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## Corruption as a threat to the rule of law

### Committee Opinion<sup>1</sup>

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Mr Arcadio DÍAZ TEJERA, Spain, Socialist Group

### A. Conclusions of the committee

1. The Committee on Rules of Procedure, Immunities and Institutional Affairs congratulates the rapporteur of the Committee on Legal Affairs and Human Rights, Ms Mailis Reps, on her well-balanced and comprehensive report, and supports the proposed draft resolution and draft recommendation.
2. Corruption is a complex phenomenon, especially when it takes place at a political level. Combating corruption is a long-term effort which cannot be addressed through law-making alone. The committee agrees with the report's conclusion that the necessary legislative improvements must be accompanied by an evolution of the general cultural attitude towards corruption, which must be clearly recognised as an intolerable practice and a major threat to the rule of law. Parliamentarians have a duty to set an example by respecting both the letter and the spirit of the law in good faith.
3. Given the need to consolidate the Council of Europe global action against corruption, the Rules Committee wishes to propose some amendments to further strengthen the draft resolution and the draft recommendation.

### B. Proposed amendments

#### *Amendment A (to the draft resolution)*

In the draft resolution, paragraph 3, replace the words “must be in the forefront” with the words “must remain at the forefront”.

#### *Amendment B (to the draft resolution)*

In the draft resolution, after paragraph 4, add the following paragraph:

*“The Assembly welcomes the decision of the Secretary General of the Council of Europe to make the fight against corruption one of the priority activities of the Council of Europe for 2014-2015, also as part of a broader effort to restore public confidence in the efficiency of democratic institutions.”*

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1. Reference to committee: Bureau decision, Reference 3915 of 5 October 2012. Reporting committee: Committee on Legal Affairs and Human Rights. See [Doc. 13228](#). Opinion approved by the committee on 24 June 2013.



*Amendment C (to the draft resolution)*

In the draft resolution, paragraph 5, at the end of the last sentence, add the following words:

*“, with special emphasis on the implementation of recommendations emanating from GRECO’s Fourth Evaluation Round focusing on corruption prevention in respect of members of parliament, judges and prosecutors.”*

*Amendment D (to the draft resolution)*

In the draft resolution, at the end of paragraph 5, add the following sentence:

*“The Assembly welcomes GRECO’s intention to address the gender dimension of corruption and to mainstream gender equality into its anti-corruption monitoring activities, as a part of the overall effort to strengthen democracy, the rule of law and human rights for the benefit of all.”*

*Amendment E (to the draft resolution)*

In the draft resolution, at the end of paragraph 8, add the following sentence:

*“The Assembly is committed to continuing to detect new trends regarding transparency and corruption risks in parliaments, in partnership with non-governmental organisations (NGOs) and civil society, and to providing national parliaments with suitable safeguards.”*

*Amendment F (to the draft resolution)*

In the draft resolution, after paragraph 8, insert the following paragraph:

*“The Assembly decides to further strengthen its co-operation with GRECO in order to improve the implementation of the recommendations contained in its reports on the observation of elections, notably through a better exchange of information regarding regulation and practice relating to the financing of election campaigns.”*

*Amendment G (to the draft resolution)*

In the draft resolution, at the beginning of paragraph 11, add the following sentence:

*“The Assembly recalls that the respect of the principle of leadership and duty of exemplarity incumbent on members of the Assembly would represent a small but essential step towards restoring confidence in democratic institutions.”*

*Amendment H (to the draft resolution)*

In the draft resolution, after paragraph 11, insert the following paragraph:

*“The Assembly resolves to strengthen the interparliamentary dimension of the fight against corruption, by promoting a co-operation platform with the aim of:*

- promoting the ratification and implementation of Council of Europe conventions and recommendations on the fight against corruption, in particular GRECO recommendations, among national parliaments;*
- taking stock of national anti-corruption initiatives, sharing good practices and brainstorming together on new working methods and approaches to tackling corruption effectively;*
- collecting information about the ongoing activities of the Council of Europe anti-corruption bodies, the initiatives of other key international players in the anti-corruption field, and statistical and correlation data from NGOs and civil society related to a given country or corruption trends in specific areas.”*

*Amendment I (to the draft recommendation)*

In the draft recommendation, paragraph 2, replace the words “The Assembly recommends that the Committee of Ministers” with “For years, the Committee of Ministers and the Parliamentary Assembly have been demonstrating a strong political determination to fight corruption. Therefore, the Assembly recommends that the Committee of Ministers”.

