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## **First Evaluation Round**

### **Evaluation Report on Latvia**

Adopted by GRECO  
at its 9<sup>th</sup> Plenary Meeting  
(Strasbourg, 13-17 May 2002)

\*The relevant legal provisions will be appended to the Final version.

## **I. INTRODUCTION**

1. Latvia was the twenty-second GRECO member to be examined in the First Evaluation Round. The GRECO Evaluation Team (hereafter, "GET") was composed of Mr Jim Warnock, Detective Chief Inspector, Headquarters Operational Support Unit, National Crime Squad (United Kingdom, law enforcement expert); Mr Marko Sorli, Vice-President of the Supreme Court (Slovenia, criminal justice expert) and Mrs Ülle Raig, Legal Adviser, Penal Law Department, Ministry of Justice (Estonia, general policy expert). This GET, accompanied by a member of the Council of Europe Secretariat, visited Riga from the 3 to 6 December 2001. Prior to the visit the GET experts were provided by the Latvian authorities with a reply to the Evaluation questionnaire (document Greco Eval I (2001) 42).
2. The GET met with officials from the following Latvian Governmental organisations: the Ministry of Justice; the Corruption Prevention Council; the Judicial Department of the Ministry of Justice; the Courts; the General Prosecutors Office; the Office for Prevention of laundering of proceeds derived from criminal activities; the Privatisation Agency; the Security Police; the State Police: a) Bureau of Enforcement of Organised Crime and Corruption and b) Economic Police; the State Revenue Service; the State Audit Office; the Department of Supervision of Public Procurement (Ministry of Finance); Internal Audit Department of Ministry of Finance.
3. Moreover, the GET met with representatives of Transparency International Latvia – Delna and a representative of the media.
4. It is recalled that GRECO agreed, at its 2<sup>nd</sup> Plenary meeting (December 1999) that the 1<sup>st</sup> Evaluation round would run from 1 January 2000 to 31 December 2001<sup>1</sup>, and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would be based on the following provisions:
  - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
  - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
  - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).
5. Following the meetings indicated in paragraphs 2 and 3 above, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned and proposals for recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the Latvian authorities, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in Latvia, the general anti-corruption policy, the institutions and authorities in charge of combating it - their functioning, structures, powers, expertise, means and specialisation - and the system of immunities. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in Latvia is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to Latvia in order for this country to improve its level of compliance with the GPCs under consideration.

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<sup>1</sup> At its 7<sup>th</sup> Plenary Meeting (December 2001) GRECO decided to extend the First Evaluation Round until 31 December 2002.

## II. GENERAL DESCRIPTION OF THE SITUATION

6. Latvia has a surface of 64,589 km<sup>2</sup> and a total population of about 2,350,000 inhabitants (57,6 % Latvians, 29,6 % Russians). It has a land border with Estonia, Russian Federation, Belarus and Lithuania. The length of the Baltic Sea coastline is 0,5 thousands km. Gross domestic product (GDP) increased in Latvia by 6,6 % in 2000 and by 7,9% in the first nine months of 2001. GDP growth was notably encouraged by the growing service sector (+ 7.1 %) and by the expansion of economic activities in the industrial sector (wood, textile, mining, quarrying and fishing industry). In spite of this strong growth, inflation remains quite low (2,6 % in 2000) and the GDP per capita has increased from 24 % in 1995 to 29 % compared to the EU average.

### a. **The phenomenon of corruption and its perception in Latvia**

#### i) *Legislation*

7. The new Latvian Criminal Law, which entered into force in April 1999, provides for several provisions under which definition of corruption and corruption-related offences is given: active bribery is defined in articles 323 and occurs when "a person who commits giving of bribes, that is, the providing of valuable property or benefits of financial or other nature (... ) to a State official<sup>2</sup> in order that he/she, using his/her official position, performs or fails to perform some acts in the interest of the giver of bribe, the applicable sentence is deprivation of liberty for a term not exceeding 6 years"; this sanction is increased up to "not less than 5 years and not exceeding 12 years" if the offence is committed repeatedly or by a State official. Article 320 defines passive bribery as "For a person who commits accepting a bribe, that is, intentionally illegally accepting valuable property or benefits of a material or other nature (... ) for the performing or failure to perform some act in the interests of the giver of the bribe by using his/her official position, the applicable sentence is deprivation of liberty for a term not exceeding 8 years (... )"; the applicable sentence increases up to "a term of not less than 3 and not exceeding 10 years" if the offence is committed repeatedly or on a large scale and up to "not less than 8 and not exceeding 15 years" when the offence is committed "with extortion of a bribe", or "by a group of persons pursuant to prior agreement, or by a State official holding a responsible position". The Criminal Code provides also for the offences of "intermediation in bribery" (article 322), "misappropriation of a bribe" (article 321) "exceeding official authority" (art.317), "using official position in bad faith" (art.318), "failure to act by state official" (art.319), "violation of restrictions imposed on state officials" (art.325), "unlawful participation in property transactions" (art.326), as well as passive corruption in the private sector (art.198), active corruption in the private sector (art.199)<sup>3</sup>.

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<sup>2</sup> According to Section 316 (Chapter XXIV) of the Criminal Code (Concept of a State official) :

1.Representatives of State authority, as well as every person who permanently or temporarily performs his or her duties in the State or local government service and who has the right to make decisions binding on other persons, or who has the right to perform any functions regarding supervision, control, inquiry, or punishment or to deal with the property or financial resources of the State or local government, shall be considered to be State officials.

2.The President, members of the *Saeima* (the Parliament of the Republic of Latvia), the Prime Minister and members of the Cabinet as well as officials of State institutions who are elected, appointed or confirmed by the *Saeima* or the Cabinet, heads of local government, their deputies and executive directors shall be considered to be State officials holding a responsible position.

<sup>3</sup> Amendments to the Criminal Law were introduced to the Latvian anti-corruption provisions in accordance with the Criminal Law Convention. A set of the relevant legislation is included in Appendix I to this report.

8. In Latvia, legal persons cannot be held liable for the criminal offences of corruption. The Latvian Criminal Law only recognises the liability of a natural person when s/he commits a criminal offence (including corruption offence) acting as representative of a legal person<sup>4</sup>.
9. The GET received information by the Latvian authorities according to which there is a discernible link between corruption and organised crime in the country. Nevertheless, the GET was unable to obtain detailed information on the extent of the connection and cannot express an objective opinion on this matter.
10. According to the Code of Criminal Procedure of Latvia, are entitled to special measures of protection victims, witnesses, suspected and accused persons, their defendants and convicted persons giving testimonies in criminal cases involving serious and especially serious crimes. An individual can be treated as subject to special measures of protection by the General Prosecutor on the basis of a written proposal made by the prosecution authority, by motivated decision. The protection of individuals takes place by ensuring non-disclosure of their personal data, and by taking the protective steps specified in the Law on Operative Activities and other steps.
11. Since April 1998, money laundering is a separate criminal offence in Latvia defined in Article 5 of the "On Prevention of Laundering of Proceeds derived from Criminal Activity". Article 4 provides for 15 categories of predicate crimes, including active bribery, passive bribery, mediation in bribery, appropriation of bribery and unauthorised receipt of financial benefits (passive corruption in private sector). Article 195 of the Criminal Law provides for sanctions for laundering of proceeds<sup>5</sup>. Latvia ratified the 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and adopted the 1997 Baltic Assembly Resolution on Fighting against Money Laundering. In 1998, the Office for prevention of laundering of proceeds from criminal activity started functioning under the supervision of the Prosecutor General Office. 13 people work at the Office and all cases related to crimes on money laundering are dealt with by the Office.

ii) *Preventive measures*

12. In September 1997, the Latvian Government set up a Corruption Prevention Council whose main task is to co-ordinate activities of all the institutions involved in the fight and prevention of corruption in Latvia and to insure coherent policy in the field. The Council is composed of the Minister of Justice acting as Chairman and the Minister of the Interior, the Director General of the State Revenue Service, the Director General of the State Audit Office, the Prosecutor General, the Director of the Competition Council, a representative of the Bank of Latvia and the Head of Delna which is Transparency International's Latvian Branch. Representatives of the World Bank and the European Commission delegation in Latvia can participate in the Council's meetings as observers. In February 1998, the Council developed the Corruption Prevention Programme, which has been updated and revised every year, lastly on 15<sup>th</sup> May 2001. The Council has responsibility, *inter alia*, for organising research and analyses on the causes of corruption; preparing proposals for necessary legislation on corruption prevention issues and for state administration reform; organising legal and ethical education of state officials and society;

