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Addendum

Second Evaluation Round

Addendum to the Compliance Report on Latvia

Adopted by GRECO
at its 41st Plenary Meeting
(Strasbourg, 16-19 February 2009)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Latvia at its 19th Plenary Meeting (28 June – 2 July 2004). This Report (Greco Eval II (2004) 4E) addressed 13 recommendations to Latvia and was made public on 5 July 2004.
2. Latvia submitted the Situation Report required under the GRECO compliance procedure on 30 December 2005. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on Latvia at its 30th Plenary Meeting (9-13 October 2006). This last report was made public on 18 October 2006. The Compliance Report (Greco RC-II (2006) 4E) concluded that recommendations i has been implemented satisfactorily and recommendations iii, iv, viii and xii have been dealt with in a satisfactory manner. Recommendations v, vi, ix, x and xiii have been partly implemented and recommendations ii, vii, and xi have not been implemented; GRECO requested additional information on their implementation. This information was provided on 4 June 2008.
3. The purpose of this Addendum to the Second Round Compliance Report is, in accordance with Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, to appraise the implementation of recommendations ii, v, vi, vii, ix, x, xi and xiii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation ii.

4. *GRECO recommended 1) to prepare specific guidelines for police officers and prosecutors on how to effectively track defendants' assets, especially at the beginning of investigations in the field of corruption; 2) to strengthen cooperation between investigators/prosecutors at the early stages of investigation to ensure economic investigations likely to result in the freezing of the proceeds of corruption.*
5. GRECO recalls that it concluded that this recommendation had not been implemented. As regards the first part of the recommendation, it considered that the provisions of the new Criminal Procedure Law would not make the need for further practical guidance, on *how* to effectively track defendants' assets, redundant. As regards the second part of the recommendation, GRECO found that no information had been provided which would suggest that co-operation between investigators/prosecutors at the early stages of investigation had been improved.
6. Regarding the first part of the recommendation, the Latvian authorities report on the relevant provisions of the Criminal Procedure Law¹, the Credit Institutions Law and the Law on Prevention of Laundering of Proceeds Derived from Criminal Activity on the investigation and freezing of assets, and the tasks of the Control Service (the Latvian Financial Intelligence Unit). In addition,

¹ In this regard the Latvian authorities *inter alia* report on:

- Section 37 of the Criminal Procedure Law, which provides that a prosecutor is supervising the investigation and providing the necessary guidance to the investigator which can also relate to the tracing of assets of a defendant;
- Section 361 of the Criminal Procedure Law, which provides that the freezing of assets is mandatory when it is necessary to confiscate illegal obtained assets or property;
- Section 116 of the Criminal Procedure Law, which provides that an investigator or a prosecutor can invite a specialist to provide assistance, using his/her special knowledge or skills in a given area, and;
- Section 35 of the Criminal Procedure Law, which provides that an auditor can be invited to conduct an audit, to review documents and products, to provide an economic or financial analysis and/or to perform other tasks.

the Latvian authorities report that the Ministry of Justice is preparing a Handbook for the Application of the Criminal Procedure Law, to be disseminated among prosecutors and judges in 2009. The handbook aims to provide practical guidance in the form of instructions on criminal procedure, to ensure that the Criminal Procedure Law is applied in a more efficient and uniform manner, and will include information on the importance of tracking and seizing assets. The development of a similar handbook for investigators has however been postponed due to lack of financing. Furthermore, in the draft National Programme for Preventing and Combating Corruption, elaborated by the Corruption Prevention and Combating Bureau (hereafter: KNAB) and which is currently undergoing public consultation, it is mentioned that experiences from other countries will be gathered and training will be provided to practitioners on tracking assets in, *inter alia*, corruption investigations. It is planned that this activity will be implemented by the KNAB by the end of 2009.