*Amendment J (to the draft recommendation)*

In the draft recommendation, after paragraph 2, insert the following paragraph:

*“In order to respond effectively to today’s and tomorrow’s challenges, it also invites the Committee of Ministers to reassess and consolidate the Council of Europe strategy in the field of the fight against corruption, which represents a core area and key strength of the Organisation, by:*

- taking stock of current achievements and pitfalls, clearly identifying priorities for action and measuring their implementation;*
- empowering relevant Council of Europe bodies such as GRECO to contribute to the effective implementation of the new strategy, by revising its mandate if need be;*
- mainstreaming anti-corruption in various Council of Europe activities and programmes, such as education for democratic citizenship, social cohesion, media, sport, etc.”*

*Amendment K (to the draft recommendation)*

In the draft recommendation, after paragraph 2, insert the following paragraph:

*“Moreover, it invites the Committee of Ministers to carry out a comprehensive evaluation of the existing co-operation between the Council of Europe and other international organisations, such as the United Nations, the Organisation for Economic Co-operation and Development (OECD) and the European Union, with a view to creating new synergies and avoiding a potential overlapping of activities.”*

*Amendment L (to the draft recommendation)*

In the draft recommendation, after paragraph 2, insert the following paragraph:

*“The Assembly asks the Committee of Ministers to consolidate further co-operation between the European Union and the Council of Europe in the fight against corruption, in particular by inviting the European Union to join the Criminal Law Convention on Corruption (ETS No. 173) and speeding up the negotiations on the participation of the European Union in the Group of States against Corruption (GRECO), in order to contribute to more co-ordinated anti-corruption policies in Europe. Moreover, recalling its Opinion 284 (2013) on budgets and priorities of the Council of Europe for the biennium 2014-2015, the Assembly asks the Committee of Ministers to ensure that joint programmes are further developed, are based on a suitable and stable system of financing and include a parliamentary dimension.”*

*Amendment M (to the draft recommendation)*

In the draft recommendation, after paragraph 5, insert the following paragraph:

*“Finally, having regard to the growing need for a Europe-wide regulatory framework in respect of lobbying, the high level of expertise of the Council of Europe’s specialised bodies, the extensive studies already carried out and the solid data collected by them on lobbying, the Assembly invites the Committee of Ministers to launch a feasibility study on lobbying in the light of which a further standard-setting work could be considered. This would be an excellent opportunity for the Council of Europe to take a leading role and gain in visibility as the guardian of human rights and democratic values.”*

**C. Explanatory memorandum by Mr Díaz Tejera, rapporteur for opinion**

**1. Introduction**

1. The rapporteur welcomes the report by Ms Mailis Reps aiming to boost anti-corruption action Europe-wide, as well as the decision of the Secretary General of the Council of Europe to make the fight against corruption one of the leading activities of the Organisation and a budgetary priority for 2014-2015. In his recent communication “Democracy, Human Rights and the Rule of Law in Europe: strengthening the impact of the Council of Europe’s Activities”, released on 7 May 2013, the Secretary General detailed his will for action by pointing to a “lack of effective supervisory mechanism regarding the funding of political parties and election

campaigns; ineffective application of legislation due to lack of detection, prosecution and punishment of corruption; limited criminalisation of bribery of parliamentarians and other members of domestic assemblies, excessive immunities, ...”.

2. In recent years, the revelation of repeated scandals in numerous Council of Europe member States has contributed to citizens’ increasing distrust of politicians and, by extension, of the political institutions. It is interesting to note that in France the word for “a politician” has become pejorative and has been replaced by other synonyms. Moreover, the distrust initially centred on the political forces in power is now related to political forces and institutions as a whole notwithstanding the political alternation which may occur.<sup>2</sup> Corruption, aggravated by numerous politico-financial scandals which almost all European countries have faced over the last decade, is one of the factors fuelling the lack of confidence towards the political class and democratic institutions. The Assembly has been sounding the alarm about this since 2007.<sup>3</sup> Corruption in decision-making hurts, but it could also kill when health risks are voluntarily underestimated, permission for exploitation is delivered amid security gaps and so forth.<sup>4</sup>

3. The political area has been for centuries a place where money has converged with power. The close ties between political parties, business, trade unions and government institutions have existed for a long time. However, in the context of a difficult economic context, unemployment and impoverishment, the level of tolerance of the population towards the misuse of power by politicians has become low. More than ever before the political elite and people’s representatives have a duty to set an example.