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<sup>4</sup> "In a proceeding against a legal person regarding a criminal offence, the natural person who has committed such offence as the representative or at the instruction of the legal person concerned, or while in the service of the legal person, as well as a joint participant of such natural person, shall be criminally liable therefor" (Section 12 of the CL)

<sup>5</sup> "For a person who commits laundering of criminally acquired financial resources or other property, in violation of the requirements prescribed by law and knowing that these resources or property were obtained criminally, the applicable sentence is deprivation of liberty for a term not exceeding 5 years, or a fine not exceeding 150 times the minimum monthly wage, with or without confiscation of property."

promoting involvement of the society in corruption prevention activities. At the time of the visit, the GET was informed that, a new body ("the Crime and Corruption Prevention Council") would replace the Corruption Prevention Council. This Crime and Corruption Prevention Council will be chaired directly by the Prime Minister with Ministers of Justice and of the Interior acting as deputies.

13. The Corruption Prevention Programme for 2001 consists of three sections: prevention, enforcement and education. The preventive element is the most comprehensive and is aimed at improving the functioning of the court system, administrative and competition procedures, issuing of licences and transparency. It also identifies the need to revise the system of financing of political parties. The enforcement element identifies needs to establish an Audit Centre and to improve the systems in Customs and the State Revenue Services. The educational element recognises the need not only to train civil servants in new and more transparent administrative procedures and in ethics, but also to raise public awareness about their rights and try to involve them in the fight against corrupt behaviour.
14. Codes of conduct already exist for members of the Bar Association, judges, sworn notaries, prosecutors and journalists. Within the framework of the Prevention of Corruption Programme, the Ministry of Justice was considering, at the time of the visit, the drafting of a general code of conduct for public officials. Similarly, the Saeima was considering a code of ethics for Members of the Saeima.
15. Another preventive measure is the Law on the Prevention of Corruption passed by the Saeima on 25 September 1995. This Law both supplements and incorporates the provisions relating to corruption in the Criminal Code and other legislation. The objectives of the Law on the Prevention of Corruption, as outlined in Article 1, are:
  - to enhance the transparency of the actions of public servants;
  - to avoid situations where the duties of public servants are compromised by unlawful influences;
  - to prohibit public servants from exercising authority in situations where conflicts of interest may arise.
16. The Law goes on to include a detailed list of persons deemed to be public officials, incorporating those already mentioned under Section 316 of the Criminal Code. In addition the Law includes a series of provisions that forbid the receipt of gifts or other forms of payment, highlight the incompatibility of being a public officials with other activities, and oblige public officials to declare their assets.

*iii) International co-operation*

17. According to the relevant legislation (Criminal Procedure Code, international treaties and agreements) Latvia can give effect to a request for mutual legal assistance in criminal matters even if the fact concerned is not a criminal offence in Latvia, which means that there is no requirement for the application of the reciprocity rule. Latvia has ratified the Criminal Law Convention on Corruption on 9 February 2001 but has not yet signed the Civil Law Convention. Latvia requested to sign the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Convention will be signed as soon as the OECD Working Group on Bribery has finished its examination of Latvian legislation. It has ratified the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol, the

Convention on the Transfer of Proceedings in Criminal Matters and the Convention on the Transfer of Sentenced persons. Latvia is also bound by a large number of bilateral agreements in criminal matters on international judicial and police co-operation.

18. According to the information provided to the GET, there are no specific factors in Latvia that would prevent or hinder international legal assistance in the prosecution of criminal offences of corruption. There are no special statistics in relation to international legal assistance on criminal offences of corruption. According to article 98 of the Constitution (Satversme) of the Republic of Latvia, Latvian citizens cannot be extradited.

*iv) Statistics*

19. According to the statistics provided to the GET by the Latvian authorities, in 2000, 34 cases of passive bribery and 9 of active bribery were recorded and 5 persons convicted for passive bribery (compared to 23 in 1999, 12 in 1998 and 40 in 1997) and 6 for active bribery (compared to 9 in 1999, 5 in 1998 and 7 in 1997). During the first half of 2001, 31 cases of passive and active bribery had already been recorded.
20. While the GET recognises that it was difficult to quantify precisely the level of corruption in Latvia, it can also certify that public perception is that corruption is a worrying phenomenon that affects the activities of some public institutions in Latvia such as customs, traffic police and judicial authorities. The seriousness of the problem appears to be recognised at the highest political level. The government seems to be committed to further improving the legal framework and its implementation in order to curb corruption which, in the GET's view, may be considered as one of the major factors that undermine the democratic and, above all, economic development of Latvia. According to the Corruption Perception Index for 2001, issued by Transparency International, Latvia was listed as number 59 with a score of 3.4 out of 10.

### Statistics on registered crimes and sentenced persons

| Criminal offence   | 1994              |                   | 1995              |                   | 1996              |                   | 1997              |                   | 1998       |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|------------|
|  | Registered crimes | Sentenced persons |            |
| CL 317 Article: Exceeding of Official Authority            | 113               | -                 | 96                | 8                 | 95                | 6                 | 75                | 11                | 3          |
| CL 318: Abuse of Official Status                           | 69                | 47                | 97                | 22                | 105               | 11                | 79                | 15                | 78         |
| CL 319: Failure to Act by a State Official                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | 0          |
| CL 320: <b>Acceptance of Bribes</b>                        | 26                | 29                | 44                | 19                | 63                | 24                | 32                | 40                | 74         |
| CL 321: Misappropriation of a Bribe                        | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | 0          |
| CL 322: Intermediation in Bribery                          | 2                 | 1                 | 2                 | 0                 | 3                 | 1                 | 0                 | 0                 | 5          |
| CL 323: <b>Giving of Bribes</b>                            | 7                 | -                 | 8                 | 0                 | 17                | 6                 | 12                | 7                 | 17         |
| CL 325: Violation of Restrict. Imposed on a State Official | 1                 | 0                 | 1                 | 0                 | 0                 | 0                 | 3                 | 0                 | 4          |
| CL 326: Unlawful Participation in Property Transactions    | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | 0          |
| CL 327: Forgery of Official Documents                      | 31                | -                 | 38                | 0                 | 49                | 2                 | 57                | 4                 | 57         |
| CL 328: False Official Information                         | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | 0          |
| CL 195: Laundering of the Proceeds of Crimes               | 0                 | -                 | 0                 | 0                 | 0                 | 0                 | 0                 | 0                 | 0          |
| CL 196: Use of and Exceeding Authorisation in Bad Faith    | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | 0          |
| CL 197: Neglect  | 43                | -                 | 81                | 6                 | 83                | 8                 | 55                | 12                | 52         |
| CL 198: Unauthorised Receipt of Financial Benefits         | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | 0          |
| CL 199: Commercial Bribery                                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | 0          |
| <b>Criminal offences in State institutions totally</b>     | <b>292</b>        | <b>77</b>         | <b>367</b>        | <b>55</b>         | <b>415</b>        | <b>58</b>         | <b>313</b>        | <b>89</b>         | <b>290</b> |

\* statistics on sentenced persons

Registered crimes

Sentenced persons

## **b. Bodies and institutions in charge of the fight against corruption**

### **b1. The Police**

21. The basic task of the Ministry of Interior in Latvia is to develop and implement unified state policies in fighting crime, guarding public order and security. The Ministry of Interior includes six major institutions:
- State Police
  - Security Police
  - State Border Guard
  - State Fire Fighting and Rescue service
  - Citizenship and Migration Agency
  - Latvian Police Academy
22. According to the Regulation of the Ministry of the Interior, "The political leader of the Ministry is the Minister of Interior. The Minister is accountable before Saeima for the activities of the Ministry and shall carry out his functions as defined in laws and other legislation." More than 20,000 persons work within the Ministry of the Interior that represents almost a third of all employees working for State institutions in Latvia.
23. The Chief of the State police and of the Security police are appointed (and can be removed) by the Government, pursuant to a recommendation by the Minister of the Interior, from among senior commanding police officers with higher legal education and not less than 5 years' experience in management position within the police.
24. Activities of police forces are under the control of the Government and the Minister of the Interior and local government institutions insofar as the latter may set up local police whose tasks are more restricted than those provided for the State and Security police.

