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Third Evaluation Round

Addendum to the Second Compliance Report on Latvia

“Incriminations (ETS 173 and 191, GPC 2)”

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“Transparency of Party Funding”

Adopted by GRECO
at its 63rd Plenary Meeting
(Strasbourg, 24-28 March 2014)

I. INTRODUCTION

1. The Addendum to the Second Compliance Report assesses further measures taken by the authorities of Latvia since the adoption of the First and Second Compliance Reports in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Latvia. It is recalled that the Third Evaluation Round covers two distinct themes, namely:
 - **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).
2. The Third Round Evaluation Report was adopted at GRECO's 39th Plenary Meeting (6-10 October 2008) and made public on 23 October 2008, following authorisation by Latvia (Greco Eval III Rep (2008) 1E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 48th Plenary meeting (27 September - 1 October 2010) and was made public on 1 October 2010, following authorisation by Latvia (Greco RC-III (2010) 6E). The Second Compliance Report was adopted at GRECO's 57th Plenary meeting (Greco RC-III (2012) 13E) and was made public on 19 October 2012, following authorisation by the Latvian authorities.
3. In accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure, GRECO's Second Compliance Report invited the Head of the Latvian delegation to submit additional information regarding the implementation of the four recommendations that had been partly implemented. The information was provided on 24 July 2013 and served as a basis for the Addendum to the Second Compliance Report.
4. GRECO selected Denmark and the Czech Republic to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the Addendum to the Second Compliance Report were Ms Marie TULLIN, Senior Prosecutor, State Prosecutor for Serious Economic and International Crime, on behalf of Denmark and Mr Václav MLYNAŘÍK, Security Expert, Security Policy Department, Ministry of the Interior, on behalf of the Czech Republic. They were assisted by GRECO's Secretariat in drawing up the Addendum.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO addressed eight recommendations to Latvia in respect of Theme I in its Evaluation Report. In the Second Compliance Report, recommendations iii, iv, v and viii were considered as implemented satisfactorily and recommendation vi was considered to be dealt with in a satisfactory manner. The remaining recommendations are dealt with below.

Recommendation i.

6. *GRECO recommended (i) to clarify in which manner the offering/promising of an undue advantage and the request for an undue advantage as well as the unrequested receipt of such an*

advantage are covered by the relevant provisions on bribery and attempted bribery in the Latvian Criminal Law, and (ii) to amend Section 198, paragraph 1 and 326.2 of the Criminal Law to ensure that the acceptance of an offer/promise of an undue advantage by private sector employees and employees of state and local government institutions is criminalised.

7. GRECO recalls that in the Second Compliance Report, part (ii) of the recommendation was considered to be implemented satisfactorily. As regards part (i) of the recommendation, the Report noted that draft amendments to Sections 323 and 199 of the Criminal Law, on active bribery in the private sector and on commercial bribery respectively, were adopted by Parliament in second reading. These amendments, which would remove the words “if the offer is accepted” and therefore would enable the criminalisation of the promise or offer of an undue advantage as a completed offence, without taking into consideration the acceptance or refusal of the advantage, were assessed by GRECO as meeting the concerns of that part of the recommendation. The recommendation was therefore considered as partly implemented, pending the final adoption by Parliament of the amendments and their entry into force.
8. The authorities of Latvia now report that the amendments to the Criminal Law were adopted by Parliament on 13 December 2012 and entered into force on 1 April 2013.
9. GRECO welcomes the entry into force of the amendments of Sections 323 and 199 of the Criminal Law which it had already assessed as compliant with the first part of the recommendation.
10. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

11. *GRECO recommended to criminalise active bribery of employees in state or local government institutions.*
12. GRECO recalls that this recommendation was considered partly implemented in the Second Compliance Report, as the Permanent Working Group on Criminal Law at the Ministry of Justice had agreed to propose to the Parliament a draft law to criminalise active bribery of employees in state and local government institutions. This draft law had been adopted by the Parliament in second reading, but GRECO pointed out that the proposed text defined only the “giving” of an undue advantage as a punishable act and left the “offer or promise” of such an advantage outside the scope of the proposed article. It called upon the Latvian authorities to amend the text further before its final adoption by Parliament.
13. The authorities of Latvia now indicate that, on 13 December 2012, the Parliament adopted amendments to criminalise active bribery of employees in state and local government institutions¹, which entered into force on 1 April 2013.