7. As regards the second part of the recommendation, the Latvian authorities state that, pursuant to the Criminal Procedure Law, a prosecutor is to supervise the pre-trial investigation. This supervising prosecutor is appointed within 24 hours after receiving the decision that criminal proceedings have been initiated. The prosecutor supervising the pre-trial investigation can *inter alia* give instructions to investigators, provide guidance on the type of proceedings and investigatory actions to be followed and take part in and carry out certain procedural activities. To ensure that these procedural and investigatory activities, including the freezing of property, are carried out in a timely and efficient manner, the Prosecutor General has issued a number of orders, which set out the duties of prosecutors in preliminary investigations and are aimed at providing clear instructions to prosecutors in carrying out their supervisory duties in investigations. These orders are regularly updated, in light of changing circumstances and on the basis of reviews of the work of investigators and prosecutors. Finally, the Latvian authorities report that in the criminal proceedings related to corruption committed in the public service there is an established practice of regular and close cooperation between investigators and prosecutors, which is also aimed at ensuring efficient and timely freezing of property, whenever necessary.
8. GRECO takes note of the information provided. As regards the first part of the recommendation, GRECO considers that the handbook has so far not been finalised and the activity foreseen in the draft National Programme has not been carried out yet. Therefore, GRECO cannot conclude that this part of the recommendation has been fully complied with. As regards the second part of the recommendation, GRECO notes that the information pertaining to the Criminal Procedure Law would have already been available at the time of adoption of the Second Round Compliance Report. However, it accepts that by having a prosecutor supervise the pre-trial investigation at an early stage and with the instructions provided by the orders of the Prosecutor General, the co-operation between prosecutors and investigators will undoubtedly have improved, as compared to the situation at the time of the adoption of the Second Round Evaluation Report.
9. GRECO concludes that recommendation ii has been partly implemented.

Recommendation v.

10. *GRECO recommended that the introduction of the institution of ombudsman be speeded up.*
11. GRECO recalls that the recommendation had been partly implemented, as the Law on the Ombudsman – providing for the creation of an Ombudsman’s office – had been adopted but had not yet entered into force.

12. The Latvian authorities report the Law on the Ombudsman entered into in January 2007. On 1 March 2007 the *Saeima* (Parliament) elected the first Ombudsman of the Republic of Latvia, whose mandate includes protecting human rights and addressing violations of the principle of good administration in the state administration. To this end, the Ombudsman has the right to, *inter alia*, initiate inspection procedures (also *ex officio*), visit any premises and get acquainted with any type of documentation. The office of the Ombudsman currently has a staff of 49.
13. GRECO welcomes the establishment of the office of the Ombudsman and concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

14. *GRECO recommended that the scope of the State Civil Service Law be extended so as to apply to civil servants in local government administration (or that specific legislation in this area be drawn up).*
15. GRECO recalls that recommendation vi had been partly implemented, as proposals to introduce civil service in local government had repeatedly been rejected by the *Saeima* (Parliament) and no other initiatives had been taken to regulate the activities of municipal civil servants.
16. The Latvian authorities report that, although the State Civil Service Law has not been amended to include employees in local government institutions within the scope of the civil service, it is priority of the current government, as stated in its Action Plan of the Cabinet of Ministers of February 2008², to *inter alia* increase the efficiency of the public service. Therefore, several initiatives have been taken to bring regulations and practices in local government institutions in line with the State Civil Service Law.
17. On 27 May 2008 the Cabinet of Ministers adopted the Public Service Policy Development Guidelines 2008 – 2013, which aim to develop common principles of good governance for public institutions at state and local level, *inter alia* in the area of human resource management, evaluation of the performance of public employees, remuneration systems, education and training. These guidelines are currently being implemented. The guidelines mention as a common priority for state and local institutions the improvement of internal control systems for the prevention of corruption and specify that a new regulation setting out uniform ethical standards for the entire public service (i.e. including local level) – the Code of Ethics of Public Sector employees – is to be developed in the near future.
18. In addition, the Latvian authorities report that – shortly before the adoption of the Public Service Policy Development Guidelines – on 31 January 2008 the draft Public Service Human Resources Development Guidelines 2008-2013 were announced at the meeting of state secretaries. These guidelines foresee in the development of a common human resource policy for the whole public sector, based on established good practices. On the basis of the guidelines, it is planned to develop and submit a plan for the development of the management of human resources to the Cabinet of Minister by 31 May 2008, which is to include common principles for the classification of jobs, remuneration, recruitment of employees and performance evaluation, as well to provide for the development of joint training for public employees at state and local level and further co-operation between the State Administration School and Training Centre of Local Governments. In

² Declaration on the Intended Activities of the current Cabinet of Ministers (www.mk.gov.lv/en/mk/darbibu-reglamentejosie-dokumenti/9/deklaracija/)

developing the aforementioned plan, the recommendation of GRECO will explicitly be taken into account.

