Groupe d'Etats contre la corruption
Group of States against corruption

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Second Evaluation Round

Evaluation Report on Lithuania

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I. INTRODUCTION

1. Lithuania was the seventeenth GRECO member to be examined in the Second Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Henry MATTHEWS, Professional Officer, Office of the Director of Public Prosecutions, Ireland; Mrs Ülle RAIG, Legal Adviser, Ministry of Justice, Estonia; and Mr Anton BARTOLO, Registrar of Companies and Director of the Company Compliance Unit, Financial Services Authority, Malta. This GET, accompanied by a member of the Council of Europe Secretariat, visited Vilnius from 6 to 10 December 2004. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval II (2004) 9E).

2. The GET met representatives of the following authorities: Ministry of Justice, Police Department under the Ministry of Interior, Special Investigation Service, Organised Crime and Corruption Investigation Department of the General Prosecutor's Office, Vilnius County Court, Vilnius District Court, Lithuanian Court of Appeal, Civil Service Department under the Ministry of Interior, County Chief Administration Office of Vilnius, Anti-Corruption Commission of the Parliament, Parliamentary Ombudsmen Office, Chief Official Ethics Commission, Public Procurement Service, Financial Crimes Investigation Service, Ministry of Finance, Tax Inspection, Customs Department, and State Control. The GET also met representatives of the Business Employers' Confederation, Bar Association, Law Institute, Chamber of Auditors, Transparency International and mass media.

3. The 2nd Evaluation Round runs from 1 January 2003 to 31 December 2005. In accordance with Article 10.3 of its Statute, the evaluation procedure deals with the following themes:

   - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173[1]), by Articles 19 paragraph 3, 13 and 23 of the Convention;

   - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);

   - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

4. The present report 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 effectiveness of measures adopted by the Lithuanian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Lithuania in order to improve its level of compliance with the provisions under consideration.

[1] Lithuania ratified the Criminal Law Convention on Corruption on 8 March 2002. The Convention entered into force on 1 July 2002.

II. THEME I – PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

5. In Lithuanian legal theory confiscation is regarded as a penal measure designed to contribute to achieving the purpose of a penalty. A decision to impose confiscation is made by the court trying the case, or by the pre-trial investigation judge in cases where the proceedings are discontinued at the stage of pre-trial investigation. The use of confiscation is regulated by Article 72 of the Penal Code (hereinafter PC). Confiscation may be ordered with regard to proceeds of crime, instrumentalities and means of crime. Any criminal offence, including corruption offences, constitutes a prerequisite for a decision on confiscation, which is normally considered separately from the sentencing of an offender and is imposed regardless of the sanction. Confiscation is not dependent on the conviction of the perpetrator (*in rem proceedings*) and may be exacted also from legal persons and juveniles.

6. Confiscation of the proceeds of crime is mandatory (PC, Article 72, para.1). In cases where property has been concealed, used up or sold, or has disappeared for some other reason and is thus not available to be taken in kind, the court shall recover an equivalent sum of money from the perpetrator, his accomplice or other persons (Article 72, para. 4). Where there is no evidence as to the amount of proceeds, their value shall be estimated by the court following the principles of damage assessment, namely by investigating documents, using specialist examinations and undertaking other actions provided for by the Code of Criminal Procedure (hereinafter CCP). If a corruption act has resulted in immaterial benefit, such benefit may be eliminated depending on its manifestation sphere (e.g. by cancelling the results of a tender).

7. Confiscation of an instrument of a crime or a means to commit the crime (for example, a bribe) is mandatory (PC, Article 72, para. 2). If such an instrument or property has been hidden or is otherwise inaccessible, value confiscation may be ordered (Article 72, para. 4).

