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Second Evaluation Round

Compliance Report on Latvia

Adopted by GRECO
at its 30th Plenary Meeting
(Strasbourg, 9-13 October 2006)

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) was made public by GRECO, following authorisation by the authorities of Latvia, on 5 July 2004.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Latvia submitted their Situation Report (RS-report) on the measures taken to implement the recommendations on 30 December 2005. Additional information was submitted on 12 September 2006.
3. In accordance with Rule 31.1 of GRECO's Rules of Procedure, the Rapporteurs appointed for the compliance procedure were Aušra BERNOTIENE on behalf of Lithuania and Eline WEEDA on behalf of the Netherlands. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of Latvia to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

5. It was recalled that GRECO in its Evaluation Report addressed 13 recommendations to Latvia. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended that legal provisions be introduced allowing 1) effective provisional freezing and confiscation of assets in the hands of third parties and 2) the confiscation of assets of an equivalent value to the proceeds of corruption offences.*
7. The authorities of Latvia report that a new Code of Criminal Procedure (CCP) entered into force on 1 October 2005, which includes provisions concerning seizure and confiscation of proceeds of crime. Article 361, paragraph 1, of the CCP now makes it possible to seize property in the hands of third parties, by providing that "illegally acquired property or property related to criminal procedure that is in another person's possession may be seized." This property may furthermore be confiscated on the basis of Article 358, paragraph 3 of the CCP which prescribes that in case the accused has no property which can be confiscated "property which after the commission of the criminal offence has been transferred by the offender to a third party without a corresponding need, property of a spouse of the offender (...) or property of another person if the offender runs an undivided household with this person" can be confiscated instead. As regards value confiscation, Article 358, paragraph 2, of the CCP provides that "if illegally obtained property has been transferred, destroyed or hidden and it is impossible to confiscate this property, (...) other property, as well as financial assets of an equivalent value" may be confiscated.
8. GRECO takes note of the information provided by the authorities of Latvia and concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

9. *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.

10. The authorities of Latvia report, on the first part of the recommendation, that the legal provisions in Chapter 28 “Ensuring the Resolving of Property issues”, which relates to the freezing of property, and Articles 394¹ and 395² of the new Code of Criminal Procedure are sufficient when it comes to tracking defendant’s assets and that no additional legal regulations are therefore necessary in the form of separate guidelines. These provisions set out the procedures for co-operation between prosecutors and police officers in order to ensure that proceeds of crime are seized whenever possible.
11. The authorities of Latvia report on the second part of the recommendation that on 31 May 2006 the Cabinet of Ministers adopted the State Programme for Preventing, Combating and Reducing Organised Crimes 2006-2010 (Decree Nr. 390). The Programme includes measures to improve the cooperation and exchange of information between law enforcement institutions and the Office for the Prevention of Laundering of Proceeds Derived from Criminal Activity within the Prosecution Office (the Financial Intelligence Unit). It also foresees in the creation of a Financial Analysis and Detention Support Division within the State Police, which will help other units of the police in tracking the proceeds of crime. The authorities further report that the Central Criminal Police Department of the State Police, the Prosecution Office and other law enforcement institutions regularly hold joint meetings regarding recent developments in investigations and issues related to cooperation.
12. GRECO takes note of the information provided. As regards the first part of the recommendation, GRECO recalls that in its Second Round Evaluation Report it concluded that insufficient attention appeared to be given to the economic aspects of the investigation, to identify the proceeds of corruption with a view to (swiftly) obtaining a provisional order and thus prevent any dissipation of assets. GRECO considers that the aforementioned legal provisions, which primarily set out general procedures for criminal investigations, do not make redundant the need for further practical guidance in the form of guidelines on *how* to effectively track defendant’s assets. As regards the second part of the recommendation, no information has been provided which would suggest improved co-operation between investigators/prosecutors at the early stages of investigation, specifically with a view to the economic aspects of the investigation.
13. GRECO concludes that recommendation ii has not been implemented.

