Groupe d'Etats contre la corruption
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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING

Strasbourg, 10 October 2008

Public
Greco Eval III Rep (2008) 1E
Theme I

Third Evaluation Round

Evaluation Report on Latvia on Incriminations (ETS 173 and 191, GPC 2)

(Theme I)

Adopted by GRECO
at its 39th Plenary Meeting
(Strasbourg, 6-10 October 2008)

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I. INTRODUCTION

1. Latvia joined GRECO in 2000. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 2E) in respect of Latvia at its 9th Plenary Meeting (13-17 May 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 4E) at its 19th Plenary Meeting (28 June – 2 July 2004). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (http://www.coe.int/greco).

2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:

   - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).

   - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).

3. The GRECO Evaluation Team (hereafter referred to as the "GET") carried out an on-site visit to Latvia from 21 to 25 January 2008. The GET for Theme I (21-22 January) was composed of Mr Alastair BROWN, Advocate Depute, Crown Office (UK) and Mr Jaan GINTER, Vice Dean, Faculty of Law, University of Tartu (Estonia). The GET was supported by Ms Tania VAN DIJK from GRECO's Secretariat. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2007) 10E, Theme I), as well as copies of relevant legislation.

4. The GET met with officials from the following governmental organisations: Ministry of Justice, Supreme Court, Prosecutor General's Office, Corruption Prevention and Combating Bureau (KNAB), Security Police and State Police. Furthermore, the GET met with researchers/academics and representatives of civil society.

5. The present report on Theme I of GRECO's Third Evaluation Round – Incriminations – was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Latvian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Latvia in order to improve its level of compliance with the provisions under consideration.

6. The report on Theme II – Transparency of party funding – is set out in Greco Eval III Rep (2008) 1E, Theme II.

II. INCRIMINATIONS

Description of the situation

7. Latvia ratified the Criminal Law Convention on Corruption (ETS 173) on 9 February 2001. The Convention entered into force in respect of Latvia on 1 July 2002. Latvia made one reservation to the Convention, concerning mutual legal assistance.[1]

8. The Additional Protocol to the Criminal Law Convention (ETS 191) was ratified by Latvia on 27 July 2006. It entered into force in respect of Latvia on 1 November 2006. Latvia did not make any reservations to the Additional Protocol.

Bribery of domestic public officials (Articles 1-3 and 19 of ETS 173)

Definition of the offence

9. Active bribery of public officials is criminalised in Section 323 of the Criminal Law[2] (hereafter CL).

> **Section 323 (Giving of Bribes)**
>
> (1) For a person who commits giving of bribes, that is, the providing or offering of material value, property or benefits of another nature, if the offer is accepted, personally or through intermediaries to a public official in order that he or she, using his or her official position, performs or fails to perform some act in the interests of the giver or offerer of the bribe, or in the interests of other persons, the applicable sentence is deprivation of liberty for a term not exceeding six years.
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> (2) For a person who commits the same acts, if commission thereof is repeated or is committed by a public official, or also if it has been committed in a group of persons pursuant to previous agreement, the applicable sentence is deprivation of liberty for a term of not less than five and not exceeding twelve years, with or without confiscation of property.

10. Passive bribery of public officials is provided for under Section 320 CL, which criminalises the acceptance of a bribe or an offer of a bribe by a public official.

> **Section 320 (Accepting Bribes)**
>
> (1) For a person who commits accepting a bribe, that is, intentionally illegally accepting the offer of material value, property or benefits of another nature, where commission thereof is by a public official personally or through an intermediary, for the performing or failure to perform some act in the interests of the giver or offerer of the bribe or the interests of other persons by using his or her official position, the applicable sentence is deprivation of liberty for a term not exceeding eight years, with or without confiscation of property.
>
> (2) For a person who commits the same acts, if commission thereof is repeated or on a large scale, or if a bribe is demanded, the applicable sentence is deprivation of liberty for a term of not less than three and not exceeding ten years, with confiscation of property.

[1] The reservation states "In accordance with Article 37, paragraph 3, of the Convention, the Republic of Latvia declares that it may refuse mutual legal assistance under paragraph 1 of Article 26 of the Convention, if the request concerns an offence which the Republic of Latvia considers a political offence." This reservation was renewed for the second time on 2 October 2007.

[2] The GET was informed that the previous Criminal Law in Latvia was called Criminal Code. To avoid any confusion, the report will hereafter refer to Criminal Law, which is a literal translation of term used in Latvian for the current law.

(3) For a person who commits the acts provided for in paragraphs one and two of this Section, if they are associated with extortion of a bribe, or if commission thereof is by a group of persons pursuant to prior agreement, or by a public official holding a responsible position, the applicable sentence is deprivation of liberty for a term of not less than eight and not exceeding fifteen years, with confiscation of property.

11. In addition, the Latvian authorities indicate that Sections 321 and 322 CL on misappropriation of a bribe and intermediation in bribery respectively and Section 326.2 CL on illegal requesting and receiving of benefits are also of relevance in this context.

Section 321 (Misappropriation of a Bribe)

(1) For a person who commits misappropriation of a bribe which a person has received in order to provide to a public official, or which he or she has accepted, pretending to be a public official, the applicable sentence is deprivation of liberty for a term not exceeding four years or with confiscation of property, or community service, or a fine not exceeding one hundred times the minimum monthly wage.

(2) For a person who commits misappropriation of a bribe which a public official has received in order to provide it to another public official, or which he or she has accepted claiming to be another public official, the applicable sentence is deprivation of liberty for a term not exceeding six years or with confiscation of property.

Section 322 (Intermediation in Bribery)

(1) For a person who commits intermediation in bribery, that is, of acts manifested in the providing of a bribe received from the giver of the bribe to a person accepting the bribe, or the bringing together of these persons, the applicable sentence is deprivation of liberty for a term not exceeding six years.

(2) For a person who commits the same acts, if commission thereof is repeated or is by a public official, the applicable sentence is deprivation of liberty for a term of not less than three and not exceeding ten years, with or without confiscation of property.

Section 326.2 (Illegal Requesting and Receiving of Benefits)

(1) For a person who intentionally commits illegally requesting and receiving of material value, property or benefits of another nature, where committed by an employee of a state or local government institution, who is not a public official, or a similar person who is authorised by the state institution, him or herself or through an intermediary, for performing or failing to perform some act, in the interests of the giver of the benefit, using his or her authority in bad faith, irrespective of whether the material value, property or benefits of another nature received is intended for this or any other person, the applicable sentence is deprivation of liberty for a term not exceeding three years, or community service, or a fine not exceeding eighty times the minimum monthly wage.

(2) For a person who commits the same acts, if commission thereof is repeated, or on a large scale, or has been committed in a group of persons pursuant to previous agreement, the applicable sentence is deprivation of liberty for a term not exceeding five years or with confiscation of property, or community service, or a fine not exceeding one hundred times the minimum monthly wage, with or without deprivation of the right to engage in specific forms employment or of the right occupy specified positions for a term not exceeding two years.

Elements/concepts of the offence

"Domestic public official"

12. Section 316 CL provides a definition of a 'public official', as used in *inter alia* the provisions on bribery in the public sector.

> **Section 316 (Concept of Public 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 public officials.
>
> (2) The President, members of the *Saeima*, 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 public officials holding a responsible position.
>
> (3) As public officials shall also be considered foreign public officials, members of foreign public assemblies (institutions with legislative or executive functions), officials of international organisations, members of international parliamentary assemblies, as well as international court judges and officials.

13. The Latvian authorities report that this definition complies with the requirements of the Convention and covers the separate categories of persons listed in Article 1(a) and (b) of the Convention (officials/public officers, mayors, ministers, prosecutors, judges and holders of judicial office). In this regard, the GET was informed that the expression 'representatives of state authority', as used in the first paragraph of Section 316 CL, refers to persons exercising some form of public power, whether this is legislative, executive or judicial. More specifically as regards prosecutors and judges, the Law on Judicial Power stipulates that the courts (judges) exercise judicial power and that prosecutors are officials belonging to the judicial system. Both prosecutors and judges are therefore to be considered 'representatives of state authority' as mentioned in the first paragraph, as well as being persons with 'the right to make decisions binding on other persons' and 'the right to perform (…) functions regarding supervision, control, inquiry or punishment'. Furthermore, the Latvian authorities report that judges are also 'officials of state institutions (…) appointed by the *Saeima* [Parliament]' and therefore to be considered 'public officials holding a responsible position' mentioned in paragraph 2 of Section 316, as is the Prosecutor General (but not ordinary prosecutors).

14. During the on-site visit, the GET was informed that when deciding whether someone is a public official for the purpose of the Criminal Law, the courts would analyse his/her rights and duties to determine if his/her function is the equivalent of one of the functions mentioned in Section 316 CL. In doing so, the courts would also look at a person's job description and/or labour contract.

15. If someone is not a public official within the meaning of the Criminal Law, in that s/he– for example – does not have the right to make decisions binding on other persons or does not carry out any of the other functions mentioned in paragraph 1 of Section 316 CL, Section 326.2 CL on illegally requesting and receiving of benefits may nevertheless cover the passive side of the offence. Section 326.2 is explicitly applicable to employees of state or local government institutions who are not public officials as well as persons in similar positions authorised by a state institution.

"Promising, offering or giving" (active bribery)

16. Section 323 CL on active bribery of public officials refers to the concept 'giving of bribes', which is explained in the same section as covering both 'providing' and 'offering', stipulating also that the offer must have been accepted.

17. During the on-site visit, several interlocutors confirmed that if an undue advantage is promised to be given only once the public official has performed the act intended by the bribe-giver or if an offer of an undue advantage is made, but this offer is not accepted by the public official, the bribe-giver can only be prosecuted for attempt and not for the completed offence of Section 323 CL. Promise of an undue advantage and the unaccepted offer of an advantage would thus be attempted active bribery. Attempt is, in turn, defined in Section 15 CL; pursuant to paragraph 5 of this section the sanction for the attempted bribery offence (for example 'promise') is the same as for the completed offence.