8. Property transferred to a third party (legal or natural person) may be confiscated regardless of whether or not criminal proceedings are instituted against the person concerned, if the property has been conveyed to him/her for the purpose of the commission of a criminal act, if s/he knew or had justifiable reasons to believe that the property was linked to an offence, or if, due to the person's carelessness, the property has been used in the commission of a crime (PC, Article 72, para. 3). The term "third party," according to the CCP, encompasses both members of the suspect's family as well as close relatives. Disputes over ownership rights are solved through civil proceedings. However, it has to be proved by the prosecutor that the actual property has been received as a result of the other crime related to corruption, or that it was a means or the object (subject) of the criminal act.

9. In cases of confiscation of the proceeds of crime the burden of proof lies with the prosecutor and can never be reversed. In order to examine the origin of suspicious property, the persons possessing it can be questioned and relevant documents may be requested. Also, in accordance with the Law on Declaration of Property, in case of suspicion that the property was acquired in a criminal way, the law enforcement authorities have the right to request the suspect's income and property declarations. Failure to prove the lawful origin of assets will result in confiscation. This principle is also applicable to third parties.

10. The legislation does not specify whether costs for preparing an offence can be deducted from the value of confiscation. The remuneration of the damage sustained by the victim due to the criminal

acts is administered by bringing a civil action in a criminal case in accordance with the procedure prescribed by Articles 109-118 of the CCP. Therefore, no direct remuneration of the damage from the confiscated property is provided for. Confiscated property accrues to the State.

11. In 2001, the confiscation of property was adjudicated in respect of 14,819 persons, in 2002 - in respect of 6,584 persons. Statistics on the number of confiscations relating to corruption offences are not available. Yet, according to the information obtained by the GET from the Special Investigation Service (SIS), the main body entrusted with the investigation of corruption and its proceeds, out of approximately 50 corruption-related cases referred by the SIS to courts every year, approximately 35 cases involve confiscation.

Interim measures: seizure and temporary limitation of property rights

12. Seizure of property is a procedural coercive measure designed to guarantee the civil claim or property confiscation and is regulated by the CCP. Provisions concerning seizure apply to instrumentalities of an offence, tangible objects and goods obtained or acquired in a criminal way, and objects or documents that are presumed reasonably important to a criminal investigation, including bank, financial or commercial records (CCP, Article 145). A seizure shall normally be effected upon the reasoned order of the pre-trial judge, however, in cases of utmost urgency it may also be decided upon by a pre-trial investigation officer or a prosecutor. In such cases the approval by a pre-trial judge must be sought within three days (CCP, Article 147).

13. The CCP additionally provides for the possibility to impose a temporary limitation of property rights a) by a prosecutor in respect of a suspect or a natural person who is financially responsible for the suspect's actions, or in respect of other natural persons who are in possession of the property received or acquired in a criminal way, and b) by a pre-trial judge in all other cases. (CCP, Article 151, para. 1). Temporary limitations of property rights may be imposed also on legal persons (Article 151, para. 2). Temporary limitation may be imposed together with seizure or separately from it, but may not include objects that are necessary for the suspect, his/her family members or dependants (Article 151, para. 3). Where a temporary limitation is imposed on bank deposits, all transactions involving them shall be suspended provided the decision does not stipulate otherwise (Article 151, para. 4). Temporary limitation of property rights is imposed for a period of up to 6 months, with a possibility of extension for not more than two periods of 3 months. In cases of serious and very serious offences, applications could be made to a pre-trial judge to extend the time limit indefinitely. The decision to impose this measure, as well as the refusal of the investigating judge to extend it, are subject to appeal (Article 151, paras. 5 and 6).

