



Groupe d'Etats contre la corruption  
*Group of States against corruption*

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS  
DIRECTORATE OF MONITORING



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

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**Restricted**  
**Greco (2008) 1E Final**

## **Eighth General Activity Report of GRECO (2007)**

**Including a section on Revolving Doors / *Pantouflage***

Adopted by GRECO at its 36<sup>th</sup> Plenary Meeting  
(Strasbourg, 11-15 February 2008)

## Terms of Reference of the report

1. The general activity report of the Group of States against Corruption – GRECO – for 2007 is submitted pursuant to Article 8, paragraph 1, iii) of GRECO’s Statute and Rule 38 of its Rules of Procedure.
2. GRECO has, since 2004, included a section devoted to a substantive issue in its general activity reports, drawing on the wealth of experience it has acquired in specific areas, its impact on national anti-corruption policies and on its ongoing reflection on matters which have given rise to much debate in a number of countries. The section of the present report devoted to revolving doors / *pantouflage* (cf. paras. 44 - 58) was prepared by Ms Jane LEY, Deputy Director, Office of Government Ethics (United States of America).

## Status of GRECO

3. On 18 April 2002, the Committee of Ministers of the Council of Europe adopted Resolution Res(2002)6 authorising the continuation of the Enlarged Partial Agreement establishing GRECO which had been set up on 1 May 1999. Thus, GRECO became a permanent body of the Council of Europe.

## Membership

4. GRECO is an Enlarged Partial Agreement open to the membership, on an equal footing, of Council of Europe member States, non-member States having participated in its elaboration and other non-member States invited to join it. By end December 2007, GRECO had 46 members, making it the Organisation’s biggest enlarged partial agreement : Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, Luxembourg, Romania, Slovak Republic, Slovenia, Spain and Sweden (founding States – 1 May 1999), Poland (date of accession – 20 May 1999), Hungary (9 July 1999), Georgia (16 September 1999), the United Kingdom (18 September 1999), Bosnia and Herzegovina (25 February 2000), Latvia (27 July 2000), Denmark (3 August 2000), the United States of America (20 September 2000), “the former Yugoslav Republic of Macedonia” (7 October 2000), Croatia (2 December 2000), Norway (6 January 2001), Albania (27 April 2001), Malta (11 May 2001), Moldova (28 June 2001), the Netherlands (18 December 2001), Portugal (1 January 2002), the Czech Republic (9 February 2002), Serbia (1 April 2003), Turkey (1 January 2004), Armenia (20 January 2004), Azerbaijan (1 June 2004), Andorra (28 January 2005), Ukraine (1 January 2006), Montenegro (6 June 2006)<sup>1</sup>, Switzerland (1 July 2006), Austria (1 December 2006). **Three new members joined GRECO during 2007**, namely the Russian Federation (1 February), Italy (30 June) and Monaco (1 July).

5. At the date of adoption of the present report, Liechtenstein and San Marino were the only Council of Europe member States not to have joined GRECO.

## Representatives of Members of GRECO and Evaluators

6. The List of representatives appointed by member States appears in [Appendix I](#). For the launch of GRECO’s Third Evaluation Round, at the beginning of 2007, members were encouraged to reflect on the composition of their delegation to GRECO in order to

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<sup>1</sup> Following independence, Montenegro succeeded to all treaties to which the State Union of Serbia and Montenegro was a party, including the Criminal Law Convention on Corruption (ETS No 173) making it *ipso facto* a member of GRECO.

provide expertise in the two themes covered. Evaluation teams were composed of experts from the List of second round evaluators and the List of third round evaluators, prepared in accordance with Article 10 paragraph 4 of GRECO's Statute.

### Meetings

7. GRECO held four Plenary Meetings in 2007 (all in Strasbourg):

GRECO 32 (19-23 March)  
GRECO 33 (29 May – 1 June)  
GRECO 34 (16-19 October)  
GRECO 35 (3-7 December)

8. The Bureau of GRECO met (in Strasbourg) on four occasions in 2007:

Bureau 38 (5-6 February)  
Bureau 39 (11 May)  
Bureau 40 (20-21 September)  
Bureau 41 (16 November)

### First and Second Evaluation Rounds

#### Compliance procedure

9. In 2007, GRECO continued the assessment of the measures taken by its members to implement the recommendations issued during its First Evaluation Round (January 2000 – December 2002). First round compliance procedures were finally closed with respect to Albania, Bosnia and Herzegovina, Czech Republic, Georgia<sup>2</sup> Greece, Hungary, Lithuania, Malta, the Netherlands, Portugal and "the former Yugoslav Republic of Macedonia".

