Emerging Trends from Two Years of GRECO Round IV Evaluations

Strengthening the Capacity of Parliamentarians, Judges and Prosecutors to Prevent Corruption in Their Own Ranks

10-11 April 2014

International Anti-Corruption Academy (IACA)
Muenchendorfer Strasse 2,
2361 Laxenburg, Austria

jointly organised by the
Federal Ministry of Justice of Austria,
IACA and GRECO
Foreword

We are pleased to present this report and share the outcomes from the international conference, “Strengthening the Capacity of Parliamentarians, Judges and Prosecutors to Prevent Corruption in Their Own Ranks: Emerging Trends from Two Years of GRECO Round IV Evaluations”, which took place at the International Anti-Corruption Academy (IACA) in Laxenburg, Austria, on 10 and 11 April 2014.

It was the Austrian Chairmanship of the Committee of Ministers of the Council of Europe that put forward the idea of taking stock of the current Fourth Round of GRECO evaluations. The initiative was taken up and further developed by the International Anti-Corruption Academy (IACA), the Austrian Federal Ministry of Justice, and the Council of Europe’s Group of States against Corruption (GRECO). With extra financial support by the Principality of Monaco, the conference brought together GRECO delegates, politicians, academics, and professionals from over 40 GRECO Member States. A wide range of interventions facilitated the profound exchange of knowledge and good practices among the participants. While this report comprehensively covers the proceedings and findings of this one-and-a-half day event, the presentations by the speakers and panellists (available at www.iaca.int/ and www.coe.int/greco) may also serve as additional food for thought.

With deep regret, our thoughts are with the family and friends of the late Ms. Barbara Prammer, former President of the Austrian Parliament, who was a key speaker at this conference. Our thanks go to all guests and participants in Laxenburg as well as to all those who made this conference a success. Furthermore, we would like to commend Mr. Glaser and Ms. Haubeneder from the Vienna University of Economics and Business for their work on the report. We trust that this publication finds an interested audience among those combating corruption in their professional lives and beyond. Ultimately, joint efforts by all sectors of society will provide the most effective and sustainable results in our common goals: the prevention of and fight against corruption, nationally, transnationally, and internationally.

Wolfgang Brandstetter
Federal Minister of Justice of Austria

Martin Kreutner
Dean and Executive Secretary, IACA

Gabriella Battaini-Dragoni
Deputy Secretary General, CoE
Executive Summary

The international conference on “Strengthening the Capacity of Parliamentarians, Judges and Prosecutors to Prevent Corruption in Their Own Ranks: Emerging Trends from Two Years of GRECO Round IV Evaluations” took place on 10 and 11 April 2014 in Laxenburg, Austria. It was jointly organized by the International Anti-Corruption Academy (IACA), the Council of Europe’s Group of States against Corruption (GRECO), and Austria’s Federal Ministry of Justice, with financial support from the Principality of Monaco. High-level politicians, representatives of international organizations, as well as experts from the GRECO Member States attended the two day conference. The main topics addressed were the issues under assessment in the GRECO Round IV Evaluation, in particular the prevention of and fight against corruption in view of Parliamentarians and the judiciary. The conference provided an opportunity for the stocktaking of the Round IV country evaluation reports finalized by the time of its convening.

The discussions under the high-level segment at the beginning of the conference underlined the political support of national and international high-level politicians and officials for preventing and fighting corruption in the relevant fields. The discussions under the next two sessions focussed on preventing corruption among Parliamentarians, judges, and prosecutors. They were characterized by stocktaking of GRECO’s evaluations, experts’ interventions and interactive debates on relevant questions. There was general agreement among the participants that despite the many efforts that have been made on the national and international level, much work needs to be done in order to achieve effective prevention of corruption with regard to the three professional categories. As was pointed out in one of the concluding remarks, GRECO evaluations show the incompleteness of Member States’ rules and regulations on conflicts of interest regarding Parliamentarians and the judiciary, among other aspects.
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I. Introduction

On 10 and 11 April, Laxenburg, a small, historical town south of Austria’s capital Vienna, was the venue of an international high-level conference on “Strengthening the Capacity of Parliamentarians, Judges and Prosecutors to Prevent Corruption in Their Own Ranks: Emerging Trends from Two Years of GRECO Round IV Evaluations”. The conference was jointly organized by the International Anti-Corruption Academy (IACA), the Council of Europe’s (CoE), Group of States against Corruption (GRECO), and the Federal Ministry of Justice of the Republic of Austria, with financial support from the Principality of Monaco, at IACA’s campus. Austria, a member of the CoE since 1956, held the Chairmanship of the Committee of Ministers of the CoE from 14 November 2013 to 14 May 2014. By the time the conference took place, 17 countries had been assessed during the GRECO Round IV Evaluation, 13 of which had their reports already published. Although more than half of GRECO’s 49 Member States had not been evaluated at the time, the number of finalized evaluations was considered high enough for a first general stocktaking of the results and perspectives. The GRECO Round IV Evaluation provides for those countries which have not yet been assessed the opportunity to start implementing the lessons learned from the outcomes of the first evaluation. The latter is particularly relevant for Austria.

The rule of law, and in particular the fight against corruption, was one of the main common priorities of the successive Andorran, Armenian, and Austrian Chairmanships of the Committee of Ministers of the CoE. As the host state of IACA, Austria bears a special responsibility for ensuring and upholding an efficient anti-corruption policy and legislation. The topic under review during the GRECO Round IV Evaluation is the prevention of corruption in respect of the Members of Parliament, judges, and prosecutors – the legislative branch and the judiciary. The importance of the existence and efficiency of these two powers in every democratic state is self-evident because the failure of a state’s Parliament or judiciary leads to a power imbalance and a concentration of power in the hands of a few officials/politicians. The malfunction of the Parliament or judiciary has direct impact on the governance of the country and thus influences the level of confidence of citizens as well as foreign investors, economic stakeholders, and the international community in the state’s institutions. It has a negative impact on the rule of law, social and economic development, peace, and the security of the country.

The prevention of corruption amongst Parliamentarians, judges, and public prosecutors is essential for the well-being of every state and, therefore, international initiatives have been established in this respect. The Global Organization of Parliamentarians against Corruption (GOPAC) is one of these examples. GOPAC assesses the implementation of the United Nations Convention against Corruption (UNCAC) by its Member States and drafts different tools, such as the Handbook on Parliamentary Ethics and Conduct: A Guide for Parliamentarians, which provides guidance on developing an ethics and conduct regime. The prevention of corruption among judges and public prosecutors is reflected in the provisions of Article 11 of the UNCAC, which is binding on States Parties. However, it does not contain obligations to implement such specific measures to prevent corruption in this field. Moreover, it is not mandatory for the States Parties to adopt codes of

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1 Twelve evaluation reports are in progress as of 11 April 2014.
conduct for the members of the judiciary, although it is recommended. Non-binding international instruments, such as the Bangalore Principles\textsuperscript{6} or the relevant documents of the CoE’s Consultative Council of European Judges (CCJE)\textsuperscript{7}, provide some essential elements of such codes of conduct. Monitoring states’ efforts in preventing corruption amongst Parliamentarians, judges, and public prosecutors is a rather new approach of international cooperation.

The stocktaking of the Round IV Evaluation has already started to consider this approach, affording the conference in Laxenburg in April 2014 special importance as well as a unique chance to analyze trends and discuss the way forward to further enhance the prevention of corruption in Parliaments, courtrooms, and prosecutor’s offices. The present report intends to give an overview of the contributions and debates during the conference, based on its agenda, providing a synopsis of the opening high-level segment, the sessions on “Politics and Parliament” and “Judges and Prosecutors”, as well as the final conclusions.

\textsuperscript{6} Bangalore Principles of Judicial Conduct (ECOSOC 2006/23).

II. High-Level Segment

The high-level segment was opened by Mr. Martin Kreutner, Dean of IACA and Executive Secretary of its Assembly of Parties. In his introductory remarks, he explained that IACA is a comparatively young intergovernmental organization with a broad constituency, and one that aims at overcoming current shortcomings in knowledge and practice in the field of anti-corruption and compliance. He pointed out the staggering effects of corruption, indicating that the citizens of more than 100 countries believe that corruption has increased in recent years, especially in the ranks of their political parties, executive and judiciary, as well as the legislature. Mr. Kreutner commended GRECO on dedicating this round of evaluations to scrutinizing these important institutions, and emphasized the necessity of the separation of powers and the danger of inadequately enlarging immunities from administrative and criminal liability. “Impunities and immunities are apparently often striking and attractive for power-holders to hide behind and thus become de-facto extra- or supra-legal”, he stated, adding that this is opposing European values, especially the concept of equality and equity of justice, and fairness.

Mr. Wolfgang Brandstetter, Austrian Federal Minister of Justice, underlined the significant impact of corruption on the economy, which needs a “level playing field”. He referred to an amendment to the Austrian Penal Code that entered into force on 1 January 2013, by which the term “corruption” has been introduced in the Austrian Penal Code. Minister Brandstetter informed the audience that a related guide has been published by the Austrian Federal Ministry of Justice providing general information and answers to frequently asked questions. He also indicated that Austria provides best practice models through its Federal Bureau of Anti-Corruption, the Public Prosecutor’s Office for Combatting Economic Crimes and Corruption, and an online platform for whistleblowers that guarantees their absolute anonymity. Furthermore, he described the mutual monitoring during GRECO Evaluation Rounds as very positive and emphasized the importance of the exchange of experiences for a successful fight against corruption.

Ms. Gabriella Battaini-Dragoni, Deputy Secretary General of the CoE, stressed that what we are witnessing nowadays “is not only political apathy, but a sense of betrayal felt by ordinary citizens towards their leaders and the institutions they represent.” Having this in mind, she noted that the crucial role of Parliaments in eliminating corruption within their ranks becomes increasingly apparent as does the necessity of implementing codes of conduct to avoid conflicts of interest. “There can be no impunity”, Ms. Battaini-Dragoni asserted. Likewise, she pointed out that judicial systems must be independent and impartial, a prerequisite of the rule of law. Ms. Battaini-Dragoni concluded her intervention by comparing corruption with an enlarging snowball which increasingly grows into an unstoppable avalanche. She added that she was cautiously optimistic for the future, commending GRECO on its work, and highlighting that it is a prime institution to combat corruption.

Mr. Bledar Çuçi, Albanian Minister of State for Local Government and National Anti-Corruption Coordinator, emphasized that the first priority of Albania’s government is the fight against corruption. He provided a synopsis of the changes Albania’s criminal law has undergone recently, including the penalization of acts of corruption committed by high officials, judges, and elected

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representatives. Additionally, the Serious Crime Office and the Prosecutor's Office for Serious Crimes have been established to investigate corruption cases. Minister Çuçi welcomed the adoption of a declaration of assets, income, liabilities, and interests of Parliamentarians as recommended by the GRECO Evaluation. With regard to judges and prosecutors, he stressed the importance of avoiding conflicts of interest and the need for the protection of judges and prosecutors in case they are threatened.

Ms. Barbara Prammer (†), President of the Austrian Parliament, pointed out the positive development in view of the legal position of representatives, which could be observed in Austria during the last few years. It is not only the main anti-corruption provisions in the Austrian Penal Code that have been made fully applicable to representatives, but the financing of political parties has also been regulated in detail. She specified that more transparency has been achieved due to the amendment of the Act on Transparency and Incompatibilities for Highest Bodies and Other Public Officials, in particular regarding secondary employment and lobbying. Finally, Ms. Prammer spoke about tightening the Austrian rules on loss of official position and mandate, and ended her speech by highlighting the integrity as the prime value for most politicians.

Ms. Margarita Popova, Vice President of Bulgaria and Chairperson of IACA’s Board of Governors, mentioned that the strengthening of Bulgaria’s Public Prosecution Service began already before the country’s accession to the EU. Moreover, she extended her support for the project on the establishment of a European Public Prosecutor’s Office, stating that this would be a great improvement in the fight against corruption. Furthermore, Vice President Popova supported GRECO’s recommendations on the implementation of a register disclosing donations to representatives as well as the introduction of codes of conduct and regulations regarding lobbying and secondary employment. At the end of her presentation, she underlined IACA’s immense importance as a growing institution and its vital work to train professionals in preventing and combating corruption.

