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Group of States against corruption

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Third Evaluation Round

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

(Theme I)

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I. INTRODUCTION

1. Estonia joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 7E) in respect of Estonia at its 6th Plenary Meeting (10-14 September 2001) and the Second Round Evaluation Report (Greco Eval II Rep (2003) 4E) at its 19th Plenary Meeting (28 June – 2 July 2004). The afore-mentioned 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 for Theme I (hereafter referred to as the "GET"), which carried out an on-site visit to Estonia from 19-20 November 2007, was composed of Mr Joseph E. GANGLOFF, Deputy Director, Office of Government Ethics (United States of America) and Mr Matti TOLVANEN, Professor, Joensuu University (Finland). The GET was supported by Mr Björn JANSON, Deputy to the Executive Secretary and Mr Michael JANSSEN 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) 5E, Theme I) as well as copies of relevant legislation.

4. The GET met with officials from the Ministry of Justice, the Public Prosecutor's Office and Southern Circuit Prosecutor's Office, the Police (Police Board, Security Police, Central Criminal Police), the Supreme Court and County Courts. The GET also met with academics.

5. Theme II of the Third Evaluation Round (Transparency of Party Funding) is dealt with in a separate report (Greco Eval III Rep (2007) 5E Theme II).

6. 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 Estonian authorities in order to comply with the requirements deriving from the relevant provisions indicated in paragraph 2. The report contains a description of the situation and a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Estonia in order to improve its level of compliance with the provisions under consideration.

II. INCRIMINATIONS

Description of the situation

7. Estonia ratified the Criminal Law Convention on Corruption (ETS 173) on 6 December 2001 and the Convention entered into force in respect of Estonia on 1 July 2002. Estonia has not signed or ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).

8. The Estonian Penal Code (hereafter: PC) entered into force on 1 September 2002, containing completely revised provisions concerning corruption offences which were last amended in 2007. Subsequent to the on-site visit, the GET was informed of a draft Amendment Act to the Penal Code and the Code of Criminal Procedure containing, *inter alia*, changes in the corruption-related provisions;[1] the pertinent drafts are presented in footnotes included in the present report. Furthermore, the GET was informed of a new anti-corruption strategy which was adopted by the Government on 3 April 2008 and deals with, among other topics, the provisions of the Anti-corruption Act which provides the legal basis for preventing corruption, including the definition of misdemeanours in this respect.

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

9. *Passive bribery* is criminalised in sections 293 and 294 of the Penal Code, which establish a distinction as to whether the official's act or omission is lawful (section 293, "Accepting of gratuities") or unlawful (section 294, "Accepting a bribe"):[2]

§ 293. Accepting of gratuities

(1) An official who consents to a promise of property or other benefits or who accepts property or other benefits in return for a lawful act which he or she has committed or which there is reason to believe that he or she will commit, or for a lawful omission which he or she has committed or which there is reason to believe that he or she will commit and, in so doing, takes advantage of his or her official position shall be punished by a pecuniary punishment or up to 3 years' imprisonment.

(2) The same act, if committed:

1) at least twice;

2) by demanding gratuities;

3) by a group, or

4) on a large-scale basis,

is punishable by up to 5 years' imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

§ 294. Accepting a bribe

(1) An official who consents to a promise of property or other benefits or who accepts property or other benefits in return for an unlawful act which he or she has committed or which there is reason to believe that he or she will commit, or for an unlawful omission which he or she has committed or which there is reason to believe that he or she will commit and, in so doing, takes advantage of his or her official position shall be punished by 1 to 5 years' imprisonment.

(2) The same act, if committed:

1) at least twice;

2) by demanding bribe;

3) by a group, or

4) on a large-scale basis,

[1] At the time of adoption of the present report, the draft act which was agreed upon by the Government on 3 April 2008, had not yet been submitted to Parliament.

[2] In order to facilitate the reading, the term *bribery (offences)* as used in this report includes the offences of "accepting of gratuities" and "granting of gratuities" unless otherwise specified.

is punishable by 2 to 10 years' imprisonment.
(3) An act provided for in subsection (1) of this section, if committed by a legal person, is punishable by a pecuniary punishment.
(4) An act provided for in subsection (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.
(5) For the criminal offence provided in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83^2 of this Code.

10. The provisions of the Penal Code on *active bribery* differentiate in the same way between "Granting of gratuities", concerning lawful acts or omissions, and "Giving a bribe", concerning unlawful acts or omissions:

§ 297. Granting of gratuities
(1) Granting or promising a gratuity is punishable by a pecuniary punishment or up to 3 years' imprisonment.
(2) The same act, if committed at least twice, is punishable by up to 5 years' imprisonment.
(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

§ 298. Giving a bribe
(1) Giving or promising a bribe is punishable by 1 to 5 years' imprisonment.
(2) The same act, if committed at least twice, is punishable by 2 to 10 years' imprisonment.
(3) An act provided for in subsection (1) of this section, if committed by a legal person, is punishable by a pecuniary punishment.
(4) An act provided for in subsection (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.

11. The Estonian authorities indicated that the interpretation of these offences is based on the corresponding offences of passive bribery; all the elements of passive bribery, e.g. an "official", "in return for a lawful/unlawful act" etc. (except the act of "accepting" or "consenting" itself) apply to the offences of active bribery as well.

