit), the police force (including its Director and the chief of police). The GET also met members of the Bar Association.

5. The present report on Theme I of GRECO's third evaluation round on incriminations was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective is to evaluate the effectiveness of measures adopted by the Monegasque authorities to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Monaco in order to improve its level of compliance with the provisions under consideration.

6. The report on Theme II – transparency of party funding – appears in Greco Eval III Rep (2011) 5E, Theme II.

II. INCRIMINATIONS

Description of the situation

7. Monaco ratified the Criminal Law Convention on Corruption (ETS 173) on 19 March 2007; it came into force in Monaco on 1 July 2007 (date of Monaco's accession to GRECO). The Principality entered three reservations concerning four provisions of the Convention, namely Articles 5 (bribery of foreign public officials), 6 (bribery of members of foreign public assemblies), 12 (trading in influence) and 17, paragraph 1 (jurisdiction) of the Convention.[1] Monaco has not ratified or signed the additional Protocol to the Criminal Law Convention on Corruption (ETS 191).

8. The main provisions governing the various corruption offences are currently Articles 113 to 122 of the Criminal Code of 1967 (as subsequently amended). These articles are grouped under paragraph IV, Section II, Chapter III, Book III entitled "Bribery of public officials and employees of private undertakings". In a certain number of cases (in particular in connection with the bribery of international public officials and grounds for exemption) certain provisions of Sovereign Order 605 of 1 August 2006 in application of the United Nations Convention against Transnational Organised Crime are applicable.

9. The Government state that that the current articles of the Criminal Code are shortly due to be amended. The Government's intention is to bring Monegasque legislation into line with the various European and international standards, both institutional and as laid down in conventions. It has therefore produced draft legislation for this purpose (which was still under preparation when the previous GRECO evaluation report was adopted, in October 2008): (draft) Bill 880 of 5 November 2010 to reform the Criminal and Criminal Procedure Codes with regard to corruption and special investigation techniques, whose purpose is to bring the Monegasque criminal enforcement system further into line with the Criminal Law Convention on Corruption and to respond to the GRECO recommendations. It was lodged with the bureau of the National Council on 7 December 2010. The vote was scheduled to take place in 2011 but the GET was informed

[1] **Reservations contained in the instrument of ratification deposited on 19 March 2007 - Or. Fr.**
1) "In accordance with the provisions of Article 37, paragraph 1, of the Convention, the Principality of Monaco reserves its right not to establish as a criminal offence the passive bribery of foreign public officials and of members of foreign public assemblies referred to in Articles 5 and 6 of the Convention."
[By a letter from the Permanent Representative of Monaco, dated 12 March 2010, registered at the Secretariat General on 15 March 2010 – Or. Fr. - the Government of Monaco has informed the Secretary General of its intention to uphold this reservation in full for a period of 3 years (Article 38 of the Convention) (Period covered: 01/07/2010 to 01/07/2013).]
2) "In accordance with the provisions of Article 37, paragraph 1, of the Convention, the Principality of Monaco reserves its right not to establish as a criminal offence, in whole or in part, the conduct of trading in influence referred to in Article 12 of the Convention."
[By a letter from the Permanent Representative of Monaco, dated 12 March 2010, registered at the Secretariat General on 15 March 2010 – Or. Fr. - the Government of Monaco has informed the Secretary General of its intention to uphold this reservation in full for a period of 3 years (Article 38 of the Convention) (Period covered: 01/07/2010 to 01/07/2013.**]**
3) "In accordance with the provisions of Article 17, paragraph 2, of the Convention, the Principality of Monaco reserves its right not to establish its jurisdiction when the offender is one of its nationals or one of its public officials and when the offences are not punished by the law of the territory on which they have been committed. When the offence involves one of its public officials or a member of its public or national assemblies or any other person referred to in Articles 9 to 11 who is at the same time one of its nationals, the rules of jurisdiction set in paragraphs 1b and c of Article 17 apply without prejudice to the provisions of Articles 5 to 10 of Monaco's Code of Criminal Procedure concerning prosecution for crimes and offences committed outside of the Principality."
[By a letter from the Permanent Representative of Monaco, dated 22 December 2010, registered at the Secretariat General on 22 December 2010 – Or. Fr. - the Government of Monaco has informed the Secretary General of its intention to uphold this reservation in full for a period of 3 years (Article 38 of the Convention) (Period covered: 01/07/2010 to 01/07/2013).**]**

that its enactment could be delayed until the adoption of this evaluation report so that any recommendations in it could be taken into account. The draft legislation would replace the whole of the aforementioned paragraph IV with a new paragraph entitled "Unlawfully obtaining advantages, bribery and trading in influence", comprising the future Articles 113 to 122-2. The GET notes that the draft legislation includes an explanatory report of some 35 pages that explains the purpose of the legislation.

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

Definition of the offence

Provisions currently in force and future provisions

10. At present, the passive and active bribery of domestic public officials is an offence under Articles 113 and 118 of the Criminal Code. Article 114 also establishes the offence of passive bribery of arbitrators and experts. Since the current definitions may appear imprecise, the Government has opted, in drawing up the draft legislation of 5 November 2010 referred to in paragraph 9 (hereafter (draft) Bill 880), to make very substantial changes to its legislation and define active and passive bribery so as to reflect as faithfully as possible Articles 2 and 3 of the Criminal Law Convention on Corruption. New provisions of the Criminal Code included in a new Article 113-2 define these forms of passive (paragraph 1) and active (paragraph 2) bribery.

Current provisions of the Criminal Code

Article 113 CC [passive bribery of public officials]
Any civil servant of the administrative or judicial institutions and any other official or employee of a public body who accepts offers or promises or receives donations or gifts in exchange for an act in connection with his or her duties or post, even if the act is reasonable but not subject to any remuneration, shall be liable to one to five years' imprisonment and the fine stipulated in category 4 of Article 26.
He or she shall also be declared ineligible for any public functions.
This provision shall be applicable to any established or other official with the status described above who, in exchange for agreed offers or promises or donations or gifts received, has refrained from performing an act which forms part of his or her duties.

Article 114 CC [passive bribery of arbitrators and experts]
Any arbitrator or expert appointed either by the judicial authorities or by the parties who has accepted offers or promises or received donations or gifts in exchange for taking a decision or giving an opinion favourable to one of the parties shall be liable to the penalty prescribed in the previous article.

Article 118 CC [active bribery of public officials]
Anyone who coerces or attempts to coerce by violence or threats, or bribes or attempts to bribe by promises, offers, donations or presents, an established or other official with the status described in Article 113 to obtain a favourable opinion, untruthful reports, statements, certificates or estimates, posts or positions, contracts, undertakings or other advantages, or any other act that forms part of the official's duties, or the non-performance of an act that forms part of the official's duties, shall be liable to the same penalties as the bribed official.

Article 121 CC*. – A member of the criminal court who accepts a bribe to act in favour of or to the detriment of the accused shall be liable to five to ten years' imprisonment.*

***Article 122 CC**. – Items supplied by the person giving a bribe shall in no circumstances be returned to him or her, nor their equivalent value, but shall be confiscated.*

(Draft) new provisions of the Criminal Code

Article 113-2 NCCP [passive bribery of a public or private official; active bribery of a natural or legal person]

Passive bribery is the request, acceptance or receipt by a public or private official, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, in exchange for acting or refraining from acting, or for having acted or refrained from acting, in the exercise of his or her functions or facilitated thereby.
Active bribery is the promising, granting or giving by any person, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, so as to induce a natural or legal person to act or refrain from acting, or in exchange for having acted or refrained from acting, in the exercise of his or her functions or facilitated thereby.

11. The answers to the questionnaire deal with Sovereign Order 605, referred to earlier in paragraph 8, solely in relation to the bribery of foreign or international public officials, which is considered later (see paragraphs 44 ff). However, the GET notes that according to Article 6 of the order, bribery offences under this order are in fact broader in scope and are also concerned with: a) as a general principle, passive bribery irrespective of the status of the perpetrator; b) the active bribery of various categories of public officials, employees of public law legal persons or persons performing a public service. The GET therefore considers it appropriate to refer to the sovereign order at this stage of the report, even though it must be borne in mind that, given its specific purpose (specified in Article 1 of Sovereign Order 605, to which Article 6 refers),[2] the scope of the relevant offences is confined to cases involving organised criminal activity with a transnational dimension.

Sovereign Order 605 of 1 August 2006 in application of the United Nations Convention against Transnational Organised Crime

Article 6.- Any person who unlawfully requests or receives, at any time, directly or indirectly, offers, promises, donations, gifts or any advantage, for himself or herself or for anyone else, to perform or refrain from performing in the exercise of his or her official functions an act directly or indirectly related to one of the offences specified in the first article shall be guilty of the offence of passive bribery as defined in Article 8 of the aforementioned Convention.

Any person who unlawfully proposes, at any time, directly or indirectly, offers, promises, donations, gifts or any advantage, for himself or herself or for anyone else, to induce a natural or legal person to perform or refrain from performing in the exercise of his or her official functions an act directly or indirectly related to one of the offences specified in the first article shall be guilty of the offence of active bribery as defined in Article 8 of the aforementioned Convention.

[2] ***Article 1 .- The provisions of this order are applicable to** :*
** 1) serious offences specified in Article 2 b of the relevant Convention punishable under Monegasque legislation by a custodial sentence of at least five years;*
** 2) the offences specified in Articles 4 to 11, when these offences are of a transnational nature and involve an organised criminal group.*

Active bribery shall be punishable by five to ten years' imprisonment and the fine stipulated in category 4 of Article 26 of the Criminal Code,[3] whose maximum may be raised ten-fold when the target is:
** 1)any public employee, or*
** 2) any established public official of the administrative or judicial systems, or*
** 3) any official employee of a public law body, or*
** 4) any person performing a public service, or*
** 5) any foreign or international public official.*
Passive bribery shall be liable to the same penalties when it is committed by one of the persons specified in the previous paragraph.

Attempted bribery as defined in the first and second paragraphs shall be punishable by the same penalties.

Elements/notions of the offence

Domestic public official

12. The wording of Article 113 of the Criminal Code (and, via a reference, that of Article 118) refers to any civil servant of the administrative or judicial institutions and any other official or employee of a public body. Are also concerned any arbitrator or expert appointed either by the judicial authorities or by the parties in accordance with Article 114 of the Criminal Code. According to the Monegasque authorities, Article 121 of the Criminal Code – which makes passive bribery of "a *member of the criminal court who accepts a bribe"* an aggravating circumstance – covers also jurors and not just State-employed judges and prosecutors (so-called "*magistrats"*).

13. In practice, since this definition could be perceived as too imprecise, it was to decided to refer in the new draft legislation, under the offence of passive bribery in Article 113-2 paragraph 1 NCCP, to the concept of "public or private official" and, to ensure compliance with Article 1 a. and b. of the Convention, to include specific provisions defining these concepts. For example, paragraph 1 of Article 113-2 NCCP, which defines the concepts of public official, foreign or international public official and private official, states that "for the purposes of this paragraph [of the Criminal Code, that is Articles 113 to 122-2 NCCP] a domestic public official is a person exercising public authority, or carrying out public service duties or vested with an elected public office ...".

(Draft) new provisions of the Criminal Code

Article 113 NCCP [definition of notions used in paragraph 4, Section II, Chapter III, Book III – Articles 113 to 122-2 NCCP]

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

---

[3] *Article 26 - (Act 1.004 of 4 July 1978; Act 1.229 of 6 July 2000; Act 1.247 of 21 December 2001) The level of the fine is set for each offence according to the following categories:*
- category 1 : from € 750 to 2 250 ;
- category 2 : from € 2 250 to 9 000 ;
- category 3 : from € 9 000 to 18 000 ;
- category 4 : from € 18 000 to 90 000.

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

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

14. The explanatory report of (draft) Bill 880 states that the current provisions are a source of uncertainty concerning the position of elected representatives and other persons involved in public duties and, drawing on French legal theory, that the new concept is intended to cover the functions performed by ministers or government advisers, judges, various categories of professional officer, the director of police and mayors. The future legislation will also cover persons carrying out public service duties, whether they have public or private law status, and persons vested with an elected public office, whether they be national or local elected representatives.

15. Article 113 NCCP would combine the current Articles 113 and 114 CC, and would deal with any *"person exercising public authority, or carrying out public service duties or vested with an elected public office".* The GET notes that the definition of active bribery of a domestic public official or private person in paragraph 2 of Article 113-2 NCCP refers to a particularly broad concept which is (bribery of) "any natural or legal person", in order to reflect – without naming them again – the various categories of persons addressed under the provisions on passive bribery in the public and private sectors. It also notes that the bribery of judges and prosecutors (*magistrats)* and jurors will be explicitly covered by the specific penalties in Article 116 NCCP (see below).