Ms. Sandra Artuković Kunšt, Deputy Minister of Justice of Croatia, presented the Croatian view on how to reduce corruption within the ranks of Parliamentarians, judges, and prosecutors. She underlined that Croatia has made a great effort in preventing crimes, a field at least as important as the prosecution of offences which have already been committed. Furthermore, she stressed that Croatia has already implemented the recommendations of the GRECO Round III Evaluation, such as the improvement of transparency, the introduction of a code of conduct, the enlargement of the involvement of the population, the amendments to the assessment of the qualitative and quantitative work of judges, and the improvement of the recruiting process of public prosecutors. What is more, an information system has been developed assigning cases randomly to judges in order to safeguard impartiality.

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13 The term “Public Officer”, serving as reference point of the main anti-corruption provisions (Art. 304 - 307b Austrian Penal Code), has been amended by the Act amending the Criminal Law on Corruption.
Mr. Angelo Farrugia, the Speaker of the House of Representatives of the Maltese Parliament, stressed that although a small country, Malta has worked hard on its contribution to the international fight against corruption. In the reform of its criminal law, for example, most recommendations of the GRECO Round III Evaluation were addressed. The protection of whistleblowers has also been expanded and a Committee of Standards and Ethics has been established within the Maltese Parliament. Moreover, a Public Accounts Committee investigates, inter alia, allegations of corruption in connection with the public award of contracts, and a proposal for a new law governing the financing of political parties is on the way.

The Principality of Monaco provided significant financial support to this conference, where it was represented by Mr. Philippe Narmino, Minister of Justice and President of the State Council. He indicated that although Monaco's GRECO Round IV Evaluation is still pending, the state is aware of its problems. The independence of the judiciary is ensured by the Constitution of 1962. In 2009, the Law governing the Judicial Activities formed part of the first step of reform in the field of judiciary and was followed by a second step in 2013 concerning the organization of the judiciary and administration. In order to guarantee the independence of judges, a judicial council will be set up to decide on, inter alia, promotions and disciplinary measures. Minister Narmino stated that Monaco has received positive assessments in the first three Evaluation Rounds and looks forward to the findings of the current one.

The High-Level Segment in Laxenburg finished with the speech of Mr. Marin Mrčela, President of GRECO and Justice of the Supreme Court of Croatia. He pointed out that the public generally perceives two professional groups as being very corrupt: politicians and judges. Mr. Mrčela made four key observations: the problems which arise within the Parliaments are similar to those observed within the judiciary; conflicts of interest need to be regulated; preventive measures are important because people are often unaware of the risks of conflicts of interest; and a clear commitment to ethical conduct is frequently missing and awareness in this field remains low.

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20 Loi n. 1.398 du 24/06/2013 relative à l'administration et à l'organisation judiciaires, Journal de Monaco du 5 juillet 2013 (Law on the Administration and Organization of the Judiciary).
III. Session I – “Politics and Parliament”

1. Stocktaking of GRECO Evaluations

Mr. Yves-Marie Doublet, Deputy Director of the Legal Affairs Department at the National Assembly of France, opened the first session on “Politics and Parliament” by taking stock of GRECO evaluations. He stressed that it is better to focus on prevention than on penalization and discussed the implementation of a code of ethics, making reference to France and the United Kingdom, two countries familiar with such codes for years. A code of ethics is important to strengthen the individual responsibility of Parliamentarians, and the GRECO Round IV Evaluation has so far indicated that only in Sweden and the Netherlands is the individual responsibility of Parliamentarians so strong that such a code could be seen as superfluous.

The conflict of interest was another topic approached by Mr. Doublet. The CoE describes a conflict of interest as arising “from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties”. Finland, for example, defines conflict of interest in its Constitution, while under Estonian law the regulations on conflicts of interest are not applicable to Members of Parliament. Mr. Doublet underlined the importance of the determination of the scope of rules on conflicts of interests, arguing that family members should be covered. Additionally, he mentioned that monitoring can be carried out either by an internal department (e.g. Poland) or through an outside body (e.g. the former Yugoslav Republic of Macedonia and Slovenia).

Mr. Doublet also touched upon the topic of gifts, observing that the permissible value of accepted gifts and presents should be adapted to the respective standard of living; small and typical gifts are normally excluded from being prohibited. “Grey areas” should, however, be avoided. The results of the GRECO Round IV Evaluation so far show that Estonia, Luxembourg, the Netherlands, Spain, and Sweden should implement rules on gifts, while Slovakia, the former Yugoslav Republic of...
Macedonia, and the United Kingdom are recommended to complete their existing rules. As for incompatibility with parliamentary duties, Mr. Doublet named Estonia and Spain as states having strict rules since their Parliamentarians are not even allowed to work as attorneys at the same time. Finland, France, Iceland, Luxembourg, the Netherlands, Poland, Sweden, and the United Kingdom, on the other hand, allow their Parliamentarians secondary employment with some exceptions. Of all countries whose Round IV Evaluation was completed and published by the time of the conference, only the Netherlands, Poland, and Slovenia had implemented a law governing lobbying. Mr. Doublet asserted that it may be easy to define a rule on this matter but difficult to apply it. Latvia, Luxembourg, the Netherlands, Spain, the former Yugoslav Republic of Macedonia, and the United Kingdom received positive evaluations to that end. The different regulations on declarations of assets, income, and interests were illustrated as well as the circumstances under which they are applicable for Parliamentarians in different countries. In most states, Parliamentarians are obliged to make such declarations when taking up their mandate. In addition, Parliamentarians can also be required to make such declarations annually, in the event their income or assets have changed, or at the end of their mandate. The latter is the case in France, Latvia, Slovenia, and Spain. The existence of comprehensive legislation is important and the implementation of effective sanctions is necessary. Mr. Doublet listed four types of sanctions, including disciplinary (Estonia, Poland, United Kingdom), electoral (France: exclusion from eligibility for one year), financial (France, Latvia, Poland, Slovenia, United Kingdom), and criminal (Slovakia) sanctions. Mr. Doublet concluded his analysis by categorizing the evaluated countries into three groups: states where the Parliamentarians have individual responsibility and therefore no strict rules are needed, states that have already implemented strict rules but lack sufficient monitoring systems, and states with strict rules and monitoring systems. The presentation ended with the remark that recommendations from the Evaluation Round should not be too strict since this would lead to less transparency and acceptance.

2. Contributions of the Panel

Ms. Jane Ley, Senior Anti-Corruption Advisor of the US State Department and former Deputy Director of the US Office of Government Ethics, as the first panellist, referred to the general mistrust of Parliamentarians and expressed the view that the integrity of Parliaments must be improved and the individual integrity of Parliamentarians strengthened. Looking at a code of conduct, two things have to be kept in mind: the joint expectations among the members and the need for internal acceptance. Furthermore, such a code should not only contain general information but also detailed examples. The public should have access to the code and be informed on the process of sanctions if breaches are committed. She identified awareness raising as another key issue which can be put into practice through training courses, and also asserted that an efficient monitoring system with safeguards of its accountability is essential. Ms. Ley concluded by mentioning the importance of providing financial disclosure, however, despite this recommendation, she added that since states are different, no best practice model can be identified.

Ms. Marion Breitschopf, Member of the independent transparency group “My deputies”, delivered a presentation on the topic, “Transparency and Trust: case study Austria”. She presented the website “www.meineabgeordneten.at”32, a transparency platform that is online since the end of 2011 and contains 407 dossiers of Austrian politicians. She also described the changes in the Austrian legal position on transparency regarding Parliamentarians since 2011, and informed that at the beginning of 2012, an initiative was launched on the website as the rules on the disclosure of

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32 The website’s German name means “my representatives”.

Austrian Parliamentarians’ income were not satisfactorily transparent. The amendment\textsuperscript{33} to the Act on Transparency and Incompatibilities for Highest Bodies and Other Public Officials that was adopted as a consequence did not resolve all issues and could not put an end to the public debate. In summer 2013, the 2013 Act amending the Act on Transparency and Incompatibilities for Highest Bodies and Other Public Officials and the Federal Constitutional Law on the Limitations to the income of Public Officials, addressed the shortfalls to the extent that the income of those in leading positions must now also be reported (e.g. income as mayor, allowance for honorary posts in chambers or economic interest groups, etc.). Ms. Breitschopf considered the Austrian legal position as still being far behind that of other states, giving the example of the lack of sanctions. She stressed the importance of the visibility of the values Austrian politicians could stand for and the common perception of what they do.

Ms. Melanie Sully, Executive Director of the Go-Governance Institute, continued the case study by revealing the background of the “Transparenzpaket” (transparency package), an umbrella term for a number of laws adopted in Austria in 2012 in the field of transparency and anti-corruption.\textsuperscript{34} She mentioned that the change in the Austrian law became necessary due to internal pressure, such as the loss of trust, but also external influence particularly stemming from GRECO’s Reports. For example, only in 2012 was the term “political party” defined as a legal term in the Austrian Political Parties Act.\textsuperscript{35} Furthermore, she pointed out that although the statement of accounts has to be published and undergo verifications by the Austrian Court of Audit, the latter has no powers of investigation and cannot verify the records of the political parties. What is more, the same transparency laws still do not apply to parliamentary groups. Ms. Sully was convinced that the reforms are a step in the right direction although the first statements of internal audits are still pending. In her final remarks, she criticized, inter alia, the lack of adequate crisis management in the Austrian political and parliamentary culture. Moreover, she stressed that an increasing level of transparency does not always result in increased levels of trust, but that codes of conduct at ministerial and parliamentary levels could help bridge gaps in the legislation.

The presentation on “Holding a parliamentary mandate: a privilege, not an inalienable right” was delivered by Ms. Vita Habjan Barborič, Chief Project Manager for Corruption Prevention at the Commission for the Prevention of Corruption of Slovenia. She expressed that employment in public office is not only an occupation but also an opportunity to do something for the public. Parliamentarians represent all individuals and not only those who voted for them. They should of course not only serve themselves and are expected to avoid conflicts of interest. As soon as Parliamentarians are suspected of having committed an offence, they should justify themselves with proper arguments to prove their innocence. Furthermore, detailed and strict rules on how long they are allowed to remain in office should be implemented to strengthen the public trust. Integrity is an important issue, not only with regard to individuals but also to organizations. Ms. Habjan Barborič called for tools, such as codes of ethics, to be given to Parliamentarians directly, enabling them to combat corruption in their own ranks.

The next panelist, Mr. Marcin Walecki, Chief of the Democratic Governance and Gender Unit of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), spoke about “Professional and Ethical Standards for


\textsuperscript{35} Sec. 1 para. 2 Bundesgesetz über die Finanzierung politischer Parteien (Parteigesetz 2012 – PartG), Austrian Federal Law Gazette I 56/2012 (Political Parties Act). The same Act (Sec. 2 Nr 2) also defines the legal term of a campaigning party.
Parliamentarians in the OSCE Region”. He pointed out that confidence in national Parliaments in the OSCE region has declined in recent years. He welcomed the increased implementation of codes of conduct as a positive development considering that such codes strengthen accountability and trust, professionalize politics, transpose and respect international standards and norms, function as guidance for Parliamentarians, media, and voters, help combat corruption, and help prevent conflicts of interest and abuse of office. Mr. Walecki referred to the ODIHR “Background Study: Professional and Ethical Standards for Parliamentarians”36, a comprehensive publication analyzing how to set professional and ethical standards for Parliamentarians and regulate their conduct. At the end of his presentation, he described how codes of conduct function by establishing common values, setting rules, encouraging monitoring, and sanctioning violations. They work best when there is an underlying consensus on the rules, when there is peer monitoring, and when breaches are punished by proportionate sanctions and by peers, Mr. Walecki explained.