> **Section 15 (Completed and Uncompleted Criminal Offences)**
>
> (1) A criminal offence shall be considered completed if it has all the constituent elements of a criminal offence set out in this Law.
>
> (2) Preparation for a crime and an attempted crime are uncompleted criminal offences.
>
> (3) The locating of, or adaptation of, means or tools, or the intentional creation of circumstances conducive for the commission of an intentional offence, shall be considered to be preparation for a crime if, in addition, it has not been continued for reasons independent of the will of the guilty party. Criminal liability shall result only for preparation for serious or especially serious crimes.
>
> (4) A conscious act (failure to act), which is directly dedicated to intentional commission of a crime, shall be considered to be an attempted crime if the crime has not been completed for reasons independent of the will of the guilty party.
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> (5) Liability for preparation for a crime or an attempted crime shall apply in accordance with the same Section of this Law as sets out liability for a specific offence.
>
> (6) A person shall not be held criminally liable for an attempt to commit a criminal violation.

18. It should furthermore be noted, as outlined in paragraph 21 below, that although the Latvian Criminal Law includes an offence of illegally requesting and receiving of benefits by employees of state and local government institutions who are not regarded as public officials (Section 26.2 CL) a mirroring offence criminalising the active side – i.e. the promising, offering or giving of these so-called benefits to employees of state and local government institutions who are not public officials – is absent from the Criminal Law.

"Request or receipt, acceptance of an offer or promise" (passive bribery)

19. Section 320 CL, paragraph 1, refers to the concept 'accepting a bribe', which is explained in the same section as covering "intentionally illegally accepting the offer of material value, property or benefits of another nature". As indicated above, bribery is only a completed crime under this section from the moment the public official has received at least part of the bribe or has explicitly accepted the offer.

20. It should furthermore be noted that Section 320 CL, paragraph 2, includes the phrase "if a bribe is demanded". A few interlocutors met on site regarded this phrase as covering 'request'. Most interlocutors however regarded this as an aggravating circumstance of the offence of 'accepting a bribe' outlined in paragraph 1 of the same article: if the initiative for 'accepting a bribe' came from the bribe-taker (i.e. s/he demanded the bribe) a higher sentence would be warranted. As before (see paragraph 17), even if the public official demanded the bribe, only once part of the bribe had been received by him/her would it be a completed offence under paragraph 2 of Section 320 CL. The request for a bribe would thus merely be an uncompleted offence: an attempt at 'accepting bribes' under Section 320 CL, paragraph 1 or an attempt at 'demanding and accepting bribes' under Section 320 CL, paragraph 2, which is covered – in a similar manner as with regard to promise and unaccepted offer of an undue advantage above – by Section 15 CL. As before, for an attempt at 'accepting bribes' or an attempt at 'demanding and accepting bribes' the same sanction as for the completed offence under Section 320 CL can be imposed.

21. Finally, as indicated in paragraph 15 above, Section 326.2 CL criminalises specifically requesting and receiving benefits. This provision is applicable to employees of state or local government institutions, who are not public officials within the meaning of 316 CL (for example, because their position does not give them the right to make a decision which is binding on another person). The terminology used in this provision is closer to that used in relation to passive private sector bribery, or more precisely 'unauthorised receipt of benefits', in Section 198 CL, than it is to passive public sector bribery in Section 320 CL. Although Section 326.2 uses specifically the word 'requesting', it was the GET's understanding that this should explicitly be read in conjunction with 'receiving': as before, the mere request would not be enough. For the offence to be considered to have been completed, at least some part of the benefit would have to be received (creating in turn a certain ambiguity as to whether situations in which the bribe was received but not first requested are sufficiently covered). Acceptance of an offer or promise of such benefits is not covered by this provision.

"Any undue advantage"

22. Sections 320 and 323 CL do not explicitly use the term 'undue advantage', but instead refer in their heading to 'bribes', which is in both sections defined as "material value, property or benefits of another nature". In this context, the Latvian authorities refer to paragraph 6 of the decision of the Supreme Court of the Republic of Latvia No 7 of 1993[3], titled "On court practice in bribery cases", which appears to be a judicial doctrine based on the practice of the courts and which explains that a bribe can include "money, securities, food products, non-consumable goods, service of a different nature, rights to property, deposits in the name of a bribe-taker, processing of fictitious contracts, payment of unwarranted bonuses or allowances, intentional gambling losses in favour of the bribe-taker, gifts for the bribe-taker's family members or friends, involvement in a profitable job etc." During the on-site visit it was confirmed that the expression 'benefits of another nature' would also cover immaterial advantages, such as honorary positions or titles or certain privileges, although no court decisions could be provided to illustrate this.

[3] This 1993 decision was elaborated before the amendments were made to the Criminal Law to implement the Convention, but the expressions 'bribe' and 'material value, property or benefits of another nature' were also included in the previous Criminal Code and therefore court practice and doctrine on this matter is still valid.

23. Contrary to Sections 320 and 323 CL, the heading of Section 326.2 CL refers to 'benefits'.[4] Nevertheless, the text of Section 326.2 CL also refers to "material value, property or benefits of another nature", as do Sections 320 and 323 CL.

"Directly or indirectly"

24. Both section 320 and 323 CL refer explicitly to situations in which the offence is committed directly or through an intermediary, as does Section 326.2 CL. In this context, it should be noted, as already indicated in paragraph 11 above, the Latvian Criminal Law also provides for a separate offence called 'intermediation in bribery' in Section 322 CL, which criminalises the acting as an intermediary, in bad faith, between the bribe-giver and the bribe-taker, either by bringing the bribe-giver and bribe-taker together or by providing the bribe-taker with the bribe received from the bribe-giver.

"For himself or herself or for anyone else"

25. The Latvian authorities indicate that the third party beneficiaries are covered in both Section 320 and 323 CL by the words "in the interests of the person giving or offering the bribe or the interest of other persons". The GET discussed this issue in detail on site as it took the view that this particular wording seemed to refer to third party beneficiaries of the act performed by the public official and did not necessarily refer to third party beneficiaries of the bribe itself. It wanted to make sure that situations in which the advantage the public official obtains is not for him/herself but for the benefit of another person[5] would also be covered by Sections 320 and 323 CL. Interlocutors met on-site confirmed however that situations in which the beneficiary of the bribe is not the public official him/herself would also be covered by Sections 320 and 323 CL, as well as 326.2 CL. In this context, reference was made to paragraph 6 of the aforementioned decision of the Supreme Court of the Republic of Latvia No 7 of 1993[6] (see paragraph 22 above), which explains that a bribe can also be "a gift for the bribe-taker's family members, the immediate family and friends". According to interlocutors met on-site this list was not limitative and could also include other persons (i.e. also those who are not a family member or friend of the official concerned): prosecutors would have to establish that the public official was aware that a bribe was given to this third party.

"To act or refrain from acting in the exercise of his or her functions"

26. Both Section 323 on active bribery and Section 320 on passive bribery explicitly refer to "for the performing or failing to perform an act (…) by using his or her official position"; Section 326.2 on requesting and receiving benefits by state/local government employees, who are not public officials, uses similar terms.

"Committed intentionally"

27. Section 320 CL on passive bribery explicitly refers to intent, by stipulating '"intentionally illegally accepting"; similarly Section 326.2 CL stipulates "intentionally commits illegally". During the on-site visit it was explained that the expression 'intentionally illegally' clarified that someone was

[4] The GET was informed that the term 'bribe' is historically associated with bribery of public officials, which is why the term 'benefits' is used in relation to bribery of employees in the public sector who are not public officials within the meaning of Section 316 CL.

[5] For example, the bribe could take the form of a relative of the public official being allowed to live virtually rent-free in a luxurious apartment in Riga or the son/daughter of the public official undeservedly passing an exam.

[6] See footnote 3 above.

accepting something that s/he knew that s/he should not receive. Section 323 on active bribery does not contain similar terms, but the Latvian authorities indicate that, similarly to Sections 320 and 326.2 CL, the corruption offences criminalised in Sections 321 (misappropriation of a bribe), 322 (intermediation in bribery) and 323 (active bribery) are only criminal offences when committed intentionally. As regards the giving of a bribe pursuant to Section 323 the person giving or offering the bribe must thus have the aim or intent of making the public official perform (or fail to perform) a certain act.

Sanctions

28. The applicable sanction for active bribery (Section 323 CL) is a maximum of 6 years' imprisonment. If the bribe-giver is a public official (or in the case of a repeat offence or commission by 'a group of persons pursuant to a prior agreement') the applicable sanction is a minimum of 5 years' and a maximum of 12 years' imprisonment and possible confiscation of the property of the offender.

29. For passive bribery (Section 320 CL) the applicable sanction is a maximum of 8 years' imprisonment, and possible confiscation of the property of the offender. In case of a repeat offender, commission on large scale[7] or demand for a bribe (See paragraph 20 above) a sanction of a minimum of 3 years' and a maximum of 10 years' imprisonment can be imposed, with mandatory confiscation of property. In cases of extortion of a bribe, commission of the offence by 'a group of persons pursuant to prior agreement' or by a public official holding a responsible position[8] a term of imprisonment of at least 8 years and at most 15 years can be imposed, with mandatory confiscation of property.

30. The provision on 'illegal requesting and receiving of benefits' (Section 326.2 CL) foresees a maximum prison sentence of 3 years or a maximum fine of 80 minimum monthly wages[9] (or if committed repeatedly, on a large scale[10] or by 'a group of persons pursuant to a prior agreement', the applicable sanction is a maximum of 5 years' imprisonment or – alternatively – confiscation of property, community service, or a maximum fine of 100 minimum monthly wages, with or without limitation of rights)

31. In addition, 'limitation of rights' can be imposed, i.e. the deprivation of the right to exercise a specific entrepreneurial activity, entrepreneurial activities in general or a specific employment; to hold a specific position or to acquire a certain permit or right provided by a special law. This sanction can be imposed as an additional sanction for a term of one year to a maximum of 5 years. The court may also impose this sanction when the specific provision in the Criminal Law does not explicitly mention it as a possibility, in situations where the criminal offence is directly related to the entrepreneurial activity or employment of the offender or has been committed by using, in bad faith, the special permit or right conferred upon him/her.

32. Furthermore, the provision on 'misappropriation of a bribe' (Section 321 CL) foresees a sentence of a maximum of 4 years' imprisonment or – alternatively – confiscation of property, community service[11] or a maximum fine of 100 times the minimum monthly wage (if the bribe has been

[7] Commission on a large scale involves a bribe of at least 50 minimum monthly wages, with one minimum monthly wage being 160 LVL (approximately €230); in total 8,000 LVL (approximately €11,400).
[8] Pursuant to Section 316, paragraph 2, public officials holding a responsible position are the President, members of the *Saeima* [Parliament], the Prime Minister and members of the Cabinet and 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.
[9] See footnote 7 above: A fine of 80 minimum monthly wages amounts to 12,800 LVL (approximately €18,210).
[10] See footnote 7 above.
[11] Pursuant to Section 40 CL community service is imposed for a minimum of 40 and a maximum of 280 hours.

received by a public official to give to another public official or by someone who claims to be a public official the maximum term of imprisonment is 6 years and the possibility to confiscate the property of the offender). The provision on 'intermediation in bribery (section 322 CL)' foresees a sentence of up to 6 years' imprisonment (or, if committed repeatedly or by a public official, a prison sentence of at least 3 and at most 10 years).