16. The GET notes that while there is currently explicit reference to the passive bribery of arbitrators and experts, who are included in the categories specified in Article 114 of the Criminal Code, this does not apply to active bribery of this category of person. According to the authorities, the new provisions (Articles 113 and 113-2 NCCP) would fill this gap.

Promising, offering or giving (active bribery)

17. The current offence of active bribery in Article 118 of the Criminal Code refers to anyone who "coerces or attempts to coerce by violence or threats, or bribes or attempts to bribe by promises, offers, donations or presents*".*

18. Article 113-2 paragraph 2 NCCP uses the terms "the promising, granting or giving …. of any undue advantage". The explanatory report accompanying (draft) Bill 880 states that the new offence is also intended to draw a distinction between active bribery in the strict sense and the concept of violence or threats. These two forms of influence on public officials are currently dealt with together in Article 118 of the Criminal Code, whereas in future the second will be covered by separate provisions.

Requesting, receiving or accepting an offer or a promise (passive bribery)

19. Under Article 113 of the current Criminal Code, passive bribery requires the public official concerned to accept offers or promises or receive donations or gifts.

20. Article 113-2 NCCP refers to public or private officials requesting, accepting or receiving an undue advantage.

Any undue advantage

21. The current wording of Articles 113, 114 and 118 of the Criminal Code uses the term "donations or gifts" and according to the Monegasque authorities the current legislation throws no further light on the nature of these "inducements".

22. The proposed Article 113-2 NCCP uses the same term as the Convention – "any undue advantage" – for both passive and active bribery. According to the replies to the questionnaire, the word "undue" in (draft) Bill 880 will be interpreted broadly. It will cover any advantage the granting of which is conducive to breaching the link of integrity that binds officials to the state, thus casting doubt on the officials', and therefore their department's, freedom from influence in reaching their own conclusions and decisions .

Directly or indirectly; For himself or herself or for anyone else

23. According to the replies to the questionnaire, the current provisions of the Criminal Code (Articles 113, 114, 118) do not make it clear whether an offence is deemed to have been committed in the event of the involvement of an intermediary between the bribe giver and receiver, or when the undue advantage is intended for or given to a third party, whether the latter is an individual or a legal person, such as a body associated with the bribe giver, a foundation, an association or a political party.

24. In this connection Article 113-2 NCCP uses the wording of the Convention for both the active and passive bribery of domestic public officials.

Acting or refraining from acting in the exercise of his or her functions

25. The current Article 118 of the Criminal Code refers to the following acts of officials that may be bought: "a favourable opinion, untruthful reports, statements, certificates or estimates, posts or positions, contracts, undertakings or other advantages, or any other act that forms part of the official's duties, or the non-performance of an act that forms part of the official's duties". The offence of passive bribery in Article 113 refers to an advantage "in exchange for an act in connection with his or her duties or post, even if the act is reasonable but not subject to any remuneration". The GET notes that the concept of acts that officials refrain from performing is covered by Article 113 paragraph 3, which refers to "an act which forms part of his or her duties".

26. The future Article 113-2 NCCP appears to introduce important innovations with the term "to act or refrain from acting, or for having acted or refrained from acting, in the exercise of his or her functions or facilitated thereby". This covers both positive acts and failure to take action, as well as officials' future acts and action already taken.

Committed intentionally

27. The replies to the questionnaire indicate that under Article 4-2 CC offences are always deemed to be intentional in Monegasque law: "for a serious or lesser offence to have been committed there must be intention, other than in the cases where, for lesser offences, the law allows of the concepts of negligence or failure to exercise due caution or care for the safety of others".

Sanctions

28. The penalties for passive bribery are currently a) one to five years' imprisonment and the fine stipulated in category 4 of Article 26 CC,[4] namely € 18 000 to 90 000 (Article 113 paragraph 1 CC); imprisonment and fines are cumulative and never alternatives; b) ineligibility for any public functions (Article 113 paragraph 2 CC); c) the loss of rights referred to in Article 27 CC, namely disqualification from exercising civic, civil and family rights (Article 116 CC). Article 122 CC states explicitly that bribes will not be returned to the person giving the bribe and must be confiscated. The passive bribery of arbitrators and experts in Article 114 CC carries the same penalties. However, the penalty is increased to 5 to 10 years' imprisonment for members of criminal courts who accept bribes (Article 121 CC). The same aggravation of penalty does not apply to the bribe-giver in such cases.

29. Under Article 118 CC the same penalties apply to active bribery, as well as the same disqualifications in Article 27 CC (Article 120 CC, which refers to the penalties laid down in Article 116 CC).

30. By way of comparison, the penalty for forging an officially or notarially recorded document (Article 90 CC) is 5 to 10 years' imprisonment, and this is increased to 10 to 20 years when the perpetrator is a public official or professional officer acting in the course of his or her duties, which is an aggravating circumstance. The misappropriation of public or private funds or documents representing such funds by any person holding public authority or any public accountant (Article 106 CC) is punishable by 10 to 20 years' imprisonment; the same applies to the misappropriation by officials of a legal instrument or title. Under Article 123 CC, the penalty for misuse of authority is 3 months' to one year's imprisonment and a category 1 fine:[5] € 750 to 2 250. The GET also notes that the offence of public officials' interfering in cases over which they also have or have had some official oversight (Article 112 CC) is liable to 6 months' to 3 years' imprisonment and a fine of € 9 000 to 18 000, together with permanent disqualification from performing any public duties.

31. Turning to the future, (draft) Bill 880 of 5 November 2010 makes a number of changes to the relevant sanctions, which are the subject of a specific group of articles - 115 to 121 NCCP - applicable to the corresponding offences of bribery and trading in influence. The GET notes that these proposals harmonise and unify the penalty system in that active and passive bribery, as well as trading in influence, are generally liable to the same sanctions:

> ***(Draft) new provisions of the Criminal Code***
> ***[Corruption]***
>
> ***Article 115 NCCP****: Passive bribery shall be punishable by five to ten years' imprisonment and twice the fine provided for in category 4 of Article 26 where committed by a* ***domestic public official****. Active bribery shall be liable to the same penalties, where committed in respect of a domestic public official.*
>
> ***Article 116 NCCP****: Passive bribery shall be punishable by eight to fifteen years' imprisonment and three times the fine provided for in category 4 of Article 26 where committed by a* ***judge or juror*** *for the advantage or to the detriment of a person subject to criminal proceedings.*

[4] See footnote 3
[5] See above

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

***Article 118 NCCP**: Passive bribery shall be punishable by five to ten years' imprisonment and twice the fine provided for in category 4 of Article 26 where committed by a **foreign or international public official**. Active bribery shall be liable to the same penalties, where committed in respect of a foreign or international public official.*

[Trading in influence]

***Article 119 NCCP**: Active trading in influence shall be punishable by five to ten years' imprisonment and twice the fine provided for in category 4 of Article 26 where committed by a **domestic public official**. Passive trading in influence shall be liable to the same penalties, where committed by a domestic public official.*

***Article 120 NCCP**: Active trading in influence shall be punishable by eight to fifteen years' imprisonment and three times the fine provided for in category 4 of Article 26 where committed by a **judge** for the advantage or to the detriment of a person subject to criminal proceedings.*

***Article 121 NCCP**: Active trading in influence shall be punishable by five to ten years' imprisonment and twice the fine provided for in category 4 of Article 26 where committed by a **foreign or international public official**. Passive trading in influence shall be liable to the same penalties, where committed by a foreign or international public official.*

32. The Monegasque authorities point out that under Article 115 NCCP, the penalties for active and passive bribery of domestic public officials will be higher than at present - five to ten years' prison and up to twice the fine specified in category 4 of Article 26, or € 36 000 to 180 000. The new provisions include an Article 116 that makes the passive bribery of judges and jurors an aggravating circumstance, since the penalty is eight to fifteen years' prison and a fine whose basic level is trebled, to € 54 000 to 270 000. The GET notes that this proposed article deviates from the principle of equal penalties for briber and bribed since solely the latter is punishable by heavier sanctions. Reference should also be made to the additional penalties in Article 122 NCCP concerning the withdrawal of rights specified in Article 27 CC and the disqualification of public officials from public duty or public service or from elective or judicial office, either permanently or for five to ten years after the main sentence has been served, and the aggravating circumstance in Article 122-1 NCCP, when the offences of bribery, trading in influence or unlawful obtaining of advantages are committed by an organised criminal organisation. Finally, Article 122-2 NCCP specifies various circumstances in which the proceeds of offences are to be confiscated.

(Draft) new provisions of the Criminal Code

***Article 122 NCCP**: In all cases covered by this paragraph, those convicted shall also be punishable by the additional penalty of withdrawal of the rights specified in Article 27 of this Code for a minimum of five and a maximum of ten years, from the day that they have served their sentence.*

Domestic public officials shall also be disqualified from public duty or public service or from elective or judicial office, permanently or for a minimum of five and a maximum of ten years, from the day that they have served their sentence.

***Article 122-1 NCCP**: The offences specified in Articles 114 to 121 shall be punishable by ten to twenty years' imprisonment and the fine stipulated in category 4 of Article 26 of the Criminal Code, whose maximum may be raised ten-fold when the offence is committed by an organised criminal organisation.*

***Article 122-2 NCCP**: The court shall order the confiscation of the proceeds of the offences of unlawful obtaining of advantages, bribery and trading in influence.*

It shall also order the confiscation of all assets acquired using the proceeds of these offences.

It may also order the confiscation of the proceeds of these offences or of any assets acquired using these proceeds from any other person possessing them, wherever they are held, if the latter could not have been unaware of their illicit origins.

If the proceeds of these offences are intermingled with assets lawfully acquired, the latter may be confiscated up to the assessed equivalent value of the intermingled proceeds.

If the proceeds of these offences cannot or can no longer be identified as such in the assets of the convicted person, the court may order the confiscation of his or her assets or capital up to the assessed equivalent value of the proceeds of these offences.

Confiscation may be ordered irrespective of the rights of other persons.

The state prosecutor shall perform the necessary recording and publication procedures.

Relevant decisions and case-law

33. The Monegasque authorities refer to three decisions over the last three years.

34. The first, based on related provisions under the sections of the Criminal Code entitled "Serious and lesser offences committed by public officials in the course of their duties" and "Forgery" (sections II and I, Chapter III, part 1 of the Criminal Code), concerned police officers who were prosecuted for "behaving leniently" in exchange for payments (judgment of the criminal court of 27 May 2008, partially confirmed by the court of appeal on 5 August 2009). The offences with which they were charged related to paragraph 1 of the aforementioned section II, namely misappropriation by persons exercising public authority. Relevant extract from the judgment of 27 May 2008: "Mr X, in the exercise of his public authority as a police constable, has been found guilty of dishonest receipt of money, in exchange for which he knowingly made it impossible to prosecute certain offenders, thereby exempting them in practice from the payment of their fine when he had no legal authority to do so".

35. In another case (judgment of the criminal court of 14 October 2008, confirmed on appeal in a judgment of 19 May 2009), a police officer was charged with complicity in fraud and the handling of the proceeds of fraud after using his official powers to enable other persons charged to defraud certain traders.

36. A third, more recent, example is a judgment of 29 March 2011 in which the criminal court sentenced a police officer who was in service at the time of the events to six months in prison. Relevant extracts from the judgment, which is not yet final since it is subject to appeal: "Mr X has been charged in the criminal court with: a) as a public official in his capacity of police officer,

before the time limit for prosecution, receiving donations or gifts in exchange for acts in connection with his duties, which is an offence under Article 113 CC; b) Mr X requested € 1 500 in exchange for information sought by Mr Y through the agency of Mr Z; c) the corroborating statements of Mr Y and Ms A, who have never met, establish that Mr X disclosed that Mr Z was the subject of an arrest warrant and an expulsion order; d) this information could only have been obtained by the accused in connection with his police functions in Monaco, via Italian or French colleagues with whom he unofficially exchanged information. The criminal court has jurisdiction to rule on this offence of passive bribery under Article 21.2 CC because one of the ingredients of the offence relates to events that took place in the Principality".

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

37. At present, as noted in paragraphs 14 to 16, in Monaco there is no specific offence of or reference to bribery of members of domestic public assemblies and, according to the replies to the questionnaire from Monaco, it is unclear whether the provisions on passive or active bribery of an "established public official of the administrative or judicial systems and any other official of a public body" in Articles 113 and 118 CC apply to elected members. No relevant case-law is cited in the replies to the questionnaire.