10. GRECO also pursued its assessment of the measures taken by its members to implement the recommendations issued during the Second Evaluation Round (January 2003 – December 2006) and adopted compliance reports in respect of 14 countries (Albania, Belgium, Bulgaria, Croatia, Denmark, France, Germany, Lithuania, Malta, Netherlands, Romania, Spain, Sweden and "the former Yugoslav Republic of Macedonia"). In accordance with the Rules of Procedure, these countries were given a further eighteen months to report on measures taken to implement outstanding recommendations.

11. More generally, GRECO designed and implemented a series of measures with a view to strengthening compliance procedures. They included a review and reinforcement of the role of the rapporteurs who are entrusted with preparing draft compliance reports and presenting them to the plenary and the decision to hold regular *tours de table* on compliance issues. A first *tour de table* was held during GRECO's 34<sup>th</sup> Plenary Meeting (October 2007) and was devoted to the highly topical question of rules and guidelines on revolving doors / *pantouflage*; this event gave rise to the drawing up of the substantive section of this report (cf. paras. 44 - 58). The *tour de table* was structured by

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<sup>2</sup> GRECO's First Round Compliance Report on Georgia had concluded that the level of Georgia's compliance with first round recommendations was unsatisfactory. Pursuant to Rule 32, paragraph 2, al. (i) of GRECO's Rules of Procedure (step 1 of the non-compliance procedure) the Head of the Georgian Delegation had been invited to submit, as from 30 April 2004, regular additional reports on the progress made towards the adoption of the measures required. An Overall Assessment of the information provided by Georgia was adopted by GRECO in October 2005, followed by a Final Overall Assessment adopted in June 2006 which terminated the first round non-compliance procedure in respect of Georgia. In October 2007, GRECO adopted an Addendum to the Final Overall Assessment which concluded the first round compliance procedure in respect of Georgia. The authorities of Georgia authorised the publication of each report adopted throughout this process.

presentations made by intervenors from France, Latvia, the United Kingdom and the United States of America - countries which have detailed regulations in this field. It was particularly designed for members who are in the process of implementing recommendations on movements of public officials to the private sector addressed to them during GRECO's Second Evaluation Round. Other measures to strengthen compliance procedures include the regular monitoring by the Bureau of overall compliance levels as well as the identification of areas where members face common problems when implementing recommendations, in preparation of future targeted *tours de table*/exchanges of views.

### **Evaluation Procedure**

12. All members having joined GRECO after the close of its Second Evaluation Round (i.e. as from 1 January 2003) are subject to so-called Joint first and second round evaluations which cover the whole range of issues addressed during these two rounds. This comprehensive approach – which places a considerable burden on the evaluated countries, GRECO and its Secretariat – is indispensable both for the sake of the equal treatment of all members and in order to gain a clear and accurate picture of the anti-corruption regulatory framework and policies of new members. In this context, GRECO evaluation teams carried out on-site visits to Switzerland (17-21 September) and Austria (19-23 November). Moreover, GRECO adopted, the Joint First and Second Round Evaluation Report on Ukraine at its 32<sup>nd</sup> Plenary Meeting (March 2007). Finally, a detailed schedule was established for joint first and second round evaluations to be carried out in 2008 in respect of members having joined GRECO in 2007 (Russian Federation, Italy, Monaco).

### **Third Evaluation Round**

13. On 1 January, GRECO launched its Third Evaluation Round which deals with two distinct themes: Theme I – *Incriminations* provided for in the Criminal Law Convention on Corruption (ETS 173), its Additional Protocol (ETS 191) and Guiding Principle 2 (Twenty Guiding Principles against Corruption - Resolution (97) 24) and Theme II - *Transparency of Party Funding* (as understood by reference to Recommendation Rec(2003)4 of the Committee of Ministers on common rules against corruption in the funding of political parties and electoral campaigns).

14. The first theme focuses on the transposition into domestic law of key provisions of the aforementioned instruments and in particular of the corruption offences established by these instruments.

15. The second theme covers, *inter alia*, the requirements upon political parties to properly account for and publicise income (including donations and loans) and expenditure, the supervision of parties' routine operations and election campaigns, as well as the enforcement of financing rules and regulations. GRECO expects that the results of this work will contribute to the Council of Europe's efforts to promote democracy and good governance.

16. Considering the highly specialised, technical nature of the themes under evaluation, GRECO focused on the provision of training to Third Round Evaluators, before carrying out its first on-site visits related to this round. Two major training events were held in March and May/June respectively in the form of workshops designed to provide third round evaluators and delegation members with deeper insight into the questions to be covered and to help anticipate certain issues likely to lead to intense debate during the adoption process of the first evaluation reports. Bearing in mind the evaluation questionnaires developed by GRECO and drawing on research, national systems and experience, specialist intervenors signalled issues to which evaluators should be attentive during on-site evaluation visits and when formulating recommendations. The

conclusions of both workshops were reflected in Guidelines produced for GRECO Third Round Evaluators.