Mr. Doublet, the last panelist of the first session, commented on “The Ethics of French Parliamentarians”. He spoke about the French code of conduct for Parliamentarians (Code de déontologie) as well as the legal provisions regulating their conflicts of interest, incompatibilities, and disclosure of activities and assets. The declaration of interests and activities is available for the public and has to be made at the beginning of the mandate and in the event of relevant changes of interests or activities. Mr. Doublet explained that the declaration of activities does not only have to reveal the professional activities at the date of the election, but also those during the last five years preceding the taking-up of the official position. The declaration of activities includes, inter alia, real estate or bank accounts. In addition, he explained that a declaration of travel has to be made, including the topics, programmes, and participants of the meetings. Between October 2012 and October 2013, less than 12 declarations of gifts were made, five of which had little value. Most notably, a register for lobbyists was established37 in 2013. However, the number of registered lobbyists in France (230 at the time of the conference) seems quite small compared to more than 2,000 registered lobbyists in Germany. Mr. Doublet also mentioned that the declaration of assets was rejected by the majority of French Parliamentarians. He closed his intervention by referring to GRECO’s recommendations to France on the establishment of a code of conduct for members of the Sénat, the chamber of the French Parliament. Even if the Assemblée nationale has no such code of conduct by now, it was recommended that the obligation to abstain in case of a conflict of interest, the publication of declarations of assets, and disciplinary sanctions in addition to criminal ones, be introduced.38

Mr. Philippe Poirier, Chair of Legislative Studies at the Luxembourg Chamber of Deputies and Coordinator of the research programme on European governance at the University of Luxembourg, who moderated this session, opened the floor for discussion.

3. Discussion

As a first question, a delegate inquired why codes of ethics would work best when peers monitor one another. Mr. Walecki answered that for cultural integrity, which also includes control by the media and society, it is best when colleagues advise and oversee each other.

Another delegate asked what the incentives for Parliamentarians are to declare their conflicts of interest as, in his opinion, it would be logical for them to declare as little as possible since the

37 Tableau des représentants d’intérêts, available online: http://www2.assemblee-nationale.fr/representant/representant_interet_liste.
voters would prefer to vote for somebody with few conflicts of interest. Mr. Walecki replied that many factors have to be kept in mind and that the development would be relatively new. Hardly any voter would study this list since the question of conflicts of interest is not at the top of the voter’s priorities. Ms. Breitschopf added that people know their Parliamentarians and that it would be an incentive to declare conflicts of interest because in case of non-declaration, a Parliamentarian could put himself/herself at the risk of a media scandal.

Another question concerned the Austrian political system: what impact does the fact that a high percentage of the Austrian population is a member of a political party have? Ms. Breitschopf explained that membership in one of the two big Austrian parties can be advantageous for finding a job. She admitted that this is a problematic criterion in the application process and that only an applicant’s qualification should matter.

Mr. Doublet was asked what credibility the French regulation on the declaration of gifts would have if – with a view to the small number of declarations made – breaches can be committed without any sanctions. He admitted that the system has weaknesses.
IV. Session II – “Judges and Prosecutors”

1. Stocktaking of GRECO Evaluations

The second substantive session of the conference, dedicated to the prevention of corruption amongst judges and prosecutors, was moderated by Mr. Jean-Pierre Dréno, Prosecutor General of the Principality of Monaco, and Mr. Marin Mrčela, President of GRECO and Justice of the Supreme Court of Croatia. Mr. Christian Manquet, Head of Unit in the Directorate for Penal Legislation of the Austrian Federal Ministry of Justice and Vice-President of GRECO, opened his intervention with a short description of what GRECO is and how it works, and touched upon the GRECO Round IV Evaluation, particularly focusing on judges and prosecutors. Mr. Manquet pointed out that GRECO’s task is to set common standards and to address each state specifically. As for preventive measures, for example, there is no measure that would help all states under all circumstances. Mr. Manquet further stressed the absence of a binding legal instrument on prevention in the framework of the CoE. Article 11 of the UNCAC, although having mandatory provisions related explicitly to the judiciary, does not oblige the States Parties to adopt a particular measure in order to prevent corruption in this field. Likewise, Article 7 of the UNCAC, which deals with the prevention of corruption in the public sector, only uses cautious wording, hardly binding states to resort to specific measures. Mr. Manquet provided the audience with a general summary of GRECO’s recommendations on the prevention of corruption amongst judges and public prosecutors, which include, inter alia, the adherence to transparency, accountability, the rule of law and independence, as well as placing special attention to judicial and prosecutorial careers and disciplinary measures. GRECO’s recommendations further addressed conflicts of interest, the acceptance of gifts, the adoption of codes of conduct, as well as declarations of assets.

2. Contributions of the Panel

The first speaker of the second panel, Mr. Gerhard Reissner, President of the International Association of Judges (IAJ), First Vice-President of the Austrian Association of Judges (AAJ), and former President (and current member) of the Consultative Council of European Judges (CCJE), referred to the contributions of the CCJE and the IAJ to the fight against corruption. In his opinion, corruption is especially a challenge in the field of justice and judges are supposed to maintain integrity in their own ranks themselves. The CCJE is dealing with many different topics related to corruption, such as the appointment, promotion, and careers of judges (including the question of who is in charge of appointing judges), their evaluation, and the disciplinary measures against them, which are prone to abuses in many countries. Clear criteria, competences, procedure, and remedies are needed. Other CCJE topics connected to corruption are procedural law (with problems such as exclusion of the public, single judges instead of judicial panels, and ex parte communication with one of the parties), the creation of specialized courts (smaller courts are more prone to corruption), and questions regarding remuneration and social security. Many of these issues are also topical for the AAJ, he explained, which is integrated in the legislative process in Austria. The AAJ aims at raising awareness amongst colleagues and the general public on certain topics by means of discussions, training, and the establishment of a code of conduct. The IAJ also organizes trainings and conferences on corruption-related topics and has set up an international commission to discuss the fight against corruption in Africa at its next meeting. Mr. Manquet referred to the impact of the GRECO Round IV recommendations regarding the transparency of appointments, the legal definition of selection criteria, as well as the strengthening of the role of self-governing bodies in appointing processes and the work of the CCJE in this respect.
The topic addressed by **Mr. Rainer Hornung**, First Prosecutor and Director of the German Judicial Academy, was “Uniform and transparent procedures for the appointment, promotion and evaluation of judges and prosecutors”. Mr. Hornung spoke about the evaluation standards that should serve as a basis for transparent decisions in appointment and promotion proceedings in the judiciary. According to him, these standards should be uniform, objective, and valid, and the appointments not politically influenced. He noted that uniformity does not mean ignoring cultures and referred to a clear appointment and promotion system with the same selection standards for each and every individual. Objectivity must be reached under due observance of the principle of judicial independence/prosecutorial autonomy. The “good” or “bad” content of a decision is not an objective criterion. The criteria that should be taken into account are legal, social, administrative, and leadership skills or performance in quantitative terms.

However, the latter could be problematic if it refers to whether or not the decisions of a judge are upheld or quashed in a higher instance. Changes in the case law are no negative indicator of a judge’s work performance. Validity refers to the reliability of evaluation reports vis-à-vis overly friendly or overly optimistic appraisals. One way to ensure valid evaluation reports is to train the evaluators in order to develop a “common code” with the persons who finally make the selection. Another way would be the establishment of “soft quotas”, aiming at not having more than a small percentage within the highest grade of appraisal in a given system in a given period of time. Appointments are free of political influence if they are based on correct, open competition procedures for each and every candidate, include up-to-date peer-to-peer appraisals, if a politically independent/autonomous body has at least co-decision powers, and if an unsuccessful candidate has the possibility to challenge the decision. Mr. Hornung’s presentation triggered a **discussion between the audience and the panelists** on whether “good” or “bad” judicial decisions would not still be an objective criterion for assessing a judge’s performance. It was the **overall perception** that a politician’s liking for a specific judicial decision has nothing to do with the quality of legal reasoning it is based upon.

**Mr. Duro Sessa**, Associate Justice at the Supreme Court of Croatia, spoke about his country’s experience on the application of codes of judicial ethics. He pointed out that the codes of ethics in their own were of no outstanding importance and that the impartiality of a judge is merely an idea if not guaranteed by the whole system in the procedure, ethics, and the political dimension (for example, irremovability, appointments, salary, etc.). Croatia has seen the establishment of two codes of ethics. The first was introduced in 1998 by the Association of Croatian Judges and was applicable only to its members. This resulted in a simple avoidance technique: a troubled judge only had to give up his or her membership. In 2006, the New Code of Ethics was established on a legal basis and applicable to all judges. As a result, a panel of judges now evaluates the facts of a case and gives its opinion on violations of the Code. The New Code of Ethics has a tripartite structure, consisting of a preamble, normative principles, and procedural rules, providing a compendium of rules on how judges should carry out their duties. Everyone – not just members of the judiciary – is entitled to make a report. Mr. Sessa concluded his presentation by reiterating that confidence in the Croatian judiciary was and is low, and that a code of ethics does not improve the situation. The presentation of **Ms. Kitty Nooy**, Chief District Prosecutor and National Integrity Programme Manager at the Dutch Public Prosecution Service (PPS), presented a short movie clip on how easy it is to find oneself in a conflict of interest situation. She stressed that it is difficult but necessary to find a balanced solution and presented the work of the Dutch Prosecution Service Integrity Bureau (BI-OM). This nationwide centre of expertise drafts regular reports and records violations of integrity, develops tools to enhance awareness, encourages debates about integrity, and provides information on the topic. A renewed code of conduct sets out five core values:
precision, professionalism, community focus, integrity, and openness. A pool of eight specialized investigators with no connection to the unit where the inquiry takes place investigates possible violations of integrity in the PPS. In addition, each prosecution service organizational unit has at least one trained Confidential Integrity Officer, serving as a first contact for employees for questions and advice, and also formally reports to the local management. Awareness has been raised, inter alia, through issuing a DVD containing PPS-specific dilemmas and a management manual. Although the BI-OM is working successfully, Ms. Nooy identified some issues where there is room for improvement: a high level of awareness for integrity matters needs to be maintained; the conclusion of integrity cases demands more uniformity; the communication process after integrity violations needs to be improved; and finally, the goal of a perceived “secure and safe work environment” should be achieved.

Ms. Anita Lewandowska, Judge and Deputy Director of the Department of Courts of the Polish Ministry of Justice, the last panellist, gave a short overview of the Polish experiences in implementing the recommendations made by GRECO in the Round IV Evaluation.39 Poland has addressed all issues that can be improved by legal acts. However, according to Ms. Lewandowska, it was harder to transpose recommendations with regard to ethics.

3. Discussion

During the debate based on the panelists’ interventions, Mr. Mrčela asked the room for a solution to the conflict of interest dilemma presented in the movie clip by Ms. Nooy. She herself stressed the necessity of dealing with the problem and suggested that solutions can be found on a case by case basis. Mr. Hornung referred to the team spirit existing in the German public prosecution, for example, stating that difficult questions such as this would be discussed with a colleague.

A question from the audience addressed whether there are tendencies to prohibit the political rights of judges, such as membership in political parties or the acceptance of mandates. Mr. Reissner stated that most codes of ethics do contain provisions on this topic and asserted that the political involvement of judges is challenging. As a result, certain CoE Member States prohibit such involvement, which is in line with the European Court of Human Rights (ECHR). Mr. Hornung emphasized that membership in a political party must not be a criterion for the appointment of a judge. On the other hand, as judges are centre stage in society, their membership in a political party should not be prohibited either. What is needed instead, he explained, is a culture of recusal. Mr. Sessa reported that Croatia prohibits the political involvement of judges; however, this prohibition itself could be abused by politicians in order to ignore the judge’s opinion in the legislative process. Mr. Manquet added that in some GRECO Member States judges themselves can be elected.

On another note, Mr. Manquet questioned whether integrity organizations similar to BI-OM also existed for Dutch judges and the police, and whether BI-OM’s investigators were prosecutors themselves. Ms. Nooy indicated that no such organization existed for Dutch judges and that the respective organization for the police has another form. As for the BI-OM’s investigators, Ms. Nooy mentioned that the investigators were prosecutors, but underlined their independence as they always come from units not involved in the relevant cases.

In replying to a question on whether the Croatian Code of Ethics for judges is really not more than a façade, Mr. Sessa noted that the few incidents that had occurred had never actually led to any procedure. Mr. Hornung added that the value of a written code of ethics will always be

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controversial, that concrete examples would be more practical, and that a combination of both would be essential.

Another question from the audience touched upon the problem of whether additional occupation, such as lecturing activities or arbitration, would cause conflicts of interest. Mr. Manquet stated that GRECO checks the national rules on additional occupation and conflicts of interest, but does not make any prohibitions regarding lecturing or arbitration. Mr. Reissner approached the question from the perspective of impartiality, adding that nearly all codes of ethics deal with these questions and that many countries do not allow judges to have a sideline in arbitration.

