

this subject. The importance of elaborating a follow-up mechanism to implement the undertakings contained in such instruments was also underlined.

3. The setting-up of the Multidisciplinary Group on Corruption

In the light of these recommendations, the Committee of Ministers agreed, in September 1994, to set up the Multidisciplinary Group on Corruption (GMC) under the joint responsibility of the European Committee on Crime Problems (CDPC) and the European Committee on Legal Co-operation (CDCJ) and invited it to examine what measures would be suitable to be included in a programme of action at international level against corruption, to make proposals on priorities and working structures, taking due account of the work of other international organisations and to examine the possibility of drafting model laws or codes of conduct in selected areas, including the elaboration of an international convention on this subject and a follow-up mechanism to implement undertakings contained in such instruments. The GMC started operating in March 1995.

4. The Programme of Action against Corruption (PAC, 1996)

The Programme of Action against Corruption, prepared by the GMC in the course of 1995 and adopted by the Committee of Ministers at the end of 1996, is an ambitious document, an attempt to cover all the aspects of the international fight against this phenomenon. It defines the areas in which action is necessary and provides for a number of measures, which need to be followed in order to realise a global, multidisciplinary and comprehensive approach in tackling corruption. The Committee of Ministers instructed the GMC to implement this programme before the end of the year 2000 (see further below for details).

5. The Prague Conference (1997)

At their 21st Conference (Prague 1997), the European Ministers of Justice adopted Resolution No1 on the links between corruption and organised crime. The Ministers emphasised that corruption represents a major threat to the rule of law, democracy and human rights, fairness and social justice, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society. They further underlined that a successful strategy to com-

2. Council of Europe: An Overview of Anti-Corruption Activities from 1994 to 1998¹

Manuel Lezertua²

1. Introduction

Five major events (briefly described below) have marked the Council of Europe's activities in the field of the fight against corruption: the Malta Conference (1994), the setting up of the Multidisciplinary Group on Corruption (1995), the adoption of the Programme of Action against Corruption (PAC – 1996), the Prague Conference (1997) and the 2nd Summit of the Heads of State and Government of the member States of the Council of Europe (1997). Moreover, an important contribution to the Council's fight against corruption has been given by the launching of the Joint Council of Europe / European Commission Programme known as »Octopus«.

2. The Malta conference (1994)

It is at the 1994 Malta Conference of the European Ministers of Justice, where the Council of Europe launched its initiative against corruption. The Ministers considered that corruption was a serious threat to democracy, the rule of law and human rights and that the Council of Europe, being the pre-eminent European institution defending these fundamental values, was called upon to respond to that threat.

The Resolution adopted at this Conference endorsed the need of a multidisciplinary approach and recommended the setting up of a Multidisciplinary Group on Corruption with the task of examining what measures could be included in a programme of action at international level and of examining the possibility of drafting model laws or codes of conduct, including international conventions, on

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bat corruption requires a firm commitment by States to join their efforts, share their experience and take common actions.

The European Ministers of Justice specifically recommended to:

1. speed up the implementation of the PAC;
2. intensify the efforts with a view to an early adoption of a framework agreement defining common principles in the fight against corruption to be implemented through national legislation and complemented, where appropriate by additional international instruments and structures; a criminal law convention providing for a co-ordinated criminalisation of corruption offences and for enhanced co-operation in the prosecution of such offences;
3. pursue the work concerning the preparation of an international civil law instrument as well as the preparation of a Model Code of Conduct for Public Officials;
4. consider, in the framework of the preparation of the 2nd Summit of Heads of State and Governments of the Council of Europe (Strasbourg, 10–11 October 1997), the best means of promoting a dynamic process towards effectively preventing and combating corruption.

6. The Strasbourg Summit (1997)

On 10 and 11 October 1997, the 2nd Summit of the Heads of State and Governments of the member States of the Council of Europe took place in Strasbourg. The Heads of State and Government, in order to seek common responses to the challenges posed by corruption throughout Europe and to promote co-operation among Council of Europe member states in the fight against corruption, instructed the Committee of Ministers to:

1. adopt, before the end of the year (1997), guiding principles to be applied in the development of domestic legislation and practice;
2. secure the rapid completion of international legal instruments pursuant to the Council of Europe's Programme of Action against Corruption;
3. establish, without delay, an appropriate and efficient mechanism for monitoring observance of the guiding principles and implementation of the international legal instruments pursuant to the PAC.