17. Following the above-mentioned preparatory work, GRECO conducted the first third round evaluation visits to Finland and the Slovak Republic (11-15 June), Slovenia (2-6 July), United Kingdom (1-5 October), Luxembourg (22-26 October), Iceland and the Netherlands (5-9 November) as well as Estonia (19-23 November) and established a full calendar of visits to be held in 2008. Feedback provided by the delegations of the first four countries evaluated and by the secretariat made it possible to identify examples of good practice for successful third round evaluations and to highlight the important role played by Heads of GRECO delegations in ensuring that evaluators are aware of what is expected of them once they commit to an evaluation.

18. The first reports resulting from the aforementioned visits (Themes I and II) were adopted at GRECO's December Plenary Meeting and concerned Finland and Slovenia<sup>3</sup> These members will be required to report to GRECO on measures taken to implement the recommendations contained in the reports by 30 June 2009. At the said Plenary, GRECO also finalised its consideration of the Third Round Evaluation Report on the United Kingdom (Theme I)<sup>4</sup>.

### **Plenary meetings - other matters**

19. Due to some examples of challenges faced by certain domestic anti-corruption bodies which came to light in 2007 and which suggested that political resolve to fight corruption might be weakening in the countries concerned, it was decided that representatives in GRECO wishing to share information on specific problems they face would be handed the floor by the President at the beginning of each Plenary Meeting.

20. During GRECO 33 a *tour de table* was held – the first in a series to be organised with a view to optimising the use of GRECO as a forum for the exchange of information (including on promising practices in anti-corruption policies, emerging trends, etc). A written record of the principal information provided during the *tour de table* was published on GRECO's web site. The record refers in particular to recent developments in anti-corruption institutions and strategies – including measures taken to raise awareness.

### **Visibility**

21. GRECO members maintained the practice of authorising the publication of Evaluation and Compliance Reports (and Addenda thereto). All published reports are available on GRECO's website. This practice raises awareness of GRECO's work considerably - most importantly, its conclusions and recommendations - particularly in specialised milieus. Moreover, member States are now invited to translate reports into their national language and to make them available to the public.

22. News flashes and press releases are issued regularly on GRECO's homepage and the Council of Europe's Internet portal to announce the publication of Evaluation Reports. Moreover, regarding the two themes selected for GRECO's third round, i.e. *corruption offences* and the *funding of political parties and election campaigns*, GRECO has started a reflection process aimed at a specific public relations approach which identifies and targets interested circles and individuals. It goes without saying that, as evidenced by recent experience, the issue of political financing gives rise to considerable interest,

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<sup>3</sup> The Third Round Evaluation Report on Finland was published on 12 December 2007.

<sup>4</sup> The report as a whole, i.e. covering Theme I and Theme II was formally adopted at GRECO 36 (February 2008).

including from the media. GRECO also disposes of an information leaflet "Monitoring compliance with Council of Europe anti-corruption standards" and a compendium of anti-corruption instruments of the Council of Europe, destined for distribution to the general public.

23. In June, GRECO published its Seventh General Activity Report (2006) – including a chapter on "the protection of whistleblowers" prepared by Mr Paul STEPHENSON, Public Concern at Work (United Kingdom), who had been a member of GRECO's Bureau during the Second Evaluation Round.

24. To mark the International Anti-Corruption Day (9 December), Drago KOS, President of GRECO delivered a video statement, broadcast on the Council of Europe's website, in which he stressed that high levels of corruption still permeated society and public institutions in some of GRECO's members; it was too early to be satisfied with the current state of anti-corruption endeavours in Europe and around the world.

25. Overall, throughout 2007, public interest in GRECO's work and modus operandi – as reflected in press coverage – has been increasing.

### **Cooperation with other bodies of the Council of Europe**

26. GRECO's President presented GRECO's Seventh General Activity Report (2006) to the **Ministers' Deputies** of the Council of Europe during their 998<sup>th</sup> Meeting (Strasbourg, June). He highlighted some concrete examples of areas where GRECO continues to promote essential anti-corruption efforts within its members, indicating that GRECO's published evaluation and compliance reports provide a very comprehensive picture of anti-corruption policies in Europe – and beyond. GRECO's Third Evaluation Round work on the funding of political parties would, he believed, attract considerable public attention and would contribute to the Council of Europe's efforts to promote democracy and good governance. He noted a more healthy intolerance vis-à-vis corruption even in countries which in the past thought of themselves as being "corruption free" but stressed that there was still much room for critical reflection and no reason for complacency. He reminded the Ministers' Deputies that one of the strengths of GRECO's modus operandi was its review, through its compliance procedures, of the manner in which members implement the recommendations that result from evaluations and he hoped members would make more sustained efforts to ensure full implementation of recommendations.