38. In order to deal with these uncertainties, (draft) Bill 880 of 5 November 2010, which is currently before the National Council, includes specific provisions – Article 113-2 paragraphs 1 and 2 NCCP – on the active and passive bribery of domestic public officials, which also extends to members of a domestic public assembly. As already noted, the draft new Article 113 NCCP refers specifically to persons "vested with an elected public office". According to the explanatory report this covers both national and local elected representatives.

39. The rules applicable to members of domestic public assemblies will therefore, generally speaking, be the same as apply to domestic public officials, particularly regarding sanctions: five to ten years' imprisonment and twice the fine specified in category 4 of Article 26 CC, or € 36 000 to 180 000, when the offence is committed by or aimed at a domestic public official, which includes members of domestic public assemblies.

Bribery of foreign public officials (Article 5 ETS 173); members of foreign public assemblies (Article 6 ETS 173); officials of international organisations (Article 9 ETS 173), members of international parliamentary assemblies (Article 10 ETS 173); judges and jurors of international courts (Article 11 ETS 173)

40. As noted in paragraph 7 of this report and the corresponding footnote, Monaco has reserved the right under Article 37 paragraph 1 "not to establish as a criminal offence the passive bribery of foreign public officials and of members of foreign public assemblies referred to in Articles 5 and 6 of the Convention". The Principality informed the secretariat of the Council of Europe in March 2010 that it intended to maintain this reservation for a further three-year period.

41. According to the replies to the questionnaire, under Article 6.2.5 of Sovereign Order 605 of 1 August 2006 in application of the United Nations Convention against Transnational Organised Crime the active and passive bribery of foreign and international public officials, as defined in Article 8 of the Convention,[6] is currently an offence, though only in the context of transnational

[6] *United Nations Convention against Transnational Organised Crime*
Article 8 Criminalisation of corruption

organised crime. However, the reservation referred to above does not cover the bribery of international public officials.

42. The bribery of members of foreign public assemblies (Article 6 of the Convention), members of international parliamentary assemblies (Article 10) and judges and jurors of international courts (Article 11) has not so far given rise to any prosecutions. Monaco has not however entered any reservations concerning the last two categories.

43. As noted earlier (paragraphs 14 to 16 and 37), it is unclear whether Monegasque law on the bribery of national officials is applicable to persons holding national elective office. The same doubts apply to some extent to offences concerning foreign and international elected representatives. The GET notes that Article 6 of Sovereign Order 605 adds, *inter alia*, the term "public employee" (*agent public*) to the categories of "established public official of the administrative or judicial systems and any other official of a public body" (*fonctionnaire public de l'ordre administratif ou judiciaire, agent ou préposé d'une administration publique*) used in the Criminal Code provisions on bribery. However, Monegasque law does not so far appear to have defined this term, and the GET would point out that neither does the UN Convention, which simply refers for the purposes of defining "public official" to the domestic law of each state party.

> ***Sovereign Order 605 of 1 August 2006 in application of the United Nations Convention against Transnational Organised Crime***
>
> *Article 6.- Any person who unlawfully requests or receives, at any time, directly or indirectly, offers, promises, donations, gifts or any advantage, for himself or herself or for anyone else, to perform or refrain from performing in the exercise of his or her official functions an act directly or indirectly related to one of the offences specified in the first article shall be guilty of the offence of passive bribery as defined in Article 8 of the aforementioned Convention.*
>
> *Any person who unlawfully proposes, at any time, directly or indirectly, offers, promises, donations, gifts or any advantage, for himself or herself or for anyone else, to induce a natural or legal person to perform or refrain from performing in the exercise of his or her official functions an act directly or indirectly related to one of the offences specified in the first article shall be guilty of the offence of active bribery as defined in Article 8 of the aforementioned Convention.*

---

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
 b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.
3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.
4. For the purposes of paragraph 1 of this article and Article 9 of this Convention, "public official" shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

Active bribery shall be punishable by five to ten years' imprisonment and the fine stipulated in category 4 of Article 26 of the Criminal Code,[7]whose maximum may be raised ten-fold when the target is:
** 1) any public employee, or*
** 2) any public official of the administrative or judicial systems, or*
** 3) any official employee of a public law body, or*
** 4) any person performing a public service, or*
** 5) any foreign or international public official.*
Passive bribery shall be liable to the same penalties when it is committed by one of the persons specified in the previous paragraph.

Attempted bribery as defined in the first and second paragraphs shall be punishable by the same penalties.

44. However, the offence in Article 6 of Sovereign Order 605 only applies to transnational organised crime, as defined in Article 1 of the order, namely 1) serious offences defined in Article 2 b of the aforementioned Convention[8] and punishable by a maximum custodial sentence of not less than five years under Monegasque law; *2)* the offences specified in Articles 4 to 11 when they are of a transnational nature and involve an organised criminal group. As a result, bribery of foreign public officials can be prosecuted when it involves an act directly or indirectly related to a serious offence or one of the offences listed in the order, namely participation in an organised criminal activity, money laundering, use of force/threats/intimidation/bribery against witnesses in proceedings connected with organised crime, human trafficking and illicit trafficking of migrants, if these offences are of a transnational nature and involve an organised criminal group.

45. Reference is also made to this order in the first section of Act 1.362 of 03/08/2009 on combating money laundering, terrorism financing and corruption, which states that, "*for the purposes of this legislation, money laundering is taken to include the offences listed in Book III, Chapter III, Section VII of the Criminal Code and corruption the offences listed in paragraph IV of Chapter III, Section II of the Code, and Article 6 of Sovereign Order 605 of 1 August 2006* "(underlined by the Monegasque authorities).

Elements/notions of the offence

46. The replies to the questionnaire make no reference to the elements of the offences of active and passive bribery as they stand in Article 6 of Sovereign Order 605, which differ from those in Articles 113 and 118 CC, and to a lesser extent Articles 113 and 113-2 NCCP. Paragraph 1 provides the following definition of passive bribery: "any person who unlawfully requests or receives, at any time, directly or indirectly, offers, promises, donations, gifts or any advantage, for himself or herself or for anyone else, to perform or refrain from performing in the exercise of his or her official functions an act directly or indirectly related to one of the offences specified in the first article shall be guilty of the offence of passive bribery". The relevant sanction is covered by the words "passive bribery shall be punishable by the same penalties when it is committed by one of the persons specified in the previous paragraph".

7 See footnote 3
8 Under Article 2 b, "serious offences" are ones punishable by a maximum custodial sentence of not less than four years or a heavier sentence.

47. Active bribery is defined in paragraph 2 of Article 6, and concerns "any person who unlawfully proposes, at any time, directly or indirectly, offers, promises, donations, gifts or any advantage, for himself or herself or for anyone else, to induce a natural or legal person to perform or refrain from performing in the exercise of his or her official functions an act directly or indirectly related to one of the offences specified in the first article."

48. Neither definition makes any reference to a particular category of persons. However, the third paragraph of Article 6 of Sovereign Order 605 lays down the relevant penalties (five to ten years' prison and a fine of between € 18 000 and 90 000) and specifies that the maximum level of the fine is increased ten-fold when the offence targets or is committed by 1. any public employee, 2. any established public official of the administrative or judicial systems, 3. any official employee of a public law body, 4. any person performing a public service, or 5. any foreign or international public official. According to the fourth paragraph, attempted bribery is punishable by the same penalties.

49. The proposals in (draft) Bill 880 of 5 November 2010 would introduce the active and passive bribery of foreign and international public officials into the Criminal Code. The government wish to take account of the close links between domestic and international bribery and make it just as much an offence for foreign and international public officials to act corruptly as it is for domestic ones. The following definition has therefore been included in the draft Article 113.2 NCCP (see also paragraph 13 of this report): "a foreign or international public official is a person exercising public authority, or carrying out public service duties or vested with an elected public office in a foreign state or in a public international organisation".

50. As noted in paragraph 14 and in the light of the explanatory report of the draft legislation, the new concept of public official is also intended to cover ministers or government advisers, judges, various categories of professional officer, the post of director of police and mayors. The future legislation will also cover persons carrying out public service duties, whether they have public or private law status. Article 113 paragraph 2 NCCP extends the definition to foreign public officials and officials of international organisations. As such it would include the various categories of persons covered by Articles 5, 6 and 9 to 11 of the Convention. The basic elements of the offence are the same as those considered in relation to the future offence of bribery of domestic public officials.

Sanctions

51. As noted above, under the current Sovereign Order 605, bribery of a foreign or international public official is punishable by five to ten years' prison and a fine of between € 18 000 and 900 000.
52. (Draft) Bill 880 of 5 November 2010 specifies the penalties for the active and passive bribery of foreign and international public officials for inclusion in Article 118 NCCP (see paragraph 31 of this report), namely 5 to 10 years' prison and up to twice the fine specified in Article 26.4 of the Criminal Code, or € 36 000 to 180 000, as in the case of bribery of domestic public officials.

Relevant decisions and case-law

53. There is no information in the replies to the questionnaire on the five categories of persons covered by this section.

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

Definition of the offence

54. Passive and active bribery in the private sector are currently covered by Articles 115 and 119 of the Criminal Code.

> ***Current provisions of the Criminal Code***
>
> ***Article 115 CC [passive bribery in the private sector]****: Any agent or employee, whether salaried or remunerated in any other form, who, without his or her employer's knowledge or consent and directly or via a third party, requests or accepts offers or promises or requests or receives donations, gifts, commissions, discounts or bonuses in exchange for an act in connection with his or her post or for failing to act in accordance with his or her duties shall be liable to six months' to three years' imprisonment and the fine stipulated in category 3 of Article 26.*
>
> ***Article 119 CC [active bribery in the private sector]*** *Anyone who bribes, or attempts to bribe, by means of promises, offers, donations, gifts, commissions, discounts or bonuses, any agent or employee, whether salaried or remunerated in any other form, in exchange for an act in connection with the person's post or for failing to act in accordance with his or her duties, shall be liable to six months' to three years' imprisonment and the fine stipulated in category 3 of Article 26.*

55. In (draft) Bill 880 of 5 November 2010, the government plan to use the same basic provisions to cover public and private sector bribery. Only the penalty will vary and, as in the case of the other offences, will be included in a separate article, in this case Article 117.

> ***Future provisions (draft Bill 880)***
>
> ***Article 113-2 NCCP [passive bribery of public or private officials; active bribery of a natural or legal person]***
>
> *Passive bribery is the request, acceptance or receipt by a public or private official, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, in exchange for acting or refraining from acting, or for having acted or refrained from acting, in the exercise of his or her functions or facilitated thereby.*
>
> *Active bribery is the promising, granting or giving by any person, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, so as to induce a natural or legal person to act or refrain from acting, or in exchange for having acted or refrained from acting, in the exercise of his or her functions or facilitated thereby.*
>
> ***Article 117 NCCP:*** *Active bribery of a private official shall be punishable by the same penalties.*

Elements of the current offence

Request or receipt; acceptance of an offer or promise (passive bribery)*; promising, offering or giving* (active bribery)

56. The GET notes that the current articles use the terms "requests or accepts offers or promises or requests or receives donations …" (passive bribery, Article 115 CC) and "bribes, or attempts to bribe, by means of promises, offers, donations, … " (active bribery, Article 119 CC).

Undue advantage

57. Articles 115 and 119 CC refer to donations, gifts, commissions, discounts and bonuses.

Directly or indirectly, for themselves or for anyone else

58. The GET notes the absence of these elements, other than the reference to "directly or via a third party" in Article 115 CC, in connection with passive bribery.

In the course of business activity

59. Under Articles 115 and 119 CC, private sector bribery is not confined to business activity. For example, passive bribery affecting an NGO would also come within the scope of the current Criminal Code.

Any persons who direct or work for private sector entities

60. The aforementioned articles use the terms "any agent or employee, whether salaried or remunerated in any other form".

To act or refrain from acting in breach of their duties

61. The GET notes that Articles 115 and119 CC refer to both positive and negative acts. According to Article 115 CC, passive bribery takes place when the bribe is requested or receive, or the promise thereof accepted, without the employer's knowledge or consent. The offence also includes the concept of breach of duties, though only in the case of negative acts ("in exchange for an act in connection with his or her post or for failing to act in accordance with his or her duties"). These elements are not included in the concept of active bribery in Article 119 CC.

<u>Elements of the future offence</u>

62. As previously noted, the proposed Article 113-2 NCCP, as laid down in (draft) Bill 880 of 5 November 2010, adopts the same basic offences for private and public sector bribery, so the earlier comments on bribery of domestic public officials also apply here.