¹ Section 326³, Criminal Law: Unlawful giving of benefits

(1) For a person who commits the offering or giving of material values, property or benefits of other nature, in person or through intermediaries, to an employee of a State or self-government institution, who is not a State official, or a similar person who is authorised by the state institution so that he or she, using his or her authority, performs an unlawful act in the interests of the giver of the benefits or any other person regardless of whether the material values, property or benefits of other nature are intended for this person or any other person-

the applicable punishment is community service, or monetary fine.

(2) For a person who commits the same act, if committed on large scale-

14. GRECO takes note of the information provided and welcomes the entry into force of the new Section 326³ of the Criminal Law, which criminalises active bribery of employees in state and local government institutions. It also welcomes this provision which criminalises the offer of an undue advantage and therefore removes a gap that had been highlighted in the Second Compliance Report. Although the term of “promise” is absent from the adopted provision, GRECO had accepted in the Evaluation Report (see paragraph 84) that the term of “offer” adequately covered promises of an undue advantage.
15. GRECO, however, notices several other changes in the adopted provision, compared to the draft version it had reviewed in the Second Compliance Report. The provision no longer criminalises the offering or giving of an undue advantage in exchange for the performance of any act or omission; only the performance of an act is criminalised, and the term ‘unlawful’ was added to restrict further the scope of the provision. Moreover, the sanction of deprivation of liberty, which was foreseen in the earlier draft for both simple and aggravated active bribery of employees, now only exists for the latter. The only sanctions remaining are therefore community service or a monetary fine.
16. The authorities explained that these changes were introduced during the third reading of the provision in Parliament, in order to avoid confusion regarding the offering of gifts of a small value which is allowed. GRECO is not convinced by this explanation, because the word ‘unlawful’ does not refer to the gift; rather, it restricts the scope of the offence to unlawful positive actions of the employee. The passive side of the same offence, criminalised in Section 326² Criminal Law, does not contain a similar restriction. GRECO is therefore concerned that the more restrictive scope of this provision, combined with sanctions which are markedly lower than for active bribery of public officials², conveys the message that active bribery of employees who are not state officials is less serious than the active bribery of officials. Thus, although active bribery of employees in state and local government institutions has been criminalised, as required by the recommendation, GRECO cannot consider that the recommendation is fully implemented, as the wording of the adopted provision is not fully in conformity with article 2 of the Criminal Law Convention. Therefore, it calls upon the Latvian authorities to criminalise all actions and omissions, whether lawful or unlawful, of employees in exchange for a bribe and to review the sanctions foreseen for this offence, in order to ensure that they are proportionate and dissuasive.
17. GRECO concludes that recommendation ii remains partly implemented.

Recommendation vii.

18. *GRECO recommended to (i) raise the sanctions for trading in influence, ensuring consequently that the statutory limitation period for this offence is increased and (ii) criminalise indirect active trading in influence as well as the request for an undue advantage to exert improper influence over the decision-making of certain third parties, in line with Article 12 of the Criminal Law Convention on Corruption (ETS 173).*
19. In the Second Compliance Report, GRECO concluded that the amended Section 326¹ of the Criminal Law was in conformity with the recommendation, as the sanctions for trading in influence had been raised and indirect active trading in influence as well as liability for requests for an

the applicable sentence is deprivation of liberty for a term not exceeding two years, or short term deprivation of liberty, or community service, or monetary fine.

² Active bribery of state officials carries a penalty of a maximum of six years' imprisonment.

undue advantage to exert improper influence had been expressly criminalised. As this provision had not yet entered into force, however, GRECO concluded that the recommendation was partly implemented.

20. The Latvian authorities state that the amended version of Section 326¹ of the Criminal Law which incorporates all the elements reported in the above paragraph, entered into force on 1 April 2013.
21. GRECO welcomes the entry into force of the amended Section 326¹ of the Criminal Law and concludes that recommendation vii has been implemented satisfactorily.

Theme II: Transparency of Party Funding

22. It is recalled that GRECO in its Evaluation Report addressed five recommendations to Latvia in respect of Theme II and that recommendations i, iii, iv and v were considered as implemented satisfactorily in the Second Compliance Report. The remaining recommendation is dealt with below.

Recommendation ii.