4. Ironically, lack of confidence and mistrust is also a positive sign as it bears witness to citizens’ political maturity. Numerous accountability initiatives have been put in place by civil society. People are more attentive to discordance between election promises and subsequent policies and know their rights better.<sup>5</sup> The Council of Europe has to use this momentum to strengthen its efforts in fighting corruption, though some adjustment may be required in order to be able to anticipate, prevent, and react quickly and adequately to challenges.

5. The rapporteur would therefore like to take stock of the Assembly’s initiatives aimed at greater transparency of its members, before coming up with some additional proposals concerning the Council of Europe institutional action to be specified in the draft recommendation and the draft resolution. The present opinion also allows the Rules Committee to provide a number of observations on the programme of the Organisation for 2014-2015 as far as the fight against corruption is concerned. The programme was presented by the Secretary General on 30 April 2013 leaving the Assembly unable to comment on it when debating [Opinion 284 \(2013\)](#) on budgets and priorities of the Council of Europe for the biennium 2014-2015.<sup>6</sup>

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2. These findings are reflected in public opinion surveys. In almost all the European Union countries surveyed in Transparency International’s Global Corruption Barometer 2010/11, political parties were rated as the most corrupt sector by the public. The only exceptions were Bulgaria (where the judiciary was rated as most corrupt) and the Netherlands, Norway and Switzerland (where the private sector was rated as the most corrupt). Recent revelations regarding party funding have led to investigations, for example in the case of alleged illegal election campaign donations by L’Oreal heiress Lilliane Bettencourt to the French Union for a Popular Movement Party, or the alleged irregularities by the former accountant of the Popular Party in Spain.

3. [Resolution 1547 \(2007\)](#) on the state of human rights and democracy in Europe, [Resolution 1746 \(2010\)](#) on democracy in Europe: crisis and perspectives, [Resolution 1888 \(2012\)](#) on the crisis of democracy and the role of the State in today’s Europe.

4. “The World Bank estimates that more than \$1 trillion are paid in bribes every year, the largest of which are to obtain state contracts and monopolies. The UN Office on Drugs and Crime estimates that multinational criminality moves \$2.1 trillion per year across borders, enabled by the active collusion or passive inattention of regulators. The Tax Justice Network estimates that governments lose \$3.1 trillion per year because of tax evasion, disproportionately by those with the resources to sway policy makers or public servants. By comparison, meeting the much-vaunted Millennium Development Goals – eradicating extreme hunger and poverty, establishing universal primary education, reducing child mortality by two-thirds, reducing maternal mortality by three-quarters, halting the spread of HIV and malaria, halving the proportion of people without access to clean water and sanitation, and promoting gender equality in schools and the workforce – would cost no more than \$481 billion in development”, the Global Organization of Parliamentarians Against Corruption (GOPAC), “Parliamentarians and NGOs to work together to fight political corruption”.

5. A tougher line has been recently taken by a French national court which imposed a harsher prison sentence than the one required by the prosecutor against a local elected representative who diverted public funds to attract voters.

6. The Secretary General of the Council of Europe submitted his priorities for the biennium late – on 22 April 2013 – leaving the Assembly’s general rapporteur on the budget insufficient time to prepare a detailed opinion on both the budget and the programme of the Council of Europe for 2014 and 2015 and on the expenditure of the Assembly, for adoption by the Rules Committee at its meeting during the April 2013 part-session.

## 2. Assembly work on transparency, accountability and integrity

6. Recalling the Assembly's previous resolutions and recommendations dealing with different aspects of the fight against corruption referred to in the draft resolution presented by the Committee on Legal Affairs and Human Rights, the rapporteur would like to shed light on the Assembly's work regarding its own rules on transparency, accountability and integrity. When dealing with questions of democracy and the fight against corruption in the 2000s, the Assembly underlined on several occasions the need for parliamentarians to declare financial interests. As a consequence, [Resolution 1554 \(2007\)](#) on conflict of interest was adopted in 2007 introducing into the Assembly's Rules of Procedure an obligation for all Assembly rapporteurs to orally declare any professional, personal, economic or financial interests which might be considered relevant or conflicting with the subject of the report. Moreover, all members are encouraged to make an oral declaration when speaking on a topic on which they have a professional, personal, financial or economic interest which might be considered as relevant or conflicting. In 2006, a code of conduct for the Monitoring Committee co-rapporteurs was adopted. Subsequently, it was decided to set up a framework regulation for all Assembly members to address issues of gifts, provide for suitable safeguards against acceptance of hospitality in return for political favours as well as to regulate the activities of interest groups. The code of conduct for the Assembly members was adopted in 2012.<sup>7</sup> Having regard to the different regulation levels existing in national parliaments and the Assembly's multicultural environment, the code of conduct brought together the principles and policies which could be shared by all members regardless of their ideological or political position. It is composed of general principles which provide a benchmark for expected behaviour, and a set of rules which notably deal with issues such as conflict of interest, requiring such conflicts to be resolved in a way that protects public interest, or disclosed if not resolved, and putting a ban on paid advocacy. Moreover, gifts and similar advantages received by members have to be registered with the Secretariat of the Assembly if their value is higher than 200 euros.<sup>8</sup> An enforcement mechanism has also been set up giving the President of the Assembly a leading role in launching investigations and deciding on sanctions, based on the seriousness and the reliability of information regarding fraudulent conducts.