27. GRECO adopted comments on Parliamentary Assembly Recommendation 1792 (2007) on fair trial issues in criminal cases concerning espionage or divulging state secrets which were incorporated in the **Committee of Ministers'** reply to the Parliamentary Assembly (CM/AS(2007)Rec1792 final).

28. The results of GRECO's work have been used to provide input to monitoring missions of the **Parliamentary Assembly** of the Council of Europe (PACE) and have also served as inspiration for other PACE initiatives, including motions for a recommendation on judicial corruption and a recommendation on the protection of whistleblowers. GRECO's Secretariat also participated in a seminar on the activities of the Council of Europe and the Parliamentary Assembly in the field of Rule of Law and Democracy (3-4 December) and in an exchange of views with the PACE Committee on Economic Affairs and Development (2 October).

## Observers

29. The **OECD** has had observer status in GRECO since 2002. In 2007 it was represented at the 32<sup>nd</sup> Plenary Meeting. Members of GRECO's Secretariat attended the following meetings organised by the OECD in the field of corruption:

- OECD Working Group on Bribery in International Business Transactions (Paris, 16-18 January and 18-21 June)
- OECD Expert Group on Conflict of Interest with a Special Session on Lobbying: Enhancing Transparency and Accountability (Paris, 6-8 June)
- OECD Investment Compact : Working Group on Anti-Corruption (Bucharest, 11 September)
- High Level Conference on the Tenth Anniversary of the OECD Anti-bribery Convention : its impact and its achievements (Rome, 21 November).

30. The **United Nations**, represented by the **United Nations Office for Drugs and Crime** (UNODC) has had observer status with GRECO since October 2006. GRECO's Secretariat attended the following meetings organised by the United Nations:

- UNODC Expert Group – Identifying elements of a mechanism to review the implementation of the United Nations Convention against Corruption (Vancouver, 9-11 March)
- Open-ended Intergovernmental Working Group on Asset Recovery (Vienna, 27-28 August)
- Open-ended Intergovernmental Working Group on Review of Implementation of the United Nations Convention against Corruption (Vienna, 29-31 August)

31. GRECO was regularly kept abreast of the ongoing work related to the review of implementation of the United Nations Convention against Corruption and GRECO's Secretariat ensured that the UNODC was appropriately informed of GRECO's monitoring methodology and the results of its work. During its 35<sup>th</sup> Plenary Meeting, GRECO adopted a Communication to the second session of the Conference of States parties to the United Nations Convention against Corruption<sup>5</sup> on review of implementation of the UN convention (Greco (2007) 21E Final) in which the importance of proper review of implementation of international legal instruments in the fight against corruption was underlined. GRECO restated its readiness to offer its knowledge and experience in the field of peer review and to contribute to any efforts aimed at avoiding overlap and duplication and at ensuring that different monitoring processes enhance each other.

## **Memorandum of Understanding between the Council of Europe and the European Union**

32. In line with the steps pursued by the Council of Europe and the European Union through their Memorandum of Understanding to further strengthen their co-operation and to ensure synergies and coherence in their work, GRECO continued to cooperate with the European Commission in the framework of the EU enlargement and neighbourhood policies. The results of GRECO evaluations, including the relevant recommendations, continued to be taken into account by the respective EU services when developing key documents in the context of the aforementioned policies and when granting related financial assistance. In particular, GRECO ensured ongoing interaction with its EU counterparts through:

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<sup>5</sup> Nusa Dua (Indonesia), 28 January to 1 February 2008.

- dialogue and targeted consultations with European Commission officials through participation in and contributions to meetings of experts, as well as meetings with DG Enlargement officials on Regular Reports;
- participation in training activities (e.g. TAIEX seminar in Bucharest to train Romanian officials on instruments for preventing and combating corruption within public administration in the light of GRECO's jurisprudence).

33. Moreover, Mr Franz-Hermann BRÜNER, Director General of the European Anti-Fraud Office (OLAF), participated in an exchange of views with GRECO during the 35<sup>th</sup> Plenary Meeting (December) and presented the scope of action of OLAF and measures against corruption taken by the European Commission. Bearing in mind the Memorandum of Understanding between the Council of Europe and the European Union, it was agreed that possibilities for future exchanges with OLAF and/or other appropriate European Union bodies would be actively explored.

34. Finally, it should be noted that GRECO's Statute and Rules of Procedure as well as the Criminal and Civil Law Conventions on Corruption (ETS Nos. 173 and 174) make provision for the participation of the European Community in GRECO.