12. Sections 295 and 296 PC specifically criminalise the offences of serving as an intermediary ("Arranging a receipt of gratuities" / "Arranging a bribe"), without defining the term "arranging":

§ 295. Arranging a receipt of gratuities
(1) Arranging a receipt of gratuity is punishable by a pecuniary punishment or up to one year of imprisonment.
(2) The same act, if committed:
1) at least twice, or
2) by taking advantage of an official position,
is punishable by a pecuniary punishment or up to 3 years' imprisonment.
(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

§ 296. Arranging a bribe
(1) Arranging a bribe is punishable by a pecuniary punishment or up to one year of imprisonment.
(2) The same act, if committed:
1) at least twice, or
2) by taking advantage of an official position,
is punishable by a pecuniary punishment or up to 3 years' imprisonment.
(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

13. Concerning the distinction between "bribe" and "gratuity" throughout the whole set of bribery provisions, the Supreme Court has given some indications on how to establish whether the official's act is "unlawful" (entailing therefore more severe sanctions) or "lawful": "Deeming an act committed by an official to be either lawful or unlawful does not depend on other objective necessary elements, but only on the assessment to be given in isolation of the act committed by the official. Giving such an assessment is within the capacity of the court, […] If, upon deciding on whether to commit or not to commit an act, an official has been provided with a margin of discretion by legislation (e.g. the capacity of a body conducting extra-judicial proceedings in a misdemeanour procedure to implement warning, expedited or general procedure upon conducting proceedings in a misdemeanour), the court shall not be bound by the decision of the official upon assessing the objective lawfulness or unlawfulness of the act committed by the official."[3]

Elements of the offence

"Domestic public official"

14. Section 288 (1) PC contains a general definition of an "official", which is extended by subsections 2 and 3 to the private sector and to officials working in foreign states or international organisations:[4]

> **§ 288. Definition of official**
> (1) For the purposes of the Special Part of the Penal Code, an "official" means a person who holds office in a state or local government agency or body, or in a legal person in public law, and to whom administrative, supervisory or managerial functions, or functions relating to the organisation of movements of assets, or functions of a representative of state or local[5] authority have been assigned.
> (2) In the criminal offences specified in §§ 293–298 of this Code, an "official" is also a person who directs a legal person in private law or acts on behalf of such a person or acts on behalf of another natural person, provided that the person has the authority and duties specified in subsection (1) of this section and that the criminal offence has been committed in the course of the economic activity of the corresponding legal or natural person.
> (3) The definition of an official provided for in subsections (1) and (2) of this section also extends to officials working in foreign states or international organisations.

15. The Supreme Court has analysed the definition of a *domestic public official* as follows: "[…] the definition of an official consists of two general elements: holding office and carrying out the aforementioned functions with regard thereto. In essence 'holding office' means being capable, i.e. authorised to make binding decisions or perform legal acts with regard to third parties or to participate in the decision-making process."[6] The Estonian authorities added that this definition

[3] Decision 3-1-1-118-06 (p. 16).
[4] The draft Amendment Act (see paragraph 8 above) foresees a revision of section 288 (3) PC providing for an autonomous definition of a foreign official:
"(3) An official in the meaning of the offences provided in sections 293–298 of the Code includes a foreign official. A foreign official is any appointed or elected person holding a legislative, administrative or judicial office of a foreign country or any level of administrative unit thereof, or any person exercising a public function for a foreign country, an administrative unit thereof, a public agency or public enterprise, or an official or representative of a public international organisation, including a member of an international assembly or an international court."
[5] The English translation of section 288 (1) PC available on the internet does not mention the element "local" authority; the officials met by the GET indicated however that this element is contained in the original Estonian text and must therefore be inserted in the English translation as well.
[6] Decision 3-1-1-68-05 (p. 8).

also reflects the definition provided by section 3 (2) of the Anti-Corruption Act for the purposes of this Act: "Official position is the competence of an official arising from the office to adopt decisions binding to other persons, perform acts, participate in making decisions concerning privatisation, transfer or grant of use of municipal property and the obligation to fulfil his or her official duties honestly and lawfully." The authorities further indicated to the GET that this definition also includes persons who fulfil their assignments as independent persons holding an office in public law, e.g. bailiffs and public notaries.

"Promising, offering or giving" (active bribery)

16. Sections 297 and 298 PC use the words "give"/"grant" and "promise". According to the authorities, "promise" should be interpreted to include "offer", it being understood that the Estonian term "lubama" covers both meanings. They furthermore quoted the Supreme Court, stating that the offence of promising a bribe is committed when a person has offered property or other benefits to the official, and that it is not important whether the official was ready to accept the offer.[7]

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

17. Subsections 1 of sections 293 and 294 PC use the words "an official who *consents* to a promise of property or other benefits or who *accepts* property or other benefits". The term "receipt" is not expressly used but is meant to be comprised in the notion of "acceptance". The "request" of a gratuity or a bribe does not in itself constitute an offence but is an aggravating circumstance according to sections 293 (2) clause 2 and 294 (2) clause 2 ("by demanding").

"Any undue advantage"

18. The definitions of bribe and gratuity, given in subsection 1 of sections 293 and 294 CP, cover property and other benefits that the official would receive in exchange for his/her act or omission. According to the authorities, "property" means all objects, including money and proprietary rights, and "other benefits" include all other advantages, also immaterial; the amount or value of the benefit is not important and there is no concept of "undue" advantage.

"Directly or indirectly"

19. The relevant provisions on active and passive bribery do not specify whether the offence could be committed directly or indirectly. However, the GET was informed during the visit that according to case law established by lower courts, it does not matter whether the bribe or the gratuity is offered, promised or given directly to the official or whether intermediaries are used. Such intermediaries can also be held responsible themselves under sections 295 and 296 PC.

"For himself or herself or for anyone else"

20. The provisions on active and passive bribery do not specify whether the advantage must be for the official him/herself. The GET could not obtain a clear answer, during the on-site visit, as to whether a bribe or gratuity promised or given to a third party is covered by the corruption offences. It was informed that at the time of the visit, a relevant corruption affair involving a third party was being prosecuted, but that no case law on this subject was available yet. Against this

[7] Decision 3-1-1-37-05 (p. 10).

background, several officials met by the GET indicated that on the basis of a strict reading of the corruption offences, advantages intended for third parties would not be covered.[8]

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

21. The bribery offences expressly include "acts" and "omissions" committed in the past or in the future. According to the definitions of bribe and gratuity given in sections 293 (1) and 294 (1) PC, the act or omission of the official has to involve *taking advantage of his or her official position*. The authorities indicated that the act or omission has to be connected to the official's competence, but that the link is usually interpreted broadly. It has to be noted in this context that the offences of *granting of gratuities* and *accepting of gratuities* presuppose that the act or omission of the official in return is in itself lawful, which implies that the official acts within his/her competence. By contrast, the offences of *giving a bribe* and *accepting a bribe* presuppose that the official in return commits an unlawful act or omission, thus implying a breach of his/her duties.