In the last question, a delegate raised the issue of concreteness of the international standards for bodies of judges. Mr. Manquet stressed the importance of the existence of these bodies as such, and noted that GRECO would be more concrete from time to time in recommending, for example, that the Ministry of Justice should not be member of such a body.
V. Mr. Doublet’s Conclusions and the Closing of the Conference

In the closing remarks of the session, Mr. Doublet reiterated the risk corruption poses to social development. He deemed that our society is becoming increasingly complex, offering more possibilities to commit corruptive acts, and therefore demanding a higher level of ethical standards and adherence to them. The preamble of the CoE’s Criminal Law Convention on Corruption places the judiciary and Parliamentarians at the centre of the fight against corruption.\(^{40}\) If the citizens no longer trust their judges, public prosecutors, and Parliaments, democracy is in danger. The repression of corruption is prevalent in relevant international legal instruments. However, citizens have high expectations regarding the prevention of corruption, and their confidence in the institutions needs to be strengthened. Consequently, it is essential to prevent Parliamentarians, judges, and public prosecutors from the risks arising from conflicts of interest and to strengthen the bond between citizens and their institutions, while at the same time protecting public decisions.

The recent GRECO evaluations show the incompleteness of Member States’ rules and regulations on conflicts of interest regarding these three groups. Therefore, the following key recommendations should be taken into account: conflicts of interest need to be defined; ethically contentious situations need to be avoided; declarations should be public since they are a precondition for discovering these situations; support for a culture of ethical correctness and thus safeguards for a more sufficient prevention of conflicts of interest are needed; an internal or external body should be established, providing advice on problems concerning conflicts of interest.

One of the findings of the GRECO Round IV Evaluation is that ethical behaviour is more an issue of preventive principles than of sanctions or prohibitions, which was also underlined by Ms. Sandra Artuković-Kunšt. However, there is no certainty that Members of Parliament, judges, and public prosecutors are immune to corruption. Moreover, the factor of time needs to be kept in mind with regard to cases as one should not engage in a “permanent trial”. There is no recipe protecting against corruption entirely but prevention is the most useful measure. On the other hand, as GRECO propagates, law enforcement not only needs to be effective and dissuasive, but also proportionate.

Mr. Doublet also observed that despite the particular legal basis of GRECO41, Member States tend to implement most of its recommendations fully or partly. On the other hand, Parliamentarians, judges, and public prosecutors are reluctant to accept external recommendations. In particular, judges and public prosecutors from young democracies may be more likely to know the dangers of non-compliance with a corrupt environment. Therefore, voluntary rules play a great role in this field. Mr. Doublet mentioned Austria as a rather critical example since in the past Parliamentarians half-heartedly contributed to the adoption of legal provisions concerning corruption in their own ranks.\(^{42}\)

\(^{40}\) See the Preamble of the Criminal Law Convention on Corruption: “Emphasising that corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice (...) and endangers the stability of democratic institutions (...)”.

\(^{41}\) Unlike the Criminal Law Convention on Corruption or the Civil Law Convention on Corruption whose implementation is monitored by GRECO, GRECO itself is not based on an international convention but on an agreement authorized by a Resolution of CoE’s Committee of Ministers. See: Resolution (98) 7 Authorising the Partial and Enlarged Agreement Establishing the “Group of States against Corruption – GRECO”, 5 May 1998.

\(^{42}\) The shortfalls in the Austrian legal position on the penalization of corruption concerning Parliamentarians have been largely overcome by an amendment of the Austrian Penal Code, which entered into force on 1 January 2013. See: Bundesgesetz mit dem das Strafgesetz und die Strafprozessordnung 1975 zur Verbesserung der strafrechtlichen Bekämpfung von Korruption geändert werden (Korruptionsstrafrechtssanierungsgesetz 2012 – KorrStrÄG 2012), Austrian Federal Law Gazette I 61/2012.
Mr. Doublet emphasized that the contributions of Mr. Hornung, Mr. Reissner, Ms. Nooy, and Ms. Lewandowska contained good examples, which can be used by GRECO evaluators. He mentioned that in respect of some Member States, GRECO’s recommendations started from zero: in some countries, no codes of conduct were in force for the relevant groups, while in others, such as Poland, GRECO was dissatisfied with the existing code of ethics for Parliamentarians. The GRECO Round IV Evaluations are bringing clear added value since very few Member States have a definition of conflicts of interest. Choosing to monitor the prevention of corruption as regards Parliamentarians and the judiciary, GRECO decided to dissociate these groups in its evaluation. Mr. Doublet supported this decision and further welcomed both groups being assessed at the same time. Considering that not every organization’s evaluation reports have the same quality as GRECO’s, he raised the issue on whether it would not be good to go on in this direction. He further outlined some proposals regarding possible directions for the GRECO’s future Round V Evaluations, such as the executive branch, including at the local level.

Mr. Mrčela also referred to GRECO’s future evaluation rounds and expressed his conviction that it will opt for a logical continuation of the Third and Fourth Rounds. Mr. Kreutner closed the event by thanking everyone for their attendance and active participation and praised GRECO for conducting the Round IV Evaluations. He also thanked the organizers for providing the opportunity for such a valuable conference and debate.
VI. Personal Afterword of the Authors of the Conference Report

GRECO is not the only stakeholder assessing the legislation, policy, case law, and factual efficiency of states in their fight against corruption. Many GRECO Member States are also evaluated by the European Commission, the OECD Working Group on Bribery, and the Implementation Review Group established by the Conference of the States Parties to the United Nations Convention against Corruption.43

Within this comprehensive monitoring, the added value of the GRECO Evaluations lies in their methods of evaluation and topics under scrutiny. While the European Commission previously only assessed the correct transposition of some EU legal acts on corruption44, it only released a comprehensive EU Anti-Corruption Report in February 2014.45 This document is of indisputable interest but differs from the GRECO Evaluations in one important aspect: it has not been established in cooperation with the assessed Member States but solely by the European Commission. The peer review approach involving the evaluated state, which is used by the GRECO, the OECD, and in the UNCAC46 framework, may allow for deeper insight of the national situation47 and could secure a better acceptance of reported weaknesses, thus enhancing the chance of a stricter compliance with the recommendations made. In comparison with the scope assessed under the OECD and the UNCAC frameworks, substantial differences to the GRECO Evaluations become apparent.

On one hand, the OECD Working Group on Bribery only examines the transposition of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions48 and the 2009 Anti-Bribery Recommendation49; two acts with important yet narrow content. The UNCAC, on the other hand, has a very wide scope. The same applies to GRECO, whose scope also encompasses numerous provisions (in three binding legal acts50 and three non-binding acts adopted by the Committee of Ministers51). However, unlike the UNCAC whose Review Mechanism was established in 2009, GRECO - being ten years older - has by now already reached its Fourth Evaluation Round, focusing on different thematic issues every time. Over the years, this has led to an in-depth analysis of many relevant fields of national law and policy. GRECO’s approach to evaluate a state’s anti-corruption policy in a comprehensive way and to concentrate the assessment on narrower segments of issues that change with every evaluation round, offers an

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47 See the critical remarks of the European Court of Auditors in The European Court of Auditors’ View on the Commission’s Report on Anti-Corruption Measures, 9.4.2014, p. 2, vis-à-vis the way the EU Anti-Corruption Report has been established and what the shortcomings of such a report could be: “At first glance, the outcome of the report seems alarming. But the findings of the report are primarily based on the perceptions of citizens and companies, and on anti-corruption measures which are actually being used. Reality may be different.”
indispensable contribution to a sound international anti-corruption framework and adds to our knowledge of national anti-corruption policies. Nothing could illustrate this better than the choice of topics examined in the GRECO Round IV Evaluation. Although just one detail of the greater field of anti-corruption, the capacity of Parliamentarians, judges, and prosecutors to prevent corruption in their own ranks is of decisive importance for the whole anti-corruption context. Giving up our focus on such details would not allow for a better overview of anti-corruption policy and would lead to a more superficial and ineffective fight against corruption.
VII. High-Level Interventions

1. Mr. Martin Kreutner

Mr. Minister, Ms. Deputy Secretary-General, as representatives of the co-hosts, Sehr geehrte Frauen Präsidentinnen, Ministers, Excellencies, Mr. President and Mr. Executive Secretary of GRECO, Dear Ladies and Gentlemen, Dear Colleagues and Friends,

Let me first of all extend a sincere and warm welcome to all of you here at IACA. We are most pleased and honoured to host and co-sponsor this important gathering and wish it all the success it deserves. The International Anti-Corruption Academy is a comparatively young but highly determined intergovernmental organization; one that comprises and unites – by way of its constituency of 54 Member States (not including its 53 Signatories) – almost half of the world’s population. It is the first global institution of its kind, dedicated to overcoming current shortcomings in knowledge and practice in the field of anti-corruption and compliance, and to empowering professionals for the challenges of tomorrow. IACA provides a new, holistic approach to anti-corruption education and research, delivers and facilitates anti-corruption training for practitioners from all sectors of society, and provides technical support and assistance to a wide variety of stakeholders. It offers standardized and tailor-made trainings, academic degree programmes, opportunities for dialogue and networking, as well as anti-corruption think-tank and benchmarking activities.

The organization was initiated by the United Nations Office on Drugs and Crime (UNODC), the European Anti-Fraud Office (OLAF), the Republic of Austria, and other major international stakeholders. It became an international organization on 8 March 2011. Since 2011, IACA also holds consolatory and observer status with the UN’s Economic and Social Council and GRECO, respectively, and in December of last year it was also granted permanent observer status with the General Assembly of the United Nations. The Academy has, moreover, been explicitly welcomed by an array of international resolutions of various regional and international organizations. IACA is committed to observing the principle of academic freedom and strives to meet the highest academic and professional standards. It addresses the phenomenon of corruption in a comprehensive and inter-disciplinary way, taking due account of cultural diversity, gender equality, and recent developments in the fields of anti-corruption, compliance, and integrity at the global and regional levels. As the head of this organization, let me again warmly welcome all of you here to Laxenburg/Vienna. We are delighted to co-sponsor – together with the Austrian Ministry of Justice and the Council of Europe’s GRECO, and with generous support from Monaco - this significant conference on “Strengthening the Capacity of Parliamentarians, Judges and Prosecutors to Prevent Corruption in Their Own Ranks”.

Ladies and Gentlemen, the global economic crisis has further undermined trust in government and institutions. According to a study by the OECD, only four out of ten citizens in OECD countries today state that they have confidence in their national authorities. What is more, Transparency International’s Global Corruption Barometer (2010, 2013), a survey conducted in more than 100 countries, found out that six out of ten interviewees believe that corruption has increased in the recent three years; 54% of all contenders think their government is largely or entirely run by groups acting in their own interests rather than for the benefit of the citizens and a staggering eight out of ten regard political parties as corrupt. The executive branch and the legislative, to be closely followed by the judiciary and the media, are generally perceived to be among the institutions most prone to corruption. It is these powers, however – the executive, the legislative, and the judiciary, along with the media as the “public watchdog” – that our concept of the modern state, of
democracy, is being based on. Governments and political institutions must therefore find ways to demonstrate and improve their reliability and accountability and, ultimately, even their legitimacy vis-à-vis the concerns of the citizens. They must show integrity and honesty in the way they operate and deal with their constituents and in the way they serve, preserve, and maintain the common good entrusted to them. And parliamentarians, judges, and prosecutors – all holding imperium and being entrusted with the public good – shall and must be at the spearhead of this undertaking. Let me thus already at this stage commend and pay tribute to GRECO for dedicating the fourth round of their evaluations to assessing and scrutinizing these important institutions. And let us all learn from this essential experience in order to further strengthen these institutions on their way to even more transparency, accountability, and legitimacy.