14. Rules on the management of seized property are contained in the CCP as well as in the "Provisions on register of property seizure," "Rules on accounting, preservation, transfer to the court and return of material evidence and other items, monetary valuables, securities" and Instructions "On procedure for accounting, preservation, return and sale of objects seized or taken from other persons, money, other valuables and securities". The general rule is that the seized property should be kept together with the investigation file or, if that is not practical, in a place indicated by the pre-trial investigation officer, prosecutor or the court (CCP, Article 92). Items of diminishing value or those involving excessive expenses shall, unless otherwise prescribed by law, be transferred to the State Tax Inspectorate for realisation (CCP, Article 93). In certain cases, the owner may be reimbursed the value of the sold/transferred or destroyed items. Where temporary limitation of property rights is involved, the prosecutor shall decide who should preserve the property and warn the person in charge about the criminal liability for embezzlement or concealment thereof. A financial institution is entrusted with executing decisions on limitation of monetary deposits. In all cases principles of proportionality and proper administration must be applied.

15. Pre-trial investigation officers, prosecutors and courts are under the obligation to invoke remedies for pending civil action by discovering property belonging to a suspect or an accused, or persons who bear financial responsibility for the actions of the accused, and impose an attachment on such property (Article 116, CCP). In order to investigate suspicions of offences, joint investigative groups have been established on a regular basis since 1999 composed of representatives of the SIS, the Police and the Prosecutor's Office. At the time of the visit, a Strategy Paper was prepared by the police on systematic tracing of instrumentalities and proceeds of crime (including corruption) and damage compensation.

Money laundering

16. Article 216 of the Penal Code criminalises money laundering. This crime, namely the carrying out of financial operations with money or property, or part thereof, acquired in a criminal way, concluding agreements, using them in economic and commercial activity, or making fraudulent declaration that they are derived from legal activity, for the purpose of concealing or legitimising these proceeds, shall be punished by imprisonment for a term of up to 7 years. All corruption offences are predicate offences to money laundering, even if committed outside the Lithuanian jurisdiction.

17. The Law on the Prevention of Money Laundering contains the list of institutions that are obliged to transmit to the Financial Crime Investigation Service (FCIS) suspicious transaction reports (STRs). They include financial institutions and other entities such as auditors, insurance companies, accounting and tax advice services, lawyers, etc. The Money Laundering Prevention Division of the FCIS acts as the financial intelligence unit for Lithuania. It has extensive powers, in particular the right to obtain information regarding money laundering from a legal or natural person notwithstanding bank confidentiality, as well as to suspend suspicious transactions for 48 hours without recourse to courts. If, during an investigation, the FCIS suspects possible corruption, it transmits all materials to the prosecutor's office who must conduct the pre-trial investigation, or part thereof. In 2001, the FCIS received 83 STRs, in 2003, - 115 STRs, and from January to November 2004 – 65 STRs, mainly originating from banks. No statistics were available in relation to reports of corruption type offences.

18. The Prosecutor General's Office, as well as county and district prosecutors' offices, control the investigation of all criminal cases, including money laundering and corruption. In discharge of this function, they may issue written guidelines as regards the investigation, participate in the planning/organisation of pre-trial investigations and, where necessary, conduct investigations themselves. In 2001, joint agreement on operational co-operation was concluded among all agencies carrying out investigative activities. The GET was informed that for the past three years, no investigations, prosecutions or convictions have been made in relation to the predicate offence of corruption (as well as, generally, there had been no cases in which courts had adjudicated on money laundering). According to the information provided by the Prosecutor General's Office, at the time of the GET's visit five money laundering cases were pending in the courts.

Mutual legal assistance: provisional measures and confiscation

19. Articles 66 and 67 of the CCP, as well as the international treaties ratified by Lithuania provide a framework for international legal assistance on corruption cases involving property confiscation and seizure. The international treaties applied in cases of provisional measures and confiscation are the European Convention on Mutual Assistance in Criminal Matters, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the United

Nations Convention against Transnational Organised Crime. When Lithuania is the requesting state, the courts and the prosecutor's office transmit their requests on property confiscation abroad through the Ministry of Justice or the Prosecutor General's Office. When Lithuania is the requested state, the aforementioned authorities receive requests from the institutions of foreign States and international organisations through the intermediary of the Ministry of Justice and the Prosecutor General's office. Requests received directly by a court, a prosecutor's office or pre-trial investigation institutions are executed only upon the authorisation of either the Ministry of Justice or the Prosecutor General's Office. In cases provided for by the international treaties to which Lithuania is a party, the courts, the prosecutor's office and the pre-trial investigation institutions may send their requests and communicate their replies directly to the institutions of foreign States or international organisations concerned.