"Committed intentionally"

22. Pursuant to section 15 (1) PC, only intentional acts are punishable as criminal offences unless a punishment for a negligent act is explicitly provided by the PC, which is not the case with regard to bribery offences. Indirect intent is sufficient for the commission of bribery offences, implying that the perpetrator foresees the occurrence of circumstances which constitute the necessary elements of the offence and tacitly accepts that such circumstances may occur (section 16 (4) PC). According to the Supreme Court,[9] promising a bribe also includes a deceptive offer that the promising party intends not to fulfil from the outset or the fulfilment of which is even impossible, but the objective of which is to induce an official to commit an illegal act or omission. By contrast, if an offer of property or other advantage is not intended to influence the official to act illegally, the person cannot be held responsible for offering a bribe.

Sanctions

23. *Giving a bribe* and *accepting a bribe* are punishable by between 1 and 5 years of imprisonment or, in case of aggravating circumstances, between 2 and 10 years. As for *granting of gratuities* and *accepting of gratuities*, sanctions range between a pecuniary punishment and up to 3 years' imprisonment; in aggravated cases, the same acts are punishable by 5 years' imprisonment at most. The GET was informed during the on-site visit that repetition constitutes an aggravating circumstance to all bribery offences, irrespective of whether several acts are dealt with in one or in several different trials, as long as the previous punishments are still recorded in the criminal registry; however, no repetition can be established on the basis of a *bribe*-based offence and a *gratuity*-based offence, which are regarded as distinct. In the case of passive bribery offences, further aggravating circumstances are acts committed by request, by a group (i.e. by at least two persons, acting in coordination) or on a large-scale-basis (i.e. the value of the bribe or gratuity is at least 100 times the monthly minimum salary and therefore approximately 27,000 EUR, in 2008). Sanctions for *arranging a bribe* and *arranging a receipt of gratuities* range between a pecuniary punishment and up to 1 year of imprisonment; in case of aggravating circumstances, the same acts are punishable by a pecuniary punishment or imprisonment for at most 3 years. In all of these cases of bribery offences, the acts committed by a legal person are punishable by a

[8] It is planned to introduce the concept of a third person as the (potential or real) beneficiary of the bribe or gratuity in sections 293 (1) and 294 (1) PC through the draft Amendment Act (see paragraph 8 above) as follows:
"An official who consents to a promise of property or other benefits or who accepts property or other benefits, *for him/herself or for a third person*, in return for …".
[9] Decision 3-1-1-37-05 (p. 11), see paragraph 16 above.

pecuniary punishment and in aggravated cases, by a pecuniary punishment or compulsory dissolution. Pursuant to section 44 (6) and (8) PC, a pecuniary punishment may be imposed as a supplementary sanction together with imprisonment or, in the case of a legal person, with dissolution.

24. In addition, section 49 PC provides that a court may deprive a convicted offender of the right to hold a certain position or operate in a certain area of activity for up to 3 years if the person is convicted of a criminal offence relating to abuse of professional or official status or violation of official duties; furthermore, section 16 of the Public Service Act enumerates the persons who are not to be employed in service such as, for example, a person under preliminary investigation for or a person accused of a criminal offence for which the law prescribes imprisonment (which is the case with giving or accepting a bribe), or a person who has been punished for an act of corruption. Finally, section 38 of the Public Procurement Act provides that persons under sanction for certain offences, including offences related to office, are prohibited from participating in public procurement procedures.

25. Similar sanctions are available for other comparable criminal offences such as fraud and embezzlement.

Statistics

26. The authorities have provided the following data[10] on the number of registered offences and the number of convictions during the period 2004 - 2007:

Penal Code §	Offence	2004		2005		2006		2007	
		Registered offences *(police data)*	Convictions (persons)	Registered offences	Convictions (persons)	Registered offences	Convictions (persons)	Registered offences	Convictions (persons)
293	Accepting of gratuities	2	2	8	3	10	2	23	2
294	Accepting a bribe	26	2	61	57	47	27	27	19
295	Arranging a receipt of gratuities	-	-	1	1	1	-	1	-
296	Arranging a bribe	3	-	4	7	13	3	2	5
297	Granting of gratuities	1	7	4	2	7	-	6	4
298	Giving a bribe	23	2	44	14	42	13	50	24

27. The authorities could not provide the GET with comprehensive information about the sanctions applied in practice. Some additional data on prison sentences over the last three years was provided but it was indicated that they were not entirely reliable.[11] According to these statistics, 25 prisoners serving corruption sentences were released during the period 2004 – 2006. They ranged from 1 to 41 months, whereas in previous years, lower sentences had also been imposed. Officials met by the GET concurred, stating that currently corruption cases committed and prosecuted tended to concern grand scale corruption.

[10] According to the Register of Criminal Procedure and the Database of the Courts Register, except for 2004 (Police database).

[11] For example, three prison sentences on the basis of section 294 PC in 2004 are mentioned.

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

28. The authorities affirmed that members of domestic public assemblies such as members of Parliament are covered by section 288 (1) PC as persons who hold office in a state or local government agency or body and who represent a state or local authority, and that they are thus to be considered "officials" for the purpose of bribery offences (sections 293 to 298 PC). However, there is no explicit reference to members of public assemblies in section 288 (1) PC. The authorities affirmed that the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of members of domestic public assemblies. There is no case law/court decision concerning bribery of members of domestic public assemblies.

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

29. The authorities stressed that foreign public officials are covered by section 288 PC and are therefore to be considered "officials" for the purpose of bribery offences. Under subsection 3 of section 288 PC, the definition of an "official" provided for in subsections 1 and 2 extends to "officials working in foreign states or international organisations".[12] The definition of a "foreign public official" therefore derives from subsections 3 and 1 and refers to a person who holds office in a foreign state or foreign local government agency or body, or in a foreign legal person in public law and has administrative, supervisory or managerial functions, or functions relating to the organisation of movements of assets, or to whom functions of a representative of state authority have been assigned. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply to bribery of foreign public officials. There is no case law/court decision concerning bribery of foreign public officials.