7. However, the requirement to declare or register gifts, hospitality and conflict of interest is not a magic solution.<sup>9</sup> No written rules can prevent shenanigans if a person is not willing to comply with rules in good faith. Therefore, the primary duties of elected representatives which may lead to restoring public confidence amid the tumultuous context of crisis, is to be at the forefront of the fight against corruption by setting an example and not contravening the rules of fair play on which the European model of democracy is based.

8. The Council of Europe's Group of States against Corruption (GRECO) touched upon the very functioning of the political system when it decided to address the issues of the financing of political parties and corruption in parliaments in the framework, respectively, of its Third and Fourth Evaluation Rounds. The first evaluations of the Fourth Round have already identified some effective prevention measures such as the increasing transparency of the parliamentary process and the greater use of new technology to ensure greater public access to draft laws and to parliamentary business; as well as some problematic areas, notably the participation of interest groups in parliaments' work and parliamentarians' accountability with regard to contact with such groups.

9. The issue of lobbying was also studied by the Rules Committee during the elaboration of the code of conduct for Assembly members. Most modern parliaments are moving towards greater control of outside influence, recognising that abuses can occur. A recent survey claimed that "about 80% of all amendments launched" in the European Parliament stemmed directly from interest representatives and "the inspiration behind 20% often came from outside Parliament". A number of parliaments have introduced a register for lobbyists. However, a 2009-2010 study by Transparency International France pointed to the mismatch between the number of groups registered officially and the number of groups which were genuinely involved in

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7. See [Resolution 1903 \(2012\)](#) on a code of conduct of members of the Parliamentary Assembly: good practice or a core duty? and the report by the Committee on Rules of Procedure, Immunities and Institutional Affairs, [Doc. 13000](#).

8. Following a recent decision of the Bureau of the European Parliament, it was decided to go beyond the initial request to declare gifts of hospitality exceeding 150 euros to impose the declaration regardless of the value. It was partly decided in order to reduce the administrative burden of putting monetary value on gifts and accommodation.

9. Solutions are usually put in place as a consequence of a scandal revelation and do not often lead to the expected results. The Code of Conduct of the European Parliament has been adopted following corruption claims by the *Sunday Times*. Public opinion on the sudden release of the private assets of members of the French Government, following a tax evasion scandal involving a minister, was divided: unprepared for such revelations, some tried to accuse of dishonesty both wealthy members of the government and those who declared little. Generally speaking, transparency has to be dealt with cautiously. In countries with a weak separation of powers, transparency in the funding of political parties and NGOs could be used by the executive against the opposition.

the preparation of a report. Moreover, an attempt by some MEPs to introduce a legislative footprint requiring names of those who contribute to the drafting of a report to be made public met with opposition from several parliamentarians who wanted to protect their source of information.

10. This shows that lobbying is a complex issue and that the modalities of interaction between members of parliament and interest groups are undergoing a transformation aimed at exploring how lobbying and informed decision making can best be balanced with the need to safeguard public interest and ensure a level playing field among all stakeholders. New rules have been introduced in some European countries but their impact is still to be measured.<sup>10</sup> The rapporteur recalled the Assembly [Resolution 1774 \(2010\)](#) on extra-institutional actors in a democratic system following which the Venice Commission has decided to carry out a special study on the topic,<sup>11</sup> as well as the [Recommendation 1908 \(2010\)](#) on lobbying in a democratic society (European code of good conduct on lobbying). The Assembly is committed to continuing to identify corruption trends in this area, reflecting upon suitable solutions and keeping its Rules of Procedure up to date.