20. The statistics are generally collected with regard to mutual legal assistance in criminal matters. No figures, however, exist specifically with regard to the number of requests on mutual legal assistance involving property seizure or confiscation in corruption cases.

b. Analysis

21. The legal framework described above provides for clear and mandatory rules with regard to the confiscation of instrumentalities and proceeds of crime, including corruption. *In rem* confiscation, value confiscation, as well as confiscation of property received by third parties (except in good faith) are all possible. The GET understood that in relation to confiscation the burden of proof lies with the prosecution and under no circumstances can it be reversed, nor lowered, as the Lithuanian Constitution does not allow for altering the standard of proof relating to the confiscation of the proceeds of crime.

22. As regards the practicalities of applications for temporary limitation of property rights, the GET held discussions with various representatives of the police, investigating agencies and the judiciary and was informed that such applications are made on a regular basis. Officials expressed the view that in relation to economic and financial crime, as well as corruption, the likelihood of success for the application was high as in such cases the prosecutor had sufficient time to prepare the case and to present it properly.

23. As far as seizure of proceeds of crime is concerned, the GET was of the opinion that tax laws remained an underused tool in this regard. One such provision relating to tax evasion is Article 219 of the PC which imposes on a person the duty to set out, by way of declaration, details of his/her income, profit or property or that of an enterprise, following a written reminder by the State institution. Failure to do so carries a penalty of 2 years' imprisonment. In addition to the filing of the tax declaration there is a requirement to pay taxes in a timely manner. Non-fulfilment of this requirement carries a penalty of 4 years' imprisonment. False statements about income or property are punishable under Article 220. During the meeting with the GET, the tax authorities expressed an interest in identifying income obtained from criminal sources or other questionable activity, while the investigative agencies appeared willing to provide the necessary information.

24. Although the Special Investigation Service (SIS), which is the main body with the competence to investigate corruption offences, appeared to be a professional body, the GET was not convinced that sufficient expertise with regard to different aspects of investigation of corruption cases was available to it. More specifically, there appeared to be problems within the SIS with regard to understanding the book-keeping and financial aspects of crime involving legal persons. Moreover, the GET was informed that there was a lack of staff possessing necessary qualifications and specialised expertise in this area. As the present situation is likely to have an effect on the possibility for the SIS to investigate corruption cases effectively, including the

tracing of instrumentalities and proceeds of crime, the GET recommends **to consider providing the Special Investigation Service with adequate resources and enhance its in-house specialised knowledge with a view to enabling the Service to trace instrumentalities and proceeds of crime, particularly with regard to legal persons, in a more effective manner.**

25. The GET was concerned that there did not appear to exist a clear understanding among those entrusted with the management of seized property of the procedures on how to manage the different types of seized property, for instance the running of a seized enterprise. The GET was informed that it was possible to apply to the court to appoint an administrator to deal with property in order to prevent dissolution of the asset but no concrete example was given of a situation where the authorities had done so. It would appear that while the necessary provisions are in place, they have not yet been used in practice. The GET was furthermore concerned that the only way to deal with the potential embezzlement or wasting of seized property was through submitting to the prosecutor a written pledge by the designated person in charge of the said property. The GET recommends, therefore, **to enhance, through guidelines and training, the practical side of management of temporarily seized property (such as enterprises or company shares) among responsible authorities.**

26. In relation to suspicious transactions, the GET recognised the work of the FCIS and the efforts made by its staff to inform and educate those with a duty to report suspicious transactions under the anti-money laundering legislation. The GET, however, noted that the submission of such reports to the FCIS was declining. The Lithuanian authorities explained to the GET that the high number of STRs in previous years was due to the entering into force of the new anti-money laundering legislation, pursuant to which all institutions with the obligation to report were transmitting reports to the FCIS, irrespective of whether such reports were indeed related to suspicious transactions or not. Now that the procedure is firmly in place, the number of reports has decreased as only reports concerning transactions that are defined suspicious by the legislation reach the FCIS.