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

30. The authorities affirmed that members of foreign public assemblies are covered by section 288 PC and are therefore to be considered "officials" for the purpose of the bribery offences, as the definition of subsection 1 includes persons who hold office in a state agency or body and who represent state authority, and subsection 3 extends this definition to officials working in foreign states. It was stated that 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 is no case law/court decision concerning bribery of members of foreign public assemblies.

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

31. Active and passive bribery in the private sector are criminal offences under Estonian law. According to subsection 2 of section 288 PC, which entered into force on 15 March 2007, the provisions on active and passive bribery offences apply to persons acting in the private sector as well.

[12]The draft Amendment Act foresees a revision of section 288 (3) PC providing for an autonomous definition of a foreign official (see footnote 4 above).

Elements of the offence

32. The elements described under bribery of domestic public officials also apply to bribery in the private sector, in accordance with the following particular elements:

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

33. Section 288 (2) PC provides that

> *"in the criminal offences specified in §§ 293–298 of this Code, an "official' is also a person who directs a legal person in private law or acts on behalf of such a person or acts on behalf of another natural person, provided that the person has the authority and duties specified in subsection (1) of this section and that the criminal offence has been committed in the course of the economic activity of the corresponding legal or natural person."*[13]

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

34. According to section 288 (2) PC, bribery in the private sector occurs if the offence has been committed *"in the course of economic activities"* of the corresponding legal or natural person.

35. A breach of duty is not specifically required for bribery offences in the private sector. Both the provisions concerning a lawful act (sections 293, 295, 297 PC) and those concerning an unlawful act (sections 294, 296, 298 PC) are applicable to acts committed in the private sector.

Sanctions and court decisions

36. The applicable sanctions in respect of active and passive bribery of domestic public officials apply to the offences of bribery in the private sector. The GET was informed by the authorities that due to the very recent legislation in this regard there is no case law/court decision concerning bribery in the private sector yet.

Bribery of officials of international organisations (Article 9 of ETS 173)

37. The authorities indicated to the GET that officials of international organisations are covered by section 288 PC and therefore are to be considered "officials" for the purpose of bribery offences. Under subsection 3 of section 288 PC, the definition of an "official" provided for in subsection 1 and 2 extends to officials working in international organisations.[14] In order to determine whether the person working in an international organisation is an official, it has to be taken into account whether he or she has an official position (holds an office) in the organisation and whether he or she has administrative, supervisory or managerial functions, or functions relating to the organisation of movements of assets, or functions of a representative of state authority. In this context, it is to be recalled that according to the Estonian Supreme Court, "holding office" means being capable, i.e. authorised to make binding decisions or to perform legal acts with regard to third parties or to participate in the decision-making process. The authorities indicated, in addition, that contracted employees, e.g. those occupying a temporary position, could also be

[13] Please note that the draft legislation contains amendments to section 14 PC which sets forth the general rules on liability of legal persons; according to the draft section 14 (1) clause 1 PC, a legal person is, in the cases provided by law, held responsible for an act which is committed by a body, one of its members, a senior official or a competent representative of the legal person.

[14] The draft Amendment Act foresees a revision of section 288 (3) PC providing for an autonomous definition of a foreign official, including officials and representatives of public international organisations (see footnote 4 above).

considered "officials of international organisations". The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of officials of international organisations. There is no case law/court decision concerning bribery of such officials.

Bribery of members of international parliamentary assemblies (Article 10 of ETS 173)

38. The authorities affirmed that members of international parliamentary assemblies are covered by section 288 PC and are therefore to be considered "officials" for the purpose of bribery offences, as the definition of subsection 1 includes persons who hold office in a state agency or body and who represent state authority, and subsection 3 extends this definition to officials working in international organisations.[15] However, there is no explicit reference to members of international *parliamentary assemblies* in subsection 3. The authorities affirmed that the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply to bribery of members of international parliamentary assemblies. There is no case law/court decision concerning bribery of members of international parliamentary assemblies.

Bribery of judges and officials of international courts (Article 11 of ETS 173)

39. The authorities indicated to the GET that judges and officials of international courts are covered by section 288 PC and therefore are to be considered "officials" for the purpose of bribery offences. They again referred to subsection 3 of section 288 PC which extends the definition of an "official" in subsections 1 and 2 to officials working in international organisations.[16] They underline that judges and officials of national courts are covered by subsection 1 as persons who hold office in a state agency or body and who represent state authority (judges) or who have other functions such as administrative, managerial or supervisory functions. Subsection 3 reportedly includes judges and officials working in international courts. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply to bribery of judges and officials of international courts. There is no case law/court decision concerning bribery of such judges and officials.

Trading in influence (Article 12 of the ETS 173)

40. Passive trading in influence is a criminal offence under Estonian law and is covered by section 298.1 PC ("Influence peddling"), which entered into force on 25 June 2006, as follows:

> **§ 298.1. Influence peddling**
> (1) A person who consents to a promise of property or other benefits or who accepts property or other benefits in return for illegal use by the person of his or her actual or presumed influence with the objective of achieving a situation where an official performing public administration duties commits an act or omission in the interests of the person handing over the property or giving the benefit, or a third person shall be punished by a pecuniary punishment or by up to 3 years' imprisonment.
> (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

[15] The definition of a foreign official provided by the draft Amendment Act includes members of international assemblies (see footnote 4 above).
[16] The definition of a foreign official provided by the draft Amendment Act includes members of international courts (see footnote 4 above).

41. As to active trading in influence, by contrast, there is no specific provision in the Penal Code, but the authorities affirmed that the general provisions on aiding and inciting (section 22 PC) would apply.

Elements of the offence

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

42. This concept is not implemented as such, i.e. a person does not specifically have to assert or confirm that he or she is able to exert such influence. According to section 298.1 PC, "actual or presumed influence" by the influence peddler is sufficient. The authorities indicated to the GET, however, that it can be presumed that if a person consents to a promise of property or other benefits or accepts such property or benefits in return for illegal use of influence, this person at least tacitly asserts that he or she is able to exert such an influence. The element "improper influence" is transposed by "illegal use".

Other constitutive elements

43. "Request or receipt, acceptance of an offer or promise" is transposed into "who consents to a promise … or who accepts property or other benefits". The "request" in itself is not covered by section 298.1 PC. '"Promising, offering or giving" is not directly transposed into this provision (see paragraph 41 above).