Ladies and Gentlemen, let us similarly be frank and forthright. Even European countries in the recent past have seen and, in some cases, are still seeing over and again – what one might have felt anachronistic - discussions on questioning the separation of powers, on dispensing or neglecting the fundamental principles of the Rule of Law, debates to bring under the control of one power, i.e. the government or the parliament, the other pillar, i.e. the judiciary, including the prosecution services, and/or the media. They have seen and continue to see deliberations on, instead of reducing or abolishing, even extending and enlarging immunity and impunity regimes for privileged groups of society, including the political sphere. What is more, such impunities and immunities are apparently too often striking and attractive for power-holders to hide behind and thus become de facto extra- or supra-legal. Such developments, however, distinguished participants, are diametrically opposing European values. They deeply disrespect the concepts of equality and equity, of justice and fairness, and they are not compliant with the ratio; the rationale and the provisions of major regional and international anti-corruption frameworks, such as the Council of Europe Conventions and the 20 Guiding Principles.

It was thus not by coincidence that in November of 2011 the European network of anti-corruption authorities (EPAC) in this very room adopted by consensus the Anti-Corruption Authorities Standards and the Ten Principles and Parameters on the Notion of Independence (of ACAs). These standards and principles were subsequently endorsed by the Kuala Lumpur Declaration of the International Association of Anti-Corruption Authorities and built the basis for the subject Jakarta Declaration 2012 of a joint UNDP-UNODC Conference on the independence of such bodies. The latest session of the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC) also welcomed these most notable results, which are in line with and also supportive of the Criminal Law Convention of the Council of Europe and the UNCAC, respectively. Ladies and Gentlemen, English historian and prolific writer Thomas Fuller is often - and rightly so - quoted as saying, “Be ye ever so high, the law is above you”. Complement and augment the Rule of Law with integrity and credibility, with a fair structure of checks and balances, as well as a sincere system of separation of powers, strong anti-corruption mechanisms, and credible compliance frameworks, and you will have what we all call and seek for: good governance. The latter, however, is the safeguard for political, social, human, and economic prosperity for our peoples. May this tripartite international conference profoundly contribute to this noble cause.
2. Mr. Wolfgang Brandstetter


uns alljährlich, zumal die WKStA mit ihren spezialisierten und in Wirtschaftsstrafsachen besonders ausgebildeten Staatsanwältinnen und Staatsanwälten völlig zu Recht als Vorzeigeprojekt und best practice Modell – weit über die Grenzen Österreichs hinaus - gilt.

Ms. Gabriella Battaini-Dragoni

Minister Brandstetter, Mr. Kreutner, Dear Ministers, Distinguished Guests,

It is a pleasure to be here in Laxenburg in the beautiful Kaunitz-Wittgenstein Palace. I am very grateful to our hosts, the Austrian Ministry of Justice and the International Anti-Corruption Academy, as well as to the Group of States against Corruption (GRECO) and the Government of Monaco, for making this event possible. Legend has it that a few centuries ago, Mozart’s symphonies echoed in these very chambers. Today, it is up to us to set the tone. Only by fine-tuning our efforts will we be able to stamp out corruption. For us to make this happen, we need to see things as they really are. Across Europe, we are seeing shockingly low levels of trust in the political class. Party membership levels are dwindling. Voter turnout rates are dropping. In most countries, non-voters make up the majority. What we are witnessing is not only political apathy, but a sense of betrayal felt by ordinary citizens towards their leaders and the institutions they represent. According to the 2014 Eurobarometer survey, three quarters (76%) of Europeans think that corruption is widespread and more than half (56%) think that the level of corruption in their country has increased over the past three years.

Almost one in four Europeans feels that the judiciary and prosecution services do not respect the rule of law. Nearly 60% of Europeans believe that corruption is high among politicians and political parties. This shows that there is a widening credibility gap, which urgently needs to be closed. So how do we bridge it? The answer, at least in part, can be found in the monitoring and impact assessment carried out by GRECO – the Council of Europe’s Group of States against Corruption. GRECO’s Fourth Round is the perfect opportunity for us to take stock of national experience and to consider the prevention of corruption in respect of Members of Parliament, judges, and prosecutors. Let me start with Members of Parliament. A well-functioning and accountable parliament is one of the best barriers against corruption. The Council of Europe, including our Parliamentary Assembly, has been at the heart of the anti-corruption fight for many years now. Through its resolutions and reports, the Assembly has, over the years, focused its attention on the role of parliaments in fighting corruption. It has emphasized that it is the responsibility of parliaments to design frameworks and create an environment which can prevent corruption. It has also done a lot to ensure that, across the legislative cycle, parliamentary proceedings are made more accountable and more transparent. The Assembly has ensured that mechanisms of parliamentary scrutiny are accelerated and reinforced. Parliaments, however, cannot perform their function if their own members are plagued by corruption. When it comes to the exercise of parliamentary duties, personal integrity is vital. Members of Parliament must respect ethical rules in order to set an example of incorruptibility and self-discipline. This can be best achieved by enforcing a parliamentary code of conduct. By regulating contact with lobbyists. But also by introducing an effective system for declaring sources of income and conflicts of interest by MPs and their close family members. There can be no impunity. Everyone should be held accountable for their actions. First and foremost, Members of Parliament themselves. A few words now about the judiciary, as well as judges and prosecutors. Independence and impartiality are two fundamental principles underpinning judicial systems which are enshrined in the European Convention on Human Rights. Without an independent and impartial judiciary, there can be no properly functioning rule of law. The same applies to individual judges. The role of a judge is not only to uphold individual rights. It is also to strike a balance between individual rights and freedoms, and the protection of rights of the community as a whole. When this balance is not struck fairly and impartially, justice is jeopardized. It is within this delicate context that GRECO has done so much impressive work over the past two years. It has examined whether effective
safeguards to uphold judicial independence and assure the highest levels of integrity have been put in place. Applying similar criteria to those of the European Court of Human Rights, GRECO has determined the manner and length of judicial appointments and has monitored the degree of independence and the existence of outside pressure. The conclusions are clear: judges have to be protected against undue influence and political intervention in particular. Of course, similar rules apply to prosecutors, even if the concept of independence has different connotations for judges and prosecutors. With this in mind, GRECO has examined in great detail the effectiveness of safeguards for autonomy within the prosecution service, as well as the transparency of career progression procedures. The essence of the priority issues of GRECO’s Fourth Round evaluation is nearly identical, regardless of whether we’re discussing Members of Parliament, judges or prosecutors. Whether it’s ethical principles or rules of conduct. Conflict of interest or declarations of assets. We must speak with one voice. And we must never turn a blind eye.

Dear colleagues, being here in Austria at the tail-end of the skiing season, I am reminded that someone once said that “corruption is like a ball of snow; once it starts rolling it becomes bigger and bigger until at some point it becomes unstoppable.” I disagree. Yes, corruption is likely to have increased in many European countries over the past few years. But we should also remember that the means available to society for detecting corruption have also been bolstered. That is why, looking ahead to the future, I am cautiously optimistic. This is in part due to the success of GRECO so far. Thanks to GRECO, the various sectorial standards of the Council of Europe – be they hard or soft power – have been brought together under one umbrella. Although in some cases coherent legal and ethical standards for preventing political and judicial corruption have yet to be established, GRECO has helped shed light on sensitive issues such as the verification of declarations of assets and income or conflicts of interest. GRECO’s Fourth Round has sparked debate and has forced some Member States to take a deep, honest look at their country’s bodies and structures. Last but not least, GRECO’s reports have provided solid guidelines for technical assistance and cooperation projects carried out by the Council of Europe and the European Union, within and beyond GRECO’s borders.

The most recent examples of projects integrating elements to curb judicial corruption have been those implemented in Georgia and Serbia. We are also implementing such projects in Tunisia, Morocco, and Jordan in the framework of our neighbourhood policy. Let me also add that the European Union’s accession to GRECO might soon become a reality. I am convinced that this will lead to more coordinated anti-corruption policies in Europe and strengthen the impact of the European Union’s and GRECO’s respective anti-corruption actions. I find these developments very encouraging. I strongly believe that they go a long way in consolidating our democratic bodies and cementing institutional reforms. Above all, however, it is vital that we realize that there is no place for compromise or complacency when it comes to corruption. Fighting corruption will be a long battle that will require constant political will. We therefore need a comprehensive approach that enjoys solid parliamentary support as well as input by the judiciary and prosecution services. And to ensure that the fight against corruption can continue, we need to engage and inform our young people through education in democratic citizenship within and among Member States. I thank GRECO for its unwavering determination and for the solid results obtained in the Fourth Round so far. And I wish you all an insightful and productive conference. Thank you.
Mr. Bledar Çuci

Honourable Mr. Brandstetter, honourable Mr. Kreutner, honourable and distinguished participants,

Thank you for inviting me to participate and address this very important conference. I do not know how often others come to this Academy, but this is my second visit here in the last few weeks. Other than me liking Vienna, this is another sign of our government’s and my own personal intention to benefit from best international practices and partners’ support for our efforts to combat corruption in Albania. It is a real pleasure to address you in my capacity as the Albanian National Coordinator on Anti-Corruption. The creation of the Office of National Coordinator on Anti-Corruption at the Minister of State level was among the very first steps that the new government took when it came in power in September last year. This is proof to the government’s firm commitment to make the fight against corruption a high level priority and to ensure that we dedicate the needed energy and resources to achieve real change in this crucial struggle against one of the biggest challenges to democracy and growth in our country.

As you might know, nearly two weeks ago, during its spring plenary session GRECO adopted the Fourth Round Evaluation for Albania. This round’s recommendations come at a moment when our government is undertaking important steps in establishing solid grounds to fight corruption on all fronts and head on. To make just an example of these steps, according to the latest amendments to the Criminal Procedure Code, adopted by the Albanian Parliament in mid-March 2014, the so called “anti-corruption package” - corruption cases of high level officials, local elected officials, as well as judges and prosecutors - will now be dealt with by the Serious Crime Prosecution Office and Serious Crime Court. The Albanian Government considers that the reason why the vast majority of the electorate voted for a change of government in the June 2013 elections is also related to the need to curb corruption among government officials, as well as among judges and prosecutors. There is no doubt that rule of law, as well as the fight against corruption and the abuse of power is exactly what the citizens of Albania had in mind when they cast their vote.

Our government is firmly believes that in order to fight corruption at all levels, the Parliament and its members should be the first to lead by example. To that end, the Government of Albania welcomes GRECO’s recommendations to have MPs disclose their assets by making them public and by conducting effective and frequent auditing of these assets, as well as to legally regulate lobbying activities. This recommendation is very much in line with the clear intent demonstrated by the newly appointed Inspector General of the Albanian High Inspectorate for the Declaration and Audit of Assets (HIDAA) to turn the auditing of public officials’ assets in Albania into a serious, consistent, and effective effort. Last month HIDAA began reviewing the auditing of the public officials’ assets since 2003, as they noted failures in doing so under HIDAA’s previous leadership. The GRECO spring recommendations also focus on the role of judges and prosecutors. All our efforts against corruption will be meaningless without the full cooperation by the judiciary. Rooting out corruption in the justice system is a crucial pre-condition for creating a strong, effective judiciary that has the ability to play its vital role in bringing corrupt officials to justice. Unfortunately, independent corruption perception surveys conducted in Albania show that the public considers the court system to be the most corrupted segment of the state. On the other hand, in the past two decades, the judicial system in Albania has failed to a large degree in its efforts to self-regulate and to clean its ranks from corrupt judges. In many cases of disciplinary actions or even dismissal brought before the High Council of Justice, the judges’ members of the Council have protected their fellow judges. I am saddened to note that those who see the Albanian judiciary like a business club where the interests of its members override public interest and the government’s political will to combat corruption, might be right. The government needs full...
cooperation by the judiciary to fight corruption. The government is also very mindful of the need to guarantee the independence of the justice system from undue interference of any kind. To make these two strategic goals meet in the context of the current problematic situation with the justice system, the Parliamentary majority in Albania plans to engage in a comprehensive and far-reaching reform of the judiciary with the full engagement of the healthy segments of the justice system and the assistance of our international partners, starting with the Council of Europe and its instruments like GRECO.

Lastly, the government is aware of the complexities in which the judges and prosecutors operate. We are aware that bribes are offered, and we know judges and prosecutors are also threatened. When judges and prosecutors are threatened, the Government will be there to provide them with whatever protection is needed. Before I complete my remarks, allow me to thank the governments that you represent for the highly valuable and consistent support that they give to our country, our people, and to our government in our efforts to consolidate a just, fair, and progressive society in Albania. Thank you for your attention!
5. Ms. Barbara Prammer (†)

Sehr geehrte Frau Vize-Generalsekretärin, sehr geehrte Frau Kommissarin, sehr geehrter Herr Präsident Mrčela, sehr geehrte Damen und Herren Minister!