11. As GRECO recently underlined, there is “a growing demand in Europe and elsewhere for the establishment of regulatory frameworks in respect of lobbying”. In the rapporteur’s view, it would be regrettable if the Committee of Ministers did not use this momentum to consider the feasibility of a study in light of which a need for further standard-setting work could be considered. The issue of lobbying represents a core expertise of the Council of Europe, where it can take advantage of the extensive work already done and the solid data collected by its organs (GRECO, Venice Commission), and make use of its excellent network of experts representing governments, parliaments, interest groups and NGOs, to acquire high visibility and play a leading role among other international institutions by adopting the first comprehensive document on lobbying.

### **3. Inventory of the Council of Europe Programme of Action against corruption**

12. As rightly pointed out by Ms Reps in her report, corruption is an enormous obstacle to the realisation of human rights protection; it leads to a lack of democracy and the ineffectiveness of the rule of law. The ongoing reform of the Council of Europe, launched by the Secretary General aimed at reinforcing the impact of Council of Europe activities, provides an opportunity to discuss whether the Council of Europe needs to reconsider its anti-corruption strategies, given the multidisciplinary dimension of the problem.

#### **3.1. New institutional architecture**

13. Today, the anti-corruption action of the Council of Europe is divided amongst the standard-setting activities run by intergovernmental committees, technical assistances implementing mainly the European Union–Council of Europe joint projects and monitoring mechanisms with the leading role held by GRECO which involves all 47 Council of Europe members, as well as the United States of America and Belarus (and Kazakhstan as a new potential partner). Many Council of Europe organs are working towards the eradication of corruption from different perspectives and in a mutual enriching environment.<sup>12</sup> It is to be regretted that such a potentially comprehensive approach is not used to its full extent. Indeed, corruption represents a multifaceted phenomenon rooted in a non-competitive political environment, a weak system of checks and balances, insufficient opposition rights, lack of transparency in the decision-making process, including unfair lobbyist activities, and unclear regulations of political parties and election campaigns. A strong and tailored approach to a given problem would require a normative dimension, proper risk assessment and implementation strategies being envisaged simultaneously throughout the three pillars of government. Such a co-ordinated, transversal approach has already been adopted by the Council of Europe in such domains as counter-terrorism, child protection and Internet governance. Moreover, the Council of Europe has to regularly take stock of potential areas of co-operation with other international entities such as the United Nations Convention against Corruption (UNCAC) review mechanism, the Organisation for Economic Co-operation and

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10. Following a recent lobby scandal in the House of Commons, the British Government decided to bring forward a bill to introduce a statutory register of lobbyists before the summer recess.

11. Venice Commission, report on the role of extra-institutional actors in the democratic system (lobbying), CDL-AD(2013)011, 22 March 2013. This report analyses the various lobbying regulation systems and their advantages and disadvantages. See also report on the legal framework for the regulation of lobbying in the Council of Europe member States, CDL-DEM(2011)002.

12. GRECO, Moneyval, Venice Commission, the European Commission for the Efficiency of Justice, European Committee on Crime Problems, European Committee on Legal Co-operation, the Congress of Local and Regional Authorities of the Council of Europe, and others.

Development (OECD), the EU anti-corruption reports and the work on ethics of parliamentarians of the Organization for Security and Co-operation in Europe (OSCE) in order to reinforce view sharing and avoid the duplication of efforts.

### **3.2. A need for a new anti-corruption Council of Europe action plan**

14. The Council of Europe's anti-corruption strategy goes back to the 1990s and is based on "The Programme of Action against corruption" adopted in 1995 and "the Twenty Guiding Principles for the Fight against Corruption" adopted in 1997. "The Programme" was drafted by a Multidisciplinary Group on Corruption and included a detailed working programme for 1996-2000 encompassing the drafting of the Criminal Law Convention on Corruption<sup>13</sup> and the Civil Law Convention on Corruption<sup>14</sup> with possible additional protocols, the European Code for Public Officials<sup>15</sup> and a recommendation on the financing of political parties.<sup>16</sup> Today, the legal instruments in force represent a benchmark and inspire national legislations. In addition, several studies listed in the Programme of Action in areas such as immunities, the role and responsibility of journalists and criminal law sanctions and measures have already been carried out by Council of Europe bodies.