44. Section 298.1 PC uses the terms "property" and "other benefits" instead of the term "advantage", in accordance with the other bribery-based offences, and there is no concept of "undue" advantage.

45. "Directly or indirectly" is not explicitly transposed, as with the provisions on bribery mentioned above.

46. By contrast, section 298.1 PC expressly prohibits influence peddling in the interests of a third person.

47. The authorities indicated to the GET that in order to apply the legal provisions on trading in influence, whether the influence was actually exerted or if it led to the intended result is not relevant. Section 298.1 PC does not specify these details, but it clearly indicates that the influence needs only to be presumed and not actual.

Sanctions and court decisions

48. The sanction applicable to *passive trading in influence* is a pecuniary punishment or up to 3 years' imprisonment; if committed by a legal person, a pecuniary sanction is applied. As for *active trading in influence*, section 22 PC specifies that, in principle, a punishment must be imposed on aiders and abettors pursuant to the same provision of law which prescribes the liability of the principal offender; in the case of an aider, the court may apply the provisions of section 60 PC on mitigation. The authorities reported that the provisions on occupational bans and confiscation could also be applied to the offence of influence peddling. They indicated that there is no case law/court decision on trading in influence.

Bribery of domestic arbitrators (Article 1, paragraphs 1 and 2 and Articles 2 and 3 of ETS 191) and Bribery of foreign arbitrators (Article 4 of ETS 191)[17]

49. The authorities indicated to the GET that although the functions and powers of arbitrators are similar to those of judges under Estonian law, the definition of "official" provided for in section 288 (1) PC seems not to cover arbitrators and, as a consequence, bribery of domestic and foreign arbitrators is not established as a criminal offence.

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

50. The status of lay judges - while acting as a member of a collegial body which has the responsibility of deciding on the guilt of an accused person in the framework of a trial - is equated to that of professional judges. Therefore, the definition of "official" covers domestic jurors and, as a consequence, the bribery offences provided for in sections 293 to 298 PC apply to domestic jurors.

51. Section 102 of the Courts Act defines the position and powers of lay judges in the administration of justice:

> *1) Lay judges shall participate in the administration of justice in county courts on the bases and pursuant to the procedure provided by the Codes of procedure.*
> *2) In administration of justice, a lay judge has equal rights with a judge.*

52. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply to domestic jurors. There is no case law/court decision concerning bribery of domestic jurors.

Bribery of foreign jurors (Article 6 of ETS 191)

53. The authorities indicated to the GET that the bribery offences provided for in sections 293 to 298 PC apply to foreign jurors. A foreign juror is to be considered an "official" in the meaning of section 288 PC, following the same rationale as described above under bribery of foreign public officials. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply to foreign jurors. There is no case law/court decision concerning bribery of foreign jurors.

Other questions

Participatory acts

54. Aiding and abetting the commission of the abovementioned criminal offences is criminalised under section 22 PC. An abettor is a person who intentionally induces another person to commit an intentional unlawful act. An aider is a person who intentionally provides physical, material or moral assistance to an intentional unlawful act carried out by another person.

55. A punishment is to be imposed on an accomplice (i.e. an abettor or an aider) pursuant to the same provision of law which prescribes the liability of the principal offender. In the case of an aider, the court may apply the provisions of section 60 PC on mitigation. The maximum rate of a mitigated punishment must not exceed two-thirds of the maximum rate of the punishment

[17] As for the offences of bribery of arbitrators and jurors, it has to be noted that Estonia is not party to ETS 191.

provided by law. The minimum rate of a mitigated punishment has to be the minimum rate of the corresponding type of punishment provided for in the general part of the Penal Code.

56. The authorities further indicated that the concept of authorisation can be covered by the inciting, aiding or even committing the offence through another person, depending on the circumstances of each particular case.

57. In the event of bribery offences, it has to be noted that an intermediary can be punished on the basis of sections 295 and 296 PC ("Arranging a receipt of gratuities" / "Arranging a bribe"), which provide for lower sanctions than the other sections on bribery offences. Although not all interlocutors met by the GET gave a clear and concurring answer to the question, the GET understood, especially on the basis of firm statements on the part of the judges met during the on-site visit, that an intermediary can not be sentenced as an abettor or an aider, i.e. in application of the general part of the Penal Code, when the special provisions of sections 295 and 296 PC are fulfilled.

Jurisdiction

58. The rules of Estonian criminal jurisdiction are laid down in Chapter 1 of the Penal Code; they apply to all bribery and trading in influence offences. Jurisdiction is established over acts committed within the territory of Estonia (principle of territoriality, section 6 PC), as well as acts committed abroad by or against Estonian citizens or legal persons registered in Estonia (principle of nationality, section 7 PC).[18] Pursuant to section 11 PC, "an act is deemed to be committed at the place where the person acted, where the person was legally required to act, where the consequence which constitutes a necessary element of the offence occurred, or where, according to the assumption of the person, the consequence which constitutes a necessary element of the offence should have occurred." The authorities indicated to the GET that only the first of these alternatives applies to bribery offences.

59. Dual criminality is required to establish jurisdiction in respect of acts committed abroad, except for cases where the offender is a member of the Defence Forces performing his or her duties.[19] However, the authorities indicated to the GET that section 8 PC foresees universal jurisdiction over acts committed outside the territory of Estonia if the punishability of the act arises from an international agreement binding Estonia, and that the Criminal Law Convention on Corruption (ETS 173) could possibly be considered such an international agreement.

60. The GET was informed that there was no case law/court decision in connection with jurisdiction over bribery offences.

[18] Offenders who become a citizen after the commission of the act, offenders who are aliens and have been detained in Estonia and are not extradited, as well as offenders who are members of the Defence Forces performing his or her duties are equally included.

[19] The GET was informed after the visit that the draft Amendment Act (see paragraph 8 above) provides an amended section 7 (2) clause 2 PC which aims at applying active nationality jurisdiction to offences related to bribery of foreign officials without requiring dual criminality, as follows:
"for giving a gratuity or a bribe to a foreign public official, and offences related to that, when the offender is a citizen of Estonia or an alien who has been detained in Estonia and is not extradited, or a legal person registered in Estonia."