#### *j) The Security Police*

25. The Security Police hold a mixture of responsibilities ranging from counter intelligence to corruption. Ninety percent of their work rests on operational activity<sup>6</sup>.
26. The Security Police do not see corruption as their main priority and regard the State Police as having the lead agency status. In April 2000, a special unit was formed within the institution, named the Active Operations Unit, one of its main tasks is combating corruption. However, there is evidence that the Security Police undertake operational activity against corruption. During the period 2000 and the first 9 months of 2001, security Police investigated and sent 20 cases related to corruption to the Prosecution Office, asking for criminal proceedings to be opened: 12 police officers, 1 state tax service employee, 1 higher educational lecturer (pro-dean of the Latvian university), 1 border guard official, 1 official of a municipality and 12 other persons not working in the state services. One of the examples given to the GET was instigated through a public complaint. This particular case was taken on as the complainant did not trust the other state institutions. No corruption cases have required a witness protection response.

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<sup>6</sup> The functions of the Security Police are strictly regulated by the Law on State Security Authorities, and the Security Police has undertaken to fight corruption on the instructions of the Minister of the Interior

ii) *The State Police*

27. Within the State Police, there exists two institutions for the investigation of corruption, namely the Bureau for Combating Organised Crime and Corruption and the Economic Police.

The Bureau for Combating Organised Crime and Corruption

28. The main task of the Bureau for Combating Organised Crime and Corruption is the fight against organised crime.

29. The published objectives of the Bureau are as follows:

- to prevent organised crime and corruption;
- to perform investigation and operational activities within its authority in the territory of the state;
- to co-ordinate work related to the fight against organised crime, smuggling and corruption;
- to co-ordinate the work of other units of the State Police.

30. Within the Bureau, twenty persons are engaged in a Unit fighting against corruption. No specific strategy plan was presented or made available for inspection by the GET. People of the Unit met by the GET reported the case of a high-ranked official of the Economic Police investigated by the Unit who was also detained because she was trying to stop the investigation of a case. In 2000, the Bureau detected 8 cases of passive bribery, 1 of active bribery, 9 of use of official status in bad faith and 1 of exceeding official authority; they arrested 4 former police officers, 5 police officers, 4 officials from educational sphere, 8 officers of municipal police, 1 border guard, 7 officials from customs and 2 other officials. In the first 9 months of 2001, 2 cases of active bribery and 3 of passive bribery were detected; the following persons were detained: 7 police officers, 8 borders guards, 3 municipal police officers, 3 customs supervisors and 4 other officials.

31. The function of the Organized Crime and Corruption Combating Bureau division is to deal with corruption cases related to organised crime. It does not mean, however, that other information on potential corruption offences are not reviewed and investigated. Whenever operative information on corruption is obtained, it is either checked or forwarded to other competent authorities engaged in investigating corruption offences. Moreover, the division receives information from other structures and institutions. Therefore, impartial information exchanges take place. When receiving a request for operative information from the institutions entitled to request such an operative information, the request is dealt with and methodological assistance is rendered. The division also collaborates successfully with the Smuggling Combating Center when dealing with cases related to corruption.

iii) *The Economic Police Bureau*

32. In 1999, the Economic Police Bureau was restructured to become a central institution with subordinated units in seven cities and twenty regions. The Economic Police is divided into 5 Divisions, each of them dealing with a specific type of crime such as money laundering, fraud, smuggling, cyber-crime. The Economic Police holds the responsibility for the investigation of the following offences:

- Use and exceeding of authorisation in bad faith
- Neglect

- Unauthorised receipt of financial benefit
- Commercial bribery
- Unauthorised obtaining and disclosure of information containing secrets acquired in the course of employment or commercial secrets
- Laundering of proceeds of crime
- Exceeding official authority
- Abuse of official status
- Failure to act by a state official
- Acceptance of bribes

33. Its objectives are as follows:

- to analyse, plan, manage, co-ordinate, control and support the work of all structural units of the Economic Police in the prevention and disclosure of offences within their authority.
- according to the legislation on intelligence activities, to perform operational and search activities (operational investigation, operational check-up and operational case preparation) in order to provide for due prevention of offences within the competence of the Economic Police, their disclosure, finding of the offenders and finding, collection, storing of proof and its use in the criminal proceedings.
- to collect, analyse, register, store and use the legal and secret information on the facts, events, cases and persons, which is necessary for the investigation, prevention and interruption of the offences under their jurisdiction.
- to manage, plan, co-ordinate, control and support the work of the units of the economic police in the criminal cases within its competence in order to prevent and stop the offences in the sphere of economy.
- to perform operational, penal and administrative measures in order to warn, prevent and stop administratively liable offences in the sphere of economy within the competence of the Economic Police.

34. In general terms a large part of its work related to corruption offences focuses on improper relationships rather than bribery.

35. The Economic Police believe that they have the full support of the state in the fight against corruption. Rather than one unique bureau responsible for corruption, the preference leans towards each criminal discipline engaging the corruption matters within its own operating area. The Bureau seeks clearer lines of responsibilities within the state institutions.

*iv) Internal Police Inspection*

36. The system of identifying and investigation of corruption complaints about the State Police is based on the principle that each complaint about the work of any police officer must be recorded and investigated to ascertain if there are grounds to support it. There is an officer in each police establishment in charge of investigating complaints from the public. If the individual is not satisfied with the results of investigation of a certain case in respect of corruption, he/she may appeal to a higher Police officer, to the Security Police or even to the Ministry of Interior. The management of the State Police believes that public trust in the State Police is the main tool for effective preventing and combating of all forms of crime. Therefore, increased attention is being paid to obtaining operative information on, and investigation of, corruption by Police officers. The primary body engaged in investigation of alleged corruption in the State Police is the State Police

Human Resource Inspection. The Inspection reports directly to the Chief of State Police, and it has the following tasks:

- investigation of disciplinary breaches, misuse of office and other cases,
- analysis of and work on complaints and other documents received from the public on breaches committed by Police officers,
- analysis of and work on complaints by Police officers about disciplinary penalties imposed on them,
- control of the inspection work of structural units of the State Police,
- summarizing and analysis of information about disciplinary breaches committed by Police officers,
- summarizing and analysis of information about offences committed by Police officers,
- forwarding cases for further processing to the State Police Inquiry Department or Public Prosecutor's Office.

v) *Recruitment and Training*

37. General requirements needed to be appointed to Latvian police forces are set up by the law on police (Section 28): candidates have to be Latvian citizens not younger than 18 and not older than 35; personal characteristics, education, physical and health conditions as well as motivation to be a police officer are tested. A person who has worked on a permanent or temporary basis for security services of the USSR cannot be employed in the Latvian police forces. In the same provision, it is said that the duty of any police officer is "to observe the norms of professional ethics".
38. When assuming office, each police officer has to take an oath swearing, *inter alia*, "to be loyal to the Republic of Latvia and to fulfil its laws honourably".
39. In 2001, several training activities for officers of the State Police on corruption issues were organised. In 2000 and 2001, the PHARE project on corruption (Combating of Corruption, Legislation, Training and Public Information Program) was also implemented; representatives of the State Police participated in this project at the level of both Management Committee and experts. Within the framework of this project, the training of State Police officers was organised. Training in this area was provided within the framework of mutual international co-operation.