19. Finally, the Latvian authorities report that although municipal employees are not included in the State Civil Service Law, depending on their function³, they are considered to be public officials. Therefore, for a number of municipal employees the Law on Prevention of Conflict of Interest in the Activities of Public Officials would also apply. This is considered to be an adequate regulatory framework to prevent corrupt conduct by municipal employees, without bringing them within the scope of the State Civil Service Law.
20. GRECO takes note of the information provided. It welcomes that – after the repeated rejection by the Parliament of the legislative proposals to bring public service employees at local level within the scope of civil service regulations – other initiatives have been taken to regulate the activities of municipal employees, in line with the applicable regulations at state level. However, it would appear that these initiatives are still in the early stages of implementation and GRECO can therefore only conclude that this recommendation has not yet been fully addressed.
21. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

22. *GRECO recommended to provide a proper legal basis for checking data of candidates to senior posts in public administration.*
23. GRECO recalls that it took note of the information that the KNAB had, after having studied good practices in other countries, set up a working group for the implementation of this recommendation. However, as no legal basis for checking data of candidates to senior posts in public administration had been established, GRECO concluded that this recommendation had not been implemented.
24. The Latvian authorities report that the abovementioned working group has concluded that a proper legal basis for checking the data of candidates to senior posts in public administration already exists. Article 7 of the State Civil Service Law sets out the requirements for recruitment to the state civil service (stipulating – *inter alia* – that a person can only be recruited if s/he has not been convicted for an intentional crime, has not been dismissed from the civil service pursuant to a court decision and is not a relative of his/her hierarchical superior or head of the institution) and Article 9 of this Law provides for the procedure by which the suitability of candidates for civil service in the light of these requirements is to be assessed. In addition, a number of laws relating to institutions, which do not fall within the remit of the State Civil Service Law (such as the KNAB and several institutions under the Ministry of the Interior) also contain regulations on the checking of data of candidates to senior posts, similar to that of the State Civil Service Law. A proper legal basis to check candidates to senior posts in civil service institutions is thus already provided for. In addition, certain senior posts within public administration fall within the remit of the Law On the Official Secrets, and are thus subject to a special investigation by state security institutions. If a candidate, following this investigation, would not be permitted to access state secrets, s/he cannot be recruited.

³ For example, if they take decisions about municipal property or municipal financial resources or if they carry out control or supervisory functions.

25. GRECO takes note of the information provided. It welcomes that the need for a further legal basis for checking data of candidates to senior posts in public administration has been duly examined. On the basis of the information provided, it would indeed seem that a legal basis for verifying information as regards candidates to senior posts in public administration is in place.
26. GRECO concludes that recommendation vii has been dealt with in a satisfactory manner.

Recommendation ix.