7. Implementation of the Programme of Action against Corruption

In conformity with its terms of reference, the GMC has started drawing up various international instruments against corruption in the fields of criminal, administrative and civil law.

□ The Criminal Law Convention on Corruption

This draft Convention, which is currently in the final stage of negotiation and is likely to be opened for signature during 1998, represents one of the most comprehensive treaties in this field. It aims at aligning national legislation concerning certain corruption offences and at improving international co-operation for the prosecution of such offences.

The current draft of the Convention provides for the criminalisation of:

- active and passive corruption of national public officials;
- active and passive corruption of foreign public officials;
- active and passive corruption in the business sector;
- active and passive corruption of members of national, international and supranational Assemblies;
- active and passive corruption of judges and staff of international or supranational courts;
- trading in influence involving national and foreign public officials;
- corruption of international officials;
- laundering of corruption proceeds;
- corruption in auditing.

In addition, the draft Convention deals with other substantial or procedural issues, such as jurisdiction, sanctions and measures, liability of legal persons, setting up of specialised authorities for the fight against corruption, co-operation among authorities responsible for law enforcement and control, and protection of witnesses and persons co-operating with the judicial authorities. Finally, with regard to international co-operation, the text includes a general duty of co-operation in the prosecution of corruption offences, in particular regarding extradition, mutual judicial assistance and spontaneous information.

□ The Model Code of Conduct for Public Officials

The purpose of this text, which is currently being negotiated within the Working Group on Administrative Law (GMCA) of the GMC is threefold: to define the ethical climate that should prevail in the public service, to spell out the standards of ethical conduct expected of public officials and to inform members of the public of what to expect of public officials in conduct and attitude when dealing with them.

The Model Code, which is both a public document and a message addressed to every individual public official, should reflect and reinforce the basic standards set out in the criminal legislation dealing with dishonesty and corruption; this legislation in turn provides the basis for the Code.

This text should be capable of stating the guiding principles for public officials, while at the same time, providing sufficiently specific rules to be of practical use in the given situation.

□ The International Instrument on civil remedies for compensation for damage resulting from acts of corruption

A feasibility study on the drawing up of a convention on civil remedies for compensation for damages resulting from acts of corruption was adopted by the Committee of Ministers in February 1997. The study gives as complete a picture as possible of all aspects related to civil law and corruption and shows that it is possible to conceive a number of scenarios where use of civil law remedies might be useful against given forms of corruption. On the basis of this study, the Working Group on Civil Law (GMCC) of the GMC, is currently negotiating an international instrument on civil remedies for compensation for damage resulting from acts of corruption. This text deals with substantive and procedural provisions including, among others, questions relating to compensation for damage, evidence, liability, non-pecuniary remedies, validity and effect of contracts, transparency and protection of whistle blowers, rights for groups to participate in judicial proceedings, access to documents, retrieval of evidence abroad, jurisdiction and enforcement of judgements.

□ Resolution (97) 24 on the 20 guiding principles for the fight against corruption
Following intensive work by the GMC during 1997 with regard to the definition of a *common framework for national strategies against corruption*, the Committee of Ministers, at its 101st Session at Ministerial level, adopted on 6 November 1997, Resolution (97) 24 on the *20 Guiding Principles for the fight against corruption*.

The first part of Resolution (97) 24 contains the 20 fundamental principles that Council of Europe member States are requested to apply at a national and international level to fight corruption phenomena.

These principles deal with the need to:

- adopt effective measures for the prevention of corruption and, in this connection, to raise public awareness and promote ethical behaviour;
- provide appropriate measure for the seizure and confiscation of the proceeds of corruption offenses;

- limit immunity from investigation, prosecution or adjudication of corruption offenses to the degree necessary in a democratic society;
- ensure that the organisation, functioning and decision-making processes of public administration take into account the need to combat corruption, in particular by ensuring as much transparency as is consistent with the need to achieve effectiveness;
- ensure that appropriate auditing procedures apply to the activities of public administration and the public sector;
- endorse the role that audit procedures can play in preventing and detecting corruption outside public administration;
- encourage the adoption, by elected representatives, of codes of conduct and promote rules for the financing of political parties and election campaigns which deter corruption; ensure that the media have freedom to receive and inspect information on corruption matters, subject only to limitations or restrictions that are necessary in a democratic society;
- ensure co-ordinated criminalisation of national and international corruption;
- ensure that civil law takes into account the need to fight corruption and in particular provides for effective remedies for those whose rights and interests are affected by corruption;
- encourage research on corruption.