63. According to the Monegasque authorities, the government wanted to redefine and extend the concept of private official to include both senior company managers and the independent professions, a point that is also made in the explanatory report. Private officials are persons who, while not exercising public authority, or carrying out public service duties or vested with an elected public office, perform, as part of a commercial activity, a management function or work for a private sector body. Article 113.3 NCCP defines the concept of private official, for the purposes of bribery offences, as follows: "A private official is a person who, while not exercising public authority, or carrying out public service duties or vested with an elected public office, performs, as part of a commercial activity, a management function or works for a private sector body".

64. They also state that the new offence will be concerned only with unlawful acts involving the commercial/business sectors, as are Articles 7 and 8 of the Convention, and will no longer include – for example – non-profit activities by persons and organisations such as associations and NGOs.

Sanctions

65. The current penalties for those giving and receiving bribes are the same as in Articles 115 and 119 CC: six months' to three years' imprisonment and the fine stipulated in category 3 of Article 26, namely € 9 000 to 18 000.

66. Under (draft) Bill 880, Article 117 NCCP (see the wording in paragraph 55) would increase the penalties: from one to five years' imprisonment and the fine stipulated in category 4 of Article 26, namely € 18 000 to 90 000. Nevertheless, these penalties are still lower than those applicable to the bribery of public officials.

Relevant decision and case-law

67. There has been one decision to date on private sector bribery. This was a criminal court judgment of 1 March 2011 in which the three accused were given sentences ranging from one month suspended to two years in prison plus fines for charges of forging private commercial or banking documents and passive bribery of an employee.[9]

Trading in influence (Article 12 ETS 173)

68. As noted in paragraph 7, trading in influence is not currently an offence in Monegasque law and is the subject of a reservation under Article 12 of the Convention*:* "In accordance with the provisions of Article 37, paragraph 1, of the Convention, the Principality of Monaco reserves its right not to establish as a criminal offence, in whole or in part, the conduct of trading in influence referred to in Article 12 of the Convention." Monaco informed the secretariat general in March 2010 that it would maintain this reservation for a further three years.

69. (Draft) Bill 880 of November 2010 makes trading in influence an autonomous offence. The relevant provisions are Article 113-3, paragraphs 1 and 2 NCCP, which define passive and active trading in influence. The penalties are laid down in Articles 119 to 121 NCCP:

[9] Relevant extracts:
"From September 2003 to June 2004 in Monaco, and before the time limit for prosecution, this employee of Monegasque public company A, without his employer's knowledge and consent and directly or via a third party, requested or accepted offers or promises and requested or received donations, gifts, commissions, discounts or bonuses in exchange for an act in connection with his post or for failing to act in accordance with his or her duties, in this case concealing in his employer's accounts, for which he was responsible, in exchange for money, misappropriations committed by C of which he failed to advise his hierarchical superiors.
Guilty under Articles 119 and 120 of the Criminal Code.
From September 2003 to June 2004 in Monaco, and before the time limit for prosecution, he bribed or attempted to bribe by promises, offers, donations or presents, F, employed as an accountant by the Monegasque public company A, of which he was the manager, in exchange for an act in connection with his post or for failing to act in accordance with his post or duties, in this case by offering him money to conceal his criminal offences by means of false accounting documents, without advising his hierarchical superiors.
Guilty under Articles 119 and 120 of the Criminal Code"

(Draft) Future provisions of Bill 880

Article 113-3 NCCP [active and passive trading in influence]
Passive trading in influence is the request, acceptance or receipt by a public or private official, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, to abuse his or her real or supposed influence to obtain or for having obtained from a public authority or department distinctions, posts or any other favourable decision or for having abused his or her real or supposed influence to obtain or for having obtained from a public authority or department distinctions, posts or any other favourable decision.

Active trading in influence is the promising, granting or giving [in French, "proposer, accorder, octroyer"] *by any person, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, to induce a natural or legal person in exchange for abusing his or her real or supposed influence to obtain or for having obtained from a public authority or department distinctions, posts or any other favourable decision or in exchange for having abused his or her real or supposed influence to obtain or for having obtained from a public authority or department distinctions, posts or any other favourable decision.*

Article 119 NCCP*: Active trading in influence shall be punishable by five to ten years' imprisonment and twice the fine specified in Article 26.4 of the Criminal Code when the target is a domestic public official.*
Passive trading in influence by a domestic public official shall be subject to the same penalties.

Article 120 NCCP*: Passive trading in influence shall be punishable by eight to fifteen years' imprisonment and three times the fine specified in Article 26.4 of the Criminal Code when it is committed by a judge to the benefit or detriment of a person subject to criminal proceedings.*

Article 121 NCCP*: Active trading in influence shall be punishable by five to ten years' imprisonment and twice the fine specified in Article 26.4 of the Criminal Code when the target is a foreign or international public official.*
Passive trading in influence by a foreign or international public official shall be subject to the same penalties.

Elements and notions of the offence in the proposed provisions

70. There are no explanations or comments on the proposed provisions in the replies to the questionnaire.

"Promising, giving or offering" (active trading in influence); "request, receipt or acceptance" passive trading in influence)

71. Paragraphs 1 and 2 of Article 113-3 NCCP use the expressions "request, acceptance or receipt" (of any undue advantage) and "promising, granting or giving" (of any undue advantage).

"Any undue advantage", "directly or indirectly", "for himself or herself or for anyone else "

72. These precise terms are used in the proposed Article 113-3 NCCP with the same meaning as in the Convention.

"Committed intentionally"

73. The new draft provisions do not affect the general principles of the Criminal Code concerning intention, as applied in the provisions currently in force.

"Anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making"

74. The GET notes that in the case of active trading in influence, paragraph 2 of Article 113-3 NCCP provides for the universality of the perpetrator of the offence (and of the trafficker in influence). However, in the case of passive trading in influence in paragraph 1, the offence is only established when the perpetrator is him or herself a public official (national, foreign or international), unlike Article 12 of the Convention, which places no limits on the status of the perpetrator.

75. Both paragraphs make abuse of influence a criminal offence and refer to its "real or supposed" nature.

76. The offence refers to influence specifically concerned with obtaining distinctions, posts and contracts but also to influence to obtain any other favourable decision.

"Any person referred to in Articles 2, 4 to 6 and 9 to 11 [of the Convention]"

77. Article 113-3 of the draft NCCP refers to the exercise of influence to secure acts or decisions by a public authority or department. The GET notes however that this article has to be read in conjunction with the provisions on sanctions in Articles 119 to 121 NCCP, which refer clearly to the application of penalties when the active or passive trading in influence is committed by or aimed at a domestic or a foreign or international public official, within the meaning of the proposed provisions of Article 113 NCCP, which is specifically intended to cover the categories of persons in Articles 2, 4 to 6 and 9 to 11 of the Convention; see paragraphs 13, 14 and 50 of this report.

"Whether or not the influence is exerted"; " whether or not the supposed influence leads to the intended result"

78. The proposed provisions of Article 113-3 NCCP on passive trading in influence distinguish between two situations, worded as follows a) "to abuse his or her … influence to obtain or for having obtained [the advantage or favourable decision]" and b) "in exchange for having abused his or her … influence to obtain or for having obtained [the advantage or favourable decision]".

79. Similarly the proposed provisions on active trading in influence make a distinction in the wording between a) "to induce a natural or legal person in exchange for abusing his or her … influence to obtain or for having obtained [the advantage or favourable decision]" and b) "in exchange for having abused his or her … influence to obtain or for having obtained [the advantage or favourable decision]".

Sanctions

80. Articles 119 to 121 NCCP identify three types of sanction: those applicable to active or passive trading in influence by or aimed at domestic, foreign or international public officials, punishable by

five to ten years' imprisonment and a fine of € 36 000 to 180 000 (twice the fine in category 2 of Article 26); and a special aggravating circumstance (eight to fifteen years' imprisonment [*réclusion*] and a fine of € 54 000 to 270 000) when the perpetrator of passive trading in influence is a judge and the influence is "to the benefit or detriment of a person subject to criminal proceedings". In this last case, the act becomes a serious offence (*crime*).

Bribery of domestic arbitrators (Articles 1 to 3 ETS 191) ; bribery of foreign arbitrators (Article 4 ETS 191)

81. As indicated in paragraph 7, Monaco has not ratified or signed the additional Protocol to the Criminal Law Convention on Corruption (ETS 191). The table attached to the reply, which summarises the transposition into domestic law of the provisions of the Convention and its Protocol, suggests that bribing arbitrators is not yet an offence but that it is intended to make it one under the aforementioned (draft) Bill 880 of November 2010.

82. However, the replies to the questionnaire indicate that, at present, as already noted in the section on the bribery of public officials, the Monegasque Criminal Code has an Article 114 specifically concerned with the bribery of arbitrators (and experts). This article covers passive bribery but not active bribery and is confined to the bribery of domestic arbitrators (and experts). The active or passive bribery of foreign arbitrators is not currently an offence.

> ***Article 114 CC [passive bribery of arbitrators and experts]***
> *Any arbitrator or expert appointed either by the judicial authorities or by the parties who has accepted offers or promises or received donations or gifts in exchange for taking a decision or giving an opinion favourable to one of the parties shall be liable to the penalty prescribed in the previous article.*

83. This article calls for the same comments as Article 113 CC on the passive bribery of civil servants, officials and other employees of public bodies: it includes the basic elements of accepting offers or promises or receiving donations or gifts but does not cover requests. The offence makes no reference to undue advantages for others or to the involvement of third parties. Nor is failure to act explicitly covered. The concept of arbitrator is defined with reference to appointment by the judicial authorities or the parties themselves. The sanctions are the same as for Article 113 CC, namely 1 to 5 years' imprisonment and a fine of € 18 000 to 90 000 (category 4 of Article 26 CC),[10] together with ineligibility for any public functions. There are no reported case-law or relevant court judgments under the current Article 114 CC.

84. Turning to the planned new provisions, the replies to the questionnaire indicate that Article 113 NCCP as set out in (draft) Bill 880 contains an extended definition of public official to include various categories of persons (see also paragraph 13 of this report): "for the purposes of this paragraph a domestic public official is a person exercising public authority, or carrying out public service duties or vested with an elected public office". According to the replies and as indicated in paragraph 15 of this report, Article 113 NCCP extends the concept of public official in criminal law to the following three functional categories: a) any established public official of the administrative or judicial systems or any other official of a public body; b) any arbitrator or expert; c) any elected representative. Domestic arbitrators will therefore be defined as persons exercising public authority, or carrying out public service duties or vested with an elected public office. The

[10] See footnote 3

provisions applicable to the active and passive bribery of domestic, foreign or international public officials – Articles 113 and 113-2 NCCP – including the relevant sanctions, will therefore also apply in the same way to domestic and foreign arbitrators.

Bribery of domestic jurors (Article 1, paragraph 3, and Article 5 ETS 191) and bribery of foreign jurors (Article 6 ETS 191)

85. The replies to the questionnaire indicate that the active and passive bribery of foreign jurors is not covered by the existing provisions of the Criminal Code. In contrast, the passive bribery of domestic jurors is an offence under Article 121 CC, which, as noted in paragraphs 11 ff, stipulates that "a member of the criminal court who accepts a bribe to act in favour of or to the detriment of the accused shall be liable to five to ten years' imprisonment". Under Article 269 of the Code of Criminal Procedure, the criminal court comprises six members, a presiding judge, two other judges and three jurors. This means that jurors are members of the court within the meaning of Article 121 CC.

86. Turning to the planned new provisions, the replies to the questionnaire state that the principle adopted would be the same as for the bribery of arbitrators and that the provisions on the bribery of domestic and foreign public officials (Articles 113 and 113-2 NCCP) would apply to the bribery of jurors, by dint of the extended definition of public official in Article 113 NCCP and the fact that foreign and international public officials are treated in the same way as domestic public officials. The basic elements of the offences are those presented in paragraphs 11 ff.

Other issues

Participatory acts

87. Articles 41 to 43 CC are the relevant provisions regarding complicity; they cover complicity and incitement in connection with all serious and lesser offences (*crimes et délits)*. The replies to the questionnaire also cite Articles 339 and 340 CC on handling stolen goods. These provisions apply to offences that are serious or lesser offences, which is the case of the various offences of bribery in the public and private sectors, and trading in influence. (Draft) Bill 880 increases the level of applicable penalties, but this would not affect the current classification of offences and thus the applicability of the provisions on aiding and abetting in relation with acts of bribery and trading in influence.