27. Concerning requests for mutual legal assistance, the GET held discussions with the Ministry of Justice, the Prosecutor General's Office, the FCIS and other interested bodies. The GET understood that requests by foreign States are processed and acted upon within a reasonable time, only with certain exceptions. The GET commended the fact that informal contacts could be made by the FCIS with their counterparts in neighbouring States and the EU and that information was often exchanged on an informal basis pending the completion of formalities in order to speed up the process.

28. The GET noted that, although the existing legislation on confiscation and seizure seems to be generally satisfactory, it was difficult to ascertain to what extent perpetrators of corruption offences, including legal persons, are in fact deprived of the illicit benefits secured, due to the lack of appropriate statistics. The GET was only provided with general figures in relation to all crimes for the years 2001 and 2002, whereas no statistics were available in respect of confiscation of proceeds of corruption offences. Furthermore, statistics were also lacking with regard to the sanctions for failure to notify cases of corruption or laundering by institutions which are obliged to do so by law. In view of the above, the GET *observes that statistics should be collected, and properly analysed, concerning provisional measures and subsequent confiscation orders in cases of corruption.*

III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework

29. The Constitution stipulates that *"the institutions of power shall serve the people"* (Article 5). More detailed provisions concerning the principles of the functioning of public administration are contained in the Law on Public Administration (hereinafter LPA), the Law on Civil Service and the Law on Local Self-Government. The definition of public administration, as provided for in the LPA, encompasses the executive activities of the state and local authorities, as well as activities of other entities empowered by law, regulated by laws and other legal acts, intended for the implementation of laws, other legal acts and local government ordinances and for the administration of planned public services (Article 3). Such entities of public administration include institutions, agencies, services and civil servants (officials) with legally granted public administration rights to implement executive power or separate functions thereof. A public administration institution is an entity of public administration performing the state or local government functions established by law. The activities of entities of public administration shall be based on the principles of supremacy of law, objectivity, proportionality, prohibition against abuse of authority, and inter-institutional co-operation (Article 4).

Anti-corruption policy

30. In 2002, the Parliament approved the National Anti-Corruption Programme based on three pillars: prevention, investigation and public education. The Programme, which is a long-term document containing approximately 200 measures to be implemented until 2006, is based on the consistent application of the rule of law principle, clear specification of decision-making procedures, and the establishment of a review system for (draft) legal acts from the anti-corruption perspective. In 2003, the Inter-departmental Commission for the Co-ordination of the Fight Against Corruption was established to oversee the Programme's implementation, coordinate the activities of state and municipal institutions and to set the priorities in the fight against corruption.[2] While exercising its functions, the Commission is empowered to request information from state and municipal institutions, set up specialised working groups and make proposals on corruption-related issues to agencies. One of the more specific objectives of the Commission has been to analyse the effectiveness of measures to prevent corruption in the public administration sector.

31. In conformity with Article 9.8 of the Anti-Corruption Programme, which stipulates that "situation of corruption should be examined properly and the provisions of this Programme and the underlying trends of anti-corruption activity are revised and supplemented every two years," the SIS has renewed the plan of measures to be implemented under the Programme. Such plan has been recently presented to Government and the aforementioned Inter-departmental Commission for debate.

32. In pursuance of the Programme's objectives to elaborate sector anti-corruption programmes and in order to systematise anti-corruption actions by state and local authorities,[3] all national ministries and all 60 local authorities have developed and are currently implementing their long-term sector anti-corruption programmes.