**b2. Criminal Investigation of corruption**

40. According to the Code of Criminal Proceeding of Latvia, both the Court, the Prosecutor and other investigative bodies have to initiate criminal investigations whenever the features of criminal offence are detected, using all the applicable means to identify the fact of criminal offence and the individuals guilty of a criminal offence, and to bring them before the Court. The Code of Criminal Procedure provides rules establishing when a criminal action may not be brought, and a pending action has to be terminated:
- if no criminal act has taken place;
  - if an act has no necessary elements of criminal offence;
  - if the limitation period has expired;
  - due to amnesty terminating the punishment for the offence, as well as forgiveness of certain individuals;

- against a person, who, at the time when criminal act took place, had not attained an age at which criminal liability applies;
  - against the individual who at the moment of commitment of the offence has not reached the age subject to criminal liability according to law;
  - on the grounds of reconciliation of the victim and the accused in cases initiated solely on the basis of the victims' complaints;
  - if there is no complaint from the victim, where the criminal action can only be initiated on the basis thereof;
  - against a deceased, except if proceedings are required to rehabilitate the deceased or resume the case against other individuals due to newly revealed circumstances, as well as in cases of criminal offences against humankind, for genocide, for criminal offences against peace and for criminal offences committed during war;
  - against an individual in respect of whom there has already been a legally enforced court verdict or a ruling on the termination of the case on the same grounds as for the same accusation;
  - against an individual against whom there is a valid decision of the investigative bodies or prosecutor on the termination of the case for the same accusation.
41. Furthermore, the Code of Criminal Procedure, Article 5 indicates cases where it is possible to refuse to initiate or terminate a criminal case:
- if elements of a criminal offence exist, but have not caused such harm as to require criminal adjudication, so that the accused person may be released from criminal liability;
  - in the case of conciliation between the victim and the accused person in those criminal offences prescribed by the Criminal Law;
  - if a criminal act has been committed by a juvenile and specific circumstances have been established which mitigate his/her liability.
42. In these cases, a copy of the decision taken by inquiry authorities, prosecutors or judges, to refuse initiation of criminal proceedings or to release a person from criminal liability has to be sent to the persons in relation to whom the decision has been taken as well as to the victims of the criminal offence. Initiating a prosecution may not be declined, and a criminal case may not be terminated if the individual who has committed the criminal offence, or his/her legal representative objects to it.
43. The Code of Criminal Procedure provides for broad powers for prosecutors during pre-trial investigation and court proceedings. Prosecutors supervise activities of investigative institutions (police), organise and manage pre-trial investigation and represent public prosecution during trial. As regards supervision activities of a prosecutor, he/she:
- initiates or refuses to initiate criminal case,
  - instructs investigative institutions to initiate criminal case,
  - cancels unlawful and groundless decisions by investigative institutions and prosecutors with lower position,
  - takes part in investigative activities,
  - gives instructions concerning investigation of criminal offence,
  - examines complaints concerning activities of investigative bodies and prosecutors of lower rank and can review decisions to terminate prosecutions made by a subordinate prosecutor,
  - sends back criminal cases to prosecutors for additional investigations.

44. The mechanism to ensure that prosecution is not discontinued as a result of undue pressure or undue consideration is:
- that there is rights for parties to appeal a prosecutor's decision to a higher prosecutor and a court's decision to a higher instance court;
  - independence of prosecutors stipulated by law "On Prosecutors Office" (according to article 6, a prosecutor is independent from influence of other public institutions and officials and conforms only with law).
45. In the fight against organized crime, including corruption, the Latvian Criminal Procedure Code and the Law on Operative Activities provide for the possibility of making use of so-called special investigative techniques. In order to use special investigative techniques before the initiation of criminal proceedings (controlling of correspondence, acquisition of information by technical means, covert monitoring of non-public conversation etc.) the judge's approval is required. In case of urgency, special investigative techniques may be used without the judge's approval if the prosecutor is informed within 24 hours and the judge's approval received within 72 hours.
46. The evidence acquired and recorded according to the procedure prescribed by the Criminal Procedure Code, including the testimony of witnesses which is recorded using audio-video equipment may be used as evidence in court if the participation of witnesses in the court is not possible. In order to protect the witnesses the court may interrogate the protected person outside of the courtroom using technical equipment.
47. A witness protection programme is in place in Latvia, which can be applied also in corruption cases (Criminal Procedure Code, Art.106.3).

### **b3. The Prosecution Office**

48. The Law on the Prosecutor's Office adopted by Parliament (Saeima) on 19 May 1994 defines duties, organization and guarantees of the Prosecution Office.
49. According to Section 2 of this Law, the Office of the Prosecutor:
- supervises the work of investigative institutions and investigative operations of other institutions;
  - organizes, manages and conducts criminal prosecution;
  - Initiates and conducts criminal prosecution;
  - maintains charges of the State;
  - supervises the execution of sentences;
  - protects the rights and lawful interests of persons and State; submits a complaint or a submission to a court in cases provided for by law; and
  - takes part in the adjudication of matters by a court in the cases provided for by law.
50. The Office of the Prosecutor is a single, centralized, three-level institutional system under the management of the Prosecutor General. Such a Public Prosecution system has been established to correspond to the three-level court system in Latvia.

51. The Law on Public Prosecutor's Office provides for:
- 1) regional and city prosecutor's offices (in the number equal to that of courts of the concerned level);
  - 2) prosecutor's offices at court regions (in the number equal to that of regional courts);
  - 3) General Public Prosecutor's Office.
52. Each Prosecutor's office is managed by a Chief Prosecutor. Apart from their direct duties, general prosecutor's offices also supervise the work of regional prosecutor's offices within their regions. General Public Prosecutor's Office consists of departments (criminal, civil and operations management departments) dealing with these matters nationally. Chief Department Prosecutors act simultaneously in the capacity of Deputy General Public Prosecutors, and one of them substitutes the General Public Prosecutor during his/her absence.
53. The Prosecutor General manages and controls the operation of the institution of the office of the Prosecutor, determines their internal structure and staff positions in conformity with allocated State budgetary funds, as well as directly manages the work of the prosecutors of the Office of the Prosecutor General.
54. The Prosecutor General is appointed by the Saeima, upon the recommendation of the Chief Justice of the Supreme Court, for a period of five years, on the basis of his/her professional qualifications and ethical criteria. The person appointed to the office of the General Public Prosecutor must have at least five years work experience in the office of the Prosecutor or at least three years work experience in the office of the Judge of a Constitutional, Supreme or Regional Court. Chief Prosecutors are appointed to the office by the General Public Prosecutor for the period of 5 years, subject to the consent of the Qualification Commission, and there are no restrictions in respect of their re-appointment. Other prosecutors are appointed by the Prosecutor General for an unlimited period of time. A new procedure was established two years ago concerning the dismissal of the General Public Prosecutor: members of Parliament now have to state in their request certain breaches of the law committed by the General Public Prosecutor (violation of the law, shameful acts incompatible with his/her office, becoming a member of a party or other political organisation). Following that, the deputies' request is reviewed by a Supreme Court Judge appointed by the Chief Justice of the Supreme Court. Should, during the review, the judge reveal breaches in the work of the General Public Prosecutor, confirmed by the Supreme Court Session, the Parliament may decide upon dismissal of the General Public Prosecutor. If, during the review, no breaches in the work of the General Public Prosecutor are discovered, the motion for dismissal of the General Public Prosecutor is withdrawn.
55. The law specifies the requirements applicable to the candidates to the office of Public Prosecutor: citizenship of the Republic of Latvia, university degree in Law, political impartiality, fluency in the official language, etc. When the candidate has passed qualification examination and the in-service training, and the possibility of his/her appointment has been discussed by the Qualification Commission, General Public Prosecutor decides upon his/her nomination to the office. The law provides for appointment of attesting and qualification commission designed to examine candidates to the office of Prosecutors, decide upon their suitability to the concerned Prosecutor's office, upon the in-service training and program, as well as to discuss serious disciplinary breaches. The membership of qualification and attesting commission as well as the in-service training program is approved on annual basis by the General Public Prosecutor's Council.