33. The applicable sanctions for other comparable crimes are: up to three years' imprisonment, community service or a maximum fine of 60 minimum monthly wages for fraud (Article 177 CL), up to five years' imprisonment, confiscation of property, community service or a maximum fine of 50 minimum monthly wages for misappropriation (Article 179 CL), up to five years' imprisonment, community service or a maximum fine of 100 minimum monthly wages, with or without deprivation of the right to hold a specific position for 1 to 3 years for 'exceeding official powers' by which substantial harm to a state body, the public order or rights and interests protected by law has been caused (Article 317 CL) and up to three years' imprisonment, community service, or a maximum fine of 60 minimum monthly wages, with or without deprivation of the right to hold a certain position for a period of 1 to 3 years for abuse of position (Article 318 CL). The applicable sanction for the aforementioned offences can range from one to thirteen years' when there are aggravating circumstances (depending on the offence and circumstances in question).

Bribery of members of domestic public assemblies (Article 4 of ETS 173)

34. The Latvian authorities indicate that members of domestic public assemblies are considered public officials according to Section 316, paragraph 1 CL. Section 316, paragraph 1 CL refers first of all to 'representatives of state authority', which as indicated above (see paragraph 13) includes persons exercising legislative power thus covering 'members of the *Saeima*' (Parliament). Furthermore, the same paragraph also refers to 'persons performing duties in local government service', which is reported to cover members of local councils (as well as mayors and deputy mayors). In addition, paragraph 2 of Section 316 explicitly refers to members of the *Saeima* (as well as the heads of local government and their deputies, that is to say mayors and deputy mayors), which are thus to be considered to be public officials holding a responsible position. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials thus also apply to bribery of members of domestic public assemblies. There have been no court decisions to date, concerning bribery of members of domestic public assemblies.

Bribery of foreign public officials (Article 5 of ETS 173)

35. Section 316, paragraph 3, CL provides "As public officials shall also be considered foreign public officials (…)". The GET was informed that, in prosecuting bribery of foreign public officials, it would first be established if the bribe-taker would be considered a public official in his/her own country. However, even if this was not the case, the bribery offence could under certain circumstances still be prosecuted as bribery of a foreign public official if the nature of his/her functions was evidently the same as that of a domestic public official under Latvian law. Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign public officials. To date, there has not been a court decision concerning bribery of foreign public officials.

Bribery of members of foreign public assemblies (Article 6 of ETS 173)

36. Members of foreign public assemblies are considered to be public officials pursuant to Section 316, paragraph 3, CL, which provides "As public officials shall also be considered (…) members

of foreign public assemblies (institutions with legislative or executive functions) (…)". Although this wording is slightly different to the terminology used in the Convention, the term 'institutions (…) with executive functions' is intended to cover all other assemblies not having powers to enact legislation but possessing other functions of considerable importance (which are in the Convention covered by the expression 'exercising (…) administrative powers'). Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply to bribery of members of foreign public assemblies. There has been no court decision to date concerning bribery of members of foreign public assemblies.

Bribery in the private sector (Articles 7 and 8 of ETS 173)

Definition of the offence

37. Active bribery in the private sector is criminalised in Section 199 CL, on commercial bribery.

> **Section 199 (Commercial bribery)**
>
> (1) For a person who commits the offering or giving of material value, property or benefits of another nature, if the offer is accepted, personally or through intermediaries to a responsible employee of an undertaking (company) or organisation, or a person authorised by an undertaking (company) or organisation in order that he or she, using his or her authority in bad faith, performs or fails to perform some act in the interests of the giver of the benefit or the proposer, irrespective of whether the material value, property or benefits of another nature is intended for this or any other person, the applicable sentence is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding fifty times the minimum monthly wage.
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> (2) For a person who commits the same acts, if commission thereof is repeated or on a large scale, the applicable sentence is deprivation of liberty for a term not exceeding five years, or community service, or a fine not exceeding one hundred times the minimum monthly wage.

38. Passive bribery in the private sector is criminalised in Section 198, which deals with unauthorised receipt of benefits.

> **Section 198 (Unauthorised receipt of benefits)**
>
> (1) For a person who intentionally commits illegally requesting and receiving of material value, property or benefits of another nature, where committed by an employee of an undertaking (company) or organisation, or another person who on the basis of law or a lawful transaction is authorised to conduct the matters of another person or organisation, him or herself or through an intermediary, for performing or failing to perform some act, in the interests of the giver of the benefit, using his or her authority in bad faith, irrespective of whether the material value, property or benefits of another nature received is intended for this or any other person, the applicable sentence is deprivation of liberty for a term not exceeding three years, or community service, or a fine not exceeding eighty times the minimum monthly wage.
>
> (2) For a person who commits the acts provided for in Paragraph one of this Section, if commission thereof is repeated, or on a large scale, or they have been committed by a group of persons pursuant to prior agreement, the applicable sentence is deprivation of liberty for a term not exceeding five years, with confiscation of property, or community service, or a fine not exceeding one hundred times the minimum monthly wage, with or without deprivation of the right to engage in specific forms of entrepreneurial activity or employment for a term not exceeding two years.

(3) For a person who intentionally commits illegally accepting the offer of material value, property or benefits of another nature, where committed by a responsible employee of an undertaking (company) or organisation, or a person similarly authorised by an undertaking (company) or organisation, or a person who on the basis of law or a lawful transaction is authorised to resolve disputes, him or herself or an intermediary, for performing or failing to perform some act, in the interests of the giver of the benefit or the proposer, using his or her authority in bad faith, irrespective of whether the material value, property or benefits of another nature is intended for this or any other person, the applicable sentence is deprivation of liberty for a term not exceeding six years or with confiscation of property, or community service, or a fine not exceeding one hundred and twenty times the minimum monthly wage, with or without deprivation of the right to engage in specific forms of entrepreneurial activity or employment for a term not exceeding three years.

(4) For a person who commits the acts provided for in Paragraph three of this Section, if commission thereof is repeated, or on a large scale, or they have been committed by a group of persons pursuant to prior agreement, or they are associated with a demand for financial benefits, the applicable sentence is deprivation of liberty for a term not exceeding eight years, or a fine not exceeding one hundred and fifty times the minimum monthly wage, with or without confiscation of property, with or without deprivation of the right to engage in specific forms of entrepreneurial activity or employment for a term not exceeding five years.

Elements/concepts of the offence

"Persons who direct or work for, in any capacity, private sector entities"

39. With regard to the scope of perpetrators, Section 198 CL on passive bribery, or more precisely 'unauthorised receipt of benefits', refers to "an employee of an undertaking (company) or organisation, or another person who on the basis of law or a lawful transaction is authorised to conduct the matters of another person or organisation", whereas Section 199 CL, paragraph 1, on active bribery, appears to have a more limited scope in that it does not use the aforementioned description, but instead refers to "a responsible employee of an undertaking (company) or organisation, or a person authorised by an undertaking (company) or organisation". A 'responsible employee' is in turn defined in Section 196 CL (which deals with use of and exceeding authority in bad faith).

Section 196, paragraph 1

(1) A responsible employee of an undertaking (company) or organisation is a person who, in an undertaking (company) or organisation, has the right to make decisions binding on other persons or the right to deal with the property or financial resources of the undertaking (company) or organisation, or a person similarly authorised by an undertaking (company) or organisation.
(2)…

"Promising, offering or giving" (active bribery)

40. Section 199 on (active) commercial bribery uses the terms 'offering or giving' and includes the additional qualification "if the offer is accepted'. As before with regard to public sector bribery (see paragraph 17 above), the promise of an undue advantage or an offer, which is not accepted by the other party, is attempted bribery and not a completed Section 199 offence. It is thus covered by Section 15 CL.

"Request or receipt, acceptance of an offer or promise" (passive bribery)

41. Section 198 CL on unauthorised receipt of benefits refers to 'illegally requesting and receiving'. In a similar manner as before, the acceptance of an offer or promise – without (part of) the undue advantage having exchanged hands – can only be prosecuted as an attempt. It was furthermore the GET's understanding – as also indicated above with regard to Section 326.2 CL (see paragraph 21 above) which uses a similar terminology – that the expression 'illegally requesting and receiving', meant that the undue advantage had not only to be requested but also (partly) received, indicating that despite the word 'requesting' in the description of the offence the mere request for an undue advantage would also be an attempt at unauthorised receipt of benefits. Moreover, Paragraph 3 of Section 198 CL refers to the acceptance of an offer, indicating that although such an act is not covered as regards 'ordinary' employees of a company in paragraph 1, accepting the offer of an undue advantage is at least criminalised as regards so-called 'responsible employees'.

"Any undue advantage"

42. Both Section 199 CL on (active) commercial bribery and Section 198 CL on unauthorised receipt of benefits) use the terms "material value, property or benefits of another nature", as referred to in the abovementioned provisions on public sector bribery (see paragraph 22 above). As before with regard to public sector bribery, this is intended to cover all types of advantages, including those of an immaterial nature.

"Directly or indirectly"

43. Section 199 CL on (active) commercial bribery includes the expression "personally or through an intermediary" and Section 198 CL on unauthorised receipt of benefits includes the phrase "him or herself or through an intermediary", thus covering both direct and indirect bribery.

"For themselves or for anyone else"

44. Both Section 199 on (active) commercial bribery and Section 198 on unauthorised receipt of benefits include the phrase "irrespective of whether the material value, property or benefits of another nature is intended for this or any other person".

"To act or refrain from acting"

45. Section 199 CL (commercial bribery) refers to "performs or fails to perform some act"; similarly Section 198 CL (unauthorised receipt of benefits) refers to the "performing or failing to perform some act".

"In the course of business activity"; "…in breach of duties"

46. Sections 198 and 199 CL do not limit the applicability of these provisions to business activities, although this is to a certain extent implied by the heading of Section 199, which speaks of 'commercial bribery'. As regards breach of duties, both sections refer to "using his or her authority in bad faith", which was explained to the GET on site as being contrary to the employee's duties.