15. In spite of its numerous anti-corruption tools, corruption is still very present in many member States. Therefore, it is necessary to take stock of the current context and to address today's challenges with regard to member States' needs and requirements. The proposed inventory and the consolidation of the anti-corruption plan is in line with the Secretary General's proposal for better evaluation and processing of data to allow for the detection of topics of general concern or a specific country priority and to set an action accordingly.<sup>17</sup> While implementing its anti-corruption standards, the Council of Europe shall consider governments' strategic priorities and valorise targeted assistance programmes leading to results being proven sustainable over time, while, at the same time, focusing on long-term perspectives. Anti-corruption efforts often take generations to bear fruit; emphasis must therefore be placed on maintaining these efforts.

16. If need be, the current monitoring mechanisms have to be given the necessary competences to contribute efficiently and credibly to the implementation of the new action plan. For instance, it should be noted that today GRECO's scope of action is based on a mandate negotiated in 1999.<sup>18</sup> Therefore, the GRECO statute adopted in 1999 could be amended to fit the new Council of Europe anti-corruption strategy and to respond to current criticism pointing to the limited visibility of the intergovernmental GRECO evaluation process and its follow-up mechanisms, the limited monitoring areas and the inability to identify corruption trends due to the lack of comparative analysis.<sup>19</sup>

## **4. Co-operation with the European Union**

17. In 2007, the Council of Europe and the European Union concluded a Memorandum of Understanding inviting both institutions to develop mid- and long-term common strategies and co-ordinating operational activities in priority areas, including the fight against corruption. The current results of GRECO's evaluation and compliance procedures serve as a source of input to European Commission progress reports for candidate and potential candidate countries as well as progress reports on the implementation of the European Neighbourhood Policy Action Plans.

### **4.1. European Union membership in GRECO**

18. The need for more synergy between the two organisations has been proclaimed several times by both the Secretary General of the Council of Europe and the President of the Assembly. Formal participation of the European Union in GRECO has reappeared on the agenda since the adoption by the European Union of the 2010 Stockholm Programme and publication of the European Commission's "Anti-corruption package" in June

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13. ETS No. 173, adopted in 1999 and entered into force in 2002.

14. ETS No. 174, adopted in 1999 and entered into force in 2003.

15. Recommendation No. R(2000) 10 of the Committee of Ministers on codes of conduct for public officials.

16. Recommendation Rec(2003)4 of the Committee of Ministers on common rules against corruption in the funding of political parties and election campaigns.

17. See Communication by the Secretary General "Democracy, Human Rights and the Rule of Law in Europe: strengthening the impact of the Council of Europe's Activities", 7 May 2013.

18. According to Article 2, "Function of the GRECO" – Appendix to Resolution (99) 5 – GRECO's competences are limited to the monitoring of the Guiding principles and the Programme of Action.

19. Communication from the Commission to the European Parliament, the Council and the European and Social Committee "Fighting Corruption in the EU" COM(2011)308 final.

2011. This has been welcomed by GRECO whose statute has provided for such participation from the outset. However, the controversy was recently triggered at EU level by the Commission's recent Communication on participation in GRECO<sup>20</sup> where the European Commission proposed a two-stage approach requesting firstly "a full participation status" which would grant the European Union involvement in the evaluation of its member States and/or candidate countries without however being itself subjected to GRECO's evaluation procedure.

19. This issue has to be resolved soon so that both organisations can start concrete talks on the precise format and content of such participation. Participation of the European Union in GRECO would contribute to more co-ordinated anti-corruption policies in Europe and strengthen the impact of the European Union's and GRECO's respective anti-corruption endeavours. The rapporteur recalls that the 2007 Memorandum of Understanding confirmed the role of the Council of Europe as the benchmark for human rights, democracy and the rule of law in Europe, stipulates the need for coherence between the two organisations' legal norms in the fields of human rights and fundamental freedoms. Moreover, while decisions taken at European Union level have an increasing impact on the European continent due to the increase in the European Union's membership and legal competencies, the European Union itself has shown itself not immune to corruption: according to a European Commission study, 73% of those interviewed in the EU-wide polls consider that there is corruption within the European Union institutions.<sup>21</sup> Therefore, there is general expectation that transparency rules which the European Union requires from its member States would also need to be applied within the EU institutions. This would be an additional good reason for the European Union to join GRECO as a full member.