56. Within the structure of the Prosecutor General's Office, a Department of Especially Serious Cases which deals with the investigation of corruption cases of senior public officials (Parliament deputies, members of the Cabinet of Ministers, heads and deputy heads of municipalities, executive directors, etc.) was set up in 1998. It supervises, among other things, the application of special means of investigation, including in the cases related to corruption. In October 1994 the Specialised Prosecutor's Office for organized crime and other matters with the status of a regional prosecutor's office and in March 1997 the Prosecutor's Office for the investigation of financial and economic crimes as a regional prosecutor's office were created in order to face these special forms of criminality.
57. The Law on the Office of the Prosecutor provides also for the political neutrality of the office. Holding the office of prosecutor may not be combined with membership of a party or other political organization. In his/her functions, a prosecutor is only submitted to the rule of law: the Saeima, the Cabinet of Ministers, State and local governments institutions, State and local government civil servants are prohibited from interfering in the work of the Office of the Prosecutor during the investigation of a matter or during the performance of other functions of the Office of the Prosecutor (Section 6).
58. When examining specific matters, each prosecutor takes his/her decisions independently and only on the basis of his/her moral conviction and according to law. Decisions of prosecutors may be appealed in the cases and in accordance with the procedures provided by Law to the one-level higher prosecutor within the regional and district offices, and to the Prosecutor General at level of the Prosecutor General's Office. Decisions of higher-ranking prosecutors cannot be submitted to any other form of appeal.
59. The Law on Office of Prosecutor provides regulations on management and control of the Prosecutor General's Office and activities of prosecutors and appeals procedure concerning decisions of prosecutors. The Prosecutor General can issue binding instructions and orders to prosecutors.
60. The Prosecutor commences criminal prosecution. In case the prosecutor refuses to initiate criminal proceedings, the parties have the right to appeal a prosecutor's decision to a higher prosecutor.

#### **b4. The Courts system**

61. The Constitution and The Law on Judicial Power establish a three-tier court system, consisting of 34 District Courts, 5 Regional Courts and the Supreme Court, collectively considered as the courts of general jurisdiction. District Court decisions may be appealed to a Regional Court or, under the cassation procedure, to the Supreme Court.
62. The Constitution enshrines the independence of judges and courts establishing that "judges shall be independent and subject only to the law" and "the judgements shall be made only by the courts".
63. According to the relevant legislation, the Ministry of Justice manages the financial resources of the regional and district courts including preparation of the budget and subsequent distribution of funds.

64. According to Article 84 of the Constitution of Latvia and Articles 51-60 of the Law on Judicial Power, district court judges are appointed to office by the Parliament upon the recommendation of the Minister of Justice for three years. After these three years the Parliament shall confirm him/her in office for an unlimited term upon recommendation of the Minister of Justice and on the basis of the opinion of the Judicial Qualification Board. The procedure is similar for regional court judges, except for the fact that they are appointed for an unlimited term. According to the Law on Judicial Power, judges may be dismissed or removed only on grounds and by procedures established by law: by Parliament at their own request, health reasons, if they have reached the mandatory retirement age, if they have been found guilty of a criminal offence.
65. As regards disciplinary proceedings, Article 1 of the Judicial Disciplinary Liability Law provides that a judge may be charged with misconduct for intentional violation of the law during review of a case, failure to perform professional duties, dishonourable actions, administrative violations, refusal to discontinue membership in a party or political organisation. Article 2 stipulates that all the disciplinary cases are reviewed by the Judicial Disciplinary Board which is composed of the President and the Vice-President and three judges of the Supreme Court, two Presidents of regional courts, two Presidents of district courts and two Heads of Land Registry Offices elected by the Council of Judges. A judge against whom a disciplinary proceeding has been initiated can review documents, give explanations and participate in hearings before the Judicial Disciplinary Board.
66. The Judicial Disciplinary Board may take the following decisions: dismiss the disciplinary case or impose sanctions such as reprimands or reduction of salary. It can also send the case to the prosecutor's office when it considers that there are sufficient elements for initiating criminal proceedings; or recommend to the Parliament that the judge be removed from his/her office or send a case to the Judicial Qualification Board to review his/her classification.

**b5. Other bodies and institutions**

67. There are other authorities in Latvia, which, although not directly involved in the criminal law area, play an important role in the prevention and disclosure of corruption. In this regard, it is essential to refer to the State Revenue Service; the Office of the Information Commissioner; the Ministry of Finance, the Auditor General, the Department of the Environment and Local Government.

*i) The State Revenue Service*

68. The State Revenue Service is made up of the National Customs Board and the National Tax Board. Within the support departments there exists the Corruption Prevention and Control Department whose main aim is preventing corruption. This work is carried out by administering the declarations (statement of income and expenditure) made by public officials. These are made on first taking office, then on annual basis and upon leaving office. They are composed of 2 parts: one open to the public (economic situation of the person, his/her participation in private companies and so on), another confidential (personal data). Declarations relating to most important public officials and representatives of the State Administration (starting by the President of Latvia) are published in the Official Journal of the State. Some 41 000 declarations are issued each year, 5% of which are checked. The methodology of selection for checking is set by the Director General of the Department. This includes checks on those public officials against whom complaints have been made or so-called risk groups (people working in board services or in local authorities administration). This is supported by a confidential telephone 'hot line'. The checks seek to establish whether there has been any improvement in material conditions.

69. If controllers of the Department find that there could be some irregular condition in the situation of the person controlled, they firstly request additional information, especially from banks; then, they ask to make use of some database (i.e. on land registers or transportation) and finally they use all the information previously collected. If serious suspicions of criminal offences come out during the State Revenue Service's investigations, the case is transmitted either to the economic police or to the Public Prosecutor's Office.

*ii) State Audit Office*

70. The State Audit Office (hereafter the "SAO") is an independent collegial institution set up in 1993, in charge of the audit control of State budget, State and local government assets. Within this task the SAO is also empowered to:

- control lawfulness of State and local procurement;
- control lawfulness of privatisation process;
- give opinions on draft legislative acts submitted to the Cabinet of Ministers and related to income and expenses of State and local government.

71. The SAO is managed by the Auditor General whose position is comparable to that of a Minister. The Parliament (Saeima) appoints the Auditor General for seven years. Auditors shall be appointed to their office and confirmed pursuant to the same procedures as judges, but only for a fixed period of time, during which they may be removed from office only by a court judgment. Members of the Council of the SAO and of the boards of audit departments shall, pursuant to the recommendation of the Auditor General, be confirmed by the Parliament for a seven-year term. The SAO is staffed by 170 members, 120 of whom are employed in auditing activities.

72. During the meeting, the GET was told that corruption is considered as a sub-component of the SAO's tasks and that public procurement is a very risky area. If SAO officials find out any suspicions of corruption, they report the case directly to either the Public Prosecutor's Office - if there are criminal elements - or otherwise to the State Revenue Service. In 2001, the Office carried out audits according to international established standards in the field and results showed that the more significant problems concern local authorities and state agencies which are regulated essentially by special budgets not so expressly detailed as the normal expenditures of the State budget. The GET was told that for that reason it is extremely difficult to control the expenditure of those State agencies that often use such uncontrolled funds. SAO also audits the privatisation procedures and the implementation of different privatisation activities after the company has been privatised. Insofar as the SAO's transparency strategy is concerned, a report on the SAO activities is drafted annually and made public through a number of different tools such as official bulletins, newspapers and websites and it is presented to Parliament.

*iii) State and Municipal Procurement Supervision Department of the Ministry of Finance*

73. According to Article 33 of the Law On State and Local Government Procurement, the Department had the duty to provide control of the legitimacy of State and municipal procurements. On January 2002, a new law "On Procurement for State and Local Government Needs" will enter into force that will replace the above-mentioned Law. More specific regulation will be introduced to ensure transparency and equality in competition procedures. This law defines selection criteria depending on a method of purchase and allows the competition commission to reject groundlessly cheap proposals which reduces subjectivity in the decision-making process. It also

provides for the establishment of a special institution – Procurement Monitoring Bureau - that will review complaints and will be empowered, *inter alia*, to suspend the tender procedure in case of a complaint lodged by one of the tenderers. During the reviewing of complaints, all parties with interests in the complaint, will have the possibility to take part in hearings. The new law foresees the publication of all offers on the Internet.

74. On 5 July 2001, the Saeima adopted a new law “On procurement for State or Local government needs” to enter into force on 1<sup>st</sup> January 2002. The GET was told that the main aims of this new law are, on the one hand to make clearer provisions about public procurement procedures and to thus enable tenderers to use a stricter interpretation of legislation and, on the other, to reduce the number of administrative acts in this field. The Law provides for the setting up of a monitoring body (the Procurement Monitoring Bureau<sup>7</sup>) whose main tasks are fixed in Section 39 of the Law. The Bureau has also the power to suspend the tender procedure if one of the tenderers submits a complaint.