¹ Article 394 provides: “(1) Investigator or prosecutor can ask for specific procedural activities or tasks to be carried out by another investigatory body or official entitled to carry out the criminal process.

(2) Task is assigned in writing, pointing out questions that need to be clarified in carrying out the specific investigation or another activity. The decision, on the basis of which the specific investigation activity is to be carried out, is attached to the task if this is provided by law. If the task is assigned to a person representing the same investigatory body, it can be assigned orally.

(3) The task should be carried out no later than within 10 days of the day of reception. If it is not possible to carry out the task by the given date, the person assigned to carry out the task shall report to the person assigning him with this task, pointing out the reason for the delay and the tentative due date for carrying out the task.”

² Article 395 provides: “(1) If the criminal process consists of a large amount of work or it is particularly complex, the senior prosecutor or the head of the investigatory body may take a decision to investigate the criminal offence in team, by determining specific persons that will be taking part in the investigation and criminal prosecution, and appointing the owner of the criminal process as the head of the investigation team. This decision cannot be appealed.

(2) The decision is added to the register of criminal process.

(3) The head of the investigation team organises the work of the team and takes all the decisions about the criminal process and the use of security measures, and the extension of the term of their use.”

Recommendation iii.

14. *GRECO recommended to assess in a comprehensive manner the problem of corruption in Latvia and thus to further define Latvian strategy for preventing and fighting corruption.*
15. The authorities of Latvia report that, on 8 March 2004, the Cabinet of Ministers adopted the National Strategy for Corruption Prevention and Combating 2004-2008. The objective of this strategy is to identify problems in preventing and combating corruption and to set out measures to address these problems. On the basis of this Strategy, the government adopted a National Programme for Corruption Prevention and Combating 2004-2008 on 3 August 2004. The National Programme focuses on the following three fields: prevention of corruption, combating corruption and the education of society on corruption issues. Several studies were used in drafting this Programme, including the “Self-evaluation survey of the impact of administrative procedures to the business environment in Latvia” of the Latvian Development Agency, the “Evaluation of the state honour system in Latvia” by the Latvian chapter of Transparency International, a public opinion poll on public access to information of the state and local public institutions, a study on “Corruption in Latvia and Improvement of the System to Combat Corruption” by the Criminological Research Centre and research funded by the OECD on corruption in the health care sector and licensing authorities in Latvia.
16. GRECO takes note of the information provided. It welcomes the adoption of the National Strategy and National Programme for Corruption Prevention and Combating 2004-2008 and the research on corruption in Latvia which has been conducted by various organisations. As regards this research, GRECO would have preferred that a comprehensive assessment had been carried out by the government on the basis of official information collected by those entities directly involved in the prevention of/fight against corruption. Nevertheless, it considers that the various studies that have been carried out do, to a large extent, address the concern that was expressed by GRECO in its Second Evaluation Round Report, namely that there was “no official research that could provide a clearer insight into the scale of corruption in Latvia, the forms it takes, the areas mainly affected or its causes”. Furthermore, GRECO considers that the various studies have been used to draw up a more effective anti-corruption plan, as was the objective of the recommendation.
17. GRECO concludes, in light of the above information, that recommendation iii has been dealt with in a satisfactory manner.

Recommendation iv.

18. *GRECO recommended that measures be taken to enhance easier access to public information, above all, at local level.*
19. The authorities of Latvia report that amendments have been made to the law “On Local Governments” to enhance access to public information at local level. These amendments prescribe, *inter alia*, that local governments must publish an official regulation outlining the procedure by which the general public can inform itself of decisions of local government entities, contracts that have been concluded and minutes of meetings of local councils; that decisions and minutes of meetings of local council are accessible to the public; and defines for which issues public consultation must be organised. In addition, the new Section 69 of the law “On Local Governments” provides for the establishment of so-called ‘service centres’ in areas where there is no administrative municipal centre, in order to ensure availability of services provided by local

governments and access to public information in these areas. In addition, the "Freedom of Information Law" has been amended to further improve possibilities for accessing information. The amendments provide for a more precise definition of 'institution' - which ensures that local governments cannot evade the obligations the law places upon them -, prescribe that certain information is to be published on-line, further defines which information should be "at the disposal of an institution" (and therefore publicly accessible) and stipulates that information about the procedure and the fee for the provision of information is to be made available on-line. The amendments to the "Freedom of Information Law" entered into force on 1 February 2006 and will be followed in the near future by further regulations by the Cabinet of Ministers.