> ***Article 41 CC:*** *The accomplices to a serious or lesser offence shall be punished by the same penalties as the perpetrators of the offence, unless otherwise stipulated in law.*
> ***Article 42 CC****: The following persons shall be punished as accomplices to a serious or lesser offence:*
> *- those who, by means of donations, promises, threats, abuse of authority or power or other unlawful machinations or devices, have incited the offence or given instructions for its commission or for facilitating its execution;*
> *- those who have procured weapons, instruments or any other means used in the commission of the offence, in the knowledge that they would be used for this purpose;*
> *- those who have knowingly aided or assisted the perpetrator or perpetrators of the offence by actions that have prepared or facilitated it, or have been used in its commission, without prejudice to the penalties specifically stipulated in this Code for the perpetrators of conspiracies or incitements detrimental to the internal or external security of the state, even in cases where the offence that was the object of those conspiring or inciting has not been committed.*

***Article 43 CC**: Those who, being aware of the criminal conduct of those responsible for banditry or violence against state security, public safety, persons or property, have provided them with accommodation, places of refuge or meeting places shall be punished as accomplices.*

***Article 339 CC**: Those who knowingly handle items that have been stolen, misappropriated or obtained with the aid of a serious or lesser offence shall be punished by the penalties specified in Article 325.*

***Article 340 CC**: In cases where a harsh or dishonouring penalty is applicable to the offence that gave rise to the handled items, the handler shall be punished by the penalty set by law for the serious offence or the circumstances of the offence of which he or she was aware at the time the items were handled.*

Jurisdiction (Article 17 ETS 173)

88. The rules governing jurisdiction are laid down in Articles 5 to 10 and 21 of the Code of Criminal Procedure (hereinafter, the CCP).

Code of Criminal Procedure

***Article 5 CCP**: Any Monegasque who, outside the territory of the Principality, is guilty of acts that are classified as a serious offence under Monegasque law may be prosecuted and tried in the Principality.*

***Article 6 CCP**: Any Monegasque who, outside the territory of the Principality, is guilty of acts that are classified as a lesser offence under Monegasque law may be prosecuted and tried in Monaco, if those acts constitute an offence under the legislation of the country where they were committed. In this case, the prosecution may be brought only at the request of the prosecution authorities, and only following a complaint from the injured party or an official report to the Monegasque authorities by the authorities of the country where the offence was committed.*

***Article 6-1 CCP** (Act 1.173 of 13 December 1994): Articles 5 and 6 shall be applicable to persons acquiring Monegasque nationality after the events of which they are accused.*

***Article 7 CCP:** The following may be prosecuted and tried in the Principality:*
** 1) Foreign nationals who, outside the territory of the Principality, have committed serious offences against state security, counterfeited national legal tender, national identification documents or currency, either paper or other, which has entered state coffers, or who have committed a serious or lesser offence against Monegasque officials, diplomatic or consular premises or property.*
2) Foreign nationals who are the co-perpetrators of or accomplices to any serious offence committed outside the territory of the Principality by a Monegasque who is being prosecuted or has been sentenced in the Principality for the offence in question.

***Article 8 CCP** (Act 1.173 of 13 December 1994): The following may be prosecuted and tried in the Principality:*

** 1) Anyone who, in the territory of the Principality, has been the accomplice to a serious or lesser offence committed abroad if the offence of complicity is recognised in both the foreign and Monegasque law, on condition that the principal offence has been confirmed by a final decision of the foreign court. (…)*

Article 9 CCP: *Foreign nationals who have been found guilty outside Monegasque territory may be prosecuted and tried in the Principality in the case of:*
** 1) A serious or lesser offence committed to the detriment of a Monegasque*
** 2) A serious or lesser offence committed even to the detriment of another foreign national if found in the Principality in possession of items acquired by means of the offence.*
In both cases, prosecution will only take place under the conditions specified in Article 6.

Article 10 CCP *(Act 1.173 of 13 December 1994):*
With the exception of those of Article 7-1, the preceding provisions are not applicable if the person concerned can show that he or she has been the subject of a final judgment abroad and in the event of conviction has served or carried out the sentence, obtained a pardon or benefitted from an amnesty.
If the sentence of the foreign courts has been partly carried out the court will take account of the period of imprisonment served when applying the new sentence handed down.

Article 21 CCP*: The courts of the Principality shall have jurisdiction to try, according to the following rules, all offences committed in the territory and those committed abroad in the cases specified in section II of the previous part.*
(Act 1.173 of 13 December 1994)

— Any serious or lesser offence in which an act constituting one of the ingredients of the offence took place in the territory of the Principality shall be deemed to have been committed there.

89. The replies to the questionnaire supply no information or explanations concerning the scope of the various provisions. Articles 21 and 5 CCP set out, respectively, a. the principle of territorial jurisdiction for all offences committed in Monaco; it is sufficient for an act constituting one of the ingredients of the offence to have been carried out there, which reflects the requirements of Article 17.1a of the Convention; b. the principle of jurisdiction over national perpetrators of offences (Monegasque courts have jurisdiction to try any serious offence committed by Monegasque citizens abroad).

90. In accordance with Article 17 paragraph 2 CCP, the Principality of Monaco has entered a reservation that it has no jurisdiction when the offender is one of its nationals or one of its public officials and when the offences are not punished by the law of the territory on which they have been committed. When the offence concerns one of its public officials or a member of its public or national assemblies or any person specified in Articles 9 to 11 CCP who is also one of its citizens, the rules of jurisdiction laid down in Article 17 CCP apply without prejudice to the provisions of Articles 5 to 10 CCP concerning criminal proceedings for serious or lesser offences committed outside the Principality.

91. The actual corruption case described in paragraph 36 illustrates the principle of jurisdiction based on Article 6 CCP but the official was also prosecuted for other offences committed – as far as these are concerned – in Monaco.

Statute of limitation

92. As noted in the previous evaluation report on Monaco, the level of the maximum sentence and the type of penalty determine the classification of offences: thus, they are lesser offences when the maximum period of imprisonment is five years (or even more in certain rare cases) while those carrying sentences of long-term imprisonment, generally for over five years, are serious

offences. This means that the passive bribery of a member of a criminal court is currently the only corruption offence that constitutes a serious offence.

93. The classification of offences determines the statute of limitation for prosecution. The relevant rules are laid down in Article 12 of the Code of Criminal Procedure concerning serious offences (10 years from the day the offence was committed) and Article 13 concerning lesser offences (3 years from the day the offence was committed). For the offences of bribery in the private sector (covered by Articles 115 and 119 of the Criminal Code), which are neither serious nor lesser offences, the normal time limit provided for in Article 14 of the Code of Criminal Procedure is one year from the day the offence was committed.

94. In addition, Article 15 of the aforementioned Sovereign Order 605 stipulates that the bribery offences in Article 6 of the order (see paragraphs 43 ff of this report) have a ten-year time limit.

95. The following table summarises and offers an overview of the penalties for corruption in the existing legislation and (draft) Bill 880, how they are categorised and the corresponding time limit for prosecution:

Offence (CC : Current Criminal Code, NCCP : new Criminal Code provisions in (draft) Bill 880)	Penalty	Category	Time limit
Article 113 CC: active bribery of public official Article 114 CC: passive bribery of arbitrators and experts Article 118 CC: active bribery of public official	1 to 5 years' prison and fine	lesser offence	3 years
Article 121 CC: passive bribery of member of a court	5 to 10 years' prison	serious offence	10 years
Article 115 CC: passive bribery in the private sector Article 119 CC: active bribery in the private sector	6 months to 3 years' prison and fine	Lesser offence	3 years
Article 6 Sovereign Order 605 of 2006: active and passive bribery concerning the exercise of official functions	5 to 10 years' prison and fine	lesser offence	3 years
Article 115 NCCP: passive and active bribery of a domestic public official Article 119 NCCP: passive and active trading in influence of a domestic public official Article 121 NCCP: passive and active bribery of a foreign or international public official	5 to 10 years' prison and fine	lesser offence	3 years
Article 116 NCCP: passive bribery of a judge or juror Article 120 NCCP: passive trading in influence of a judge	8 to 15 years' prison and fine	serious offence	10 years
Article 117 NCCP: passive and active bribery of a private official	1 to 5 years' prison and fine	lesser offence	3 years
Article 118 NCCP : passive and active bribery of a foreign or international public official	5 to 10 years' prison and fine	lesser offence	3 years

Special grounds of defence

96. There are no such grounds, such as statutory grounds for exemption or genuine regret, in the Monegasque Criminal Code that are applicable to corruption offences. However, it can be noted that, in connection with organised crime, Sovereign Order 605 of 1 August 2006 in application of the United Nations Convention against Transnational Organised Crime and two of its protocols includes an article under which, subject to certain conditions, persons participating or who have participated in a criminal group may be granted total immunity or a remission of sentence.

General statistics on bribery and trading in influence cases

97. Since 2006 there have been two corruption cases. One concerns the bribery of a public official (see also paragraph 36): in a judgment of 29 March 2011, the Monaco criminal court sentenced a

police officer who was serving at the time of the events to six months' imprisonment under Article 113 of the Criminal Code (passive bribery of a public official). The second concerns bribery in the private sector (see also paragraph 67): in a judgment of 1 March 2011 the criminal court sentenced the three defendants under the Criminal Code, Articles 94 (private sector forgery of commercial or banking documents), 115 (passive bribery in the private sector), 116, 119 and 120 (active bribery in the private sector) and 395 (breach of trust and embezzlement), to, respectively, two years' imprisonment with issuance of an arrest warrant, four months' imprisonment, and one month's deferred imprisonment and a fine of € 500. The last defendant was also issued with the warning provided for in Article 395. At the time of finalisation of the present report, this decision was upheld in appeal and sent to revision.

98. The two cases cited in paragraph 34 involved corrupt activities under other charges ("*concussion*"[11], complicity and handling the proceeds of fraud).

III. ANALYSIS

99. Bribery is currently an offence under two sets of provisions: a). the general and relatively long-established ones of the Criminal Code (hereinafter the CC) and b). the more specific ones in Sovereign Order 605 of 1 August 2006 in application of the United Nations Convention against Transnational Organised Crime. The latter is cited by the Monegasque authorities as the basis for certain offences not currently covered by the Criminal Code (CC), such as the bribery of foreign and international public officials, but only in relation to the material element of organised crime. Moreover, this order provides for bribery offences concerning many other categories of persons, since it refers to "any public employee", "any civil servant of the administrative or judicial institutions", "any official employee of a public law body", and so on (see paragraph 43). The problem is that there is a divergence in the basic definitions of acts of bribery used in the sovereign order and the Criminal Code. Those in the sovereign order are more in line with the requirements of the Criminal Law Convention on Corruption than are those of the Criminal Code, which fall considerably short. Besides, the order in question establishes autonomous rules of law, which means that the general rules of the Criminal Code are not applicable. The result is a legal armoury that lacks consistency.