75. Although officials involved in public procurement are viewed as a high-risk group, the GET was informed that only 3 cases were very recently brought before the courts (September 2001) about tender procedures related to building areas in the Riga region and that some of those tenders involved are suspected of having links with some politicians. Moreover the GET was told that in several cases procurement legislation is not followed and quite often it happens that authorities address themselves directly to a supplier. According to some information provided to the GET, the fact that very few cases of corruption have been discovered in the procurement area could be the consequence of inappropriate control and investigative activities. Therefore corrupt practices would remain unnoticed.

*iv) Internal Audit Department (of the Ministry of Finance)*

76. The enhancement of auditing has become an important matter with the entry into force of the Cabinet of Ministers’ Regulations on Internal Audit in 1999 and Ministry of Finance decrees on methodology of performing joint internal audit in 2001. The Ministry of Finance has a coordination role in auditing: it co-ordinates and manages the establishment and development of internal audit in public service, develops methodology, guidance and manuals of the internal audit, co-ordinates training and professional qualification, provides a central reference point for internal audit knowledge and materials. Internal audit of programmes financed by the EU is performed through the joint audit arrangements whereby it is led by the internal audit of the ministry in question accompanied by officials of the Internal Audit Department of the Ministry of Finance.

*v) Privatisation Agency*

77. On February 1994, a law on the “privatisation of State and local government property” was adopted which provided, *inter alia*, for the establishment of the Latvian Privatisation Agency (hereafter “LPA”). LPA is a non-profit State stock company that employs 125 people who do not have civil servant status and is responsible for all the aspects of privatisation of State enterprises (except for agriculture and apartments). The Agency is financed by revenues from the privatisation process itself: LPA collects funds from privatisations according to percentage rates established by the Government. The operational activities are carried out and decisions taken by the LPA Executive Board composed of up to 7 members.

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<sup>7</sup> The Bureau was established on 1 January 2002.

78. The GET was told that since the creation of LPA, only 2 cases of wrongdoing were registered. One occurred in 1994 when an employee was asked to resign for having sold some confidential information. The second case happened in 2000 and concerned a member of the Executive Board who was prosecuted for having tried to convince a company to renounce participating in the option during a privatisation process. This person, who was discovered by Police as having close friendly relationships with the other bidder, was sentenced to 1 year conditional imprisonment.

**c. Immunities from investigation, prosecution and adjudication for corruption offences**

79. The GET regrets very much that the Latvian authorities were not able to organize, during the visit in Riga, a meeting with experts in immunities matters in spite of the fact that this had been expressly required since this meeting did not appear in the first project of program prepared by the Latvian authorities. For that reason, the GET, in its exam of the system of immunities existing in Latvia, took only account of the legislative texts which were supplied to it during the visit (notably the Constitution and the law on judicial power) and the replies to the questionnaire.

80. The following authorities benefit from immunities in Latvia:

- The President of the Republic: he/she may be subject to criminal liability if the Saeima consents thereto by a majority vote of not less than two-thirds (article 54).
- Members of the Saeima: they may not be called to account by any judicial, administrative or disciplinary process in connection with their voting or their views as expressed during the execution of their duties. Court proceedings may be brought against members of the Saeima if they, albeit in the course of performing parliamentary duties, disseminate (article 28):
  - defamatory statements which they know to be false, or
  - defamatory statements about private or family life.

81. Moreover, members of the Saeima shall not be arrested, nor shall their premises be searched, nor shall their personal liberty be restricted in any way without the consent of the Saeima. Members of the Saeima may be arrested if apprehended in the act of committing a crime. The Presidium shall be notified within twenty-four hours of the arrest of any member of the Saeima; the Presidium shall raise the matter at the next sitting of the Saeima for decision as to whether the member shall continue to be held in detention or be released. When the Saeima is not in session, pending the opening of a session, the Presidium shall decide whether the member of the Saeima shall remain in detention (article 29). Without the consent of the Saeima, criminal prosecution may not be commenced and administrative fines may not be levied against its members (article 30).

82. Judges and lay judges enjoy immunity during the time he/she fulfils his/her duties in relation to adjudication in a court. A criminal procedure against a judge may only be initiated by the Prosecutor General of the Republic of Latvia. A judge may not be detained or be subjected to criminal liability without the consent of the Saeima. A decision concerning the detention, forcible conveyance, arrest, or subjection to a search of a judge shall be taken by a Supreme Court justice specially authorised for that purpose. A lay judge, during the time he/she fulfils his/her duties in relation to the adjudication of a court, may not be subjected to criminal liability or be detained without the consent of the Local Government which elected him/her. A decision

concerning the detention of, forcible conveyance, detention, or subjection to a search of a lay judge shall be taken by a Supreme Court justice specially authorised for the purpose.

83. If a Latvian diplomat commits a crime in another State, article 4 of Criminal Law will be applied. This article states that Latvian citizens, shall be held liable in accordance with this Law for a criminal offence committed in the territory of another state. As Latvia has ratified European Convention of transfer of proceedings and concluded a lot of bilateral agreements with other states, proceedings can be taken over on the bases of these treaties. No such cases have ever arisen.

### **III. ANALYSIS**

#### **a. General policy and legislation on corruption**

84. The scale of the problem of corruption in Latvia is difficult to quantify. Perceptions and reality are always different; yet both are of equal importance. The difficulty begins with recognition of the problem: the real challenge is changing attitudes and behaviour. During the visit, the GET was told several times that the Latvian society's mentality vis-à-vis corruption phenomena is changing and people are more and more reporting to the police or other law enforcement agencies cases of suspicions of corruption. In the GET's view this is to be considered an extremely positive aspect. The Latvian Government may have acted quickly in introducing appropriate legislative framework, yet real obstacles are found in the sheer complexity of the issue, society's expression of uncertainty, concerns about competence and the speed of change demanded.
85. For that reason, the GET considered essential to recommend that the Latvian authorities continue implementing appropriate preventive policies based on codes of conduct for all officials and education and information for Latvian society as a whole, so that everyone is aware of his/her rights and obligations.
86. Furthermore, the GET recommended that the corruption prevention programme should continue to be implemented, particularly on the following issues:
- increasing public awareness of the danger that corruption represents for the stability of democratic institutions and economic and social progress;
  - informing the public about the measures adopted to combat corruption, the penalties that may be imposed for it and the institutions involved in fighting corruption which may be contacted by the public;
  - enhance the involvement of the media and non-governmental organisations in a co-ordinated awareness-raising campaign.
87. The GET met representatives of the Latvian authorities, who demonstrated their intention to tackle the problem of corruption in Latvia. The majority of these representatives referred frequently to the Corruption Prevention Council, which was seen as mainly responsible for implementing Latvia's anti-corruption policy. The GET is pleased to note that this body is made up of people from a variety of fields. Representatives from the Ministries of Justice, Interior and Finance, the Prosecutor General's Office, the State Revenue Service, the State Audit Office, the State Civil Service Administration and the Latvian School of Public Administration and other institutions and organisations (including Transparency International) attend meetings of the Corruption Prevention Council. The GET also welcomes the steps taken to update legislation directly or indirectly related to the prevention of corruption and remove any legal loopholes. It

acknowledges the effort made in this area, particularly the drafting of a number of laws and regulations aimed at creating a new legislative framework or amending and improving the existing legislation (on financing of political parties, prevention of conflicts of interest in the State agencies, public procurement and on management of state holdings in companies) and the planned amendments to the Criminal Law.

88. Moreover, the GET notes that actions have already been taken in public bodies in accordance with the Corruption Preventive Programme adopted by the Council such as the rotation principle among the customs officials and the abolishment of the possibility for State police officers to levy on-the-spot fines when discovering an offence. Furthermore, the draft Administrative Procedure Law has been up-dated and the new law "On Political Parties Financing" has been elaborated and submitted to the Cabinet of Ministers.
89. The GET is of the opinion that the work of the Corruption Prevention Council does not always produce the results expected by the public. The GET is not in a position to say exactly why some of these objectives have not been achieved, but it often seemed that the persons directly responsible for following up and implementing decisions taken by the Council had not appropriate the necessary financial and technical means to implement an effective anti-corruption policy. For this reason, the GET recommended that the scope of the Corruption Prevention Council be extended to ensure the effective implementation of its objectives.