20. The rapporteur is concerned by the decision of the European Commission to put in place an additional anti-corruption monitoring mechanism which would generate additional expenses amid the reduction of the EU budget and strengthening of austerity policies in member States.<sup>22</sup> Moreover, the contribution of EU member States to this mechanism remains unclear. A revision of the GRECO mandate would be necessary to bring the European anti-corruption activities under the same roof, making GRECO a comprehensive evaluation but also risk-assessment mechanism and a European forum for sharing information and best practices in Europe, equally involving all parties and providing for a sound compliance procedure.<sup>23</sup>

#### **4.2. Joint Council of Europe–European Union programmes aiming at strengthening good governance and the fight against corruption**

21. First launched in 1993, joint programmes between the Council of Europe and the European Union have become one of their major co-operation instruments in pursuit of the common goal of promoting human rights, fundamental freedoms and the rule of law in Europe. Confirming a long-standing trend, last year joint programmes continued to be the largest source of funding sustaining the Council of Europe's co-operation and technical assistance activities. The EU evaluation process of the Council of Europe–European Union co-operation underlined the Council of Europe's ability to mobilise expertise related to the sectors in which it specialised.<sup>24</sup> The report welcomes a reflection process being carried out by the Council of Europe and the European Union regarding a more structured form of joint co-operation programmes in the EU financial framework 2014-2020 including anti-corruption fields. A shorter length of the preparatory phase and more flexibility would allow prompt support for GRECO recommendations within the request period following adoption of the country report. The rapporteur points to the Assembly's calls on the Secretary General of the Council of Europe to negotiate a partnership with the European Union for the establishment of a stable, sustainable system for financing the joint programmes and the need for a parliamentary dimension to be included in them.<sup>25</sup>

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20. The Communication by the European Commission "Participation of the European Union in the Council of Europe Group of States against Corruption", COM(2012)604 final.

21. Special Eurobarometer 374, February 2012, [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_374\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf)

22. The Communication by the European Commission "Fighting Corruption in the EU" foresees the establishment of an EU Anti-Corruption Report, the first of which is expected to be released in June 2013.

23. The rapporteur would like to welcome recent modifications made to the GRECO Rules of Procedure.

24. ODGProg/Inf (2013)3.

25. [Opinion 284 \(2013\)](#) on Budgets and priorities of the Council of Europe for the biennium 2014-2015.

## 5. Avenues to improve Parliamentary Assembly action against corruption

### 5.1. Strengthening co-operation in the field of financing of election campaigns

22. In its [Opinion 284 \(2013\)](#) on budgets and priorities of the Council of Europe for the biennium 2014-2015, the Assembly called for the need to find synergies in order to contribute to the priorities set up within the Council of Europe, provided they are consistent with the statutory rules of the Organisation. Assembly members participate on a regular basis in the work of several organs dealing with corruption issues.<sup>26</sup> The relationship between the Parliamentary Assembly and the Venice Commission is an example of a success story, since an important number of corruption risks are closely linked to the constitutional order, a weak separation of power and an inefficient mechanism of checks and balances. The election field is the area where co-operation between the two organs has become regular. A memorandum on the election legislation of a particular country, highlighting the most important and problematic issues, is prepared for the attention of the members of Assembly election observation missions, and a member of the Venice Commission can be invited to join the mission as legal adviser. Moreover, if a report of an election observation mission points to problems related to election legislation, the Bureau of the Assembly may invite the Venice Commission to examine ways to improve this legislation.<sup>27</sup> The Assembly is grateful to the Venice Commission and its experts for the excellent co-operation forged on the ground during the observation of parliamentary or presidential elections. Such a tandem allows the Council of Europe to speak as one voice, raise the profile of observation missions and reinforce the credibility and the authority of recommendations.

23. The rapporteur would like to stress that compliance and evaluation reports released in the framework of the Third Evaluation Round, dealing among others with the transparency of party funding, have allowed GRECO to acquire extensive expertise and set up an important database regarding election campaign legislation and its practical implementation. Therefore, in order to strengthen the complementarity between the bodies of the Council of Europe and to improve the implementation of the recommendations contained in the reports of election observation missions, patterns for co-operation could be established between the Parliamentary Assembly and GRECO allowing for, among others, the preparation of a memorandum drawing the attention of members of an election observation mission to the specific issues regarding the funding of an election campaign in a particular country and allowing the participation of a GRECO member in observation missions.

### 5.2. Gender mainstreaming

24. In 2012, GRECO initiated a reflection process inspired by the gender equality policies of the Council of Europe, notably as regards gender mainstreaming in policy development, to look into a possible gender dimension of corruption. In the international field, the issue of gender and corruption is being taken seriously in the context of development and aid, and particularly within the context of women's rights, the impact of corruption on women and the relationship between levels of corruption and women's participation and representation. In June 2012, a gender rapporteur was appointed by GRECO to ensure better communication between GRECO and other Council of Europe bodies on issues of gender equality and gender mainstreaming.