23. *GRECO recommended to take measures to strengthen the independence of the Corruption Prevention and Combatting Bureau (KNAB) (including as regards the supervision of its activities, the procedure for appointing and dismissing its Director and deciding on its budget), thus ensuring that it can exercise its functions in an independent and impartial manner.*
24. In the Second Compliance Report, GRECO had rated this recommendation as partly implemented, because positive measures regarding the selection of the Director of the KNAB had been formalised in a regulation and the possibility of political interference had been minimised. However, other necessary measures regarding the independence and the status of the KNAB, including budgetary measures, had not yet been taken. GRECO regretted that the Cabinet of Ministers had not yet decided on one of the policy options proposed by a working group in January 2010.
25. The authorities of Latvia report that the Prime Minister established, on 29 August 2013, a working group to assess the effectiveness of the legal norms regulating the activity of the KNAB and of its Director. The working group, under the guidance of the Prosecutor General, issued a report, in December 2013, pointing out necessary amendments which included issues relating to the competence, rights and obligations of the Director of the KNAB. The supervision by the Prime Minister of the KNAB's activities, disciplinary actions against the KNAB's Director and the competence of the Director and his deputies regarding the KNAB's regulations and rules of procedure are among the issues that need clarification, according to the report.
26. The Cabinet of Ministers endorsed this report and decided to set up another working group to prepare amendments to the Law on the Corruption Prevention and Combating Bureau. The working group is composed of the Head of the State Chancellery, a Supreme Court judge, a representative of the General Prosecutor's Office and representatives of the Ministry of Justice, Ministry of Finance and the KNAB. It is expected that the working group will submit the draft amendments law to the Cabinet of Ministers by 1 December 2014. The authorities state that the amendments will result in a strengthening of the KNAB's independence and a modification of its budgetary procedure, in light of GRECO's recommendations.

27. GRECO takes note with interest that the Cabinet of Ministers has decided to prepare amendments to the Law on the Corruption Prevention and Combating Bureau that would strengthen the independence of the KNAB and its Director, including as regards budgetary matters. It hopes that this intention will be translated effectively in the amendments currently under preparation. However, GRECO cannot but regret that progress on this issue has been slow.
28. GRECO concludes that recommendation ii remains partly implemented.

III. CONCLUSIONS

29. **With the adoption of this Addendum to the Second Compliance Report on Latvia, GRECO concludes that Latvia has now implemented satisfactorily or dealt with in a satisfactory manner in total eleven of the thirteen recommendations contained in the Third Round Evaluation Report. The two remaining recommendations have been partly implemented.** With respect to Theme I – Incriminations, recommendations i, iii, iv, v, vii and viii have been implemented satisfactorily, recommendation vi has been dealt with in a satisfactory manner and recommendation ii has been partly implemented. Regarding Theme II – Transparency of Party Funding, recommendations i, iii, iv and v have been implemented satisfactorily and recommendation ii has been partly implemented.
30. Concerning incriminations, substantial amendments to the Criminal Law entered into force already in December 2009. These amendments broadened the scope of several bribery provisions, allowing the criminalisation of cases in which an undue advantage is intended for a third party, complementing the criminalisation of bribery of arbitrators and foreign jurors and ensuring that the full range of persons working for private sector entities is now covered. Further amendments were adopted on 13 December 2012 and entered into force on 1 April 2013, which removed most of GRECO's remaining concerns, notably as regards the offer of an undue advantage and the offence of trading in influence. The only recommendation that remains partly implemented concerns the criminalisation of active bribery of employees in state and local government institutions who do not have the status of state officials.
31. In so far as the transparency of political funding is concerned, measures were taken by the authorities to give effect to nearly all recommendations. New legislation was adopted to regulate the involvement of entities outside the party structure in election campaigns, to increase the limitation periods for violation of political financing rules, to enhance the liability of natural persons for violations of these rules, as well as to improve the recruitment procedures of the staff of the Corruption Prevention and Combating Bureau (KNAB) and eliminate political interference in the selection process of its Director. GRECO regrets, however, that other complementary measures necessary to strengthen the independence of the KNAB, including as regards the supervision of its activities and the procedure for deciding its budget, have not yet been taken.
32. The adoption of this Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Latvia.
33. GRECO invites the authorities of Latvia to translate the Addendum into the national language and to make the translation public.