**b. Policing and prosecuting institutions**

*i) Investigation and coordination*

90. There are presently in Latvia a range of policing institutions that contribute to the fight against corruption. The GET considers that their efforts are frankly segmented and disjointed and that there is an obvious lack of direction and co-ordination which no doubt leads to lost opportunities. Clearly, these bodies are failing to produce the results expected by society. During the visit, the GET was told by a member of the Economic Police that "there is a need to make clear who is doing (has to do) what".
91. To date there appears to be no evidence of any successful corruption investigations originating from police intelligence. The notable cases all seem to stem from a disenchanted third party involved in the incident. This suggests insufficient intelligence gathering activity in the area of corruption, plus a lack of use of proactive investigative techniques.
92. The GET recommended therefore to promote coordination, experience sharing and circulation of information among the different police forces involved in anti-corruption investigations, in particular by establishing an anti-corruption operational working group with a multi-agency focus and above all more proactive investigative strategies.
93. The Latvian State requires a process where it can collect existing yet disparate corruption knowledge. This collective data will identify any gaps requiring further research. An intelligence capability will help quantifying, categorising and understanding the corruption phenomenon. Emerging trends and targets will also be highlighted from this material. Prevention of corruption and operating strategies can be set and more proactive operating methods used. Operational resources will become more effective.

94. The Police Institutions will require structures and systems to handle, store and disseminate intelligence. A tasking and coordinating element will form part of this structure. Different departmental institutions should regularly share knowledge and good practice. Co-operation will foster improved efficiency. No single agency can fight corruption alone. Efforts should be made to develop mechanisms for closer co-operation among administrative authorities, police and prosecutors. An exchange of information and good practise between these bodies would allow more systematic pro-active approach to the detection, investigation and prosecution of corruption. The GET therefore recommended to introduce a corruption intelligence system<sup>8</sup> with operational functions, and research in vulnerable sectors and the ability to conduct and to develop early intervention strategies.
95. The State Revenue Service Corruption Prevention and Control Division appears on the face of it to be a good system of vetting public officials. Its work is supported by Article 328 of the Criminal Law which creates the offence of false official information, defined as the committing of knowingly providing information to an institution or a State Official. However the division lacks real teeth, in that it has no powers to check the declarations made against the bank accounts and other financial assets held by public officials. It entirely relies upon full disclosure by public officials. The GET understood that this position was under review at the time of the visit with new legislation being considered. The GET recommended to extend the powers of this unit to encompass disclosure from banking institutions regarding information on an individual's financial account.

*ii) Technical Support*

96. Latvians hold high aspirations for the future. Public opinion is strongly influenced by the country's economic performance and the translated social benefits. Dissatisfaction with the rate of progress of reform has bred suspicion and resentment. This raises two real challenges for institutions combating corruption: to gain the trust of the public and demonstrate effectiveness against it by producing results. The GET witnessed a lack of modern facilities and appropriate technologies in the daily work of the law enforcement bodies. Therefore, the GET recommended that the resourcing of the fight against corruption be improved.

*iii) Proactive Policing Techniques*

97. Other than the Security Police, the GET was not convinced of the widespread use of sophisticated policing techniques. The use of informants and undercover officers is a cost effective method of policing. There appeared to be a lack of imagination in fighting corruption, with little evidence of formal training in these areas. The State Police suggested that they use interception of communications in all corruption cases which raises concerns as to whether such an intrusive technique is being properly and proportionately applied. Strict application and enforcement of existing laws together with vigorous prosecutions of offenders is essential in a State governed by the rule of law. In Latvia, existing laws in preventing and combating corruption seem to be quite an effective tool but in the GET's opinion they are often under-utilized. For that reason, the GET recommended to make more effective use of the existing legislative tools provided to discover and combat corruption and in particular those concerning the use of special investigative technical means in the detection of corrupt behaviour.

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<sup>8</sup> An intelligence system involves the collection, assessment, research, evaluation and subsequent tasking information. This process links into achieving policy objectives, prioritising the use of resources and accountability to Human Rights.

*iv) Internal Police Corruption*

98. The GET noted that setting up a system of identifying and investigating corruption complaints within the State Police has been developed. It further noted that, the Inspection is made up of Police officers with high moral standards, professional knowledge and lengthy experience of practical work. However, the GET was informed by some of those it met that the Inspection lacked resources and was also insufficiently independent of the Police officers who were the subject of the complaints. It therefore recommended that the Latvian authorities implement measures to ensure effective monitoring of police actions, including corruption. Such measures should ensure a degree of independence to the investigators.

*v. Changing attitudes of the Police*

99. The levels of performance demanded by modern Latvian society may require the Latvian Police to consider an organisation wide change program. As Police deals with people, there is no scientific nor one discrete change technique or method. The intended outcome of such a program is easier to quantify, the Police may require new operating methods, and more importantly a new relationship with the community they serve.

100. On an organisational basis, the Chief Officer needs to set out clear policy and purpose. Supporting the Chief Officer, the workforce should participate with imagination and ideas on how to deliver these objectives. Individuals, groups and departments should be asked to examine how their roles and procedures fit within any new policing context. The emphasis is on empowering the police officers within the organisation to change the existing system. With set targets, this process will deliver a change attitudes and behaviour. The Police may require support. Externally, a Management Consultant may be asked to facilitate the process. Internally, data collection points could be established to measure performance now, and consequently evaluate the change program.

101. The policing institutions appear to be task orientated. Evidence of performance too quickly became a recital of existing or developing law rather than delivery. There is a need for a real change in attitude and behaviour. Improved skills and motivation need to be implemented in the fight against corruption. The public demand a cost effective service, free of corruption. Therefore, the GET observed that efforts to change attitudes and behaviour of police officers would prove beneficial in implementing anti-corruption strategies

*vi) The judiciary*

102. The law on the Office of the Prosecutor guarantees a relatively strong and independent position of the Office of the Prosecutor in relation to the other State authorities. In the view of those people from the Office met by the GET, the legal environment would generally guarantee the proper functioning of the prosecution and judiciary while dealing with corruption cases.

103. The GET noted that the public prosecution and the judiciary were broadly perceived by the public as being ineffective in fighting corruption. As an example it was mentioned that in 2000, 34 cases of acceptance of bribes were investigated but only 5 persons were sentenced.

104. The inconspicuous number of persons sentenced for corruption and disparity that exists between registered crimes and sentenced persons for corruption seems to indicate the necessity for much

more effective action on the part of all law enforcement and controlling bodies and also for more effective work of prosecution and judiciary.

105. The prosecution and judiciary's position will be strongly strengthened not only by Justice being done but also by Justice being seen to be done. A gradual reduction in the differences between public perception and official statistics can be achieved only by producing results.
106. Within the Prosecutor General's Office, several units exist which have been assigned special functions in fighting crime. The investigation and prosecution of corruption is merely one of their tasks. Prosecutors in these units do not see fighting corruption as their main priority. Corruption is a silent and very complex crime. It recalls that the investigation and prosecution of such a complex offence requires special skills and experiences and special training. The size of the country hardly justifies specialization of prosecutors in all regional and district offices. It would seem much more effective to allocate to one unit within the Prosecutor General's Office with adequate material and human resources. A unit dedicated specially to dealing with corruption and corruption related cases should ensure a more active role of the prosecution in the anti-corruption strategy.
107. The GET recommended therefore that one of the existing units within the Prosecutor General's Office dealing with corruption cases be responsible for training, support and sharing of practice to other units involved in the fight against corruption. The unit should give support to the territorial prosecution offices and develop a higher level of cooperation with policing institutions.

*vii) Training*

108. The Ministry of Justice plays an important role in relation to the courts. The judiciary has little legal or practical control over or input into its own financing which is determined by the Ministry of Justice. The GET considers that the judiciary in general and the training of judges in particular is insufficiently funded. Unsatisfactory working conditions, lack of technology, inadequate remuneration contributes to inefficiencies and backlogs, especially in Riga District Courts. For this reason, the GET recommended that judges be guaranteed satisfactory legal and financial status; to significantly increase the means allocated to the courts in order to improve their functioning.
109. Even though the GET was informed that persons responsible for preventing, investigating, prosecuting and adjudicating corruption offences participate in training seminars or programmes, it was not clear whether the training on corruption issues is given the necessary priority or is of a desirable level. Therefore the GET recommended to continue additional appropriate training - in particular on the typologies of corruption and the unique challenges of investigation, including its international dimension – be organised for police officers, prosecutors and judges dealing with corruption and connected offences.