### **Cooperation with other organisations and institutions**

35. In May, GRECO held an exchange of views with the Federal Institute of Access to Public Information (IFAI) of Mexico, represented by Mr Alonso Lujambio IRAZABAL, Director and Mr José JARERO, Director of International Affairs. The Institute is an autonomous, decentralised agency of the Federal Public Administration, entrusted with monitoring implementation of the Law on Transparency and Access to Public Government Information, in particular, guaranteeing the right to access public governmental information, protecting personal data held by the federal government and ruling on individual appeals.

36. GRECO was also represented at a number of other events related to its field of expertise, as follows:

- Fifth Global Forum – Fighting corruption and safeguarding integrity (Johannesburg, 2-5 April)
- Conference – Financing political parties and election campaigns, organised by the Stefan Batory Foundation (Warsaw, 26 April)
- Seminar on International Conventions against Corruption organised by the Ministry of Justice of Finland and the Ministry of Justice of the Russian Federation (Moscow, 23-24 May)
- Transparency International Regional Conference (Baku, 31 May) which was attended by Ms Eline WEEDA, member of GRECO's Bureau at the time
- European Commission / Council of Europe Meeting – Preparation of regular reports 2007 (19 June)
- Conference on Transparency and Accountability in Party and Election Financing organised by Transparency International (TI), the Social Science Research Centre Berlin (WZB) and the Ibero-American Institute (Berlin, 12-13 July)
- Training workshop on Practical methods for preventing corruption within public order and public administration staff organised by the European Commission – Directorate-General Enlargement (Bucharest, 10 September)
- Roundtable – No need to prevent corruption in Europe? organised by the State Council and the Commission for the Prevention of Corruption of Slovenia (Ljubljana, 8 October) in which both the Secretariat and the President participated

- G8 Conference of Experts on the Promotion of the Rule of Law (Berlin, 30 November).

37. During the year, GRECO's President took part in high-level discussions with the Minister of Justice of Serbia, a representative of the Administration of the President of the Russian Federation, the US Assistant Attorney General of the Criminal Division and the Director of the Office of Government Ethics. He also participated in an international conference – Fighting corruption, a priority for democracy organised by the Parliament of Portugal and its Committee on constitutional affairs, rights, freedoms and guarantees (Lisbon, 26-27 March) and the 7<sup>th</sup> Annual European Partners against Corruption conference held by the Supreme Command of the Finnish Police (Helsinki, 12-14 December) as well as a meeting with the Council of Governmental Ethics Laws, a meeting on Double standards in a corruptive environment held in Austria and in activities carried out within the UPAC project "Support to good governance: Project against corruption in Ukraine" which is jointly funded by the European Commission and the Council of Europe .

38. In the course of 2007, GRECO's Secretariat also met, *inter alia*, with a group of lawyers from the Icelandic Parliament (11 January), members of the National Assembly of Montenegro (23 January), students from the European Doctoral College of the three Universities of Strasbourg (1 February), Prosecutors from Sweden (5 February), a group of senior editors from Serbia (11 May), the Deputy Minister of the Interior of Ukraine (15 May), lawyers from Georgia (22 May), local government representatives from Donetsk, Ukraine (20 August), members of the Alkmaar Criminal Court, the Netherlands (19 September), a delegation of Members of Parliament from Moldova (26 September), the Head of the People's Democratic Union party from the Russian Federation (1 October), interns from the Human Rights Institute of Catalunya (1 October), Norwegian judges (8 November), trainers of prosecutors from Azerbaijan (13 November), the Minister of Justice of Ukraine (15 November), the Director of the Federal Bureau for Internal Affairs, Ministry of the Interior, Austria, Co-Chairman of the European Partners Against Corruption – EPAC (15 November) and the Head of International Affairs of the Crown Prosecution Service, United Kingdom (30 November).

### **Budget and programme**

39. The Netherlands made a voluntary contribution to GRECO's budget by financing the Start-up training workshop for the Third Evaluation Round on political party funding, held during the 32<sup>nd</sup> Plenary Meeting.

40. During its 33<sup>rd</sup> Plenary Meeting GRECO approved budgetary proposals for 2008 and instructed the Executive Secretary to submit the proposals to the Secretary General. The proposals were subsequently endorsed by the Budget Committee and adopted by the Statutory Committee on 29 November 2007, under the chairmanship of Mr Bruno GAIN, Permanent Representative of France to the Council of Europe who had been elected as the Statutory Committee's new President. Recognition was given to the fact that member States had a high level of confidence in the monitoring carried out by GRECO which they strongly support. It was felt crucial that GRECO be provided with the necessary means to achieve its mission satisfactorily.

41. In this connection, GRECO wishes to express once again its gratitude for the continuous support to its work provided by the Secretary General and the Statutory Committee.