20. GRECO takes note of the information provided and welcomes the legal measures that have been taken to enhance access to public information. GRECO recalls that, already in its Second Round Evaluation Report, it found that the legislation with respect to access to information was adequate; difficulties however existed in practice, in particular at the local level, with the actual access to information. In this regard, GRECO would have appreciated further information on which measures - for example training, provision of guidelines to public officials, etc. - have been taken to ensure that the system of access to information is effective in practice. Nevertheless, it considers that with the abovementioned amendments the personal discretion of the public official in deciding whether to give out certain information has been reduced, which will no doubt enhance access to information in practice.
21. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

Recommendation v.

22. *GRECO recommended that the introduction of the institution of ombudsman be speeded up.*
23. The authorities of Latvia report that on 6 April 2006 Saeima (Parliament) adopted the Law on Ombudsman, which provides for the creation of an Ombudsman's office. The Ombudsman will, *inter alia*, be entrusted with the protection of citizens' rights against maladministration. The Law on Ombudsman will enter into force on 1 January 2007.
24. GRECO takes note of the information provided and welcomes the adoption of the Law on Ombudsman. As the law has not entered into force yet, it cannot yet conclude that this recommendation has been fully complied with.
25. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

26. *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).*
27. The authorities of Latvia report that the Ministry of Regional Development and Municipalities has repeatedly submitted proposals to the Saeima (Parliament) regarding the introduction of civil service in local government. These proposals have so far been rejected.
28. GRECO takes note of the information provided by the Latvian authorities. Although some efforts have been made to bring employees at the local level within the scope of the civil service, in the

absence of any other initiatives to regulate the activities of municipal civil servants, it cannot conclude that this recommendation has been complied with.

29. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

30. *GRECO recommended to provide a proper legal basis for checking data of candidates to senior posts in public administration.*
31. The authorities of Latvia report that the Corruption Prevention and Combating Bureau has studied the practice in other countries as regards methods for the checking of data in application forms of candidates to senior posts in public administration and has set up a working group for the implementation of this recommendation.
32. GRECO takes note of the information provided. As yet, no legal basis for the checking of data in the application forms of candidates to senior posts in public administration appears to have been established.
33. GRECO concludes that recommendation vii has not been implemented.

Recommendation viii.

34. *GRECO recommended that measures be taken to enhance the adoption of codes of ethics for civil servants of all state and employees of local government institutions.*
35. The authorities of Latvia report that the National Programme for Corruption Prevention and Combating 2004-2008 stipulates that public administration institutions (both at the central and local level) are to adopt standards of ethics. The majority of public institutions have developed codes of ethics and/or included sections on ethics within their internal regulations. The few institutions that have not adopted codes of ethics or included ethical standards are in the process of doing so.
36. GRECO takes note of the information provided by the authorities of Latvia and concludes that recommendation viii has been dealt with in a satisfactory manner.

Recommendation ix.

37. *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.*
38. The authorities of Latvia report that the National Programme for Corruption Prevention and Combating 2004-2008 stipulates that government institutions (at both the central and local level) are to include an obligation for their employees to report suspicions of corruption in the legal provisions regulating their activities. To this end, the Corruption Prevention and Combating Bureau has drafted a new law "On Prevention of Conflicts of Interest." The draft law includes a section obligating public officials to report information on conflicts of interest or possible corrupt conduct they come across in carrying out their duties. The draft law also includes rules on how

public officials can report violations of the law and will provide for a system of protection for those who report wrongdoings.