*viii) Witness Protection*

110. It was clear to the GET that most of the public officials interviewed had little knowledge of an existing witness protection programme. In the GET's view the general public's knowledge about this programme is even lesser. A Witness Protection Programme is designed to provide protection and anonymity to high-risk witnesses. An effective Witness Protection Programme should be able to afford identity changes, relocation, temporary accommodation, personal alarms and general advice. The relatively small population and geographic size of Latvia will make witness protection a difficult technique to implement.

111. The GET was told during the visit that, even though the public has an increasing trust in law enforcement bodies (the result being an increasing number of complaints addressed to them), citizens are sometimes frightened of making complaints against public officials. Firstly, because they know that criminal proceedings are very long and complicated (and, for instance, they will be asked to testify several times) and secondly, citizens are very often afraid of being submitted to retaliation by public officials, not physically but due to the position that they occupy within the State administration. For that reason, the GET recommended to raise information campaigns on the existence and possibility of use of the Witness Protection Programme which certainly will encourage persons to come forward in the confidence that the prosecution authorities will provide protection. As a result, witnesses will be able to testify against key corrupt officials without fear of reprisal.

**c. Public procurement and local authorities**

112. During the visit, the GET was informed that procurement in the local authorities is a main area of risk for corruption in Latvia. The situation mentioned is that close personal relationships exist between suppliers and purchasers. The GET welcomes the fact that a new law "On Procurement for State and Local Government Needs" would enter into force on January 2002 which will introduce more specific regulations in order to ensure transparency and equality in competition procedures. However, the GET considers that the adoption of new laws, though an important first step, is not enough to eliminate all the risks of corruption opportunities in this delicate area. Therefore the GET recommended that measures, in addition to those already planned and adopted, be taken to minimise the risks of corruption opportunities in the public procurement area:

- to provide proper training to all those public officials who deal with procurement activities in the central and local agencies in order to make them aware of the regulations in force and ensure that they would be able to assess procedural irregularities in the context of evidencing corruption;
- to consider improving competition mechanisms at level of local government authorities in order to avoid excessive familiarity between officials and suppliers, leading to direct orders being placed without applying tendering procedures, such as, for instance, collective decision-making procedures, rotation of officials deciding on purchases, specific supervision of contracts concluded directly etc.

**d. Immunities**

113. The GET noted that the current system of procedural immunities applies to a reasonable number of categories of people, namely the President of Republic of Latvia, members of Parliament and judges.

114. The GET considered that the scope of the procedural immunity afforded to members of parliament and judges was generally acceptable. It noted, however, that there were no clear guidelines for the persons deciding on whether or not to lift the immunity. Although binding rules or criteria would not be compatible with the essence of the institution of procedural immunity, guidelines contained, for example, in the rules of procedure, would be a useful tool to prevent it from being politically abused. Such guidelines should recall that, as a rule, immunity should be an exception and should not be maintained if there is evidence that the suspect used his/her official position to gain an undue advantage.

115. Accordingly, the GET recommended to establish guidelines for the Deputies of the Saeima, and especially its Presidium, containing criteria to be applied when deciding on requests for the lifting of immunities. Moreover, to ensure, that in the case of judges, decisions concerning immunity are free from political consideration, and are based only on the merits of the request submitted by the Prosecutor General.

#### **IV. CONCLUSIONS**

116. The scale of the problem of corruption in Latvia is difficult to quantify but it can be stated that public perception is that corruption is a worrying phenomenon that affects the activities of some public institutions in Latvia such as customs, traffic police and judicial authorities. The seriousness of the problem appears to be recognised at the highest political level. The government seems to be more committed to further improving the legal framework and its implementation in order to curb corruption which is one of the major factors that undermines the democratic and above all economic development of Latvia. The real challenge is changing attitudes and behaviour. Latvian society's mentality vis-à-vis corruption phenomena is changing and people are more and more reporting to the police or other law enforcement agencies cases of suspicious corruption. Nevertheless, dissatisfaction with the rate of progress of reform has bred suspicion and resentment. This raises two real challenges for institutions combating corruption: to gain the trust of the public and demonstrate effectiveness by producing results. There are presently in Latvia a range of policing institutions that contribute to the fight against corruption. Their efforts are segmented and disjointed and there is an obvious lack of direction and co-ordination which no doubt leads to lost opportunities. Clearly, these bodies are failing to produce the results expected by society.

117. In view of the above, the GRECO addressed the following recommendations to Latvia:

- i) that Latvian authorities continue implementing appropriate preventive policies based on codes of conduct for all officials and education and information for Latvian society as a whole, so that everyone is aware of his/her rights and obligations;
- ii) that the corruption prevention programme should continue to be implemented, particularly on the following issues:
  - increasing public awareness of the danger that corruption represents for the stability of democratic institutions and economic and social progress;
  - informing the public about the measures adopted to combat corruption, the penalties that may be imposed for it and the institutions involved in fighting corruption which may be contacted by the public;
  - enhance the involvement of the media and non-governmental organisations in a co-ordinated awareness-raising campaign.
- iii) that the resourcing of the fight against corruption be improved;
- iv) that the scope of the Corruption Prevention Council be extended to ensure the effective implementation of its objectives;
- v) to promote coordination experience, sharing and circulation of information among different police forces involved in anti-corruption investigations, in particular by establishing an anti-

- corruption operational working group with a multi-agency focus and above all more proactive investigative strategies;
- vi) to introduce a corruption intelligence system with operational functions, to include research in vulnerable sectors and development of early intervention strategies;
  - vii) to extend the powers of the State Revenue Service Corruption Prevention and Control Division to encompass disclosure from banking institutions regarding information on an individual's financial account;
  - viii) to make more effective use of the existing legislative tools provided to discover and combat corruption and in particular those concerning the use of special investigative technical means in the detection of corrupt behaviour;
  - ix) to implement measures to ensure effective monitoring of police actions, including corruption. Such measures should ensure a degree of independence to the investigators;
  - x) that one of the existing units within the Prosecutor General's Office dealing with corruption cases be responsible for training, support and sharing of practice to other units involved in the fight against corruption. The unit should give support to the territorial prosecution offices and develop a higher level of cooperation with policing institutions;
  - xi) that judges be guaranteed satisfactory legal and financial status; to significantly increase the means allocated to the courts in order to improve their functioning;
  - xii) to continue appropriate training - in particular on the typologies of corruption and the unique challenges of investigation, including its international dimension – be organised for police officers, prosecutors and judges dealing with corruption and connected offences;
  - xiii) to raise information campaigns on the existence and possibility of use of the Witness Protection Programme which certainly will encourage persons to come forward in the confidence that the prosecution authorities will provide protection. As a result, witnesses will be able to testify against key corrupt officials without fear of reprisal;
  - xiv) that measures, in addition to those already planned and adopted, be taken to minimise the risks of corruption opportunities in the public procurement area:
    - to provide proper training to all those public officials who deal with procurement activities in the central and local agencies in order to make them aware of the regulation in force and ensure that they would be able to assess procedural irregularities in the context of evidencing corruption;
    - to consider improving competition mechanisms at level of local government authorities in order to avoid excessive familiarity between officials and suppliers, leading to direct orders being placed without applying tendering procedures, such as, for instance, collective decision-making procedures, rotation of officials deciding on purchases, specific supervision of contracts concluded directly etc.
  - xv) to establish guidelines for the Deputies of the Saeima, and especially its Presidium, containing criteria to be applied when deciding on requests for the lifting of immunities. Moreover, to ensure, that in the case of judges, decisions concerning immunity are free

from political consideration, and are based only on the merits of the request submitted by the Prosecutor General.

118. Moreover, the GRECO invites the authorities of Latvia to take account of the observation made by the experts in the analytical part of this report.
119. Finally, in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of Latvia to present a report on the implementation of the above-mentioned recommendations before 31 December 2003.

APPENDIX

Relevant Legal Provisions