Statute of limitations

61. The period of limitation is determined by the length of imprisonment which can be imposed for the crime in question (see sections 4 and 81 PC). On this basis, the limitation period provided for bribery offences, including granting and accepting of gratuities, is 5 years; in aggravated cases of giving or accepting a bribe (sections 294 (2) and 298 (2)) the limitation period is 10 years.[20] Pursuant to section 82 PC, the statute of limitations for the execution of a judgement is 3 years or, in aggravated cases, 5 years.[21]

Defences

62. There are no special defences in Estonia that would exempt an individual from criminal liability if s/he freely reports a corruption offence to the relevant authorities. However, section 205 of the Code of Criminal Procedure provides the general rule that the Public Prosecutor's Office may under certain conditions terminate criminal proceedings with regard to a suspected or accused person who has significantly facilitated the ascertaining of facts relating to a subject of proof of a criminal offence.

III. ANALYSIS

63. The Estonian Penal Code, which was completely revised in 2002 and last amended in 2007, provides a fairly sound basis for the criminalisation of the various corruption offences. Likewise, the officials interviewed during the on-site visit considered the existing criminal laws sufficient and the enforcement framework satisfactory, explaining the limited case law by the recent legislative reforms and by the small size of the country. Nevertheless, the GET identified a number of inconsistencies and deficiencies in the existing system as compared with the standards of the Criminal Law Convention on Corruption (ETS 173) (hereafter: the Convention) and its Additional Protocol (ETS 191). After the on-site visit, the GET was informed of a draft Amendment Act to the Penal Code and the Code of Criminal Procedure containing, *inter alia*, changes to the corruption-related provisions. It appears to the GET that, overall, the relevant draft changes, which are referred to in the present analysis, go in the right direction. However, as these amendments have not as yet been adopted by Parliament (the amendments were agreed by the Government on 3 April 2008), the present report can only be based on the legislation in force at the time of its adoption.

64. Section 288 (1) PC provides for a general definition of "official", which is extended by subsections 2 and 3, for the purpose of bribery offences, to persons working in the private sector as well as in foreign states or international organisations. Given the terms used by subsection 1, "a person who holds office … and to whom administrative, supervisory or managerial functions, or functions relating to the organisation of movement of assets, or functions of a representative of state or local authority have been assigned", and given the Supreme Court's interpretation of "holding office" as being authorised to *participate in the decision-making process*, the GET concludes that the requirements of Articles 1a and 1b of the Convention which make reference to the national definition of "official", "public officer", "mayor", "minister" and "judge", including prosecutors and holders of judicial offices, are met. By contrast, the GET takes the view that the legal definition does not unambiguously provide for the coverage of members of domestic or foreign public assemblies or of international parliamentary assemblies, as required by Articles 4, 6 and 10 of the Convention. The authorities held that these persons were covered by the concept "a person … to

[20] As for the interruption or suspension of these periods, see section 81 (5) to (8) PC.
[21] As for the suspension of these periods, see section 82 (2) PC.

whom functions of state or local authority have been assigned", but there was no case law available to support that position. Furthermore the authorities indicated, after the visit, that the draft amendment to section 288 (3) PC provides for an autonomous definition of a foreign official, including members of foreign and international assemblies. Nevertheless, on the basis of the legislation in force, the GET recommends **to ensure that active and passive bribery of members of domestic public assemblies, members of foreign public assemblies and members of international parliamentary assemblies are criminalised in accordance with Articles 4, 6 and 10 of the Criminal Law Convention on Corruption (ETS 173).**

65. Section 288 (2) PC addresses bribery in the private sector by including in the notion of "official" persons who direct a legal person in private law or act in the name of such a person or act in the name of another natural person and who have "the authority and duties specified in subsection 1", i.e. who perform administrative, supervisory or managerial functions or functions relating to the organisation of movements of assets. Because of this relatively narrow technical definition, low-level employees and - with possible rare exceptions - most agents and consultants working on behalf of private sector entities are not covered by section 288 (2) PC and are therefore not subject to the bribery provisions. Therefore, the GET can only conclude that the scope of section 288 (2) PC does not fully meet the requirements of Articles 7 and 8 of the Convention which refer to "any persons who direct or work for, *in any capacity*, private sector entities". Although this provision has been effective only since March 2007 and no cases had been prosecuted under this section at the time of the visit, several officials clearly seconded the GET in this analysis. After the on-site visit, the GET was informed that the draft legislation, referred to in paragraph 63, contains amendments to section 14 PC which sets forth the general rules on liability of legal persons; according to draft section 14 (1) clause 1 PC, a legal person is, in the cases provided by law, held responsible for an act which is committed by a body, one of its members, a senior official or a competent representative of the legal person. However, the draft legislation does not appear to affect section 288 (2) PC and to fully address the aforementioned lacunae. The GET recommends **to amend current legislation in respect of bribery in the private sector in order to clearly cover the full range of persons who direct or work for, in any capacity, private sector entities as provided for in Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).**

66. The GET notes that arbitrators are not specifically referred to in section 288 PC nor is there any relevant case law. Moreover, the GET notes that there are no court decisions in this respect either. According to the authorities interviewed by the GET, domestic and foreign arbitrators are not covered by the general definition of an official. The GET shares this view and furthermore notes that the Additional Protocol to the Criminal Law Convention has not been signed or ratified by Estonia. Finally, the GET notes that according to the authorities, arbitrators are rarely employed in Estonia, but notwithstanding this practical situation – which is common to a large number of countries – the current legislation does not comply with the standards defined by the Additional Protocol. In addition, the GET wishes to stress that the Additional Protocol not only concerns domestic but also foreign arbitrators (article 4). Consequently, the GET recommends **to criminalise active and passive bribery of domestic and foreign arbitrators in accordance with articles 2, 3 and 4 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and to sign and ratify this instrument as soon as possible.**

67. The GET notes that there is no definition of active bribery in the Estonian Penal Code; the active bribery offences (sections 297/298 PC) are designed as "mirror offences" based on the corresponding passive bribery provisions (sections 293/294 PC). The GET is convinced that it would add to the comprehensibility, for the benefit of both practitioners and citizens, of the active bribery offences if they contained full definitions of the punishable acts. Even if such an

amendment is not obligatory under the Convention, it would certainly help clarify the precise meaning of the active bribery offences without needing to refer to the corresponding passive bribery provisions.