2. Mit dem Korruptionsstrafrechtsänderungsgesetz 2012 wurde erstmals die vollständige Einbeziehung inländischer Abgeordneter in den Amtsträgerbegriff des österreichischen Strafgesetzbuches (§ 74 StGB) gesetzlich angeordnet. Diese Änderung ist mit einer umfassenden Reform des Korruptionsstrafrechts als Ganzes einhergegangen. Das heißt, dass


Ich wünsche Ihnen daher aus ganzem Herzen viel Erfolg für diese Konferenz und für Ihre weitere Arbeit!
Ms. Margarita Popova

Sehr geehrte Frau Prammer, Präsidentin des Nationalrats der Republik Österreich, sehr geehrter Herr Brandstetter, Justizminister der Republik Österreich, sehr geehrter Herr Kreutner, Dekan und Exekutivsekretär der Versammlung der Mitglieder von IACA, ihre Exzellenzen, sehr geehrte Organisatoren dieses hochangesehenen Forums, sehr geehrte Damen und Herren, liebe Kolleginnen und Kollegen,


Vollständige Übersetzung folgt...

7. Ms. Sandra Artuković Kunšt

Ministers, fellow panellists, ladies and gentlemen, I would like to start by thanking our organizers for this conference.

It is an honour and a privilege for me to be here with all of you today. We are all aware that corruption is a global problem which threatens the stability and security of societies, democratic institutions, and sustainable economic and social development of countries. It undermines growth and prosperity and reduces public trust in state institutions. Therefore, the suppression of corruption is of utmost importance and should remain one of the top priorities on the agenda of the international community. Even before entering the European Union, the Republic of Croatia has taken many steps in meeting demanding EU criteria relative to the fight against corruption.

While implementing our anti-corruption strategic goals, we have made and are still making great efforts in the prevention and repression of corruption through establishing legislative and institutional frameworks, allowing systematic detection and processing of corruptive criminal offences. Although we made a great effort in processing corruptive criminal offences, we are aware that for an efficient fight against corruption only repression is not sufficient. Modern trends in combating corruption are increasingly turning to prevention, and therefore, the emphasis should be on the elimination of the risks of corruption.

In that sense, the Republic of Croatia has been subject to evaluation in all four of GRECO’s Evaluation Rounds, the last one dealing with “Corruption prevention in respect of Members of Parliament, judges and prosecutors”. In relation to the theme of this conference, it is important to emphasize that all recommendations issued in the Third Round, which focused on corruption prevention in the context of political financing and the incriminations of corruption - including in respect of parliamentarians, judges and prosecutors - have been implemented. There is no doubt that Members of Parliament, judges, and prosecutors are people on responsible public positions who should set an example to others in a way of ethical and transparent performance of their duties. Regarding members of the Croatian Parliament, valuable measures have been introduced to enhance the transparency of their work and public participation in the legislative process. The Republic of Croatia has facilitated civil society involvement in shaping up public policy, through introducing public participation models in the legislative process, as well as through the refinement of public monitoring and scrutiny tools.

The Action Plan on Open Government Partnership with a focus on fiscal transparency, public consultations, and the right of access to information targets further measures to better assure citizens’ involvement in policy development. Judicial reform has substantially improved judicial independence and efficiency. Both judges and prosecutors have their own codes of ethics and are subject to financial disclosure, which strengthens public confidence in justice. The majority of members of the State Judicial Council (which is primarily competent for appointment and dismissal of judges and court presidents) now come from the ranks of judges who are elected by their peers to reduce risks and former allegations of politicization, as was recommended by the European Union. Steps were taken in recent years to introduce clear and objectively verifiable criteria for the quantitative assessment of the work of all judges, which has further enhanced transparency in the system. Also, transparent and objective selection criteria, as well as a competitive procedure, have been introduced in the appointment system to prosecutorial posts. The composition of the State Prosecutorial Council (which is primarily competent for the appointment and dismissal of prosecutors) has become more balanced, the procedure for electing its members more transparent, and periodical evaluation and promotion rules have been improved. Furthermore, we have recently introduced the reorganization of the judicial network in the Republic of Croatia. The
new reorganization will also shorten court proceedings, contribute to better organization of work processes, increase effectiveness of the judicial bodies, and facilitate the monitoring of work by higher courts and Ministry of Justice (the Ministry is competent for different tasks of judicial administration without interfering in the courts’ decisions).

The requirement for this monitoring is the full functionality of the information system, ICMS or Integrated Court Management System, which increases the transparency of the judicial system allowing management and random case allocation. In addition, citizens are able to follow the status of their cases before courts through e-case application. These tools help the transparency of the judicial system and contribute to the prevention of corruption. The Republic of Croatia will continue to devote itself to the fight against corruption, concentrating on achieving legal safety, the enhancement of confidence towards the legal system, and better economic development of our country. At the end, I would like to confirm our commitment to the goals and objectives of this conference and I am also looking forward to hear your views and different experiences in fighting corruption in this segment. I am sure this conference will produce clear and focused outcomes which will help us in our common fight against corruption. Thank you for your attention.
8. Hon. Angelo Farrugia

Honourable Minister of Justice, honourable Deputy Secretary General, honourable President of the Austrian Parliament, honourable Vice President, honourable Ministers, Executive Secretary, esteemed Colleagues, Ladies and Gentlemen,

Good morning. It was with great pleasure that I have accepted to be here today and participate in this conference and particularly in the High-Level Segment. Allow me, therefore, to express my sincerest gratitude to the organizers and the hosts of this conference for the hospitality extended to all participants. Malta has throughout the years done its utmost to uphold the recommendations put forward by GRECO in order to partake in the international battle against corruption on all levels. Although Malta is a small country, we have over the last year progressed tremendously in this sector when a number of decisions were taken and laws were implemented or amended which represent a giant step forward apart from evidencing Malta’s true commitment in defeating or at least diminishing corruption on all spheres. I believe that it is opportune to give you an overview of all the hard work that Malta has done in order to assist in the international fight against corruption.

**Act IV of 2013 (Criminal Code (amendment) Act)**

This Act, drawn up on 14 June 2013 and entered into force shortly afterwards, was intended to amend a number of provisions in the Criminal Code, most of which are directly linked to the offences of corruption and bribery. These amendments have also served to satisfy some of GRECO’s recommendations with regard to Theme I on Incriminations in the Third Evaluation round which should soon come to a close. The punishments applicable to corruption committed in the public sector have been considerably increased and hence the deterrent to commit such offences is now more present and real in Malta. Moreover, when a public officer receives/accepts a bribe in connection with his duties and in accordance with Section 115 of the Criminal Code, these offences shall not be prescribed if this public officer was at the time of the offence a Minister, Parliamentary Secretary, Member of the House of Representatives, Mayor or Local Councillor and the offence involved the abuse of such office. Finally, the Criminal Code (trading in influence) was also amended whereby an increase in punishment was also reflected. Moreover, any thefts, committed by a public officer for his own benefit or that of others, of any Government money, documents or title which would have been entrusted to him owing to his responsibilities and duties, shall now be extended to any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector who knowingly, in the course of his business activities, directly or through an intermediary and in breach of his duties, conducts himself in any manner.

**Protection of the Whistleblower Act**

The enactment of Chapter 527 of the Laws of Malta marks the introduction of the Protection of the Whistleblower Act (the ‘Act’) into the Maltese ‘corpus juris’. All disclosures made after 15 September 2013, shall be afforded protection under the Act. This Act is definitely instrumental in the fight against corruption in that it ascertains the protection of whistleblowers who, in default of the protection provided to them in accordance with this Act, may be easily subjected to situations giving rise to corruption or they themselves could be the victims of corrupt practices for the sake of the protection of others. The Act intends to preclude the eventuality of any detrimental action targeted against the whistleblower ensuing from a genuine disclosure. A whistleblower who makes a protected disclosure is in no circumstance liable to civil, criminal and/or disciplinary proceedings. The protection of the whistleblower is to be ascertained irrespective of the fact that the disclosure has been made in good faith or not, that the perceived threat to public interest had taken place or
not, and/or that the person disclosing such information has duly followed all the requirements stated in this Act. In the event that the whistleblower is the perpetrator or an accomplice in an improper practice, constituting a crime or contravention under any applicable law prior to its disclosure, criminal proceedings against the whistleblower may still be instituted. Disclosures made anonymously do not amount to protected disclosures. A whistleblowing reports unit may, after taking all the information it received into consideration and accounted for the circumstances of the case, discard such information if its content may be considered libellous or defamatory. The Act does not authorize any disclosure of information protected by legal professional privilege and such a disclosure would not amount to a protected disclosure for the purposes of the Act. All internal disclosures are to be made to the designated whistleblowing reporting unit or officer within the organization or authority in question. Internal disclosures may only be made to the head or the deputy head of the organization, deemed as the whistleblowing reporting officer. An external disclosure shall only be protected if an internal disclosure has been made or attempted to be made. External disclosures may be made to the whistleblowing reporting unit of the authority in question if any of the extraordinary possible eventualities enumerated in Article 16 of the Act takes place.

For a better implementation of the Act, the Minister may establish internal procedures which employers must adhere to in their dealing with any disclosure of improper practice committed within or by their organisation and establish procedures which authorities must have in place for receiving and processing external disclosures. He may also designate boundaries of communication between the whistleblowing reporting unit and the whistleblower and lay down rules for the better implementation of this Act.

The Select Committee to make recommendations on the setting up of a Commissioner and Standing Committee on Standards, Ethics and Proper Behaviour in Public Life and the Bill pursuant thereto

Following a private members’ motion presented by the Leader of the Opposition, on 16 October 2013 the House of Representatives unanimously approved a motion moved by the Deputy Prime Minister and Minister for European Affairs providing for the setting up of a Select Committee of the House tasked with making recommendations to the House on the setting up of an Office and a Standing Committee on standards, ethics, and proper behaviour in public life.

The Select Committee, chaired by yours truly and comprised of two members from either side of the House, met three times in 2013 when the members discussed various systems for the regulation of ethics and behaviour in public life in place in other countries such as the UK and Canada. The Committee reached consensus on the setting of an Office of Commissioner and a Standing Committee on standards, ethics, and proper behaviour in public life. A bill was presented to the Committee towards mid-December 2013, following which the Speaker made an interim report to the House. The Committee met a further two times in 2014 to discuss the draft bill presented by the Office of the Attorney General. After agreement to the amended bill, on 24 March 2014, the Speaker made the final report to the House, presenting the draft bill to be considered as the recommendations by the Select Committee. The salient points of the Draft Bill agreed to by the Select Committee are:

- That it be applicable to i) Members of Parliament including Ministers, Parliamentary Secretaries, and Parliamentary Assistants and ii) employees in a position of trust and persons engaged as advisors or consultants to Government and any statutory body.
- The Commissioner for standards, ethics, and proper behaviour in public life would be set up as an independent and autonomous official tasked with examining, and if necessary
verifying such declarations relating to income or assets or other interest or benefits of whatever nature of persons to whom the Act applies who are under a duty to file such declarations and to investigate, on his initiative or on the written allegation of any person, any matter alleged to be in breach of any statutory or any ethical duty of any person to whom the Act is to apply.

- The Commissioner can only investigate allegations not later than two years from the day on which the complainant first had knowledge of the matters complained about.
- The Commissioner shall, as a minimum, annually report to the House of Representatives on the performance of his functions.
- The Standing Committee on Standards in Public Life shall be presided by the Speaker and shall be comprised of two members from either side of the House. Its powers shall be to receive reports made by the Commissioner who finds the person being investigated prima facie in breach of any duty under this Act, and to oversee and scrutinize the work of the Commissioner.
- The Committee has the power to decide on a number of sanctions. In the case of Members of Parliament the Committee may decide that the person investigated be asked to rectify any breach, make an apology in writing to the Committee, make an apology by way of a personal statement on the floor of the House, repay for resources improperly used or be subject to any measure the House may deem fit.