25. The rapporteur would therefore like to encourage gender mainstreaming as an aspect of corruption prevention strategy and, more broadly, as a way of strengthening democracy and the rule of law to the benefit of all citizens, the goal towards which the Assembly is constantly working.

### 5.3. Reinforcing the parliamentary dimension of the fight against corruption

26. Several intergovernmental organisations and international initiatives have their own parliamentary dimension. Besides granting democratic legitimacy to an action, the parliamentary dimension also has a practical implication given that several areas may fall outside the scope of immediate government action. The Parliamentary Assembly has already developed parliamentary support for the Council of Europe intergovernmental campaigns to combat violence against women and to stop sexual violence against children. Moreover, regular hearings with heads of national delegations regarding the (non-)implementation of

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26. The Committee of Legal Affairs and Human Rights appoints at the beginning of each session Assembly representatives to the GRECO and the Venice Commission.

27. Co-operation agreement between the Parliamentary Assembly of the Council of Europe and the European Commission for Democracy through Law of 4 October 2004

judgements of the European Court of Human Rights are organised by the Committee on Legal Affairs and Human Rights, providing a contribution to the conventional implementation mechanism led by the Committee of Ministers.

27. In the rapporteur's view, the Parliamentary Assembly could contribute to national anti-corruption efforts by, *inter alia*, increasing the visibility of existing common Council of Europe standards, exchange of best practices and ways of implementing these standards through concrete proposals for legislative and political action. Regular meetings during part-sessions could be organised during which members would be informed by representatives of the Council of Europe bodies, joint programmes or NGOs about specific corruption concerns raised with regards to a given country or corruption with regard to a specific topic (i.e. sport, natural resources, climate change, politics, private sector and corporate liability). It would allow members to become aware of the latest figures and concerns as well as to mainstream anti-corruption policy in Assembly actions in various domains. The rapporteur would like to particularly stress the need for a better civil society and NGO involvement. The Assembly has recently adopted a resolution<sup>28</sup> where it has recognised the precious role of NGOs in raising people's awareness about the issues, making the victims' voice heard and promoting national and local policies.

## 6. Proposals

28. In the light of the above considerations, the Committee on Rules of Procedure, Immunities and Institutional Affairs would like to complete the draft resolution and the draft recommendation submitted by the Committee on Legal Affairs and Human Rights by the following:

- The principle of the leadership and duty of exemplarity incumbent on members of the Assembly needs to be emphasised.
- The Assembly's commitment to continuing to detect new trends regarding transparency and corruption risks in parliaments should be underlined.
- The Committee of Ministers should be invited to reassess and consolidate the Council of Europe strategy in the field of the fight against corruption by taking stock of current achievements and pitfalls, envisaging new priorities in line with the challenges faced by member States today and empowering relevant Council of Europe bodies such as GRECO to effectively implement the new strategy.
- The European Union should be invited to join the Criminal Law Convention on Corruption and to accelerate the negotiations on the participation of the European Union in GRECO in order to contribute to more co-ordinated anti-corruption policies in Europe and strengthen the impact of the European Union and GRECO's respective endeavours.
- The current European Union–Council of Europe partnership in the field of joint programmes, including in the areas of the fight against corruption, should be welcomed and the need for its further consolidation and the inclusion of a parliamentary dimension should be formulated.
- An invitation to GRECO should be launched by the Assembly to strengthen co-operation between the two bodies, notably in the framework of election observation missions, through a better exchange of information regarding financing of election campaigns.
- The Committee of Ministers should be invited to launch a feasibility study on lobbying, in the light of which further standard-setting work should be considered.
- The GRECO study on incorporation of gender mainstreaming into anti-corruption monitoring should be welcomed as a part of the overall effort of the Assembly to strengthen democracy, the rule of law and human rights for the benefit of all.
- The Parliamentary Assembly dimension in the fight against corruption should be reinforced through the organisation of regular meetings of Assembly members with representatives of the Council of Europe bodies, joint programmes or NGOs, during which specific corruption concerns raised with regards to a given country or a specific topic of activities (i.e. sport, natural resources, oil and gas, climate changes, politics, private sector and corporate liability) could be addressed.

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28. [Resolution 1910 \(2012\)](#) on NGOs' role in combating intolerance, racism and xenophobia.