39. GRECO takes note of the information provided and concludes that recommendation ix has been partly implemented.

Recommendation x.

40. *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.*
41. The authorities of Latvia report that amendments to the Criminal Law, providing for criminal liability of legal persons, were adopted by Parliament on 5 May 2005 and entered into force on 1 October 2005. If a criminal offence has been committed by a natural person in the interest of a legal person the following sanctions can be applied to the legal person: liquidation, limitation of rights, confiscation of property, or a monetary sanction in the amount of 1 to 10,000 times the minimum wage³. Confiscation of property and compensation for harm can be applied as additional sanctions.
42. GRECO takes note of the information provided by the authorities of Latvia and welcomes the amendments to the Criminal Law. However, it is not unequivocally clear to GRECO if all relevant cases are covered by the abovementioned amendments⁴. Furthermore, from the information provided by the Latvian authorities, GRECO has the impression that the liability of a legal person depends on the prior conviction of a natural person. Consequently, at this point GRECO cannot conclude that recommendation x has been fully complied with.
43. GRECO concludes that recommendation x has been partly implemented.

Recommendation xi.

44. *GRECO recommended to ensure that the execution of the additional sentence of limitation of rights is effective in practice.*
45. The authorities of Latvia report that Sections 148 and 149 of the Code on Execution of Sentences provide that the court which has imposed a sentence of limitation of rights will issue an execution order. This execution order will be sent to a bailiff, who will forward it to the relevant institution which is to implement the limitation of rights described in the execution order. With the execution of this sentence, natural persons are prohibited from registering in the Commercial Register as individual entrepreneurs or as board members, directors or owners of a legal person. As regards already existing registrations, the Register of Enterprises (which administers the Commercial Register) can, on the basis of Section 14, paragraph 5 of the Commercial Law, delete the names of natural persons from the register. However, the Register of Enterprises has to date not received any court sentences or execution orders disqualifying a person from participating in entrepreneurial activities. The authorities of Latvia indicate that, in order to optimise the

³ By virtue of Regulation Nr 205 of the Cabinet of Ministers (25 November 2005), the minimum wage is 90 Latvian Lats (approximately €128).

⁴ For example, it is not clear if the new sections on liability of legal persons cover situations in which lack of supervision or control by a natural person has made possible the commission of criminal offences for the benefit of a legal person by a natural person under its authority (as required by article 18, paragraph 2 of the Criminal Law Convention).

application of limitation of rights as an additional penalty, several seminars were organised for judges in 2004-2005.

46. GRECO takes note of the information provided. GRECO recalls that in its Second Round Evaluation Report, it noted that all sentences regarding limitation of rights were provided to the Commercial Register, but that the Register did not take any action towards already existing companies. It has now been reported that the entity administering the Commercial Register has not received any orders to take action towards existing companies. From the information provided by the Latvian authorities, GRECO cannot deduce whether this is because a disqualification sanction has never been imposed or because orders for the execution of a disqualification sanction have not been sent to the Register of Enterprises. Either way, although GRECO welcomes the training provided to judges to optimise the application of this sanction, GRECO can at this point not conclude that it has now been ensured that the execution of the additional sentence of limitation of rights is effective in practice.
47. GRECO concludes that recommendation xi has not been implemented.

Recommendation xii.