There is absolutely no doubt that the setting up of the Select Committee and the drafting of the bill proposed are essential to assist in the fight against corruption on all spheres including high level sectors where integrity, ethics, and professionalism should always be upheld. Such abidance will certainly ensure that little room is left for corrupt practices.

**The rulings emanating from the Public Accounts Committee (PAC) findings, which are being challenged in the Constitutional Court**

The Public Accounts Committee (PAC) has the power, amongst others, to inquire into matters relating to public accounts as referred to it by the House of Representatives, a Minister or the Director of Audits, and to examine reports and related documentations which are put forward by the Director of Audits. These reports are intended also as a mechanism to further investigate allegations of serious nature, including allegations of corruption and/or bribery offences committed in the public sector. In July 2013, the Auditor General drew up a report entitled ‘An analysis of the Effectiveness of Enemalta’s Corporation’s Fuel Procurement’, which is still being discussed to date. This report was lodged pursuant to investigations and proceedings taken against a number of individuals who held high positions at the Enemalta Corporation or who were involved in the fuel procurement boards in conjunction with Enemalta Corporation after allegations of corruption, bribery, trading in influence, and money laundering were made on their behalf by Mr. George Farrugia. The latter was given a presidential pardon in order to testify and to give full information in connection to these allegations of a criminal nature against these individuals, and which criminal proceedings are also still ongoing. Mr. George Farrugia was called to testify before the PAC, whose Chairperson requested a ruling by the Speaker on whether the presidential pardon issued in Mr. Farrugia’s regard would also be applicable in the course of the PAC proceedings. After reference was made to the relevant rules of procedure and to constitutional case law, it was ruled that what is applicable before the Courts of Criminal Judicature should also apply before the PAC, despite the fact that the presidential pardon did not refer to the PAC proceedings.
Pursuant to this ruling, other witnesses were also called to testify before the PAC, following allegations made in their regard by Mr. Farrugia. Clarifications were requested by these individuals with regard to their position when giving evidence before the PAC, since, in terms of the Constitution of Malta, they have a right not to incriminate themselves apart from having a right to remain silent, particularly in view of the pending proceedings against them. The Speaker’s ruling was requested and he decided that on the same guidelines they would not be compelled to respond to any questions which could incriminate them, whilst being compelled to answer any questions which would not incriminate them in any way. Consequentially, one of the witnesses filed a constitutional case alleging that the ruling given by the Speaker is in breach of the fundamental human rights of the applicant since the latter cannot be compelled to answer any question, and not simply those which could incriminate him, and this with a view to his right to remain silent. The applicant opined that the ruling cannot be applied in his regard, owing to Article 39 of the Constitution of Malta (the right to a fair trial which includes the right not to incriminate oneself and the right to remain silent). This constitutional case is still pending and hence the outcome thereof could have a bearing with regard to the continuation and outcome of the PAC findings in terms of the report duly filed by the Auditor General. It is in the interest of the PAC to get to the bottom of this report and to make all necessary recommendations to ensure that any corrupt practice is eliminated or greatly diminished. In this way, Malta will continue to support the national as well as international fight against corruption.

**Proposed Bill on Political Party Financing**

In January 2012, a private member’s bill was presented to Parliament by Dr. Franco Debono whereby an Act was being proposed on Political Party Financing. The party financing bill, as it shall be referred to from now on, is an all-encompassing bill dealing with various issues related to party financing, including the constitutional status and functions of political parties, rights of association, members’ rights, as well as the legal status of political parties. The bill also proposes the establishment of an internal disciplinary board so as to maintain the discipline of political parties. It also tackles the dissolution of political parties. Part II of the proposed bill regulates the registration of political parties and the requisites required according to this bill to ensure such registration. It also provides for methods of redress in the event that registration is not allowed according to the procedure being proposed in the bill. Part III of the bill refers to the accounting requirements of political parties and stresses on the importance of transparency. Moreover, the Electoral Commission shall also be notified with all relevant information concerning the acquisition and disposal of funds and, in the event of infringement by any political parties in this regard, administrative sanctions may be imposed. In the event of more serious breaches, including false declarations made by the party representatives or by the treasurer collating data about party funding, criminal action may also be taken.

Part IV of the proposed bill regulates the control of donations to registered parties and their members. It enlists non-permissible donors and/or donations, including but not limited to donations made evidently in the expectation of or in return for a specific financial or political advantage, assistance in kind, donation from foreign sources, as well as anonymous donations when the amount of donation exceeds a certain amount. This part also deals with sponsorship as well as the recording of donations made to the political parties. The recording shall take note of the amount being donated apart from details concerning the identity of the donor as well as additional details in the event that the donor is a registered company. Penalties apply in the event of non-compliance with this procedure. Moreover, the bill also regulates weekly donation reports conducted during the election period. Similarly to accounting records, donation reports shall also be submitted to the Electoral Commission. Donation reports shall also be rendered accessible to
the public. Penalties are also applicable under this part of the proposed bill in the event of any breach as indicated. Finally, Part V of the bill deals with miscellaneous matters, and amongst other things proposes amendments to the General Elections Act, the European Parliament Elections Regulations, as well as the Third Schedule of the Local Council’s act so as to be further in line with current trends and the proposed bill on party financing. With regards to the above, Malta’s position on party financing has been evaluated by GRECO which has as its main objective the elimination of corruption and the observation and ratification of the Criminal Law and Civil Law Conventions on Corruption and their protocols. In terms of party financing, GRECO stresses on the importance on transparency of all political party funds concerned and the accessibility of such relevant documentation on a public sphere with very few reservations.

This bill has in fact been evaluated by GRECO and they look forward to the implementation of this bill with some further improvements which have been noted and which shall be duly put forward and proposed. Moreover, the bill was analyzed so as to further accommodate the conformity of the different laws in our country and the EU, as well as to ensure that GRECO recommendations with regard to this bill are fully satisfied. Once these improvements are made, the bill in question will be more transparent and shall prevent the possibility of abuse and corruption on a political level. Moreover, last February the Parliamentary Secretary for Justice, Dr. Owen Bonnici, who was appointed Minister for Justice last week, presented a white paper concerning the above and invited all relevant stakeholders and the general public to submit any comments they may have with regards to the proposal being suggested by the government. The Government of Malta is intent on completing the consultation process by the beginning of summer and implementing and enforcing the bill during the summer months. This will undoubtedly be another essential tool to assist in the fight against corruption both locally and internationally and will ultimately also satisfy GRECO recommendations with regards to the Third Evaluation Round on party financing. Thank you.
9. Mr. Philippe Narmino

Mesdames, Messieurs,

Permettez-moi en premier lieu de remercier les organisateurs de cette conférence de m’avoir invité à participer à cette session de haut niveau et ainsi de vous faire part de l’importance que la Principauté de Monaco accorde à la lutte contre la corruption pour laquelle les autorités monégasques ont mobilisé et continuaront à mobiliser des moyens importants. L’entrée en vigueur à l’égard de Monaco de la Convention pénale contre la corruption le 1er juillet 2007 et par là-même la participation au GRECO a engendré des avancées significatives du droit monégasque dans la lutte contre la corruption. Les évaluations des 1er, 2e et 3e cycles du GRECO ont été le moteur de ces modifications qui pour certaines étaient envisagées de longue date, notamment la réforme de la Justice. Bien que la Principauté de Monaco n’ait pas encore fait l’objet du 4e cycle d’évaluation du GRECO, ses autorités sont d’ores et déjà sensibilisées aux problématiques de la prévention de la corruption au sein du système de justice d’une part, et dans la sphère parlementaire, d’autre part. Bien évidemment, de par leurs fonctions, qu’ils accomplissent une mission de service public ou qu’ils soient investis d’un mandat électif, ces acteurs de la vie institutionnelle ont un devoir d’exemplarité envers les justiciables et les citoyens. Pour m’en tenir au domaine dont j’ai la charge, c’est-à-dire le département de la Justice, j’évoquerai les grandes lignes de l’organisation de la justice à Monaco, les garanties statutaires qui protègent les personnels de justice et les outils de répression mis en place à leur égard en matière de corruption.

1. L’organisation de la Justice

L’indépendance de la Justice est avant tout garantie par la Constitution du 17 décembre 1962. Elle a été renforcée par la réforme de la Justice qui a eu lieu en deux temps : en premier lieu, par l’adoption de la loi n° 1.364 du 16 novembre 2009 portant statut de la magistrature qui améliore la définition et la mise en œuvre des droits et devoirs des magistrats, notamment en créant un Haut Conseil de la Magistrature. Puis, dans un second temps, par la loi n°1.398 du 24 juin 2013 relative à l’organisation et à l’administration judiciaires qui a considérablement modernisé les textes relatifs aux services judiciaires qui étaient alors régis par des textes du 9 mars 1918 et du 15 juillet 1965. Au niveau constitutionnel, l’article 6 confirme la séparation des pouvoirs déjà instituée en 1907 en prévoyant que « La séparation des fonctions administratives, législatives et judiciaires est assurée. » Le titre X de la Constitution consacré à « La Justice » énonce pour sa part en son article 88 que « Le pouvoir judiciaire appartient au Prince, qui par la présente Constitution, en délègue le plein exercice aux cours et tribunaux. Les tribunaux rendent la justice au nom du Prince. L’indépendance des juges est garantie. L’organisation, la compétence et le fonctionnement des tribunaux, ainsi que le statut des juges sont fixés par la loi ». Depuis 2009, la loi n° 1.364 précise la composition du corps judiciaire, définit les droits et obligations des magistrats, institue le Haut Conseil de la Magistrature, fixe les règles en matière de recrutement, de rémunération, d’avancement et de déroulement de carrière, de discipline et de cessation de fonctions des magistrats. En 2013, a été adoptée la loi n°1.398 relative à l’organisation et à l’administration judiciaire. Cette loi systématiser les règles et principes édictés par des textes anciens mais y adjoint des éléments qui tendent soit à moderniser l’organisation de la justice, soit à en faciliter le fonctionnement.

Elle régit à ce titre la Direction des Services Judiciaires. Le Directeur des Services Judiciaires veille à la bonne administration de la justice dont il est responsable devant le Prince seul. A ce titre, il

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dispose, dans le champ de l’administration judiciaire, de compétences comparables à celles dévolues au Ministre d’État pour l’administration générale du pays. Conformément au principe de la séparation des pouvoirs tel qu’appliqué à Monaco- et c’est ici une particularité du système de Justice monégasque- le Directeur des services judiciaires ne siège pas au Conseil de Gouvernement. A ce titre, en application de l’article 46 de la Constitution, les ordonnances souveraines concernant les services judiciaires ne relèvent pas du Gouvernement mais sont prises par le Prince sur le rapport du Directeur des services judiciaires. Ainsi la Principauté de Monaco applique-t-elle les principes constitutionnels de séparation des pouvoirs et d’indépendance de la justice. Cette organisation de la Justice fait une place particulière à la préservation de garanties statutaires des magistrats et personnels de justice.

2. Les garanties statutaires des personnels de Justice

Les garanties d’indépendance et d’intégrité des magistrats, du personnel et des auxiliaires de justice sont anciennes, solides et ont été régulièrement réadaptées. Elles ne peuvent être convenablement mises en œuvre sans l’existence et le respect de composantes nécessaires au système de Justice devant prévaloir dans un Etat de droit. Ainsi, doivent être notamment prévus et respectés les incompatibilités de la fonction de magistrat avec d’autres fonctions ou activités, la collégialité des tribunaux, l’inamovibilité des juges, la séparation de la poursuite et de l’instruction en matière répressive ou encore le double degré de juridiction. Dans un esprit de protection de l’indépendance et de l’impartialité des magistrats, la loi du 16 novembre 2009 prévoit l’incompatibilité de la fonction de magistrat avec l’exercice de toute autre fonction publique, d’une activité privée lucrative, professionnelle ou salariée, ainsi que de tout mandat électif à caractère politique. L’inamovibilité des juges est également prévue et protégée sans compter la collégialité des cours et tribunaux qui à Monaco est une réalité quotidienne à laquelle les juges se confrontent quotidiennement. La séparation de la poursuite et de l’instruction en matière répressive, ou encore le double degré de juridiction sont des principes consacrés par les dispositions des codes ou des lois applicables. S’agissant de l’indépendance et de l’intégrité des magistrats, l’existence d’un organe chargé de veiller à ce que l’équité, l’égalité de traitement et tous les principes qu’un Etat de droit se doit de respecter dans la gestion des carrières de magistrats indépendants soient observés est d’une importance capitale. À Monaco, a été installé en avril 2010, le Haut Conseil de la Magistrature. Cet organe collégial est investi d’un rôle prépondérant dans le cadre de l’administration de la Justice.