42. At its 35<sup>th</sup> Plenary Meeting, GRECO adopted its Programme of Activities for 2008, as it appears in document Greco (2007) 20 E Final. When proposing the schedule of evaluations to be carried out in 2008, the Secretariat paid particular attention to

ensuring an even distribution of work throughout the year in order to allow for foreseeable planning of the content of plenary meetings over the years to come.

### **Secretariat**

43. The Directorate Generals of Legal Affairs (DG I) and of Human Rights (DG II) were merged to form the new *Directorate General of Human Rights and Legal Affairs (DGHL)* composed of three pillars: the Directorate of Standard-Setting, the Directorate for Legal Cooperation and the Directorate of Monitoring, of which the GRECO Secretariat became a component. Following the creation of a new post - approved by GRECO's Statutory Committee when adopting the budget for 2007 - Mr Michael JANSSEN joined GRECO's Secretariat as an Administrative Officer on 1 June. He was assigned to Section I (cf. organigramme reproduced in Appendix II).

### **Revolving doors / *pantouflage***

**(Jane LEY, Deputy Director, Office of Government Ethics, United States of America)**

44. New approaches in public sector management such as public/private partnerships, contracting out, privatization, and civil service reform, along with expanded employment opportunities and the increase in the use of lobbyists, have changed the relationships of the public service and the private sector and the public's perception of those relationships. The need to maintain the public's trust particularly during periods of change, emphasizes the importance of developing and maintaining systems that address conflicts of interest including those that arise from the movement of public officials to the private sector. GRECO approached this movement of public officials during the Second Evaluation Round through the evaluation of recruitment, retention, codes of conduct and conflicts of interest in public administration.

45. By the end of the second round, a majority of the members evaluated (26 of 40) had received recommendations to establish or enhance their systems for regulating the movement of officials to the private sector. Few members had designed systems to specifically address this movement, although a number had laws that prohibited the disclosure of certain types of information both during and after public service and/or criminal laws that could reach the acceptance of private employment in exchange for an official act.

46. Of the fifteen members who received a recommendation on regulating the movement of public officials to the private sector and who have now gone through a compliance review, only two have satisfied the recommendation. In part, this rate of compliance reflected the time required to develop, adopt and implement appropriate legislation or guidelines. This compliance rate also reflected the difficulties members were encountering in determining how best to approach the issue.

47. At the end of 2007, as a part of an effort to assist members in compliance, GRECO used this topic for a *tour de table* so that members would have an opportunity to share good practices as well as pitfalls. Representatives of members with four different systems made presentations about their systems. France described its system to address *pantouflage* including the role of ethics committees which are to advise administrative bodies on the compatibility of the proposed private activities of their civil servants and subordinate staff. The UK described its general employment prohibitions for Crown Servants that included a prior approval system for individually-tailored modifications to that general prohibition. The U.S. described its criminal and administrative regulation of all executive branch officials for the full range of revolving door concerns: entry into public service with agreements to return to a specific employer; seeking and negotiating for employment while in government service; and representational bars for former public officials. Latvia described its limitations on official

acts for officials who have come into public service from a private sector enterprise and its restrictions on ownership of and activities with entities who hold public contracts. The type, length, and specific purpose for as well as the range of officials covered by each system differed and each member was able to identify both strengths and weaknesses in their systems.

48. What is clear from discussions during the consideration of evaluation and compliance reports and during the *tour de table* is that tailoring a regulatory system to the legal framework and needs of each member presents significant challenges. There is no best model. There are, however, some common considerations in the development or enhancement of any such system.

49. In addition to the fundamental goal of promoting public trust, the most common goals of a system to address the movement of public officials from public service to the private sector are: (1) help ensure that specific information gained while in public service is not misused (2) help ensure that the exercise of authority by a public official is not influenced by personal gain, including by the hope or expectation of future employment; and, (3) help ensure that the access and contacts of current as well as former public officials are not used for the unwarranted benefits of the officials or of others. In some degree, almost any individual who carries out a public function, whether he or she is elected, appointed, or hired under contract, whether serving full-time or part-time, whether paid or unpaid, should be accountable to some standards designed to help meet these goals.

#### *During public service*

50. Effective systems that address the movement of public officials into the private sector must pay attention to the activities of current public officials. A current public official has access to the most up-to-date information, has the most access to other public officials, has official authority and power, and is under more internal and public scrutiny. It is during current service that official information, authority and access can readily be used by an official in hopes of securing a position from a prospective employer or to benefit a future employer. Conflicts of interest can arise, but may not necessarily do so, with an official's agreement to return to or move to a specific private employer, the process of an official's seeking private employment (submitting applications for advertised positions, sending inquiries, proposals or resumes in an attempt to try to develop opportunities), or an official's responding to unsolicited approaches by private employers. A variety of standards and procedures can address these types of potential conflicts and need to be considered in an overall system that addresses the conflicts of current officials. Further, as a part of an integrated system of standards for both current and former officials and in order to promote general acceptance of both, care should be taken to ensure that standards and procedures for the outside employment or non-official activities of current employees logically complement the standards and procedures for the activities for former officials. For example, is it logical to allow (or not prohibit) a current official to have outside employment with a specific enterprise yet prohibit the public official after leaving public service to continue the very same job he had been doing for the enterprise? Or should a current public official be allowed to represent (or not be prohibited from representing) private clients or employers to a public agency, but prohibited from making those same representations after leaving government service? Rarely would standards for the same private employment or activity properly be less restrictive while in public service than after public service.