100. The Principality of Monaco is well aware of the inadequacies of its current criminal law with regard to the requirements of the Convention, which it ratified in 2007, and has accordingly prepared new draft legislation - (draft) Bill 880 *of 5 November 2010 to reform the Criminal Code and Criminal Procedure Code with regard to corruption and special investigation techniques*. This sets out to fill certain gaps by means of new Criminal Code provisions on corruption (hereafter the NCCP), which include a general recasting of the relevant offences. During the adoption of the present report, the Monegasque authorities pointed out that the draft law – currently in Parliament – will be on the parliamentary agenda for the autumn session 2012 and the government has drawn the attention of the parliamentarians to the importance of the draft bill. The bill is characterised by an economy of language and a clear commitment to consistency. In the current draft, for example, active and passive bribery are defined in just two sub-paragraphs while a series of additional articles set the level of the relevant penalties in accordance with the

[11] Articles 109 and 111 CC define "concussion" as follows: a) Article 109 CP – « any civil servant, officer, public officer, clerk, or collector (including any of his clerks or employees) of taxes ,duties, contributions, or public revenues commits a « *concussion* » by ordering ,requesting or receiving what he knows is not due or exceeds the amount that is owed by way of duties, taxes, contributions, public revenues, or as salary and wages (…)» ; b) Article 111 – « (…) the holders of public authority, who for any reason and in whatever form have, without legal permission, granted exemptions or a discharge from duties or public taxes, or delivered public/state goods or services free of charge (…)».

categories of persons concerned. These are welcome developments. As noted in paragraph 9, the (draft) Bill was tabled with the bureau of the National Council on 7 December 2010 and was expected to be voted on in 2011. The GRECO evaluation team (hereinafter, the GET) has therefore taken account of both the proposed and the current legislation in its analysis. The GET has been informed that enactment will probably be delayed until this evaluation report becomes available so that any recommendations it might include can be taken into account in appropriate amendments to the explanatory report of the draft legislation. The GET wishes to stress that this should make it possible to respond to certain recommendations on technical aspects but it is clear that in certain cases it is the wording of the offences that will have to be amended. Finally, the relevant provisions of Sovereign Order 605 will have to be amended after (draft) Bill 880 is passed (a draft law cannot amend a sovereign order, since such orders are the expression of the Prince's authority). The GET was unable to obtain a firmer timetable on this matter, which will continue to be relevant after the adoption of the amendments to the Criminal Code.[12] The GET recommends **to take the necessary steps to harmonise the corruption offences in Sovereign Order 605 *of 1 August 2006 in application of the United Nations Convention against Transnational Organised Crime* with those of the Criminal Code, as they will result from the adoption of (draft) Bill 880 *of 5 November 2010 to reform the Criminal and Criminal Procedure Codes with regard to corruption and special investigation techniques.***

101. The information received and the GET's on-site discussions indicate that the Monegasque authorities now appear to approach the discussions on corruption with greater composure than at the time of the previous visit in 2008. Preventive policies are gradually being introduced, decision makers and those on the ground appear to be more familiar with the subject and the first convictions have been recorded. For the time being, they concern relatively unimportant cases or personnel who do not come into the category of senior officials or decision makers. Various persons indicated that although corruption is not rare in Monaco, there are still few prosecutions brought. Some interlocutors said that it was still difficult to prove or prosecute. In particular, it appears that Monaco has adopted from French legal theory and practice the fact that corruption offences can only be constituted if there is an agreement between briber and bribed, a so-called "corrupt pact".

102. Monegasque legislation has drawn the consequences of this in different ways. For example, the unilateral act of "requesting" an undue advantage is totally absent from the offence of passive bribery of an "established public official [or] any other official of a public body" in Article 113 CC (and in Article 114 CC in the case of an arbitrator or expert), whereas it is included in the offence of passive bribery in the private sector in Article 115 CC. Similarly, unilateral acts of "promising" or "offering" as such are excluded from the offences of active bribery in the public (Article 118 CC) and private (Article 119 CC) sectors, though in these cases the legislation has added the term "attempts to bribe by promises [or] offers" to the various basic ingredients of the offences. It was sometimes said during meetings that unilateral acts of requesting could always be prosecuted under the general provisions on "attempts" and would be liable to the same penalties as the completed offences. However, the GET notes that this view did not appear to be shared by all those concerned and that it did not cover all the relevant offences since the notion of attempt can only be combined with offences classified as serious (*crimes*) under Article 2 CC, and thus only the passive bribery of a member of a criminal court in Article 121 CC (see the summary table

[12] The various corruption offences provided for in the sovereign order will be present also in the (future) new Criminal Code provisions, including ones relating to "organised crime", since the draft legislation provides for a new Article 122-1 which makes offences committed by an organised group an aggravating circumstance. The co-existence of two sets of legislation, which partly overlap or are mutually contradictory, for example concerning the categories of persons in the public sector covered and the relevant penalties, would constitute a source of unnecessary doubts and uncertainties.

in paragraph 85). In the case of offences classified as lesser (*délits*) by the law, Article 3 CC provides that attempts must be explicitly provided for in legislation and – leaving aside the previous cases where the concept of attempt is included in the definition of the offence – this condition is only fulfilled in the case of the special offences specified in the final paragraph of Article 6 of Sovereign Order 605 of 1 August 2006 (see paragraph 43). It therefore follows that there is a significant deficiency in the offence of passive bribery of a civil servant or public official or employee of a public body in Article 113 CC (and in Article 114 CC in the case of an arbitrator or expert). From a practical standpoint, it is clear that the need for the prosecuting authorities to demonstrate the existence of an agreement between briber and bribed – which also makes it possible to establish the link between the undue advantage and the consideration received by the person bribed – makes it extremely difficult to prosecute such offences, unless the criminal charges are altered so that the offender or offenders can be prosecuted under other counts (for example "*concussion*" – see paragraph 98 et the corresponding footnote, and paragraph 104 below). The new draft provisions, which use identical wording for the offences of public and private sector bribery (Article 113-2 NCCP), as well as for trading in influence (Article 113-3 NCCP), systematically use language very similar to that of the Convention and would rectify this situation since the offence is completed once an undue advantage has been requested, accepted or received and it is no longer necessary, in theory, to determine whether an offer has been accepted and whether briber and bribed have reached an agreement. However, by failing to make it an offence to accept an offer or promise within the meaning of Article 3 of the Convention, Articles 113-2 paragraph 1 (passive bribery) and 113-3 paragraph 1 (passive trading in influence) NCCP would not cover acts of corruption in which, for example, bribe-giver and bribe-taker had reached an agreement but no bribes had yet been passed (situations that do seem to be covered by the current provisions). The GET notes that the Criminal Law Convention is intended to authorise the prosecution of the perpetrators of bribery and trading in influence whether or not there is an agreement and welcomes the proposed new wording of the offences in this regard. If (draft) Bill 880 is enacted as intended this should contribute significantly to updating the approach to corruption in criminal law. In the light of the foregoing, the GET recommends **(i) to align, as planned, the basic elements of the offences of active and passive bribery of public officials with Articles 2 and 3 of the Criminal Law Convention on Corruption (ETS 173), and in this context (ii) to ensure that passive bribery of public officials (and in the private sector) covers the act of requesting an undue advantage, and (iii) to ensure that the future offence(s) of passive bribery include the element of "accepting an offer or promise" of an undue advantage.**

103. The practitioners whom the team met showed varying degrees of awareness of the scope of the proposed changes, as the GET itself envisaged them. While acknowledging that the projected changes should facilitate the prosecution of bribery and trading in influence offences, certain judges and prosecutors continued to think that evidence of a corrupt pact must still be established in future. Quite simply they considered that such an agreement could be reached at the same time as or subsequent to – rather than simply prior to – the act to be rewarded by the bribe. Others thought that the future principle of what they termed the "reversed agreement" (after the act) could pose problems in practice. As indicated in the previous paragraph however, the GET believes that the proposed changes seem to go further and supporting measures would certainly be helpful, for example additions to the explanatory report, circulars and awareness raising and training sessions for professionals (it was indicated on-site that a conference is planned for relevant professionals, in which the authors of the draft legislation would take part; the said conference took place on 27 October 2011, allowing also to gather opinions about the intended legislation). These measures would probably facilitate the implementation and effectiveness of the future provisions, by making it clear for example that establishing the existence of an

agreement was no longer an automatic consequence of the future offences and that if it was necessary to establish the link between the bribe and an equivalent response from the person bribed, evidence of this link could perhaps be adduced from objective factual circumstances.[13] The GET therefore recommends **to take the appropriate measures (such as circulars, training sessions or additions to the explanatory report of the draft legislation) to specify or recall, according to circumstances, that the future offence(s) of bribery (and trading in influence, should it be criminalised) do not necessarily entail an agreement between the parties and that evidence of a link between the undue advantage and its consideration may also be based on objective factual circumstances.**

104. Turning to the nature of the bribe, the current provisions of the criminal Code refer to "offers or promises or [the receipt of] donations or gifts" (active and passive bribery in the public sector – Articles 113 and 114 CC) and to "donations, gifts, commissions, discounts or bonuses" (active and passive bribery in the private sector – Articles 115 and 119 CC). The very limited number of court cases so far and the on-site discussions did not enable the GET to determine with certainty whether and how far non-material advantages or ones with no monetary value are covered by these offences. The cases dealt with so far have mainly concerned financial bribes and while one case did involve benefits in kind (meals offered regularly to a police officer in exchange for police reports that were set aside or not drawn up) this was prosecuted on the basis not of bribery provisions but of dishonest receipt of advantages (*concussion*) – not because of the nature of the bribes but because it was impossible to establish the existence of a corrupt pact (see the previous paragraph). (Draft) Bill 880 will introduce changes by referring, like the Convention, to the notion of "undue advantage" for the various definitions of bribery and trading in influence in Articles 113-2 and 113-3 NCCP. However, the explanatory report does not make it clear how far this represents an improvement and whether, for example, the various forms of non-material and material advantages – favours, honorary titles, posts, promotion and so on – must be deemed to be undue advantages. The GET recommends **to remove all uncertainty by specifying, by appropriate measures, that acts of bribery (and trading in influence, should it be criminalised) are offences whatever the nature – material or non-material – of the undue advantage.**

105. Under the Criminal Law Convention, offences of bribery and trading in influence are complete, whether or not intermediaries are involved or the undue advantage is for the person bribed or a third party (natural or legal person). The current offences in the Monegasque Criminal Code make no reference to the involvement of intermediaries, other than the reference in Article 115 CC on passive bribery in the private sector to "directly or via a third party". The other bribery offences in the public or private sectors do not use this expression or any equivalent. Indeed, the on-site discussions with judges showed that this single reference in one article can be legitimately interpreted to mean that corruption via third parties is theoretically not covered by the other provisions. Nor do any of the current provisions of the Criminal Code make any reference to the concept of third party beneficiaries. Under its current wording, (draft) Bill 880 seeks to fill this gap since the draft provisions on public and private sector bribery (Article 113-2 NCCP) and trading in influence (Article 113-3 NCCP) use the term "directly or indirectly". Reference is also made to an advantage for the person bribed "or for anyone else". However, it is not specified whether this can be a natural person or a legal person (for instance an association, business undertaking or political organisation) as specified in the Convention. The explanatory report could usefully include this clarification. The GET recommends **(i) to ensure that, as intended, the various offences of bribery in the public and private sectors (and trading in influence, should it be**

[13] The meetings did in fact make it clear that in Monegasque law, the consideration may be proved by any kind of evidence and that such factual evidence may be adduced.

criminalised) are construed in such a way as to include the participation of intermediaries and third party beneficiaries and (ii) to specify, by the appropriate measures, that the term "or for anyone else" is interpreted broadly.

106. The on-site discussions confirmed that the term "any established public official of the administrative or judicial systems and any other official of a public body" used by the existing Articles 113 and 118 CC, which establish the offences of passive and active bribery of public officials, raises problems as to precisely which categories of persons they apply to. The GET notes that Article 1a of the Convention leaves it to States to define the concept of "public official", and requires the offences to cover the positions of mayor and minister among others. Yet it is difficult, if not impossible, for Articles 113 and 118 CC to cover these two categories. Similarly, as noted in the descriptive part in paragraphs 37 ff, it is unclear whether the Monegasque Criminal Code, as it currently stands, incriminates bribery involving members of elected public assemblies within the meaning of Article 4 of the Convention. Yet the GET notes that Monaco did not enter a reservation to Article 4 when it ratified the Convention in 2007 (see also paragraph 7 and the corresponding footnote).

107. As also noted in the descriptive part, (draft) Bill 880 of 5 November 2010 would rectify these two omissions by reference to the concept of "public official", defined in Article 113 NCCP as a "person exercising public authority, or carrying out public service duties or vested with an elected public office". The (draft) Bill's explanatory report (see paragraph 14), drawing inspiration from the explanatory report to the Convention, states that the new term is intended to cover the functions performed by ministers or government advisers, judges, various categories of professional officer, the post of director of police and mayors. The future provisions of the Code will also cover persons carrying out public service duties, whether they have public or private law status, and persons vested with an elected public office, whether they be national or local elected representatives. Although interlocutors of the GET said that the two Monegasque public assemblies, the National Council and the municipal council, had few powers and responsibilities in practice, there has to be an appropriate offence of bribery of Monegasque elected representatives. The GET supports these proposals and therefore recommends **(i) to extend in an adequate manner, as planned, the definition of bribery of public officials so as to include the various categories of relevant persons, in particular members of government and mayors, in accordance with Articles 2 and 3 combined with Article 1 of the Criminal Law Convention on Corruption (ETS 173), and (ii) to criminalise, as planned, bribery of members of public assemblies, in accordance with Article 4 of the Convention.**

108. The situation regarding corruption offences involving the various categories of persons operating in the public sector other than the strictly national one is fairly complex, as indicated in paragraphs 40 ff of this report. Firstly, Monaco has entered a reservation concerning foreign public officials under Article 5 of the Convention and members of foreign public assemblies under Article 6, and the Criminal Code has not established a corruption offence regarding these two categories. Article 6 of Sovereign Order 605 *of 1 August 2006 in application of the United Nations Convention against Transnational Organised Crime* does make the bribery of foreign public officials an offence, but only in the context of the fight against organised crime, as noted earlier, and the GET has been unable to determine whether, in the absence of any definition or clarification in the order, this concept would cover also members of foreign public assemblies. (Draft) Bill 880 is designed to fill these gaps via Article 113 paragraph 2 NCCP, which extends the offence of bribery of public officials to foreign public officials and states that the concept includes those vested with an elected office in a foreign state. The GET welcomes these proposals and therefore recommends **(i) to consider criminalising active and passive bribery of foreign**

public officials and members of foreign public assemblies, outside the context of organised crime, and in accordance with Articles 5 and 6 of the Criminal Law Convention on Corruption (ETS 173) and, as a consequence, (ii) withdrawing or not renewing the reservation to Articles 5 and 6 of the Convention.