Moreover, Resolution (97) 24 requires the GMC to prepare without delay international legal instruments in pursuance of the PAC. (see Section 111 above) and submit to the Committee of Ministers without delay a draft text proposing the establishment of an appropriate and efficient mechanism, under the auspices of the Council of Europe for monitoring observance of the *20 Guiding Principles* and the implementation of the international legal instruments to be adopted pursuant to the PAC.

□ Resolution (98) 7 authorising the Partial and Enlarged Agreement establishing the »Group of States against Corruption – GRECO« – a monitoring mechanism
The Committee of Ministers of the Council of Europe, at its 102nd Session on 5 May 1998, taking into account in particular the Final Declaration and Action Plan adopted by the Heads of State and Government of the Council of Europe following their 2nd Summit (see above) and Resolution (97)24 on the 20 Guiding Principles for the fight against corruption (see above), adopted Resolution (98)7 authorising the Partial and Enlarged Agreement establishing the »Group of States against Corruption« – GRECO«.

Indeed, GRECO aims at improving the capacity of its member States to fight corruption by following up, through a dynamic process of mutual evaluation

and peer pressure, compliance with their undertakings in this field and, in particular, with the 20 Guiding Principles for the fight against corruption and the implementation of the international legal instruments to be adopted in pursuance of the PAC.

GRECO is opened to the participation of member States and non-member States of the Council of Europe on an equal footing. Indeed, for the international fight against corruption to be effective, there is a need for as many States as possible to be committed against this blight of society. In order to ensure the principle of the »equal footings«, GRECO's highest body will be the Statutory Committee, which will be composed of the representatives on the Committee of Ministers of the member States of the Council of Europe which are also members of GRECO and of representatives specifically designated to that effect by the other members of GRECO (which are not member States of the Council of Europe).

In order to carry out its tasks, GRECO will proceed to evaluation procedures in respect of each of its members. For each evaluation round, it will start by selecting specific provisions on which the evaluation procedure will be based. GRECO will also adopt a questionnaire for each evaluation round, which will be addressed to all members concerned by the evaluation. Moreover, GRECO will appoint a team of experts for the evaluation of each member. Indeed, this team will examine the replies given to the questionnaire, will request, where appropriate, additional information from the member undergoing the evaluation. The team of experts may also visit the member concerned, for the purpose of seeking additional information concerning its law or practice, which is useful for the evaluation.

The team of experts will prepare a draft evaluation report on the state of the law and the practice in relation to the provisions selected for the evaluation round. After having received any comments by the member undergoing the evaluation, this draft report will be discussed and adopted by GRECO.

These reports will be confidential. They may contain specific recommendations addressed to the member concerned, with a view to improving its domestic laws and practices to combat corruption. However, the Statutory Committee may issue a public statement when it believes that a member remains passive or takes insufficient action in respect of the recommendations addressed to it by GRECO.

GRECO will start functioning as soon as the Secretary General of the Council of Europe receives the 14th notification from a member State of its wish to participate in it.

□ Annual Conferences of Specialised Services in the fight against corruption

The *Programme of Action Against Corruption* stresses the need for exchanges of practical experience among services (e. g. police, prosecutors, senior members of

civil service) involved in the fight against corruption, both at national and international level, and considers it necessary to organise conferences of specialised services in the fight against corruption on an annual basis. These Conferences of specialised services constitute a useful opportunity for exchanging up-to-date information on national techniques and experiences among those who are in the front line in the fight against corruption.

The first European Conference of Specialised Services in the fight against corruption, organised in Strasbourg in 1996, dealt with the setting up and the functioning of specialised authorities, special features of the investigation and the prosecution of corruption cases, as well as the improvement of international co-operation.

The Second such Conference was held in Tallinn (Estonia) from 27 to 29 October 1997. The Conference organised by the Council of Europe in co-operation with the Ministry of Justice of Estonia, dealt with the topic of »Corruption in Public Procurement« and gathered a significant number of specialists which unanimously adopted a series of 17 conclusions of particular importance given that public procurement mobilises very significant financial resources (e.g.: up to 11% of the Gross Domestic Product totalling 720 billion ECU in the EU countries) where corruption, not only hinders free competition, but it is also tremendous source of waste of public expenditure which can run up to 30% of total procurement costs.