68. Furthermore, the GET notes that the bribery offences are set forth in separate provisions addressing "gratuities" and "bribes", the latter involving an underlying "unlawful" act or omission on the part of the official and leading to more severe sanctions than gratuity offences. The GET has doubts about this distinction as it appears to be very difficult to identify a clear borderline between lawful and unlawful acts. The GET, who discussed this issue at length with a number of interlocutors, could not get a clear answer to the question of whether an unlawful act presupposes the violation of a law or if it also encompasses the non-compliance with instructions given to the official. Therefore, it would appear that in case of doubt, prosecutors may be more likely to charge with the less serious offence. The authorities stressed however, that in practice, they had not met any significant problems in this respect. By contrast, they acknowledged a specific deficiency in the current system of bribery provisions relating to the imposition of aggravated sentences. In this connection, the GET was informed during the visit that a gratuity-based offence which is committed after a bribe-based offence (or vice versa) would not give rise to an aggravated sentence, the two of them being regarded as distinct offences; whereas a gratuity offence committed after a previous gratuity offence would warrant an increased sentencing range for the subsequent offence (case of reiteration). This appears to pose a problem of consistency. The GET therefore recommends **to ensure that a gratuity-based offence following an earlier bribe-based offence (and vice versa) can give rise to an aggravated sentence.**

69. Pursuant to sections 297 (1) and 298 (1) PC, active bribery may be committed by "granting/giving" or "promising" an advantage. These terms are also meant to cover the act of "offering", as stressed by the authorities and confirmed by the Supreme Court according to which "the offence of promising a bribe is committed when a person has offered property or other benefits to the official, and that it is not important whether the official was ready to accept the offer". As for passive bribery, the GET takes the view that the word "accept" in sections 293 (1) and 294 (1) PC covers the simple "receipt" in the meaning of Article 3 of the Convention, as this article only applies to acts committed intentionally and therefore supposes at least some kind of tacit acceptance. By contrast, the GET notes that the "request" of a bribe or gratuity is not a separate element of the offence but only an aggravating factor to be taken into account by the court when deciding on the appropriate sentence (see sections 293 (2) clause 2 and 294 (2) clause 2 PC: "by demanding gratuities/bribe"). It follows that these provisions do not criminalise a situation where a request for a bribe is not accepted, as the request itself would not constitute an offence. However, the Estonian authorities argued that such a demand might be charged pursuant to the general rules on attempts (section 25 PC). The GET accepts this explanation, considering that according to the general rules an attempt may lead to the same sanctions as the offence itself.

70. Neither sections 293/294 PC nor sections 297/298 PC specify whether the advantage must be for the official him/herself or may be intended for a third party as well. A strict reading of the above-mentioned provisions leads to the clear conclusion that third persons are not covered. This opinion was furthermore shared by the officials met by the GET. In addition, it is interesting to note in this connection that section 298^1 PC explicitly includes the concept of a third party in the offence of trading in influence, which strongly suggests *e contrario* that the legislator has deliberately omitted to include this concept in the bribery provisions. The GET notes that the Estonian authorities plan to introduce the concept of a third person as the (potential or real) beneficiary of the bribe or gratuity in sections 293 (1) and 294 (1) PC through the draft Amendment Act. Nevertheless, on the basis of the legislation in force, the GET recommends **to**

ensure that the active and passive bribery offences are construed in such a way as to cover instances where the advantage is not intended for the official him/herself but for a third party.

71. Moreover, the GET noted inconsistencies in current legislation relating to intermediaries. The provisions on "Arranging a receipt of gratuities" (section 295) and of "Arranging a bribe" (section 296 PC) appear to apply to situations which would also be covered by the general rules on aiding and abetting (section 22 PC). Practitioners met by the GET could not explain the difference between the "arranging" provisions and those of aiding and abetting, but they stressed that courts would probably not apply section 22 PC with respect to conduct that falls within the more specific "arranging" provisions. Furthermore, these two sets of rules, which appear to overlap, lead to different sanctions: section 22 PC allows for penalties based on the provisions of the principal offence, whereas sections 295/296 PC provide for less severe sanctions than the bribery provisions. Moreover, the "arranging" provisions do not differentiate as to whether a bribe or a gratuity is concerned, whereas the bribery provisions establish more severe sanctions for a bribe than for a gratuity. These inconsistencies may well lead to inadequate and inconsistent sentencing of intermediaries. Even if legal amendments are not strictly necessary with regard to the Convention, the GET can only conclude that the current legislation is confusing and warrants a thorough review in due course.

72. Trading in influence was criminalised in 2006, but the GET noticed three shortcomings. Firstly, the Penal Code contains only a provision on passive trading in influence (section 298.1 PC). The authorities stated that the *active* offence is considered an act of aiding or inciting passive trading in influence. However, no case was cited to demonstrate the prosecution of an active trading in influence offence, and the GET could not, during the on-site visit, obtain any answer to the question of how to deal with cases where an offer is rejected by the person who has or is presumed to have some influence, i.e. when there is no principal offender. Secondly, the GET notes that, as is the case with the bribery provisions, section 298.1 PC does not comprise the simple *request* of a benefit and, in the case of trading in influence, the request does not constitute an aggravating circumstance. Thirdly, as stressed by practitioners met by the GET, the term "illegal use" of influence employed by section 298.1 PC is unclear and too narrow in comparison with the term "improper influence" as contained in Article 12 of the Convention, especially when the influence peddler is not a public official and thus does not have to comply with official regulations. According to the Estonian authorities, a prosecution would require that a legal standard, or norm, be cited in the indictment, but there is no guidance as to how to determine the relevant legal standard; the GET was informed that some cases could not proceed because of this question. Consequently, in order to meet the requirements of Article 12 of the Criminal Law Convention on Corruption (ETS 173), the GET recommends **(i) to criminalise active trading in influence as a principal offence; (ii) to include the request of an advantage in the offence of passive trading in influence; and (iii) to clarify what should be considered "illegal use of influence" in order to ensure that all instances of an asserted or confirmed improper influence are covered.**

73. The sanctions available for bribery offences – up to 10 years of imprisonment – and trading in influence offences – up to 3 years of imprisonment – under Estonian law appear to conform to the requirements established under Article 19 (1) of the Convention. Moreover, extradition is permitted in relation to all these offences, according to section 439 (1) of the Code of Criminal Procedure. The GET regrets, however, that the statistics delivered by the authorities do not give a complete picture of the sanctions applied in practice and are not entirely reliable, as stressed by the authorities themselves.