"Committed intentionally"

47. As far as the mental element of the offence is concerned, the requirement of intent is necessary. In Section 198 CL (unauthorised receipt of benefits) this is made explicit, by use of the words 'intentionally illegally'; in Section 199 CL on (active) commercial bribery this is not made explicit, but the Latvian authorities indicate that as before (see as regards active bribery of public officials, paragraph 27 above) active commercial bribery is only a criminal offence when committed intentionally: the person giving the bribe must aim to make the bribe-taker perform (or fail to perform) a certain act.

Sanctions

48. A person committing active commercial bribery can be sentenced to up to 3 years' imprisonment, so-called custodial arrest[12], community service or a fine of up to 50 times the minimum monthly wage. If the offence has been committed repeatedly or on a large scale the sentence can be increased to up to 5 years' imprisonment, community service or a fine of up to 100 minimum monthly wages.

49. A person committing passive bribery in the private sector (or more accurately: the unauthorised receipt of benefits) can be sentenced to up to 3 years' imprisonment, community service, or a maximum fine of 80 minimum monthly wages. In case of a repeat offence, commission on a large scale or by 'a group of persons pursuant to prior agreement', the offender can be sentenced to a term of imprisonment of up to 5 years with (mandatory) confiscation of property, community service or a fine of up to 100 minimum monthly wages, with or without deprivation of the right to carry out certain entrepreneurial activities or employment for a period of up to 2 years.

50. Furthermore, if the offence has been committed by a responsible employee of the undertaking (company) (see paragraph 39 above) or organisation, or a person similarly authorised by an undertaking (company) or organisation, the applicable sentence is up to 6 years' imprisonment confiscation of property, community service or a fine of up to 120 minimum monthly wages, with or without deprivation of the right to carry out certain entrepreneurial activities or employment for a period of up to 3 years. If the responsible employee is a repeat offender, or if s/he has committed the offence on a large scale or as part of a group of persons pursuant to a prior agreement, or if the offence is associated with a demand for financial benefits a prison sentence of up to 8 years can be imposed, or a fine not exceeding 150 minimum monthly wages. It is possible to confiscate the offender's property and to deprive him/her of the right to carry out certain entrepreneurial activities or employment for a period of up to 5 years.

Statistics and court decisions

51. In 2007 there has been one case concerning active commercial bribery (Section 199 CL), which resulted in a not-guilty verdict. There have been no cases as regards passive bribery in the private sector (acceptance of unauthorised benefits, pursuant to Section 198 CL).

[12] Pursuant to Section 39 of the Criminal Law, custodial arrest is a short term of imprisonment of at least three days and at most six months. During his/her custodial arrest, a person may also be required to carry out 'public work' [community service], to be determined by the local government.

Bribery of officials of international organisations (Article 9 of ETS 173), members of international parliamentary assemblies (Article 10 of ETS 173) and judges and officials of international courts (Article 11 of ETS 173)

52. Section 316, paragraph 3, CL provides "as public officials shall also be considered (…) officials of international organisations, members of international parliamentary assemblies, as well as international court judges and officials". Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply to bribery of officials of international organisations, members of international parliamentary assemblies and judges and officials of international courts. To date, there have not been any court decisions concerning bribery of officials of international organisations, members of international parliamentary assemblies or judges and officials of international courts.

Trading in influence (Article 12 of ETS 173)

Definition of the offence

53. Trading in influence has been criminalised by Section 326 CL.

> **Section 326.1 (Trading in influence)**
>
> (1) For a person who commits offering or giving of material value, property or benefits of another nature to any person in order that he or she, using his or her official position, professional or social position, to personally influence the activities or taking of decisions of a public official, if there are not present the elements of the crime provided for by Section 323, the applicable sentence is deprivation of liberty for a term not exceeding one years, or custodial arrest, or community service, or a fine not exceeding fifty times the minimum monthly wage.
>
> (2) For a person who commits accepting an offer, which has been made by any person of material value, property or benefits of another nature, in order that he or she, using his or her official position, professional or social position, to personally influence the activities or taking of decisions of a public official, or to encourage any other person to influence the activities or taking of decisions of a public official, if there are not present the elements of the crime provided for by Sections 198 and 320, the applicable sentence is deprivation of liberty for a term not exceeding two years, or custodial arrest, or community service, or a fine not exceeding fifty times the minimum monthly wage.

Elements/concepts of the offence

"Asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]"

54. Section 326.1, paragraph 1 CL refers to "in order that s/he (…) personally influences the activities or taking of decision of a public official". The Latvian authorities indicate that a person is liable for trading in influence both when a person claims or confirms that s/he is capable to influence decision-taking by using illegal means and when such statements are not made, but the benefit is offered anyway on the assumption that the person could influence the decisions of a public official. During the on-site visit it was furthermore explained that if a person who is not in a position to exert influence over the activities of or the taking of decisions by a public official, nevertheless asserts that s/he could do so in order to obtain an undue advantage to do so, s/he would be prosecuted for fraud instead.

Other concepts/elements

55. The Latvian authorities indicate that Section 326.1, paragraph 1 CL on active trading in influence provides that a person can only be prosecuted for trading in influence when the benefit is offered or given directly. Section 326.1, paragraph 2 CL on passive trading in influence however includes the phrase "or to encourage any other person to influence the activities or taking of decisions of a public official", which indicates that some form of indirect trading in influence is at least covered as regards the passive side.

56. Furthermore, the Latvian authorities state that it is irrelevant whether the influence is exerted or not or whether it leads to the intended result or not. Once the 'material value, property or benefits of another nature' is offered or given (paragraph 1) or accepted (paragraph 2) a person can be liable for trading in influence. The GET was informed that – unlike with regard to bribery offences as mentioned above – the mere offer of 'material value, property or benefits of another nature' (regardless of whether this offer was accepted or not) is enough for it to be considered a completed offence under paragraph 1 of Section 326.1 CL. Similarly, the acceptance of an offer, regardless of whether the 'material value, property or benefits of another nature' has exchanged hands is a completed offence under paragraph 2 of Section 326.1 CL. The Latvian authorities indicate that other elements of the offence are implemented in the same manner as bribery of public officials.

Sanctions

57. The sanction applicable to active trading in influence is imprisonment for up to 1 year, so-called custodial arrest, community service or a fine of up to 50 minimum monthly wages; for passive trading in influence it is up to 2 years' imprisonment, custodial arrest, community service or a fine of up to 50 times the minimum monthly wage.

Statistics and court decisions

58. To date, there has been no court decision concerning trading in influence.

Bribery of domestic arbitrators (Articles 1-3 of ETS 191)

59. Passive bribery of domestic arbitrators is covered by paragraph 3 of Section 198 CL on unauthorised receipt of benefits (see full text in paragraph 38 above on passive private sector bribery), which provides "for a person who intentionally commits illegally receiving the offer of material value, property or benefits of another nature, where committed by (…) a person who on the basis of law or a lawful transaction is authorised to resolve disputes, him or herself or an intermediary, for performing or failing to perform some act, in the interests of the giver of the benefit or the proposer, using his or her authority in bad faith, irrespective of whether the material value, property or benefits of another nature is intended for this or any other person (…)."

60. A mirroring phrase on active bribery covering 'persons who on the basis of law or a lawful transaction are authorised to resolve disputes' is absent from the provision on active private sector bribery in Section 199 CL.

Elements/concepts of the offence

61. As regards passive bribery of domestic arbitrators, which is criminalised by the provision on unauthorised receipt of benefits, Section 198, paragraph 3 CL refers to "a person who on the

basis of law or a lawful transaction is authorised to resolve disputes". The Latvian authorities indicate that these elements are a recent amendment to the law and only entered into force in February 2006. As regards active bribery, as already indicated, this particular phrase is absent from Section 199 CL. Therefore active bribery of domestic arbitrators is only covered in situations in which the arbitrator can be said to have been employed by a company or authorised by it (Section 199).

62. Furthermore, as regards passive bribery of domestic arbitrators, it should be noted that Section 198, paragraph 3 CL includes the expression "uses his or her authority in bad faith", which limits the application of this provision to acts which the arbitrator carried out in breach of his/her duty. Similarly, as regards active bribery of domestic arbitrators, in as far as this is covered by Section 199 on commercial bribery, the offence can also only be prosecuted if the act the bribe-giver intended to have the arbitrator render in return for the bribe was in violation of the duties of the arbitrator.

Sanctions

63. The sanction applicable to passive bribery of domestic arbitrators pursuant to Section 198, paragraph 3, CL is a maximum of 6 years' imprisonment, confiscation of property, community service or a fine of up to 120 minimum wages, with or without the deprivation of the right to engage in certain entrepreneurial activities or employment for a period of up to three years. If the offence has been committed repeatedly, on a large scale, by a group of persons pursuant to a prior agreement or in connection with a demand for financial benefits the sanction can be increased to up to 8 years' imprisonment, a maximum fine of up to 150 minimum monthly wages, with the possibility to confiscate the property of the offender and to deprive him/her of the right to engage in certain entrepreneurial activities or employment for a period of up to 5 years.

64. In as far as active bribery of domestic arbitrators is covered by Section 199 CL, the sanction is a maximum of 3 years' imprisonment, so-called custodial arrest, community service or a fine not exceeding 50 minimum monthly wages.

Statistics and court decisions

65. There has been no court decision concerning bribery of domestic arbitrators. It should however be noted that the amendments to Section 198 of the Criminal Law, establishing liability for passive bribery of domestic arbitrators, only entered into force in February 2006.

Bribery of foreign arbitrators (Article 4 of ETS 191)

66. According to the Latvian authorities, the abovementioned Section 198, paragraph 3 CL which *inter alia* covers passive bribery of domestic arbitrators, is also applicable to foreign arbitrators, as Section 2 CL stipulates that persons having committed a criminal offence on the territory of Latvia shall be determined in accordance with the Latvian Criminal Law. If a foreign arbitrator has committed passive bribery abroad, but s/he is a Latvian citizen (or in possession of a 'permanent residence permit' of Latvia), s/he can also be prosecuted in Latvia for bribery of arbitrators pursuant to Section 4 CL (see as regards jurisdiction paragraph 72 below), which provides that Latvian citizens (and those in possession of a Latvian 'permanent residence permit') shall be held liable, in accordance with the Latvian Criminal Law, for criminal offences committed on the territory of another state.