48. *GRECO recommended to ensure that the legal framework does not allow for the deductibility of the expenses related to corruption offences.*
49. The authorities of Latvia report that only expenses which can be proven to relate to entrepreneurial activities can be tax deductible. As no documentary evidence can be presented that expenses related to corruption offences are connected with the entrepreneurial activities of a tax subject, these expenses are not tax deductible. Furthermore, Section 5, paragraph 4, of the Law on Enterprise Income Tax expressly provides that “donations or gifts to other persons, or guarantees which the tax subject is required to pay on the basis of a contract, or deductions from the profit or turnover of a company” will not be recognised as related to entrepreneurial activities for tax purposes. Therefore, no amendments to the legal and regulatory acts are necessary.
50. GRECO takes note of the information provided. It recalls that information on Section 5 of the Law on Enterprise Income Tax was already included in its Second Round Evaluation Report. At the time GRECO had the impression that most expenses linked to corruption were not deductible, but tax authorities could not affirm that this Section applied to all corruption expenses. GRECO would have welcomed further information on what has been done to increase awareness among tax inspectors that all corruption expenses are in fact covered by this section, but it nevertheless considers that it has now been sufficiently confirmed that this section applies to all expenses related to corruption.
51. GRECO concludes that recommendation xii has been dealt with in a satisfactory manner.

Recommendation xiii.

52. *GRECO recommended to train and provide specific guidelines to tax inspectors in respect of the identification of corrupt practices, including disguised bribes.*
53. The authorities of Latvia report that the State Revenue Service has adopted a Plan of Measures for Corruption Prevention 2005-2008 based on the National Programme for Corruption Prevention and Combating 2004-2008. They further report that Officials of the State Revenue Service, upon

uptake of their posts, are introduced to the “Procedure prescribing the necessary action of officials and the employees of the State Revenue Service when a bribe has been offered”. This Procedure is available on the internet and therefore the officials of the State Revenue Service are constantly informed about their action in cases of bribery. They are also regularly instructed to attend courses on “Corruption Prevention” and “Conflict of Interest” organised by the School of Public Administration. Finally, on 7 September 2004, State Revenue Service approved “Guidelines for the heads of structural units for the prevention of corruption”. These guidelines contain recommendations for measures to determine corruption risks, as well as recommendations for taking preventive measures in all the structural units of the State Revenue Service. The training and guidelines with regard to ‘internal’ corruption have increased the understanding of tax inspectors of corrupt activities and bribes. As regards ‘external corruption’, the Latvian authorities state that existing legislation provides that the inspections carried out by tax inspectors are limited to tax payments. It would therefore be difficult for them to check on the economic activities of tax subjects in general. Nevertheless, the OECD Bribery Awareness Handbook for Tax Examiners has been translated into Latvian and tax inspectors have participated in an OECD training project on this issue.

54. GRECO takes note of the information provided by the Latvian authorities. It commends the authorities of Latvia for the measures that have been taken to prevent and combat corruption within the revenue service. Although GRECO appreciates that this has increased understanding of tax inspectors of the phenomenon of corruption, it considers that the detection of ‘external’ corruption offences when inspecting taxes is of a different nature to that of dealing with ‘internal’ corruption. Furthermore, the statements made by the Latvian authorities on the scope of tax inspections do not convince GRECO of sufficient awareness on the part of the Latvian authorities of the role tax inspectors can play in the detection of corruption offences. GRECO welcomes the measures taken by the OECD to train and provide guidance to tax inspectors in Latvia on how to detect disguised bribes. However, without more precise information on the nature of and participation in this training and on any efforts by the Latvian authorities to make tax inspectors aware of the Handbook of the OECD, GRECO cannot conclude that this recommendation has been fully complied with.
55. GRECO concludes that recommendation xiii has been partly implemented.

III. CONCLUSIONS

56. **In view of the above, GRECO concludes that Latvia has implemented satisfactorily or dealt with in a satisfactory manner just under half of the recommendations contained in the Second Round Evaluation Report.** Recommendation i has been implemented satisfactorily and recommendations iii, iv, viii and xii have been dealt with in a satisfactory manner. Progress has been reported on recommendations v, vi, ix, x and xiii which GRECO considers as partly implemented. Recommendations ii, vii, and xi have not been implemented.
57. GRECO invites the Head of the Latvian delegation to submit additional information regarding the implementation of recommendations ii, v, vi, vii, ix, x, xi and xiii by 31 May 2008.