109. The current Criminal Code does not criminalise bribery of international public officials (Article 9 of the Convention) and (yet again) Monaco has not entered any reservation concerning Article 9. Article 6 of Sovereign Order 605 does establish an offence concerning this category, though solely in the context of the fight against organised crime, as noted earlier, but its concept of "official" does not extend to members of international parliamentary assemblies, which means that Article 10 of the Convention has not so far been transposed. (Draft) Bill 880 is designed to fill these gaps via Article 113 paragraph 2 NCCP, which extends the offence of bribery of public officials to international public officials, defined to include persons vested with an elected office in a public international organisation. The GET supports these proposals and therefore recommends **to criminalise, as planned, active and passive bribery of international public officials and members of international parliamentary assemblies, outside the context of organised crime and in accordance with Articles 9 and 10 of the Criminal Law Convention on Corruption (ETS 173).**

110. The situation is similar regarding the bribery of judges and officials of international courts, covered by Article 11 of the Convention. The current bribery offences in the Criminal Code are not sufficiently extensive to cover these persons. The concept of "international public official" in Order 605, in the context of organised crime, probably includes officials employed by an international court but not the judges themselves, who are often appointed for a fixed period. At all events, there is no definition that would confirm or invalidate this interpretation. The explanatory report of (draft) Bill 880 states that the concept of public official in (the draft new) Article 113 NCCP also covers judges and persons exercising public authority, or carrying out public service duties, which would satisfy the requirements of Article 11 of the Convention. The GET therefore recommends **to criminalise, as planned, active and passive bribery of judges and officials of international courts outside the context of organised crime and in accordance with Article 11 of the Criminal Law Convention on Corruption (ETS 173).**

111. The offences of passive and active bribery in the private sector are currently covered by Articles 115 CC and 119 CC respectively. These two provisions cover positive and negative acts and go further than Articles 7 and 8 of the Convention in that the context of the offence is not confined to the commercial sector. Nevertheless, they suffer from the imperfections and deficiencies noted earlier: presence of the concept of attempted bribery in the offences, indirect bribery only covered by Article 115 CC and no provision for third party beneficiaries in either article. Moreover, these articles are concerned with the bribery of "any agent or employee, whether salaried or remunerated in any other form". As noted in the descriptive part, this term does not cover managers and the independent professions, contrary to the requirements of Articles 7 and 8 of the Convention, and one of the purposes of (draft) Bill 880 is to rectify this omission. The planned wording of the definition of private official in the proposed Article 113-3 NCCP seems to be very broad and should in principle cover the bribery of any persons working for or on behalf of a private sector entity, even if they are not formally its employees or managers, for example those undertaking functions of commercial or legal representation. The explanatory report takes note of the comments in the explanatory report to the Convention on this point and it appears therefore to give full effect to the Convention. This being said, like the Convention it would restrict the offence to the commercial context. Finally, whereas Article 119 CC does not refer to breach of duties and as such goes further than the Convention, the current Article 115 CC states that to be prosecuted

the employee must have acted "without his or her employer's knowledge or consent". GRECO has already had to point out, in relation with other countries it has evaluated, the potential problems caused by this type of wording, for example when in judicial proceedings an employer covers up for and exculpates an employee by stating, *ex post facto*, that he or she had been aware of the employee's conduct but had taken no action. The on-site discussions confirmed that this kind of "scenario" also occurs in Monaco. The GET recalls that the concept of "breach of duties" used in the Convention has the advantage of referring to pre-established obligations that are laid down in contracts or in the internal rules and policies of private entities. This makes it easier therefore for the investigating or prosecuting authorities to assess the situation and has the advantage of encouraging the private sector to establish such rules to avoid the application of corporate (collective) liability mechanisms. (Draft) Bill 880 - Article 113-2 NCCP, by dealing with passive and active bribery in the public and private sectors, places bribery in the two sectors on an equal footing and the proposed wording, by making no reference to breach of duties, would rectify the current deficiencies, as described above. In the light of the aforementioned inadequacies of the current offence of bribery in the private sector the GET recommends **to criminalise, as planned, active and passive bribery in the private sector in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173), ensuring notably that the various types of relationship (employed or other) that the bribe-taker may have with the private entity are covered and that it is not possible under the offence for employers to exonerate the private agents *ex post facto* and improperly from their liability.**

112. Trading in influence is not at present an offence and Monaco has entered a reservation in this regard. (Draft) Bill 880 is again intended to rectify this deficiency through draft Article 113-3 NCCP, which covers the passive and active forms of the offence in paragraphs 1 and 2 respectively. In large measure, the current wording reflects the spirit of Article 12 of the Convention and even goes further in that it includes trading in influence with persons in the private sector as targets of the influence. The proposed offence also includes cases in which the offer, request and so on of an undue advantage for using the influence (real or supposed) occurs after the influence has been exerted. As indicated earlier, the draft provisions also contain already references to third party beneficiaries and direct/indirect dealings. However, there are several shortcomings in Article 113-3 NCCP. Firstly, the current wording suggests that the influence is essentially aimed at securing a positive act or a favourable decision; it is not concerned with negative acts, such as failure to take a decision, to introduce a regulation or to impose a penalty, which would serve the interests of the person purchasing the influence. The GET notes that the authors of the Convention wished to give an extensive scope to this concept ("influence over … decision making"). The second shortcoming is that passive trading in influence in paragraph 1 only concerns public officials who trade their influence, unlike the active trading in influence in paragraph 2, which concerns any person, in accordance with Article 12 of the Convention. Thirdly, only the first paragraph, the passive form of the offence, refers to acts committed "to obtain" or "for having obtained" a decision and so on, which seems to cover both situations in which the influence secured the desired result and ones in which it did not (or has not yet). This is the intention of Article 12 of the Convention but it should be clarified. With regard to the last two points, the GET was unable to obtain precise explanations for these differences between the offences of passive and active trading in influence. The GET considers that these incompatibilities need to be rectified. It also goes without saying that the wording of the sanctions in Articles 119 to 121 NCCP would need to be adapted in consequence (the current drafting refers to trading in influence offences "committed by" and "aimed at" public officials). Fourthly, to designate the person targeted by the influence, Article 113-2 NCCP refers to a "public authority or department" and not to a "public official"; however, it is the latter term that is used to cover the categories of persons referred to in Articles 2, 4 to 6 and 9 to 11 of the Convention (see Article 12

of the Convention), on account of the extended definition in the proposed Article 113 NCCP. The GET considers that, in this context, the use of the term "public authority or department", which appears nowhere else and is not defined, creates legal uncertainties and fails to cover such categories as members of assemblies, international public officials and so on. The on-site discussions confirmed the GET's reservations on this subject. Finally, if the wording of the basic elements of the definition of active trading in influence (in French, "*proposer, accorder, octroyer*") seems equivalent to that of the Convention, passive trading in influence misses the "acceptance of an offer or promise". This kind of omission, already underlined in paragraph 102 in respect of bribery of public officials, needs to be addressed. In view of the above, the GET recommends **(i) to consider criminalising trading in influence, as planned, and thus withdrawing or not renewing the reservation relating to Article 12 of the Criminal Law Convention on Corruption (ETS 173) and (ii) to ensure, in this context, that the future definition of the active and passive forms of the offence reflects the terms of Article 12 of the Convention and, in particular, covers the acceptance of a promise or offer (of an undue advantage) and the various "target persons" referred to in Articles 2, 4 to 6 and 9 to 11 of the Convention, as well as situations in which the influence is intended to secure a failure to act, in which the influence does not lead to the intended result or in which the perpetrator of (passive) trading in influence is not a public official.**

113. Monaco has not ratified (or signed) the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), which extends the latter's scope to the bribery of commercial, civil or other arbitrators and jurors. It has proved difficult to assess the situation regarding these categories of persons on the basis of the GET's examination of the current provisions and of (draft) Bill 880. Turning first to the bribery of arbitrators, it is clear that the existing Article 114 CC constitutes an offence in its own right. It covers the active (but not the passive) bribery of domestic arbitrators (and experts), but not the active and passive bribery of foreign ones. As indicated in paragraph 83, it concerns arbitrators appointed by the authorities or the parties to a dispute, but the definition of the offence suffers from the same shortcomings as the offence of bribery of domestic public officials, added to which bribery for the purpose of securing a failure to act is not covered. As noted in paragraph 84, the authorities consider that the future Articles 113 and 113-2 NCCP would cover the bribery of both domestic and foreign arbitrators, thanks to the broad definition of public official. However, the GET is not persuaded that this is entirely satisfactory. The idea that the future definition of public official in Article 113 NCCP would include arbitrators seems to stem from a combined reading of the current Articles 113 and 114 CC and the new (draft) Article 113 NCCP, which raises problems of coherence. Given that until now the legislation has considered arbitrators (and experts) to be a sufficiently specific category to justify an offence distinct from that of bribing public officials, the GET was unable to conclude that the new definition in the future Article 113 NCCP will be sufficiently broad in practice to cover all the cases involving arbitration, in particular when an arbitrator is not a member of a predetermined arbitration tribunal but is appointed by the parties to a dispute on an *ad hoc* basis.

114. As indicated in paragraph 85, the situation regarding the bribery of jurors is currently unclear. While the bribery of foreign jurors is definitely not an offence, the authorities state that bribery of domestic jurors is covered by Article 121 CC as far as the passive form of the offence is concerned. However, the replies to the questionnaire are silent about the active bribery of jurors. The GET notes that, in reality, Article 121 CC is concerned with the penalties and aggravating circumstances applicable to the bribery of a "member of a criminal court" (5 to 10 years' imprisonment). This seems to indicate that the bribery of domestic jurors is covered firstly by Article 113 CC (bribery of a civil servant of the administrative or judicial institutions and any other official of a public body – punishable by 1 to 5 years' imprisonment and a fine) and that jurors are

thus deemed to be public officials within the meaning of Article 113 CC. In this case, in the GET's view, the reference to this article in Article 118 CC (on the active bribery of public officials) should logically also make it possible to prosecute the active bribery of jurors. Certain judicial practitioners expressed doubts about this: according to them, the current provisions take little or no account of the types of functions performed by jurors. The aforementioned concerns apply in part to the provisions of (draft) Bill 880: as previously noted, the drafting method used is to provide a basic definition of active and passive bribery in the public and private sectors in Articles 113 to 113-3 NCCP while other articles specify the penalties applicable according to the categories of persons concerned. Under this approach, Article 116 NCCP lays down a specific penalty for the passive bribery of (*magistrats* i.e. judges and prosecutors, and) jurors – which in itself represents progress since the concept of juror is clearly specified and the latter are treated separately from public officials. However, this is not the case with the active bribery of jurors, since Article 116 NCCP has nothing to say on the subject. It is reasonable to think that the active bribery of *magistrats* or jurors would be covered by the active bribery of public officials, but this should be specified to dispel any doubts in the mind of the public or practitioners. It could also be useful to specify that Article 118 NCCP, which lays down the relevant penalties, would cover the bribery of foreign or international judges or jurors. Currently, the explanatory report of (draft) Bill 880 provides no clarifications concerning the intentions of the legislation's authors and makes no reference to the question of arbitrators or jurors, nor to the Protocol (it only cites the Criminal Law Convention). In the light of the discussion in the previous paragraphs, the GET recommends **(i) to criminalise active and passive bribery of domestic and foreign arbitrators and jurors, while ensuring and making clear, in an appropriate manner, that the wording of the proposed new provisions of the Criminal Code reflects the various elements of Articles 2 to 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and (ii) to sign and ratify the said Protocol as soon as possible.**

115. The penalties incurred – both in the current Criminal Code (CC) and in (draft) Bill 880 – for the various bribery and trading in influence offences, which are considered in this report, appear to be effective, proportionate and dissuasive, as specified in Article 19 of the Criminal Law Convention. As noted in paragraph 87, the general provisions on aiding and abetting in Articles 41 to 43 CC apply to the various offences of bribery and trading in influence of the CC, in accordance with Article 15 of the Convention.