67. As regards active bribery of foreign arbitrators, if the arbitrator is considered to be a public official in the jurisdiction where s/he exercises his/her function, then pursuant to Section 316, paragraph 3 CL the provision on active bribery of domestic public officials of Section 323 CL will be applicable. If the arbitrator is not considered to be a public official in the jurisdiction concerned, the person bribing this arbitrator can only be held liable if the arbitrator can be considered to be a responsible employee of a company or a person authorised by a company, upon which Section 199 CL comes into play, again – as before with regard to passive bribery of foreign arbitrators – by reference to the general rules on jurisdiction in Section 2 and 4 CL.

68. The elements of the offence and the applicable sanctions detailed under private sector bribery (see paragraphs 40-50 above) and active bribery of public officials – in as far a foreign arbitrator can be considered to be a public official – (see paragraph 28) apply accordingly to bribery of foreign arbitrators. To date, there has been no court decision concerning bribery of foreign arbitrators.

Bribery of domestic jurors (Article 1, section 3 and Article 5 of ETS 191)

69. The Latvian authorities report that 'jurors' are considered as 'lay judges'[13]. Lay judges are equated with public officials in accordance with Section 316 CL (i.e. they are persons who temporarily perform duties in state service and who have the right to perform functions regarding inquiry and punishment). Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply to bribery of domestic jurors or – in this case – bribery of lay judges. To date, there has been no court decision concerning bribery of domestic lay judges (jurors).

Bribery of foreign jurors (Article 6 of ETS 191)

70. The Latvian authorities indicate that foreign jurors are covered by the provisions on bribery of public officials, if they are considered to be public officials in their respective countries. Foreign public officials are – as already indicated in paragraph 35 above – pursuant to Section 316, paragraph 3 CL equated to domestic public officials. Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of (domestic) public officials apply to bribery of foreign jurors. There has been no court decision regarding bribery of foreign jurors.

Other questions

Participatory acts

71. Participatory acts are covered by Sections 17-20 CL, which deal *inter alia* with aiding and abetting the commission of crimes. These types of participation are punishable as principal offences.

[13] It should be noted that Latvia does not have a jury system as such. However, use is made of lay judges. Sections 31 and 37 of the Law on Judicial Power provide that criminal matters in the district (city) courts shall be adjudicated collegially by one judge and two lay judges and that the collegium of a Regional Court shall be composed of a regional court judge and two lay judges. Lay judges for district (city) courts and regional courts are elected by district (city) local governments for five years (Articles 15 and 17 of the Law on Municipalities).

Section 17 (Perpetrator of a Criminal Offence)

A person, who himself or herself has directly committed a criminal offence or, in the commission of such, has employed another person who, in accordance with the provisions of this Law, may not be held criminally liable, shall be considered the perpetrator of a criminal offence.

Section 18 (The Participation of Several Persons in a Criminal Offence)

The participation by two or more persons intentionally in joint commission of an intentional criminal offence is participation or joint participation.

Section 19 (Participation)

Criminal acts committed intentionally by which two or more persons (that is, a group) jointly, knowing such, have directly committed an intentional criminal offence shall be considered to be participation (joint commission). Each of such persons is a participant (joint perpetrator) in the criminal offence.

Section 20 (Joint Participation)

(1) An act or failure to act committed intentionally, by which a person (joint participant) has jointly with another person (perpetrator), participated in the commission of an intentional criminal offence, but he himself or she herself has not been the direct perpetrator of it, shall be considered to be joint participation. Organisers, instigators and accessories are joint participants in a criminal offence.

(2) A person who has organised or directed the commission of a criminal offence shall be considered to be an organiser.

(3) A person who has induced another person to commit a criminal offence shall be considered to be an instigator.

(4) A person who intentionally has promoted the commission of a criminal offence, providing advice, direction, or means, or removing impediments for the commission of such, as well as a person who has previously promised to conceal the perpetrator or joint participant, the instruments or means for committing the criminal offence, evidence of the criminal offence or the objects acquired by criminal means or has previously promised to acquire or to sell these objects shall be considered to be an accessory.

(5) A joint participant shall be held liable in accordance with the same Section of this Law as that in which the liability of the perpetrator is set out.

(6) Individual constituent elements of a criminal offence which refer to a perpetrator or joint participant do not affect the liability of other participants or joint participants.

(7) If a joint participant has not had knowledge of a criminal offence committed by a perpetrator or other joint participants, he or she shall not be held criminally liable for such.

(8) If the perpetrator has not completed the offence for reasons independent of his or her will, the joint participants are liable for joint participation in the relevant attempted offence. If the perpetrator has not commenced commission of the offence, the joint participants are liable for preparation for the relevant offence.

(9) Voluntary withdrawal, by an organiser or instigator from the completing of commission of a criminal offence shall be considered as such only in cases when he or she, in due time, has done everything possible to prevent the commission with his or her joint participation of the contemplated criminal offence and this offence has not been committed. An accessory shall not be held criminally liable if he or she has voluntarily refused to provide promised assistance before the commencement of the criminal offence.

Jurisdiction

72. Sections 2-4 set out the Latvian rules on criminal jurisdiction, which provide for jurisdiction of *inter alia* all bribery and trading in influence committed within the territory of Latvia (principle of territoriality, Section 2 CL) and acts committed by Latvian citizens and non-citizens (i.e. those with a Latvian non-citizens passport), as well as foreigners or stateless permanent residents of the republic of Latvia, who commit a criminal offence abroad (principle of nationality, Section 4 CL). The Criminal Law also provides for jurisdiction to prosecute acts committed abroad by foreigners against Latvia or the interests of inhabitants of Latvia (passive nationality jurisdiction, Section 4, paragraph 3 CL), as well as jurisdiction over acts committed abroad by foreigners, in cases provided for by international agreements binding upon Latvia (paragraph 4), which includes all offences mentioned in the Convention and its Additional Protocol, if the person is not prosecuted in the foreign jurisdiction in question. It should be noted that dual criminality is not required to establish jurisdiction in respect of acts committed abroad. In effect, Section 4, paragraph 4 CL thus provides for extraterritorial jurisdiction of Latvia over all the offences mentioned in the Convention and the Additional Protocol, committed outside the territory of Latvia by nationals of States parties to the Convention and its Additional Protocol (if the State in question will not or cannot prosecute the offence itself).

Section 2 (Application of the Criminal Law in the Territory of Latvia)

(1) The liability of a person who has committed a criminal offence in the territory of Latvia shall be determined in accordance with this Law.

(2) If a foreign diplomatic representative, or other person, who, in accordance with the laws in force or international agreements binding upon the Republic of Latvia, is not subject to the jurisdiction of the Republic of Latvia, has committed a criminal offence in the territory of Latvia, the issue of this person being held criminally liable shall be decided by diplomatic procedures or in accordance with bilateral agreements of the states.

Section 3 (Applicability of the Criminal Law to Aircraft, and Sea and River Vessels Outside the Territory of Latvia)

A person who has committed a criminal offence outside the territory of Latvia, on an aircraft, or a sea or river vessel or other floating means of conveyance, if this means of conveyance is registered in the Republic of Latvia and if it is not provided otherwise in international agreements binding upon the Republic of Latvia, shall be held liable in accordance with this Law.

Section 4 (Applicability of the Criminal Law outside the Territory of Latvia)

(1) Latvian citizens and non-citizens, and aliens or stateless persons who have a permanent residence permit for the Republic of Latvia, shall be held liable in accordance with this Law for a criminal offence committed in the territory of another state.

(2) Soldiers of the Republic of Latvia who are located outside the territory of Latvia shall be held liable for criminal offences in accordance with this Law, unless it is provided otherwise in international agreements binding upon the Republic of Latvia.

(3) Aliens and stateless persons who do not have permanent residence permits for the Republic of Latvia and who have committed serious or especially serious crimes in the territory of another state which have been directed against the Republic of Latvia or against the interests of its inhabitants, shall be held criminally liable in accordance with this Law irrespective of the laws of the state in which the crime has been committed, if they have not been held criminally liable or committed to stand trial in accordance with the laws of the state where the crime was committed.

(4) Aliens or stateless persons who do not have a permanent residence permit for the Republic of Latvia and who have committed a criminal offence in the territory of another state, in the cases provided for in

international agreements binding upon the Republic of Latvia, irrespective of the laws of the state in which the offence has been committed, shall be held liable in accordance with this Law if they have not been held criminally liable for such offence or committed to stand trial in the territory of another state.

73. To date, there has been no court decision involving jurisdiction of bribery offences.

Statute of limitations

74. Section 56 CL specifies that the statutory limitation period for the various offences is as follows:

Article CL	Offence	Sanction (max. imprisonment)	Limitation period
'Criminal violations'			
326.1, para.1	Active trading in influence	1 year	2 years
326.1, para. 2	Passive trading in influence	2 years	2 years
'Less serious crimes'			
198, para. 1	Passive private sector bribery ('unauthorised receipt of benefits')	3 years	5 years
198, para. 2	Passive private sector bribery ('unauthorised receipt of benefits'); repeatedly, at a large scale or as part of a group pursuant to prior agreement	5 years	5 years
199, para. 1	Active bribery in the private sector ('commercial bribery')	3 years	5 years
199, para. 2	Active bribery in the private sector ('commercial bribery'); repeatedly or at a large scale	5 years	5 years
321, para. 1	Misappropriation of a bribe (Section 321 CL) Passive bribery of a public official, in violation of his/her duty	4 years	5 years
326.2, para. 1	'Illegal requesting and receipt of benefits' in the public sector by persons not being public officials	3 years	5 years
326.2, para. 2	'Illegal requesting and receipt of benefits' in the public sector by persons not being public officials; committed repeatedly, on a large scale or by a group of persons pursuant to prior agreement	5 years	5 years
'Serious crimes'			
198, para. 3	Passive bribery in the private sector ('unauthorised receipt of benefits') by a responsible employee / a person similarly authorised / a person authorised to resolve disputes	6 years	10 years
198, para. 4	Passive bribery in the private sector ('unauthorised receipt of benefits') by a responsible employee / a person similarly authorised / a person authorised to resolve dispute; committed repeatedly, on a large scale, by a group of persons pursuant to a prior agreement or associated with a demand for financial benefits	8 years	10 years
320, para. 1	Passive bribery in the public sector ('accepting bribes')	8 years	10 years
320, para. 2	Passive bribery in the public sector ('accepting bribes'); committed repeatedly, on a large scale or if a bribe is demanded	10 years	10 years
321, para. 2	Misappropriation of a bribe; received by a public official to give to another public official or accepted by claiming s/he was the other public official	6 years	10 years
322, para. 1	Intermediation in bribery	6 years	10 years
322, para. 2	Intermediation in bribery; committed repeatedly or by a public official	10 years	10 years
323, para. 1	Active bribery in the public sector ('giving bribes')	6 years	10 years
'Especially serious crimes'			
320, para. 3	Passive bribery in the public sector; by extortion, committed by a group of persons pursuant to a prior agreement, or by a public official holding a responsible position	15 years	15 years
323, para. 2	Active bribery in the public sector; committed repeatedly, by a public official or by a group of persons pursuant to prior agreement	12 years	15 years
323, para. 3	Active bribery in the public sector, by an organised crime group	15 years	15 years

75. These limitation periods run from the day of commission of the offence and stop the moment charges are brought (or the moment at which the accused is informed that an official extradition request has been made, if s/he lives abroad). The limitation period may be interrupted if a new criminal offence is committed in the meantime. In such cases, the limitation period provided for the more serious offence will be calculated from the time of commission of the new criminal offence.