27. *GRECO recommended to place civil servants under a clearly defined obligation, as would be appropriate to their public status, to report suspicions of corruption offences and to establish an adequate system of protection for those civil servants who report wrongdoing.*
28. GRECO recalls that it concluded that this recommendation had been partly implemented, as the draft Law on Prevention of Conflicts of Interest in Activities of Public Officials, which would include a section obliging public officials to *inter alia* report suspicions of corruption and provide a legal basis for a system to protect whistleblowers, had not entered into force yet.
29. The Latvian authorities report a number of measures were taken by Latvia in order to ensure that public officials are under an obligation to report suspicions of corruption offences. First of all, Section 315 of the Criminal Law imposes a general obligation on every citizen to report serious crimes, which includes corruption. In addition, Section 20 of the Law on the Prevention of Conflicts of Interest in Activities of Public Officials stipulates that the head of a state or local government authority has a duty to inform the KNAB without delay or – in specific cases stipulated in the law – the director of the Constitution Protection Bureau, on detected violations of the Law on the Prevention of Conflicts of Interest in Activities committed by public officials of the relevant institution. Moreover, codes of ethics and other internal regulations, *inter alia* those of the State Revenue Service, the Naturalisation Board, the Ministry of the Interior and the KNAB, require certain categories of public officials to report corruption.
30. As regards the protection of whistleblowers, the Latvian authorities report that in 2004 and 2006 amendments were adopted to the Labour Law⁴. These amendments *inter alia* provide that to impose sanctions or to otherwise cause, directly or indirectly, adverse consequences to an employee, who has informed the competent authorities of suspicions of a crime or administrative violation have been committed in the workplace, is prohibited. In case of a dispute in these situations, the employer has a duty to prove that the employee has not been unduly punished or otherwise harmed. A civil servant would have to report first to his/her superior and if no solution is found, s/he would have the right to go to court to have the protection provided to him/her by the Labour Law enforced.
31. The authorities of Latvia furthermore report that the government has set up a working group to come up with possible solutions to improve the relevant regulations in this area, specifically in respect of public officials falling within the scope of the Law on the Prevention of Conflicts of Interest in Activities of Public Officials, both as regards the reporting of *inter alia* corruption offences and the protection of public officials who report wrongdoing in the public service in good faith.

⁴ In the absence of a specific legal norm in the State Civil Service Law, these provisions of the Labour Law would also apply to civil servants.

32. GRECO takes note of the information provided. As regards the first part of the recommendation, GRECO finds a duty for public officials to report suspicions of corruption to be something very different from a general criminal law provision to report serious crimes (a provision which, moreover, was already in place at the time of adoption of the Second Round Evaluation Report). In addition, it would appear that only heads of state or local government bodies and not civil servants in general, as required by the recommendation, are subject to some form of a reporting obligation. Although GRECO welcomes that certain codes of ethics cover this issue and that this issue will be addressed by a working group set up by the government, for the moment it cannot be said that a clear obligation to report suspicions of corrupt conduct is now in place for all civil servants. As regards the protection of whistleblowers, it would appear that a system with the potential to protect civil servants (as well as other employees), who report wrongdoing, from adverse consequences, is now in place and that this system will be further tailored to specifically cover public officials falling within the scope of the Law on the Prevention of Conflicts of Interest in Activities of Public Officials. GRECO welcomes this.
33. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

34. *GRECO recommended to establish liability of legal persons for offences of bribery, trading in influence and money laundering and to provide for sanctions that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption.*
35. GRECO recalls that this recommendation had been partly implemented, as it was not unequivocally clear if the new amendments to the Criminal Law, providing for liability of legal persons, covered all the situations prescribed by the Criminal Law Convention on Corruption (ETS 173). In addition, GRECO had the impression that the liability of legal persons depended on a prior conviction of a natural person.
36. The Latvian authorities report, concerning the abovementioned issues, that – pursuant to Section 70.1, paragraph 1 of the Criminal Law – *“coercive measures may be applied to a legal person, if the criminal offence has been committed in the interests of the legal person by a natural person, in conformity with the provisions of Section 12, paragraph one, of the Criminal Law”*. In turn, Section 12, paragraph one, of the Criminal Law provides *“In a legal person matter, a natural person who has committed a criminal offence acting as an individual or as a member of the collegial institution of the relevant legal person, on the basis of a right to represent the legal person, to act on behalf of or to take decisions in the name of such legal person, or realising control within the scope of the legal person or while in the service of the legal person, shall be criminally liable therefore”*.
37. The authorities of Latvia furthermore report that the Criminal Procedure Law provides that the guilt of a natural person in a specific criminal offence has to be established first. To this end Section 439 of the Criminal Procedure Law provides *“Proceedings for the application of coercive measures to a legal person shall take place within the framework of the criminal proceedings in which the natural person referred to in Paragraph two of this Section has been recognised as a suspect or is being held criminally liable”*. Specifically, in cases in which lack of supervision or control of a natural person has made it possible that a criminal offence has been committed for the benefit of a legal person, it has to be established first that the lack of supervision qualifies as a criminal offence (for example, as ‘misuse of power’ or ‘neglect’ pursuant to respectively Sections 196 and 197 of the Criminal Law). Additionally, it would need to be established that

another natural person has committed a criminal offence in the interest of the legal person as a result of an act or a failure to act by the aforementioned natural person. If a connection can thus be established between these events, then there are no grounds to claim that coercive measures cannot be applied against a legal person in cases in which lack of supervision or control by a natural person has made the commission of the offence for the benefit of a legal person possible.