116. The classification of offences also determines the statute of limitation for prosecution and this calls for a few comments. The limit of three years for prosecuting bribery and trading in influence offences (with the exception of passive bribery of a member of a criminal court, for which the statute of limitation is 10 years) is very short, bearing in mind the secrecy and lack of a direct victim that characterise bribery, making it difficult to detect cases. During GRECO's previous evaluation, it was announced that the proposed amendment to the Criminal Code would make it possible to transform the various lesser offences of bribery into serious offences, thus raising the time limit to ten years. The GET notes that this would simply require a terminological amendment, namely the sentences of imprisonment (*emprisonnement*) to be requalified as ones of imprisonment for serious offences (*réclusion*) without affecting the length of sentence imposed. This would be more in line with the situation in other GRECO member states, most of which have time limits of five years or more for prosecuting bribery or trading in influence offences. However, in its current wording, (draft) Bill 880 has not opted for this approach and the statute of limitation would remain unchanged for the prosecution of the various relevant offences. The on-site discussions showed that while the courts did not appear to suffer from an excessive workload

and thus a significant backlog of cases[14] that might compromise the rapid and effective treatment of corruption cases, the prosecuting authorities acknowledged that they were experiencing an abnormal workload resulting from the number of international requests for judicial assistance. Most of the judicial representatives and practitioners whom the GET spoke to favoured an extension of the time limits for corruption offences, which they justified by the fact that such cases often have a cross-border component and Monaco faces periods of one to three years, or even more, for the execution of outgoing requests for judicial assistance. They also stressed the general difficulties posed by economic and financial cases in Monaco, as elsewhere, and the difficulties inherent to the level of proof in corruption cases. The GET can only invite the Principality of Monaco to consider this matter anew: it therefore recommends **to extend in an appropriate manner the statute of limitation for the prosecution of the bribery and trading in influence offences.**

117. The Principality's jurisdiction to prosecute acts of bribery in the public and private sectors and trading in influence – as defined in Articles 5 to 10 and 21 of the Code of Criminal Procedure (hereinafter the CCP) and described in paragraphs 88 ff – calls for several comments, bearing in mind Monaco's specific circumstances, particularly the fact that many public officials employed there are foreign nationals (above all French). As the legislation currently stands, the Principality does not satisfy the requirements of Article 17 of the Convention in a number of respects and (draft) Bill 880 does not provide for any changes on the subject: a) although the Principality has jurisdiction for offences committed in whole or in part in its territory under Article 21 CCP, and for offences committed abroad by Monegasque citizens, it has no jurisdiction to prosecute bribery or trading in influence offences committed outside the country by a domestic public official if the latter is not a Monegasque citizen (this does not concern bribery of elected assembly members since nationals only can be elected to the National Council or municipal council): this is incompatible with the principle laid down in Article 17 paragraph 1d of the Convention); b) the Principality has no jurisdiction to prosecute bribery or trading in influence by a foreign national and involving a Monegasque public official (active bribery of a Monegasque public official, for example) or by a Monegasque citizen performing the functions of an international public official or by a member of an international assembly if the acts in question take place outside Monegasque territory (which is incompatible with the principle laid down in Article 17 paragraph 1c of the Convention). At present, the extraterritorial jurisdiction in Articles 7 and 9 CCP is confined to traditional aspects of the protection of state security and national interests, the protection of national citizens and so on. The GET's attention has been drawn to the general scope of Article 21 CCP which reportedly permits the prosecution of offences committed by foreign nationals outside national territory. However, the GET's understanding is that this article is not applicable autonomously but is linked to the principles laid down in Articles 5 and 10 CCP. It also notes that the Code imposes a series of restrictions on the existing rules of jurisdiction. For example, jurisdiction with regard to offences committed by Monegasque citizens abroad on the basis of Article 6 (such as passive bribery on the part of a public official or the active bribery of a foreign public official) is subject to a triple cumulative condition that is only inapplicable, by virtue of Article 5, to the bribery of a judge or prosecutor (*magistrate*), which is classified as a serious offence. The three conditions are: dual criminal liability, the authorisation of the prosecuting authorities and a complaint from the injured party or an official report to the Monegasque authorities by the authorities of the country where the offence was committed. This triple condition also applies to the prosecution of corruption offences committed by foreign nationals (in particular Articles 7 and 9 CCP, though as indicated earlier, these articles do not appear to be relevant in the context of corruption).

[14] According to information supplied, the current volume is 650 to 800 judgments a year at first instance, of which about a third concern serious or lesser offences.

118. To summarise, the rules governing jurisdiction need to be revised in the light of Article 17 of the Convention. Moreover, GRECO has frequently stressed that the condition of dual incrimination and other restrictions such as those imposed on the application of Article 6 CCP are superfluous and affect countries' ability to prosecute effectively transnational corruption or offences that are committed outside national territory simply so as to render prosecution more complex (which is particularly easy in the present case since a five minute car journey and a rendezvous in a neighbouring French or Italian municipality are sufficient). As noted in the descriptive part, Monaco has entered a reservation to Article 17 paragraph 1 of the Convention, the text of which appears in footnote 1 of paragraph 7. This reservation gives precedence to domestic law concerning, firstly, the dual criminality condition and, secondly, all the previously noted provisions of Articles 5 to 11 CCP regarding offences classified as serious or lesser. The GET therefore recommends **(i) to consider establishing the jurisdiction of the Principality of Monaco with regard to offences of corruption and trading in influence committed by public officials or members of assemblies whatever their nationality, and to offences committed by foreign nationals and involving Monegasque public officials, members of Monegasque assemblies or Monegasque citizens vested with functions at international level, in accordance with Article 17 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173); (ii) to consider abolishing the restrictions on jurisdiction established in law (dual incrimination, need for the authorisation of the prosecuting authorities and need for a complaint from the injured party or an official report from the foreign authorities) and, therefore (iii) withdrawing or not renewing the reservation to Article 17 of the said Convention.**

IV. CONCLUSIONS

119. The current offences of bribery and trading in influence suffer from significant deficiencies with regard to the Criminal Law Convention on Corruption (ETS 173). Monaco did indeed ratify the Convention in 2007 but its domestic law has not yet been amended as a result, and the limited number of cases so far heard by the courts has not yet made it possible for case-law developments to fill some of the gaps. The Additional Protocol to the Convention (ETS 191) has not yet been signed. The offences in the Criminal Code are based on traditional principles in the sense that the offence of bribery is, as a rule, only completed when there is an agreement between the persons offering and receiving the bribe, which is contrary to the more modern approach adopted by the Convention and the other similar international instruments. At the same time, the existing offences do not yet clearly cover various categories of public officials such as senior members of the executive and members of the assemblies, and bribery of foreign and international public officials is only taken into account in the limited context of combating organised crime. Meanwhile, trading in influence is totally absent from the current body of offences. Finally, Monegasque law limits the country's ability to prosecute corruption offences with a transnational dimension due to the courts' very limited jurisdiction to hear this type of case and to a series of procedural restrictions (dual criminal liability, the need for the authorisation of the prosecuting authorities and the requirement of a complaint from the injured party or an official report from the foreign authorities). The Monegasque authorities are aware of the need to improve the situation and the GET welcomes the fact that draft legislation, (draft) Bill 880, was tabled in parliament in November 2010: if enacted this would bring about considerable improvements. Nevertheless, some of the deficiencies identified in this report would remain and the Principality should take this into account, in particular by means of necessary amendments or appropriate clarifications in the explanatory report.

120. In the light of the foregoing, GRECO addresses the following recommendations to Monaco:

i. **to take the necessary steps to harmonise the corruption offences in Sovereign Order 605 *of 1 August 2006 in application of the United Nations Convention against Transnational Organised Crime* with those of the Criminal Code, as they will result from the adoption of (draft) Bill 880 *of 5 November 2010 to reform the Criminal and Criminal Procedure Codes with regard to corruption and special investigation techniques*** (paragraph 100);

ii. **(i) to align, as planned, the basic elements of the offences of active and passive bribery of public officials with Articles 2 and 3 of the Criminal Law Convention on Corruption (ETS 173), and in this context (ii) to ensure that passive bribery of public officials (and in the private sector) covers the act of requesting an undue advantage, and (iii) to ensure that the future offence(s) of passive bribery include the element of "accepting an offer or promise" of an undue advantage** (paragraph 102);

iii. **to take the appropriate measures (such as circulars, training sessions or additions to the explanatory report of the draft legislation) to specify or recall, according to circumstances, that the future offence(s) of bribery (and trading in influence, should it be criminalised) do not necessarily entail an agreement between the parties and that evidence of a link between the undue advantage and its consideration may also be based on objective factual circumstances** (paragraph 103);

iv. **to remove all uncertainty by specifying, by appropriate measures, that acts of bribery (and trading in influence, should it be criminalised) are offences whatever the nature – material or non-material – of the undue advantage** (paragraph 104);

v. **(i) to ensure that, as intended, the various offences of bribery in the public and private sectors (and trading in influence, should it be criminalised) are construed in such a way as to include the participation of intermediaries and third party beneficiaries and (ii) to specify, by the appropriate measures, that the term "or for anyone else" is interpreted broadly** (paragraph 105);

vi. **(i) to extend in an adequate manner, as planned, the definition of bribery of public officials so as to include the various categories of relevant persons, in particular members of government and mayors, in accordance with Articles 2 and 3 combined with Article 1 of the Criminal Law Convention on Corruption (ETS 173), and (ii) to criminalise, as planned, bribery of members of public assemblies, in accordance with Article 4 of the Convention** (paragraph 107);

vii. **(i) to consider criminalising active and passive bribery of foreign public officials and members of foreign public assemblies, outside the context of organised crime, and in accordance with Articles 5 and 6 of the Criminal Law Convention on Corruption (ETS 173) and, as a consequence, (ii) withdrawing or not renewing the reservation to Articles 5 and 6 of the Convention** (paragraph 108);

viii. **to criminalise, as planned, active and passive bribery of international public officials and members of international parliamentary assemblies, outside the context of organised crime and in accordance with Articles 9 and 10 of the Criminal Law Convention on Corruption (ETS 173)** (paragraph 109);

ix. **to criminalise, as planned, active and passive bribery of judges and officials of international courts outside the context of organised crime and in accordance with Article 11 of the Criminal Law Convention on Corruption (ETS 173)** (paragraph 110);

x. **to criminalise, as planned, active and passive bribery in the private sector in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173), ensuring notably that the various types of relationship (employed or other) that the bribe-taker may have with the private entity are covered and that it is not possible under the offence for employers to exonerate the private agents *ex post facto* and improperly from their liability** (paragraph 111);

xi. **(i) to consider criminalising trading in influence, as planned, and thus withdrawing or not renewing the reservation relating to Article 12 of the Criminal Law Convention on Corruption (ETS 173) and (ii) to ensure, in this context, that the future definition of the active and passive forms of the offence reflects the terms of Article 12 of the Convention and, in particular, covers the acceptance of a promise or offer (of an undue advantage) and the various "target persons" referred to in Articles 2, 4 to 6 and 9 to 11 of the Convention, as well as situations in which the influence is intended to secure a failure to act, in which the influence does not lead to the intended result or in which the perpetrator of (passive) trading in influence is not a public official** (paragraph 112);

xii. **(i) to criminalise active and passive bribery of domestic and foreign arbitrators and jurors, while ensuring and making clear, in an appropriate manner, that the wording of the proposed new provisions of the Criminal Code reflects the various elements of Articles 2 to 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and (ii) to sign and ratify the said Protocol as soon as possible** (paragraph 114);

xiii. **to extend in an appropriate manner the statute of limitation for the prosecution of the bribery and trading in influence offences** (paragraph 116);

xiv. **(i) to consider establishing the jurisdiction of the Principality of Monaco with regard to offences of corruption and trading in influence committed by public officials or members of assemblies whatever their nationality, and to offences committed by foreign nationals and involving Monegasque public officials, members of Monegasque assemblies or Monegasque citizens vested with functions at international level, in accordance with Article 17 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173); (ii) to consider abolishing the restrictions on jurisdiction established in law (dual incrimination, need for the authorisation of the prosecuting authorities and need for a complaint from the injured party or an official report from the foreign authorities) and, therefore (iii) withdrawing or not renewing the reservation to Article 17 of the said Convention** (paragraph 118).

121. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the Monegasque authorities to present a report on the implementation of the above-mentioned recommendations by 30 September 2013.

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