Defences

76. Pursuant to Section 324 CL, criminal liability for active bribery of a public official must be waived in situations in which the bribe-giver has been a victim of extortion by the public official or if the bribe-giver – after having given the bribe – voluntarily comes forward to report the offence (Section 324 CL). Criminal liability of the person acting as an intermediary or abettor may also be waived if s/he voluntarily comes forward (paragraph 3).

> **Section 324 (Release of a Giver of a Bribe and Intermediary from Criminal Liability)**
>
> (1) A person who has given a bribe shall be released from criminal liability if this bribe is extorted from this person or if, after the bribe has been given, he or she voluntarily informs of the occurrence. A person who has offered a bribe shall be released from criminal liability if he or she voluntarily informs of the occurrence.
>
> (2) Extortion of a bribe shall be understood to be the demanding of a bribe in order that legal acts are performed, as well as the demanding of a bribe associated with threats to harm lawful interests of a person.
>
> (3) An intermediary or abettor respecting a bribe shall be released from criminal liability if, after commission of the criminal act, he or she voluntarily informs of the occurrence.

77. The GET was informed that the prosecution service has no discretion in this regard: if the bribe-giver comes forward voluntarily before the authorities learn that the corruption offence has taken place or if during the investigation it is established that the bribe was extorted from him/her, the bribe-giver cannot be prosecuted. The GET learned that even if the bribe-giver is released from criminal liability under Section 324, the bribe itself would not be returned to the bribe-giver, but would be transferred to the state budget.

78. In addition, Section 58, paragraph 3 CL – which unlike Section 324 is applicable to both private and public sector bribery – provides that a person may also be released from criminal liability (i.e. the official conducting the pre-trial investigation – be it the prosecutor or law enforcement official – may decide to terminate criminal proceedings against a person) if s/he has given substantial assistance in disclosing a serious or especially serious criminal offence (see the table in paragraph 74 above), which is more serious or dangerous than the crime committed by the person him/herself. However, this does not apply to persons who themselves have committed especially serious criminal offences.

79. Finally, pursuant to Article 60 CL if a convicted person has helped uncover a serious or especially serious crime, committed by another person, which is more serious or more dangerous than the criminal offence for which s/he has been convicted, the court by whose judgment the person has been convicted, may reduce the sentence specified in the judgment.

Statistics

80. The Latvian authorities have provided the following statistics regarding the number of criminal cases and prosecutions initiated and the number of persons convicted in the period 2004-2006.

	2004			2005			2006		
	Cases	Prosecutions	Convictions	Cases [14]	Prosecutions	Convictions	Cases	Prosecutions	Convictions
Accepting bribes (Section 320)	26	20	27	20/7	19	26	22	14	26
Misappropriation of a bribe (Section 321)	3	4	2	2/3	1	4	7	1	3
Intermediation in bribery (Section 322)	6	4	4	4/4	5	5	6	1	3
Giving of bribes (Section 323)	20	10	12	16/4	14	14	28	16	20
Trading in influence (Section 326.1)	0	0	0	0/0	0	0	0	0	0
Unauthorised Receipt of Benefits (Section 198)	1	1	0	0	0	0	2	1	0
Commercial bribery (Section 199)	1	1	0	1	1	0	1	3	0

III. ANALYSIS

81. The provisions on bribery in the Latvian Criminal Law (hereafter CL), some of which were amended in 2002, 2004 and 2006, appear at first sight to provide a fairly sound basis for the criminalisation of various corruption offences. Although a number of the GET's interlocutors met on site pointed to the need to clarify or improve the terminology used in certain sections of the Criminal Law, not one seemed to regard the provisions as containing any major deficiencies or loopholes. Criticisms shared with the GET focused rather on the rapidity of legislative reform and, in this context, the (too) frequent amendments of the corruption provisions in recent years and on shortcomings in the enforcement of these provisions. In spite of the overall positive assessment of the corruption legislation as such by the practitioners, the GET identified a number of inconsistencies and shortcomings in the existing system as compared with the standards of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). In the absence of court decisions regarding several types of offences, the analysis of these inconsistencies and shortcomings is mainly based on an in-depth consideration of Latvian law, taking into account the interpretations provided by the interlocutors met on-site and, in particular, the variations therein. It should be noted that at the time of the on-site visit the provisions on, *inter alia*, bribery were subject to an extensive review by an independent working group set up by the Minister of Justice. The GET commends the Latvian authorities for this initiative and expects that some of the shortcomings described below will have already been identified in the context of

[14] This refers to the number of criminal cases started before the new Criminal Procedure Law entered into force on 1 October 2005 and criminal proceedings initiated after this date.

this review. In light of the aforementioned criticism concerning the frequency of amendments to the Criminal Law, the GET trusts that the implementation of the recommendations it addresses to Latvia will be combined with that of the working group's recommendations.

82. The Criminal Law contains a series of provisions concerning bribery in the public sector, as well as two provisions dealing with bribery in the private sector. As regards bribery in the public sector, apart from passive and active bribery of public officials in Sections 320 and 323 CL, the Criminal Law also includes provisions on misappropriation of a bribe (Section 321 CL) and intermediation in bribery (Section 322 CL), as well as a provision dealing with the 'illegal request and receipt of benefits' by public sector employees who are not public officials (Section 326.2 CL); as regards the latter, it should be noted that there is no mirroring provision covering the active side (see also paragraph 88 below). As regards bribery in the private sector, Section 199 CL on active private sector bribery uses terminology similar to that of active public sector bribery, whereas Section 198 CL on passive private sector bribery has more similarities to Section 326.2 CL on illegal request and receipt of benefits than it has to Section 320 CL. As certain deficiencies in the provisions on bribery in the public sector are comparable to those identified in the provisions on bribery in the private sector, these will be analysed first, after which the issues concerning specifically either the public sector offence or the private sector offence will be dealt with.

83. The provisions on active bribery in the public sector (Section 323 CL) and the private sector (Section 199 CL) criminalise in a similar manner "providing or offering of material value, property or benefits of another nature, if the offer is accepted", which seems to rule out a mere promise or an unaccepted offer of an undue advantage. The provisions on passive bribery criminalise "accepting a bribe, that is the intentionally illegally accepting the offer of material value, property or benefits of another nature" in the public sector (Section 320 CL) and the "illegally requesting and receiving of material value, property or benefits of another nature" in the private sector (Section 198 CL).

84. In this context, the GET discussed at length the extent to which certain key elements of the bribery offence, such as a promise or an unaccepted offer of an undue advantage, as well as the request for and acceptance of an offer or promise of an undue advantage were covered. As regards the absence of the terms 'promising' or 'acceptance of a promise' in the relevant provisions in the Criminal Law, the GET accepts the explanation of the Latvian authorities that situations in which the briber commits him/herself to give an undue advantage at a later stage (e.g. after the bribe-taker has performed the desired act) would be adequately covered by the terms 'offering' in Sections 199 and 323 CL and 'accepting an offer' in Section 320 CL. However, regarding certain other key elements of the bribery offence, the explanations provided were less convincing. First of all, the GET noted that most interlocutors regarded the offence of bribery to be completed only if the bribe-taker (or someone else on his/her behalf) has at least received part of the bribe or has explicitly accepted the offer of a bribe. If this has not happened (yet), the bribe-giver can only be prosecuted for attempted bribery, pursuant to Section 15 CL. However, a number of interlocutors also seemed to regard an accepted offer as an uncompleted offence, if not at least part of the bribe had reached the bribe-taker (despite the fact that both Section 323 and Section 199 on active bribery explicitly include the qualification "if the offer is accepted"). Secondly, ambiguities were also identified regarding the 'request' for an undue advantage. It was made clear to the GET that the request for an undue advantage by a public official would be attempted acceptance of a bribe under Section 320, paragraph 1 and Section 15 CL. The demand for a bribe under paragraph 2 of this Section would thus refer to cases in which the conditions of paragraph 1 are fulfilled but in which the initiative came from the bribe-taker, in this case a public official. However, a number of interlocutors took the view that Section 320,

paragraph 2 CL by referring to a bribe being demanded, in itself already criminalised the request of a bribe. Furthermore, the GET understood that the term 'requesting' in Sections 198, paragraph 1, and 326.2 CL should be read in conjunction with the term 'receiving', in the sense that a request for an undue advantage without subsequent receipt would be attempted bribery, which however made it unclear how situations in which the undue advantage was received but not first requested would be covered. Finally, regarding the qualification of an offer of an undue advantage or acceptance of such an offer as attempted bribery, the GET was made aware that in practice there was a considerable variance in court decisions as to whether this conduct would be qualified as attempted bribery or a completed bribery offence.[15]

85. In addition to the abovementioned ambiguities, the GET also found clear lacunae, in that certain key conduct was not criminalised in the relevant bribery provisions. Whereas – as indicated above – Section 320 CL criminalises the acceptance of a bribe or offer thereof, both Section 198, paragraph 1 CL and Section 326.2 CL only refer to the 'requesting and receiving' of undue advantages. The acceptance of an offer or promise of an undue advantage by 'ordinary'[16] employees in the private sector and/or employees of state or local government institutions (who cannot be regarded as public officials under Latvian law) is thus not sufficiently covered by either the provisions on bribery or attempted bribery. To conclude, in the opinion of the GET it could be deemed acceptable that key elements of the offence as prescribed by the Convention would be covered by 'attempt', particularly if the sanctions for these attempted offences are the same as for the completed offence, as is the case in Latvia. However, in Latvia, the particular wording of the law is clearly a source of ambiguity, not only in respect of the Convention, but also regarding the obvious absence of a common understanding on the side of practitioners. This will almost certainly hamper the effective implementation of the law in practice. In addition, there are also clear shortcomings regarding the criminalisation of certain key conduct, which need to be addressed. The GET is of the firm opinion that the terminology used in Sections 320 and 323 CL and Sections 198 and 199 CL, as well as Section 326.2 CL needs to be improved, or at least be clarified in an appropriate manner, in order to remove any doubts as to the extent to which certain conduct and key elements of the bribery offence as established by the Convention are covered. The GET therefore recommends **(i) to clarify in which manner the offering/promising of an undue advantage and the request for an undue advantage as well as the unrequested receipt of such an advantage are covered by the relevant provisions on bribery and attempted bribery in the Latvian Criminal Law, and (ii) to amend Section 198, paragraph 1 and 326.2 of the Criminal Law to ensure that the acceptance of an offer/promise of an undue advantage by private sector employees and employees of state and local government institutions is criminalised.**

86. As regards the object of bribery, the undue advantage, Sections 198, 199, 320 and 323 CL refer to "material value, property or benefits of another nature", as does Section 326.2 CL on illegal requesting and receiving of benefits; Sections 321 and 322 on misappropriation of a bribe and intermediation in bribery use the term 'bribe', which should however also be understood in reference to "material value, property or benefits of another nature" in the preceding Section 320. From the discussions held on site the GET was satisfied that "material value, property or benefits of another nature" would also cover immaterial advantages.