#### *Post public service (post-service) restrictions*

51. The establishment of any public policy almost always requires a balance of interests. The development of post-service restrictions is no different. During discussions, members indicated that public policies in addition to those involving integrity of public officials, had been or needed to be taken into consideration in developing their

approaches to post-service restrictions. These included the desirability of promoting the recruitment and retention of the most qualified individuals to public service, the ability to access those with specific technical expertise that might not always be immediately available in the civil service, the need for short-term assistance, the expectation of public service as a career, the expectation of periodic changes of senior political personnel as a result of changes in government, the promotion of an exchange of understanding of the public and private sector vis-à-vis one another, and the high value a particular country's society places on free movement in the labour force. Other public policy interests included the need to require some specific commitment to a length of public service in exchange for educational opportunities, the receipt of severance payments for early termination, and/or payments under a pension system. Experience of members shows that systems designed to meet one public policy need not preclude others. The challenge is to strike an appropriate balance.

52. In general, GRECO members used three approaches (or a combination) to address post-service activities. These are (1) prohibitions on employment, either general or for narrowly defined groups; (2) restrictions on representations of private entities by former public officials back to public entities (representational bars); and (3) prior approval of and/or reporting of intended or current post-service activities. Which public officials were subject to the various prohibitions/restrictions/reporting requirements, the type and length of a prohibition/restriction/requirement, and the penalties/enforcement mechanisms varied among the approaches and, in some cases, within each approach.

53. From information in evaluation and compliance reports, at least fifteen members indicated that they utilized employment prohibitions of varying natures and seven members indicated they used representational bars. At least 7 members indicated they had some system that required prior approval, notice and/or reporting of post-service activities. Most, but not all, required that the post-service activity be compensated in order to be restricted or require approval (a probable reflection of the difference in theory between a system that prohibits employment and a system that restricts representations). Most restrictions or reporting requirements lasted from 1 to 3 years, although at least one member had restrictions that could extend to 5 years. The United States noted a representational bar ("switching sides") that could extend for a substantially longer period because bar is tied to the life of the matter that is the subject of the representation.

54. In general, employment prohibitions and representational bars serve somewhat different concerns. Employment prohibitions typically focus on who a former public official can be employed by, not the type of activities in which the person can engage. A general employment prohibition can be used to actually create individually crafted restrictions by requiring officials to seek case-by-case approvals before engaging in employment. Most often, however, employment prohibitions are used to address concerns that arise with the type of function that the individual had engaged in as a public servant. For example members noted specific employment prohibitions for officials who carry out such functions as procurement or contracting oversight, tax officers, inspectors or controllers of banks and members of securities services. Targeted employment prohibitions are described by the type of function carried out by the former official (or employing public agency/department) and the type of entity the individual is prohibited from being employed by. Thus, procurement officials might be prohibited from being employed by any businesses with contracts the officials supervised or controlled, or bank examiners prohibited from being employed by the banks they had audited or reviewed in the past two years. Broadly applied as opposed to targeted employment prohibitions have a more serious effect on recruitment and retention particularly where public service salaries and benefits are not competitive with the private sector or if there is a high degree of uncertainty about whether prior approval for a modification of a general prohibition will be granted.

55. Representational bars focus on what a former official does after public service, not for whom it is. Whether the former official receives compensation for his representational activities is not a necessary element of the restriction. Representational bars that describe which public entities or which position, level or type of public official a former public official may not make representations to can be useful for elected officials, political assistants and senior civil servants when addressing the concern regarding influence and access to current public officials. Subject matter-targeted representational bars can be written to apply broadly across the public service but yet have little impact on the actual post-service activities of most of the public officials to whom it applies. If the former official participated in certain types of matters regardless of where in the public service he or she was employed, then there is a representational bar on those matters (no switching sides). These matters are typically described in general terms but encompass those matters where there is often access to specific information about individuals or businesses or the government's strategy (i.e. investigations; administrative cases; procurement negotiations; audits). The U.S. describes these types of matters as "particular matters involving specific parties in which [the official] has personally and substantially participated [in his official capacity]". Representational bars, while helping to accommodate recruitment and retention concerns, do not directly address the behind-the-scenes assistance that can be offered by former official. They may also require more education and training so that officials and potential employers can fully understand the extent of the restrictions.