38. In addition, the Latvian authorities clarify that in the legal system of the Republic of Latvia, a legal person is not considered to be an 'entity' within the system of the Criminal Law. A legal person is an abstract concept and as such it – unlike a natural person – cannot have a personal attitude towards the commission of an offence, which is a necessary element for the determination of guilt. Therefore, the guilt of a natural person has to be established at first. Nevertheless, the establishment of the guilt of a natural person does not mean that there should be a conviction of a natural person in order to impose coercive measures on a legal person: as indicated by Section 439 of the Criminal Procedure Law above, it is sufficient that a natural person is officially regarded as a suspect or s/he is being prosecuted.
39. GRECO takes note of the information provided on what appears to be a very complex system for holding a legal person criminally liable. Specifically, as regards the requirements of Article 18, paragraph 2, of the Criminal Law Convention on Corruption (ETS 173), the fact that the lack of supervision or control by a natural person (which has made the commission of a criminal offence for the benefit of the legal person possible) has to be qualified as a criminal offence before a legal person can be held liable, is not a totally satisfactory situation. More in general, however, GRECO has concerns about the fact that a physical perpetrator has to be identified first, as in large corporations the sheer potential for persons being responsible for only a fraction of the completed offence as well as collective decision-making processes could make it impossible to identify with certainty a particular natural person as a suspect and/or prosecute him/her. Nevertheless, GRECO accepts that such a requirement cannot be said to be in contravention of the letter of Article 18 of the Criminal Law Convention on Corruption and recognises that the Latvian authorities have made significant efforts to introduce the concept of liability of legal persons in the Latvian legal system. As regards the second part of the recommendation, GRECO considers that by providing for the sanctions of liquidation of the legal person, limitation of rights, confiscation of property and fines of up to 10,000 minimum monthly wages (which currently amounts to 1.8 million Latvian Lats / approximately €2.6 million), as was already reported in the Second Round Compliance Report, effective, proportionate and dissuasive sanctions appear to have been provided for.
40. GRECO concludes that recommendation x has been dealt with in a satisfactory manner.

Recommendation xi.

41. *GRECO recommended to ensure that the execution of the additional sentence of limitation of rights is effective in practice.*
42. GRECO recalls that it concluded that this recommendation had not been implemented, as it could not deduce from the information provided that the main concern expressed in the Second Round Evaluation Report, namely the fact that the Commercial Register did not take any action towards already existing companies, had been addressed.
43. The Latvian authorities report that – in the period January 1999 till 9 May 2008 –the Register of Enterprises (which administers the Commercial Register) received information on 299 natural

persons on whom a sanction limiting his/her right to carry out business activities had been imposed. Upon receipt of this information the head of the Register of Enterprises (the Public Notary) is to take a decision, in which s/he indicates the deadline for entering this decision in the database of convictions. When a person whose rights have been limited would subsequently submit an application to the Register of Enterprises to register as an individual business, a member of a board or be included in the register of members, the head of the Register of Enterprises will reject this application. Furthermore, in respect of already existing business the Register of Enterprises can delete a person, on whom a sanction limiting his/her rights has been imposed by a court, from the Commercial Register. In addition, the Latvian authorities report that further information on sanctions can be obtained from the Register of Convictions, which – pursuant to Section 8 of the Law on the Register of Convictions – contains information on persons accused and/or convicted of a criminal offence, including the type and severity of the sanctions imposed.