87. Both the provisions on bribery in the public sector, and those on bribery in the private sector, explicitly mention the commission of the bribery offence through intermediaries. Persons

[15] See: V. Liholaja, "Qualification of Bribery and Sanctions: Some Problem Issues", *Jurista Vards* [Lawyers' Words], 7 August 2007, pp. 1-2.

[16] Section 198, paragraph 3 CL criminalises "illegally accepting the offer of material value, property or benefits of another nature" by a *responsible employee* of "an undertaking (company) or organisation".

intermediating in bribes can be prosecuted under the general rules on aiding and abetting (Section 20 CL). In addition, Section 322 CL criminalises specifically 'intermediation in bribery' in the public sector (notably, however, such an offence is absent as regards private sector bribery), stipulating that persons who pass on the bribe from the bribe-giver to the bribe-taker or who bring the bribe-taker and bribe-giver together, can be sentenced to six years' imprisonment. It is the GET's understanding that courts would most likely not apply Section 20 CL in respect of conduct falling within the more specific 'intermediation' provision of Section 322 CL. In cases of overlap the special legal norm of Section 322 CL would thus prevail over the more general rule of Section 20 CL, also in respect of the sanctions to be imposed.

88. More specifically as regards the public sector offence, the GET welcomes the clarity with which the definition of the concept public official contained in Section 316 CL covers foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies and judges and officials of international courts. As regards domestic public officials, paragraph 1 of Section 316 CL uses a more 'functional' approach, designating "representatives of state authority" as well as persons performing certain functions (as regards supervision etc.) in state or local government service as public officials. The GET was satisfied with the explanation of the Latvian authorities that this definition covers mayors, ministers, prosecutors, judges and holders of judicial office as well as members of the *Saeima* [parliament] and local assemblies. However, as regards 'ordinary' public officials, the GET noted that Section 316 CL only covers state/local government employees with certain very specific and relatively high-ranking positions. While this is strictly speaking not contrary to the Convention, as Article 1(a) of the Convention does not contain an autonomous definition of a public official and permits the use of the definition in the national law of the state in question, the GET has serious concerns that bribery of certain other employees in public service is not sufficiently covered, neither by Sections 320 and 323 CL on bribery of public officials nor by Sections 198 and 199 CL on bribery in the private sector. The GET was made aware that to address this issue the offence of 'illegal requesting and receiving of benefits' by employees in state or local government service (not being public officials) in Section 326.2 had been introduced in the Criminal Law in February 2006. Apart from the fact that this provision includes the same ambiguity regarding key elements of the offence as the similarly worded private sector offence in Section 198 CL, it – as already noted above – does not have a mirroring provision covering the active side. In light of this, the GET recommends **to criminalise active bribery of employees in state or local government service who are not public officials in the meaning of the Latvian Criminal Law.**

89. As regards beneficiaries of the bribe, the GET noted that Sections 320 and 323 CL on passive and active bribery in the public sector do not specify whether situations in which the undue advantage is not for the bribe-taker him/herself, but for a third party, are covered. By contrast, the GET noted that the provisions on bribery in the private sector (Sections 198 and 199 CL) do explicitly mention third party beneficiaries, by providing "irrespective of whether the material value, property or benefits of another nature are intended for this or any other person". Section 326.2 CL on illegal requesting and receiving of benefits includes a similar phrase. The fact that this was made explicit in certain sections, but not in others suggests that the legislator has deliberately omitted to include this in Sections 320 and 323 CL. However, most interlocutors on site took the view that situations in which the beneficiary of the bribe is not the bribe-taker him/herself would also be covered by Sections 320 and 323 CL, in reference to a statement of the Supreme Court of 1993 (see paragraph 25 above) that a bribe can also be "a gift for the bribe-taker's family members, the immediate family and friends", which was regarded to be a non-exhaustive list. However, in light of the inconsistency between Sections 198, 199 and 326.2 on the one hand and Sections 320 and 323 on the other hand, the GET would find it advisable if

due consideration would be given to bringing Sections 320 and 323 into line with Sections 198, 199 and 326.2 as far as third party beneficiaries are concerned. The GET therefore recommends **to consider amending Sections 320 and 323 of the Criminal Law to ensure that instances in which the advantage is not intended for the bribe-taker him/herself but for a third party are explicitly covered by these provisions.**

90. Turning to private sector bribery, apart from the difficulties mentioned in paragraphs 84 and 85 above, which the provisions have in common with the public sector offence, the difficulty with the provision on active private sector bribery (Section 199 CL) is that it refers to the acceptance of the bribe by a responsible employee[17] of a company or organisation (or a person authorised by a company or organisation). The mirroring provision criminalising passive bribery in the private sector – or more accurately 'unauthorised receipt of benefits' – in Section 198 CL instead refers to "an employee of an undertaking (company) or organisation, or another person who on the basis of law or a lawful transaction is authorised to conduct the matters of another person or organisation" and does not limit this to so-called 'responsible' employees. Although no information was made available to the GET which would indicate that the term 'responsible' in Section 199 CL had been an obstacle in prosecuting active private sector bribery, interlocutors met on site agreed with the GET that Section 199 CL did not meet the requirements of the Convention, which in Article 7 explicitly refers to persons who direct or work for a private sector entity 'in any capacity'. Furthermore, the GET noted that unlike Sections 320 and 323 CL on bribery of public officials, which prescribe that the act rendered by the public official in return for the bribe can be in the interest of the bribe-giver or any other person, Sections 198 and 199 CL explicitly establish that the act or omission by the bribe-taker in return for the bribe is in the interest of the bribe-giver solely. The GET was not made aware of the reasons why such a restriction had been included in these provisions. It is clear however that Articles 7 and 8 of the Convention do not provide for such a restriction. The GET therefore recommends **(i) to amend Section 199 of the Criminal Law, ensuring that the full range of persons who direct or work for, in any capacity, private sector entities as provided for in Article 7 of the Criminal Law Convention on Corruption (ETS 173) are covered and (ii) to ensure that instances in which the act or omission by the bribe-taker in return for the undue advantage is in the interest of someone else than the bribe-giver are also covered by Sections 198 and 199 of the Criminal Law.**

91. As regards the bribery offences included in the Additional Protocol, the GET noted that passive bribery of domestic arbitrators is covered by the provision on passive private sector bribery (Section 198 CL), which explicitly refers to persons "who on the basis of a law or a lawful transaction are authorised to resolve disputes". However, this section also mentions the use of his/her authority in bad faith, thus presupposing a breach of duty on the side of the arbitrator (as is indeed commonly included in the provisions on private sector bribery offences). Such a restriction is not endorsed by the Additional Protocol. As regards active bribery of (domestic) arbitrators, the phrase included in Section 198 CL referring to persons being authorised to resolve disputes is notably absent from Section 199 CL on active private sector bribery. Some interlocutors on site regarded this as an oversight of the legislator; a few others appeared to be of the opinion that the definition of a public official in Section 316 would capture the function of an arbitrator in that s/he was "a 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", thus making the provisions on bribery of public officials (Sections 320 and 323 CL) applicable to arbitrators. In the absence of any court decision supporting the latter interpretation,

[17] A responsible employee is defined as "a person who, in an undertaking (company) or organisation, has the right to make decisions binding on other person or the right to deal with the property or financial resources of the undertaking (company) or organisation, or a person similarly authorised by an undertaking (company)."

the GET remains unconvinced that active bribery of (domestic) arbitrators is covered by the provisions on public sector bribery (at the very least because it would rule out commercial arbitration agreements).