74. The jurisdictional principles of territoriality and of nationality apply to all bribery and trading in influence offences, but section 7 (1) PC requires dual criminality for offences committed abroad by or against Estonian citizens (or against legal persons registered in Estonia). This means that in these cases prosecution would be possible only if the act was punishable in the foreign State as well, which would involve a restriction as compared to Article 17 1.b of the Convention. The GET notes that Estonia has not made a reservation in this respect. The authorities indicated, however, that in these cases section 8 PC could possibly apply, which foresees universal jurisdiction over acts committed outside the territory of Estonia if the punishability of the act arises from an international agreement binding Estonia; according to the authorities, the Criminal Law Convention on Corruption could possibly be considered such an international agreement. Nevertheless, the GET noted that the officials met during the on-site visit were quite uncertain about this possible solution which has not yet been confirmed by any court decision and raises further questions as to, for example, the uncertain applicability of universal jurisdiction to citizens of States not having signed the international agreement in question. It appears to the GET that the requirement of dual criminality is likely to be an obstacle to the prosecution of corruption offences committed abroad. In this connection, the GET notes that the draft Amendment Act contains an amended section 7 (2) clause 2 PC which aims at applying active nationality jurisdiction to offences related to bribery of foreign officials without requiring dual criminality. Nevertheless, on the basis ofthe legislation in force, the GET recommends **to abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad.**

75. Moreover, Article 17 1.b of the Convention extends (active) nationality jurisdiction to public officials and members of domestic public assemblies – i.e. not necessarily nationals. This extension is not reflected in section 7 PC which generally requires Estonian citizenship.[22] Estonian public officials and members of Estonian public assemblies who are not at the same time Estonian citizens would therefore not be covered. The GET was told by the authorities that this kind of case would not occur in Estonia. The GET recalls that in the particular context of the European Union, it is no longer rare that citizens from other EU countries serve as officials or as elected representatives in a municipal assembly. Consequently, the GET recommends **to establish jurisdiction over offences of bribery and trading in influence committed abroad by/or involving Estonian public officials and members of domestic public assemblies who are not Estonian citizens.**

IV. CONCLUSIONS

76. The relevant provisions contained in the Estonian Penal Code, which were completely revised in 2002 and last amended in 2007, provide a fairly sound basis for the investigation, prosecution and adjudication of corruption offences. Nevertheless, the current legislation contains a number of inconsistencies and deficiencies in relation to the requirements established under the Council of Europe Criminal Law Convention on Corruption (ETS 173). Given that the fight against corruption is one of the priorities of current Estonian criminal policy,[23] that a new anti-corruption strategy will be implemented as of 2008 and that amendments to the Penal Code, including several changes in the corruption-related provisions, are currently being prepared, the present report and its recommendations should be seen as a timely contribution to the ongoing reform process.

[22] Offenders who become a citizen after the commission of the act, offenders who are aliens and have been detained in Estonia and are not extradited, as well as offenders who are members of the Defence Forces performing his or her duties are equally included.

[23] The two current priorities are firstly, organised crime, including *inter alia* proceeds of crime (including cases of corruption) and offences related to money laundering, and secondly, juvenile crime.

77. More specifically, the bribery offences under current Estonian legislation are found to be more limited in scope than foreseen in the Convention, especially with regard to parliamentarians and to persons acting in the private sector. Moreover, the existing bribery offences do not cover bribes intended for a third party. The GET also identified a deficiency in the current system of bribery provisions relating to the imposition of aggravated sentences which needs to be remedied. As regards the offence of trading in influence, the active offence is not criminalised as a principal offence, and the passive offence shows some deficiencies, in particular regarding the request of an advantage by the influence peddler and the requirement of an "illegal use of influence". In addition, Estonian legislation requires dual criminality with regard to bribery and trading in influence offences and restricts nationality jurisdiction to offences committed by (or involving) Estonian citizens. Finally, the bribery offences do not apply to domestic and foreign arbitrators as defined by the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) to which Estonia should, as soon as possible, become a Party.

78. In view of the above, GRECO addresses the following recommendations to Estonia:

i. to ensure that active and passive bribery of members of domestic public assemblies, members of foreign public assemblies and members of international parliamentary assemblies are criminalised in accordance with Articles 4, 6 and 10 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 64);

ii. to amend current legislation in respect of bribery in the private sector in order to clearly cover the full range of persons who direct or work for, in any capacity, private sector entities as provided for in Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 65);

iii. to criminalise active and passive bribery of domestic and foreign arbitrators in accordance with articles 2, 3 and 4 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and to sign and ratify this instrument as soon as possible (paragraph 66);

iv. to ensure that a gratuity-based offence following an earlier bribe-based offence (and vice versa) can give rise to an aggravated sentence (paragraph 68);

v. to ensure that the active and passive bribery offences are construed in such a way as to cover instances where the advantage is not intended for the official him/herself but for a third party (paragraph 70);

vi. (i) to criminalise active trading in influence as a principal offence; (ii) to include the request of an advantage in the offence of passive trading in influence; and (iii) to clarify what should be considered "illegal use of influence" in order to ensure that all instances of an asserted or confirmed improper influence are covered (paragraph 72);

vii. to abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad (paragraph 74);

viii. to establish jurisdiction over offences of bribery and trading in influence committed abroad by/or involving Estonian public officials and members of domestic public assemblies who are not Estonian citizens (paragraph 75).

79. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Estonian authorities to present a report on the implementation of the above-mentioned recommendations by 31 October 2009.

80. Finally, GRECO invites the authorities of Estonia 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.