The Third European Conference of Specialised Services in the fight against Corruption will be held in Madrid, 28–30 October 1998. It is currently being organised in co-operation with the Ministry of Justice of Spain and it will deal with the topic of »Trading in influence and illegal financing of political parties«. This is an area to which the Council of Europe attaches very significance importance, as it touches one of the crucial elements of democracy. Indeed, political parties are channels for the citizen's participation in political life. However, political parties are confronted with a number of serious difficulties, the most pressing and complicated of which is perhaps their financing. States have responded to the need to ensure financing of political parties in different ways. Yet a number of issues regarding funding have not found a solution: disclosure of contributions, transparency, alternative methods of income, role of external funding. Moreover, financing of political campaigns is an issue which attracted the attention of the media and resulted in public distrust and apathy about political parties. Trade in influence – an offence included in the Council of Europe criminal law convention on corruption – often serves the purposes of raising funds for financing political parties and in this connection, it introduces a serious distortion in the proper functioning of the democratic system. It also contributes to the perception of an endemic corruption that erodes the moral basis of democratic institutions.

8. The Octopus Project

The Octopus Project is a joint initiative between the Council of Europe and the European Commission, aimed at the fight against corruption and organised crime in sixteen countries in transition.³ It began in June 1996 and allowed for an evaluation of the problem of corruption and organised crime and of the efficiency of counter-measures already taken by the Governments of the 16 member States concerned. Provisional recommendations and guidelines were formulated by Council of Europe experts for each of the States involved. Expert missions were carried out to determine the extent to which the proposed measures were appropriate to the particular circumstances of the country in question, their feasibility and an identification of potential obstacles to their implementation. The findings were presented at a conference held in Strasbourg on 1–3 December 1997 which led to the formulation of final recommendations and guidelines, including complementary measures, for each individual country involved.

The Council of Europe is now organising a number of activities aimed at facilitating the implementation of the above-mentioned recommendations. These activities deal with subjects like prevention of corruption, organisation and co-ordination of departments responsible for fighting corruption and organised crime, handling of corruption, organised crime and business crime cases, tax evasion and money laundering and, of course, international co-operation. The 11th Quadripartite meeting Council of Europe/European Union, held in Strasbourg on 1st April 1998, considered co-operation possibilities in the continuation of the Octopus project.

The Council of Europe and the European Commission are currently negotiating a wide-ranging extension of the Octopus project for the years 1999–2000.

³ The following 16 countries were invited to participate in the project: Albania, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Russian Federation, Slovakia, Slovenia, »the former Yugoslav Republic of Macedonia« and Ukraine.

3. Internationale Finanzierungsorganisationen (IBRD, IMF, Regionalbanken)

Peter Eigen

»Die internationale Gemeinschaft muß sich einfach mit dem Krebsgeschwür der Korruption befassen, denn sie ist ein schweres Hindernis für nachhaltige und gerechte Entwicklung... Die Weltbank-Gruppe ist bereit, alles zu tun was wir können, um unseren Mitgliedstaaten und Partnern zu helfen, ihre Bemühungen im Kampf gegen die Korruption zu verstärken. Die Zeit zum handeln ist jetzt.«

James D. Wolfensohn, Präsident der Weltbank¹

1. Einleitung und Überblick

Für die Kontrolle der internationalen Korruption spielen die internationalen Finanzierungsorganisationen, unter ihnen insbesondere Weltbank und Internationaler Währungsfond, eine zentrale Rolle. Bis vor kurzem war für beide das Thema Korruption noch praktisch tabu.

Zwar wurden wichtige Instrumente zur Korruptionsbekämpfung, über Buchhaltung und Rechnungslegung für Entwicklungsprogramme, und ganz besonders auch über Verfahren für die Auftragsvergabe bei Weltbankprojekten eingerichtet. Doch war die Realität klar von der Absicht geprägt, möglichst Konflikte zu vermeiden, wenn Korruptionsfälle auftauchten. Man versteckte sich offiziell hinter der formalen Verantwortung der Partnerländer und wurde allenfalls hinter den Kulissen tätig, oder wenn sich Anbieter aus Mitgliedstaaten darüber beschwerten, von ihren Mitbewerbern zu eklatant ausgestochen worden zu sein.

Dies hat sich jetzt gründlich geändert. Unter der Führung ihres neuen Präsidenten **James D. Wolfensohn** hat die **Weltbank** sich ausdrücklich zum **Kampf gegen die Korruption** bekannt.

Dabei setzt sie auf drei Komponenten:

1. Im Bereich ihrer eigenen Programme und ihres unmittelbaren wirtschaftspolitischen Umfelds wird sie mit strikter Konditionalität gegen jede Art von Korruption vorgehen.

¹ Weltbank: Corruption 1997, S. 2.