Le Haut Conseil est également appelé à exercer le pouvoir disciplinaire à l’égard des magistrats, la procédure disciplinaire étant entourée de garanties renforcées tendant, en particulier, à assurer le respect de son caractère contradictoire. Les éléments fondamentaux de la lutte contre la corruption des magistrats sont donc consacrés au plus haut niveau mais sont aussi inscrits dans la législation secondaire. En effet, l’été dernier, a été pris par le Directeur des Services Judiciaires un arrêté relatif aux mesures destinés à renforcer la confiance des justiciables dans l’intégrité, l’impartialité et l’efficacité des agents des services judiciaires. Aux termes de son article premier, tous les personnels judiciaires – magistrats, greffiers, fonctionnaires et agents relevant de la Direction des Services Judiciaires- sont tenus au respect des obligations prévues par ce texte. Cet arrêté intègre outre des obligations de probité et de discrétion professionnelle, des prescriptions quant aux précautions à prendre pour préserver l’impartialité et la dignité des fonctions afférentes à la Justice. Ce texte réglemente aussi le sujet sensible dit «des cadeaux» et indique le comportement à adopter et les mesures à prendre à cet égard.
3. Des outils de répression dissuasifs

En dehors des procédures et sanctions disciplinaires qu’encourent les magistrats en cas de manquements à leurs obligations statutaires, aux devoirs de leur état ainsi qu’à l’honneur, à la délicatesse ou à la dignité que requièrent leurs fonctions, des sanctions sévères ont été prévues pour les magistrats et autres agents publics du service de la Justice pour des infractions relevant de la loi dite «anti-corruption». Le 9 octobre 2012, a été adoptée la loi portant réforme des codes pénal et de procédure pénale en matière de corruption et de techniques spéciales d’enquête. Cette réforme profonde des codes pénal et de procédure pénale a notamment très précisément défini la notion d’agent public. Les dispositions de cette loi pénale dite anti-corruption s’appliquent aux magistrats et agents des services judiciaires, comme par exemple les greffiers. Les magistrats sont inclus dans la définition de l’agent public donnée au nouvel article 113 du code pénal et sont donc, ainsi que les fonctionnaires et agents de la Direction des Services Judiciaires concernés par toutes les dispositions s’appliquant à ces agents.

Les magistrats, auxquels sont assurées des garanties essentielles pour leur permettre d’assumer au mieux leurs lourdes charges, doivent bien évidemment adopter un comportement exemplaire sauf à encourir des sanctions pénales particulièrement sévères. Les magistrats et les jurés sont en effet considérés comme des agents publics particuliers puisque certaines dispositions de la loi prévoient une aggravation de la sanction pénale en ce qui les concerne. Avant cette réforme de 2012, le Code pénal monégasque comportait une gamme d’incriminations permettant de réprimer la corruption mais le champ d’application de la loi contre la corruption a été élargi de manière significative. Au titre des sanctions, on compte notamment la privation du droit d’exercer des fonctions juridictionnelles, pendant cinq ans au moins et dix ans au plus comme peine complémentaire. D’autres articles du code pénal prévoient l’aggravation des peines dans le cas où les infractions de corruption passive ou de trafic d’influence sont commises par des magistrats (réclusion de 8 à 15 ans et triplement de l’amende encourue, soit un maximum de 270.000 euros).

L’arsenal répressif est donc dissuasif mais prévoit en contrepartie une protection efficace de ces mêmes magistrats lorsqu’ils font l’objet de menaces, de violences, ou de tout autre acte d’intimidation pour qu’ils se prêtent à des actes de corruption. Dans ces circonstances, les auteurs de ces agissements s’exposent à des sanctions particulièrement lourdes. Mesdames, Messieurs, voici les quelques éléments tirés de la situation actuelle de Monaco que j’ai souhaité vous faire partager aujourd’hui. Je vous ai livré ici, avec sincérité, les fruits de l’expérience nationale d’un «petit État» qui a, avec force et volonté, engagé d’importantes réformes tendant à renforcer la lutte contre la corruption. Ces éléments ont d’ores et déjà fait l’objet, pour partie, d’une appréciation positive par le GRECO dans le cadre des trois premiers cycles d’évaluation, le rapport de conformité du 3ème cycle devant être examiné au mois de juin prochain en assemblée plénière. Les enseignements qui seront tirés à l’issue des travaux qui nous occupent aujourd’hui et demain constitueront un guide précieux pour aborder avec confiance l’examen du 4ème cycle auquel Monaco sera ultérieurement soumis.
10. Mr. Marin Mrčela

Dear Minister Brandstetter, dear Deputy Secretary General, dear Vice-President, Ministers, honourable Guests,

Let me start by conveying my sincere thanks and appreciation to the Austrian Chairmanship of the Committee of Ministers of the Council of Europe and the Federal Ministry of Justice of Austria for their initiative to organize this event. It is a pleasure to be with you today in such beautiful surroundings thanks to our host – the International Anti-Corruption Academy. Allow me also to express my gratitude to the Government of Monaco for their financial contribution, which has made this event possible. Ladies and Gentlemen, Winston Churchill once cynically said: “The best argument against democracy is a five-minute conversation with the average voter”. Such conversations are likely to confirm the findings of the Eurobarometer and many other surveys and indices, including those produced by Transparency International, that consistently point at the elevated corruption perception levels and the soaring public disenchantment with institutions which form the very foundations of a democracy. This disenchantment seems largely justified. In a number of GRECO Member States, two professional groups appear to be “in competition” for being acknowledged as the most corrupt by the public: politicians (and political parties) and members of the judiciary.

The low public confidence in politicians and judges, in particular, is generated by what is perceived to be a culture of impunity, and a belief that a blind eye is turned to allegations of misuse of power, nepotism, corruption, lack of transparency, accountability, and integrity, including at the very top level. Corporatism and detachment from the public of such vital democratic institutions as parliaments and courts is also often perceived to be significant and may explain MPs’ and judges’ disregard of critical comments from the public and the media as well as their reluctance to reform. Even where measures to tackle corruption are being pursued, they often fail to yield significant results or impact on citizens’ views regarding the level of misconduct in their country. Parliaments, courts, and prosecution services are institutions of paramount importance for the functioning of and trust in a democracy. They are also supposed to play a pivotal role in the prevention and fight against corruption. It is with the overall goal of strengthening the capacity of MPs, judges, and prosecutors to prevent corruption within their own ranks that GRECO launched its Fourth Evaluation Round in January 2012. On the one hand, this new Round represents the continuation of GRECO’s previous undertakings in the First, Second, and Third Evaluation Rounds. On the other hand, the Fourth Round is a testimony to flexibility and innovation in GRECO’s monitoring methodology. At first glance, it might appear that this new Round is not based on any particular anti-corruption legal instrument. In reality, GRECO’s evaluations are anchored in the fundamental principles and standards for credible and effective democratic institutions as endorsed by the Council of Europe and its “variable geometry” of inter-governmental and inter-parliamentary bodies.

Rather than monitoring compliance with specific provisions of the organization’s anti-corruption treaties and imposing uniform rules, our approach in the Fourth Round has been to evaluate each country purely on its own merits and to design tailor-made recommendations. Since January 2012, a total of 17 evaluation reports have been adopted. Most of those have already been made public and are available on GRECO’s website. Although much more work lies ahead - until all 49 Member States have been scrutinized - several important observations can be made at this stage. First and foremost, despite the different status and role that MPs, judges, and prosecutors play in a democratic society, our analysis of policy and regulatory frameworks demonstrates a high degree of convergence as regards the common challenges that these professional groups face in preventing and averting the risks of corruption. Since the problems encountered are relatively similar, the
recommendations issued by GRECO in respect of each group are often comparable and propose common responses to the problems identified, while preserving the dynamics and specificities of individual country evaluations. Secondly, the Fourth Round reports adopted so far underscore the urgency of regulating conflicts of interest — a most pressing societal and political concern. Clearly, MPs, judges, and prosecutors can be subject to potential or actual conflicts on account of their office and professional duties, past or present. However, in most Member States conflicts of interest are unregulated, and in others, legislative frameworks are so complex or frequently amended that the stability and clarity of legislation are severely undermined. Furthermore, it is not uncommon for regulations to focus on restrictions or prohibitions to the detriment of public disclosure and transparency. Concerning MPs, in particular, their susceptibility to undue influence by third parties, including lobbyists, warrants strong attention. Being a recurrent concern, the prevention and regulation of conflicts of interest are central to most of the GRECO reports adopted so far.

These recommend that the rules in this area balance transparency, trust, and accountability. The lack of due attention to preventive measures and the underestimation of their importance is the third issue that emerges. Although some elements of a corruption prevention policy are in place in many GRECO Member States, a focused policy for systematic prevention and management of corruption risks is frequently absent. As MPs, judges, and prosecutors are often exposed to a variety of risks, of which they are sometimes not even aware, credible systems should aim at early and effective prevention and not rely solely on criminal law and sanctions. For this reason, GRECO has recommended that deliberate policies for preventing and managing conflicts of interest and corruption risks be elaborated and that conflicts of interest be a matter of “soft law” rather than binding regulation. Also preventive mechanisms must be put in place to enable the notification, identification, and timely resolution of actual, potential or case-by-case conflicts of interest for MPs or members of the judiciary. Whether we are talking about hard or soft law, implementation is deemed as vital as regulation. In respect of many of our members, efforts to close the implementation gap need to be considerably stepped up to allow additional progress to occur. Last but not least, a multiplicity of rules and supervisory bodies is not necessarily found to be synonymous with effectiveness or efficiency. According to many GRECO reports, the lack of clear commitment to ethical conduct is marked. Mechanisms for obtaining help, advice or training are limited and the procedures for responding to ethical violations are ineffective.

Evidence from a number of countries suggests, nevertheless, that an integrity culture can pervade public assemblies and the justice system without specific measures being imposed on their main actors. Indeed, understanding what constitutes integrity and the objectives of instilling an integrity culture — be it among MPs, judges or prosecutors - is the essence of GRECO’s Fourth Round. Through its recommendations, GRECO supports the adoption of codes of conduct. These have the advantage of laying down ethical principles and standards of conduct that may otherwise be lacking and are also designed with a view to improving the public image and reputation of the groups under review. To ensure that the texts are fully effective, GRECO recommends that such codes be complemented by training, advice, and counselling. The adoption and enforcement of codes is seen as going hand in hand with guidance and policies for preventing and managing conflicts of interest and corruption risks. Ladies and Gentlemen, Edward Kennedy once said: “Integrity is the lifeblood of democracy. Deceit is a poison in its veins”. The continual re-thinking of the status of MPs, judges, and prosecutors and, in particular, fine-tuning it with the realities and demands of the day is a clearly discernible trend. The relevant adjustments require adherence to the highest integrity standards as well as greater transparency and public accountability. That is precisely what GRECO has been promoting and will continue to promote thanks to its Fourth Evaluation Round! Thank you for your attention!
The judicial administration is headed by the Federal Minister of Justice, Dr. Wolfgang Brandstetter. The Federal Ministry of Justice reports to the Federal Minister of Justice. The Federal Minister of Justice belongs to the supreme administrative bodies of the Federal State and is a member of the Federal Government. He is responsible for the political management, coordination and supreme supervision of the judicial system (including the penal system), together with all associated service units.

The International Anti-Corruption Academy (IACA) is an international organization dedicated to overcoming current shortcomings in knowledge and practice in the field of anti-corruption and seeking to empower professionals for the challenges for tomorrow. Education, professional training, research, technical assistance, international cooperation, and networking lie at the core of its mandate. IACA brings together 59 States Parties and International Organizations and 53 Signatories.

The Group of States against Corruption (GRECO) is a Council of Europe body that aims to improve the capacity of its members to fight corruption by monitoring their compliance with anti-corruption standards. It helps states to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms. Currently it comprises 48 European states and the United States of America.

The Council of Europe is the continent’s leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.