92. Moreover, the GET was informed that the aforementioned provisions, which seek to criminalise bribery of domestic arbitrators, would also be applicable to bribery of foreign arbitrators, pursuant to Sections 2 and 4 CL establishing jurisdiction (see paragraph 97 below). Apart from the fact that the abovementioned shortcomings relating to bribery of domestic arbitrators would thus also be present as regards foreign arbitrators, the GET takes the view that general jurisdictional principles have no bearing on the criminalisation of the offence as such. Furthermore, even if one were to accept that the jurisdiction clauses would cover bribery of foreign arbitrators, this would not explain why for all other passive bribery offences involving foreign officials, members of foreign public assemblies or foreign judges (etc.), which – following the reasoning of the Latvian authorities – could just as easily have been covered by the general jurisdictional principles, it was found to be necessary to include a specific reference in the Criminal Law. As the explicit criminalisation of bribery involving certain categories of foreign persons but not others raises serious doubts as to whether foreign arbitrators are indeed covered, the GET would find it advisable that, for the sake of legal certainty, bribery of foreign arbitrators would be explicitly criminalised. In light of this reasoning and the shortcomings identified in the previous paragraph, the GET recommends **to (i) criminalise active bribery of arbitrators, in line with Article 2 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); (ii) criminalise passive bribery of arbitrators, not involving a breach of duty, in line with Article 3 of the Additional Protocol; and (iii) explicitly cover (bribery of) foreign arbitrators, in line with Article 4 of the Additional Protocol.**

93. Turning to bribery of domestic jurors, the GET took note of the fact that Latvia does not have a jury system as such. It was satisfied that the phrase "persons who (…) temporarily perform duties in the state or local government service and who have the right to perform functions regarding inquiry and punishment" in Section 316 adequately captures the concept of 'lay judges', thus making the provisions on bribery of public officials also applicable to bribery of domestic jurors ('lay judges'). However, bribery of foreign jurors is criminalised by reference to paragraph 3 of Section 316, which equates foreign public officials with domestic public officials. Bribery of foreign jurors is thus only covered (by the sections on public sector bribery) to the extent that jurors are considered to be public officials in the foreign jurisdiction in question (which will hardly ever be the case). This is not in line with the Additional Protocol, which criminalises bribery of foreign jurors irrespective of their status in the foreign jurisdiction. The GET therefore recommends **to ensure that foreign jurors are covered by the provisions on bribery in the Criminal Law also in those cases where they do not have the status of public officials in the foreign jurisdiction.**

94. The GET welcomes that Latvia has criminalised trading in influence. On the one hand, Section 326.1 CL on trading in influence appears to be rather far-reaching: the offence does not refer in any way to 'improper influence' and/or 'undue advantage', but criminalises in general terms the giving of "material value, property or benefits" to someone to have him/her use his/her influence over activities or decisions of a public official (and in a similar manner criminalises in paragraph 2 the receiving of such an advantage to use his/her influence over the decisions/activities of a public official). It would thus seem that professional lobbying activities would also be covered by this provision, which probably was not the intention of the legislator. While the GET is of the opinion that the Convention is a minimum standard and countries should be free to criminalise behaviour beyond this standard, it does have some concerns that such a broad and far-reaching transposition of Article 12 of the Convention may frustrate the actual purpose of the

criminalisation of trading in influence and reflect badly on the standards the Convention sets. On the other hand, the offence in Section 326.1 CL is in some respects also more limited than the standards of the Convention. Section 326.1, paragraph 2 CL on passive trading in influence criminalises the acceptance of an offer of "material value, property or other benefits" to personally influence the activities of a public official or "to encourage any other person to influence the activities or taking of decisions of a public official". This phrase is absent from the first paragraph of Section 326.1 CL on active trading in influence, which criminalises the offering or giving of the aforementioned benefits to "any person (…) to personally influence the decisions of a public official". In the view of the GET, indirect active trading in influence is thus not covered by Section 326.1 CL. Moreover, Section 326.1, paragraph 2 CL refers to the acceptance of an offer of "material value, property or other benefits" and thus does not criminalise the request for such an advantage. As such Section 326.1, paragraph 2 CL is not in line with Article 12 of the Convention.

95. In this context, various interlocutors informed the GET that this provision had, to date, never been used. However, there was one situation, dating back to before the entry into force of Section 326.1 CL, which would nowadays be prosecuted as trading in influence, involving the leader of a political party who was paid a substantial amount of money for using his/her influence over the party as regards a vote in parliament. This particular case drew the attention of the GET to the sanctions for trading in influence, which it noted were not commensurate to those for other comparable offences under Latvian criminal law (cf. maximum one year of imprisonment for active trading in influence and a maximum of two years for the passive trading in influence, as opposed to six and eight years' imprisonment respectively for active and passive public sector bribery). Specifically in reference to the aforementioned case, the GET has some doubts as to whether these sanctions can be regarded as effective, proportionate and dissuasive. In addition, the categorisation of trading influence as a 'criminal violation' (thus invoking a sanction of not more than two years' imprisonment) has as a consequence that the statutory limitation for this offence is not more than two years. In the opinion of the GET, considering that trading in influence is typically a 'background' offence, which takes time to be brought to light and is difficult to investigate, this limitation period is too short. Therefore, in the light of the preceding paragraphs, the GET recommends **to (i) raise the sanctions for trading in influence, ensuring consequently that the statutory limitation period for this offence is increased and (ii) criminalise indirect active trading in influence as well as the request for an undue advantage to exert improper influence over the decision-making of certain third parties, in line with Article 12 of the Criminal Law Convention on Corruption (ETS 173).**

96. During the on-site visit, the Latvian authorities insisted on the usefulness of the system of effective regret as provided under Section 324 CL, which gives the person giving a bribe to a public official the possibility to come forward without being prosecuted. The fact that effective regret is considered to be such a successful provision could point to problems in the investigation and prosecution of corruption offences. Despite the fact that in Latvia effective regret is considered to be indispensable for investigating and prosecuting corruption in the public sector, the GET has some reservations about (the breadth of) this Section of the Criminal Law, as the possibilities for its misuse are rife. The GET is particularly concerned about the automatic nature of this defence. There is no possibility for review of the situation and motives of the bribe-giver: if s/he reports the offence before the investigative body learns of the offence s/he cannot be prosecuted. In situations in which the initiative comes from the bribe-giver – bearing in mind that Section 324 CL is also applicable to bribes being offered – who has enjoyed the benefits of the act carried out in return for the bribe and subsequently reveals the offence out of fear that the police will eventually find out and thus completely exonerates him/herself, this is hardly a satisfactory outcome. In addition, the GET notes that Section 324 CL does not require bribe-

givers to come forward immediately, but only at any point in time before law enforcement authorities learn of the offence. It does not cancel the benefits bribe-givers may have unjustifiably received in return for the bribe nor does it limit the applicability of this defence to situations in which the initiative came from the public official; more particularly, it would appear that in the case of extortion, the bribe-giver can benefit from the defence of effective regret, even if s/he has not brought the offence to the attention of a law enforcement authority. In light of all these concerns, the GET recommends **to analyse Section 324 of the Criminal Law and recent cases in which the defence of *effective regret* has been invoked, with a view to ascertaining the potential for misuse of this defence and, if need be, to take appropriate measures.**

97. Finally, as regards jurisdiction, apart from establishing jurisdiction over all offences committed on Latvian territory, Section 4, paragraph 1 CL also establishes jurisdiction over offences committed abroad by Latvian citizens and persons having permanent residence status in Latvia without making this subject to a dual criminality requirement. Furthermore, paragraph 4 of the same section foresees extraterritorial jurisdiction as regards criminal offences committed outside the territory of Latvia in cases provided for by international agreements binding upon Latvia. The Convention and the Additional Protocol are considered to be such international agreements. The GET commends Latvia for this.

IV. CONCLUSIONS

98. The current provisions on bribery in the Latvian Criminal Law are ambiguous in a number of respects and contain several inconsistencies and deficiencies in relation to the requirements established under the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). First and foremost, the terminology used in both the provisions on bribery of public officials and bribery in the private sector and the lack of a common understanding of this terminology among practitioners creates doubts whether offering, promising and/or requesting an undue advantage as well as accepting an offer or promise of such an advantage are criminalised in a satisfactory manner. Moreover, the provisions on bribery in the private sector are more limited in scope than foreseen by the Convention, as instances in which the act or omission by the bribe-taker in return for a bribe is not for the bribe-giver him/herself are not covered and active private sector bribery is restricted to so-called 'responsible employees' of a company. Furthermore, active bribery of employees in state or local government service (who are not considered to be public officials under Latvian law) and indirect active trading in influence need to be criminalised and the sanctions for trading in influence are to be increased, to ensure in particular that the limitation period for this offence is extended. Moreover, as regards the offences prescribed by the Additional Protocol, bribery of arbitrators and foreign jurors is not sufficiently covered, as Latvian legislation only captures instances in which the arbitrator breaches his/her duty and/or the arbitrator or the foreign juror can be considered to be a public official. Finally, in light of the concerns about the breadth of the defence of so-called 'effective regret', Latvia is recommended to analyse Section 324 of the Criminal Law as well as recent cases in which this defence has been invoked.

99. GRECO welcomes the fact that the provisions on bribery in the Latvian Criminal Law have in the meantime undergone an extensive review by a working group set up by the Minister of Justice and trusts that the present report and its recommendations are a timely and complementary contribution to the reform initiated on the basis of this review.

100. In view of the above, GRECO addresses the following recommendations to Latvia:

i. **(i) to clarify in which manner the offering/promising of an undue advantage and the request for an undue advantage as well as the unrequested receipt of such an advantage are covered by the relevant provisions on bribery and attempted bribery in the Latvian Criminal Law, and (ii) to amend Section 198, paragraph 1 and 326.2 of the Criminal Law to ensure that the acceptance of an offer/promise of an undue advantage by private sector employees and employees of state and local government institutions is criminalised** (paragraph 85);

ii. **to criminalise active bribery of employees in state or local government service who are not public officials in the meaning of the Latvian Criminal Law** (paragraph 88);

iii. **to consider amending Sections 320 and 323 of the Criminal Law to ensure that instances in which the advantage is not intended for the bribe-taker him/herself but for a third party are explicitly covered by these provisions** (paragraph 89);

iv. **(i) to amend Section 199 of the Criminal Law, ensuring that the full range of persons who direct or work for, in any capacity, private sector entities as provided for in Article 7 of the Criminal Law Convention on Corruption (ETS 173) are covered and (ii) to ensure that instances in which the act or omission by the bribe-taker in return for the undue advantage is in the interest of someone else than the bribe-giver are also covered by Sections 198 and 199 of the Criminal Law** (paragraph 90);

v. **to (i) criminalise active bribery of arbitrators, in line with Article 2 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); (ii) criminalise passive bribery of arbitrators, not involving a breach of duty, in line with Article 3 of the Additional Protocol; and (iii) explicitly cover (bribery of) foreign arbitrators, in line with Article 4 of the Additional Protocol** (paragraph 92);

vi. **to ensure that foreign jurors are covered by the provisions on bribery in the Criminal Law also in those cases where they do not have the status of public officials in the foreign jurisdiction** (paragraph 93);

vii. **to (i) raise the sanctions for trading in influence, ensuring consequently that the statutory limitation period for this offence is increased and (ii) criminalise indirect active trading in influence as well as the request for an undue advantage to exert improper influence over the decision-making of certain third parties, in line with Article 12 of the Criminal Law Convention on Corruption (ETS 173)** (paragraph 95);

viii. **to analyse Section 324 of the Criminal Law and recent cases in which the defence of *effective regret* has been invoked, with a view to ascertaining the potential for misuse of this defence and, if need be, to take appropriate measures** (paragraph 96).

101. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Latvian authorities to present a report on the implementation of the above-mentioned recommendations by 30 April 2010.

102. Finally, GRECO invites the authorities of Latvia to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.