56. Establishing an appropriate length of time for the duration of either an employment prohibition or a representational bar is also a challenge and requires a balance of considerations. Length should be reasonable and tied to the purpose of the restriction. How long is it before certain types of information become stale or available to the public generally, or before the special access or treatment that might be shown a former senior official reasonably will no longer occur, or before specific types of matters which were under the former official's supervision should be expected to be resolved? If the length of the restriction is unreasonably long, it has the real possibility of affecting recruitment and retention; it may easily promote cynicism regarding public service conduct standards in general, and may affect enforcement.

#### *Penalties/Enforcement*

57. A variety of penalties and enforcement systems are used and/or are available for the conduct of current as well as former officials. These include, individually or in combination: criminal sanctions, civil forfeiture, administrative and judicially imposed fines, and specific penalties set forth in employment contracts. In addition, disciplinary sanctions are available for current and in some instances for former officials; reduction or elimination of early termination (severance) payments or pensions could be available for former officials. Current and former officials who engage in activities requiring a license (such as the practice of law) may be subject to sanction from the licensing authority and both can be struck from eligibility lists. Damage to personal reputation through unflattering attention of the press and public opprobrium is always a possible consequence for any public official but it may be the only consequence for public officials subject to aspirational codes of conduct with no formal enforcement mechanisms.

58. The need for appropriate systems to address the movement of individuals in and out of public service is and will continue to be a concern for all members. The complexity and the changing nature of modern governments assure that. Experiences of GRECO members show that there is no 'best' solution to addressing this movement; there are significant challenges in creating and maintaining any appropriate system that meets this need. GRECO continues to watch with interest as members develop their systems; those with systems in place can always learn from the creative solutions of others.

59. *In GRECO's view, this chapter will no doubt be of major interest to a large audience, including policy makers and academics. It very much hopes that its members will arrange for the chapter to be translated into their national language, where appropriate, and to be disseminated as widely as possible.*

#### **Information on GRECO**

60. Information on GRECO and its activities are available on the GRECO website [www.coe.int/greco](http://www.coe.int/greco) (including the full text of the adopted Evaluation and Compliance Reports and Addenda thereto) and in a leaflet which can be requested from the Secretariat.

**APPENDIX I / ANNEXE I**

**LIST OF REPRESENTATIVES IN GRECO /**  
**LISTE DES REPRESENTANTS AU GRECO**

At / au 17/12/2007

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Edif. Adm. de l'OBAC

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Ms Wendy PRINCE

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**OBSERVER: UNITED NATIONS, represented by the UN Office on Drugs and Crime  
(UNODC) / OBSERVATEUR: NATIONS UNIES, représentées par l'Office des Nations Unies  
contre la Drogue et le Crime (ONUDC)**

Mr Dimitri VLASSIS

Chief

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Division for Treaty Affairs

Mr Oliver STOLPE

Anti-Corruption Unit and the Global Programme  
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UNODC

United Nations office on Drugs and Crime  
Rule of Law Section, Division for Operations

**APPENDIX II / ANNEXE II**

**SECRETARIAT – ORGANIGRAMME**

Wolfgang Rau, Executive Secretary  
Björn Janson, Deputy to Executive Secretary  
Elsbeth Reilly, Personal assistant  
Penelope Prebensen, Administrative assistant

**Central Office**  
Logistics of evaluation procedures  
Marie-Rose Prevost      Penelope Prebensen, Head      Laure Heim

**Section I**  
Björn Janson, Head  
Laura Sanz-Levia  
Michael Janssen  
Marie-Rose Prevost, Assistant

**Evaluation and compliance procedures in respect of:**  
Albania  
Bosnia and Herzegovina  
Croatia  
Denmark  
Estonia  
Finland  
Hungary  
Iceland  
Ireland  
Italy  
Malta  
Montenegro  
Poland  
Russian Federation  
Serbia  
Slovenia  
Spain  
Sweden  
"the former Yugoslav Republic of Macedonia"  
Turkey  
Ukraine  
United Kingdom  
United States of America

**Section II**  
Christophe Speckbacher, Head  
Tania Van Dijk  
Laure Heim, Assistant

**Evaluation and compliance procedures in respect of:**  
Andorra  
Armenia  
Austria  
Azerbaijan  
Belgium  
Bulgaria  
Cyprus  
Czech Republic  
France  
Georgia  
Germany  
Greece  
Latvia  
Lithuania  
Luxembourg  
Moldova  
Monaco  
Netherlands  
Norway  
Portugal  
Romania  
Slovak Republic  
Switzerland