44. GRECO welcomes the information provided, from which it would appear that imposition of a sanction limiting the rights of a person to engage in entrepreneurial activities is used more frequently than it was initially led to believe. Furthermore, it would seem that appropriate action can be taken both in respect of already existing businesses and to prevent new businesses from being registered by persons on whom a disqualification sanction has been imposed
45. GRECO concludes that recommendation xi has been implemented satisfactorily.

Recommendation xiii.

46. *GRECO recommended to train and provide specific guidelines to tax inspectors in respect of the identification of corrupt practices, including disguised bribes.*
47. GRECO recalls that this recommendation had been partly implemented, as the training and guidelines provided appeared to deal mostly with internal corruption (i.e. corruption within the revenue service) instead of external corruption (i.e. the detection of corruption offences when inspecting taxes).
48. The Latvian authorities state now that in April 2007 two officials the State Income Service of Latvia (SIS) participated in a four-day training seminar on “Uncovering of bribery by tax inspectors” organised jointly by the Organisation for Economic Co-operation and Development (OECD) and the Special Investigation Service (STT) of Lithuania, in which specialists in the inspection of accounting documents of enterprises provided further guidance *inter alia* on how to detect bribery of foreign public officials. This seminar has ensured a better understanding of tax inspectors of the SIS on how to uncover bribery in the course of tax inspections. Furthermore, the KNAB regularly provides seminars to the SIS on corruption risks, ethics and conflicts of interest, among which a seminar on “Issues of Tax Control” which was held in May 2008 for heads of structural units of the SIS.⁵ In addition, several SIS officials have attended the course on ‘Corruption Prevention’ for civil servants at the State Administration. This course and the seminars provided by the KNAB do however not deal with the detection of corruption offences when inspecting taxes.
49. The Latvian authorities also report that the duties and obligations of tax inspectors of the SIS, as stipulated in the Law on State Income Service and the Law on Taxes and Levies, are not related

⁵ At this seminar, the KNAB provided further information about main corruption risk areas and new approaches in the fight against corruption.

to determination and detection of corrupt offences of taxpayers. Hence, the training of tax inspectors of the SIS and development of guidelines in the area of detection of bribery by the SIS is not within its competence.

50. GRECO takes note of the information provided. It recalls that the Latvian authorities already reported on an earlier occasion (see paragraph 53 of the Second Round Compliance Report) that inspections by tax inspectors are limited to tax payments. A similar statement is made in the information provided for this Addendum, which again raises doubts as regards the awareness on the part of the Latvian authorities of the role tax inspectors can play in the detection of corruption offences. Furthermore, as regards training, the involvement of the SIS in the one seminar of relevance to this recommendation was limited to two inspectors (and nothing in the information provided presupposes that this was a 'train the trainers' course or that the training materials have otherwise been disseminated to other officials in the SIS). As regards guidelines, although the translation into Latvian of the OECD Bribery Awareness Handbook for Tax Examiners (as was reported in the Second Round Compliance Report) should provide tax inspectors with some guidance on the identification of corrupt practices, as already stated in the Second Round Compliance Report, without further details on concrete measures taken to make tax inspectors aware of the handbook, GRECO cannot yet conclude that specific guidelines have now been provided.
51. GRECO concludes that recommendation xiii has been partly implemented.

III. CONCLUSION

52. In addition to the conclusions contained in the Second Round Compliance Report on Latvia and in view of the above, GRECO concludes that recommendations v and xi have been implemented satisfactorily and recommendations vii and x have been dealt with in a satisfactory manner. Recommendations ii, vi, ix and xiii have been partly implemented.
53. With the adoption of this Addendum to the Second Round Compliance Report, GRECO concludes that out of the 13 recommendations issued to Latvia, in total 9 recommendations have now been implemented satisfactorily or dealt with in a satisfactory manner. GRECO expects that further positive developments can be signalled in the near future, in particular in respect of the provision of guidelines on the tracing of assets, the applicability of public service regulations to local government employees as well as the reporting of corruption.
54. The adoption of the present Addendum to the Compliance Report terminates the Second Evaluation Round compliance procedure in respect of Latvia. The Latvian authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations ii, vi, ix and xiii.
55. Finally, GRECO invites the Latvian authorities to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.