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[2] The Government appoints the Chairman of the Commission. The present Chair of the Commission is the Minister of the Interior, the Vice Chairs are the Government Chancellor and the Director of the Special Investigation Service

[3] in view of the programming model set by the Government Resolution "On the Approval of the Procedure for the Development and Approval of Long-term Programmes to Strengthen National Security," Government Resolution No. 523 as of 8 May 2000

Transparency

33. Article 25 of the Constitution secures the citizens' right "*to obtain any available information which concerns them from State agencies in the manner established by law*". The main laws ensuring access to public documents are the Law on the Provision of Information to the Public and the Law on the Right to Obtain Information from State and Local Government Institutions. The former establishes the procedure for obtaining, processing and disseminating public information and sets out the rights and responsibilities of public information producers; the latter secures the right of persons to obtain information from the state and municipal institutions within a 14-day time limit and defines the means for implementation of this right (e.g. how to apply for information, preparation and provision of the information, the appeal procedure, etc.). The latter Law also imposes a positive obligation on state and local government authorities to provide information about their activities. Refusals are only permitted in cases necessary in a democratic society and when deemed more important than the persons' right to information.

34. To ensure the transparency of public administration, as well as to eliminate barriers to access to public documents, specific requirements have been added to the newly adopted and drafted legal acts. More detailed procedures are also contained in the Government Act on Standard Order on Services to Citizens and Other Persons in the Public Administration Institutions. In 2002, the Government adopted a Resolution "On the Approval of the Position Paper on E-Government." This legal act sets out guidelines for the creation of an e-government aimed at increasing the direct influence of society on the decision-making process and establishing a more flexible and optimal structure of public administration. The Resolution is in the process of being implemented, although the system is not yet fully operational. The Action Plan for the Implementation of the E-Government Concept Paper came into effect in November 2003. It envisages multiple changes in the service sector in the field of information management and decision-making. In 2003, the Government adopted a resolution on the Approval of the General Requirements for Websites of State Institutions, which is currently the basic legal act regulating the creation, maintenance and updating of such websites.

35. With respect to public consultation, of administrative decisions concerning legitimate community interests, public authorities are obliged to consult organisations representing the interests of sectors of society and, in cases provided by law, the population at large (LPA, Article 7). Unless the law provides otherwise, the choice of the method of consultation is the discretion of the public institution concerned. The right of residents to participate in the decision-making process, to resort to public opinion surveys and to make statements on the administration of municipal affairs was expanded in November 2003, following amendments to the Law on Local Self-Government.

Control of public administration

36. The Law on Public Administration, the Law on Administrative Disputes Commission and the Law on Administrative Proceedings provide a possibility for lodging an administrative appeal against a decision made by administrative authorities. An appeal shall be submitted to the authority that made a decision. The authority has a possibility to change its decision in line with a request, in which case the appeal will not result in any further measures. If the authority does not alter the decision as requested, complaints can be lodged with the Administrative Disputes Commission. Furthermore, it is possible to appeal a decision of the Administrative Disputes Commission to the county administrative tribunals if leave of appeal is granted (Law of Administrative Proceedings, Article 15).

37. Complaints concerning the abuse of office and bureaucracy of officers of state and local government and administration institutions can also be lodged with the Parliamentary Ombudsmen. Inquiries made by Ombudsmen are based on complaints from the general public, cases referred to them by members of Parliament, as well as complaints of foreign nationals and stateless persons.[4] The Ombudsmen do not have direct competence to investigate instances of corruption, but in case they find *indicia of crime* while investigating complaints, they are obliged to refer the investigation material to a pre-trial investigation institution or the prosecutor (Law on Parliamentary Ombudsmen, hereinafter LPO, Article 19).[5] The Ombudsmen, moreover, have the right to apply directly to court regarding the dismissal of officers guilty of abuse of office or bureaucracy or to suggest to a collegial body, head of institution or superior institution that administrative (disciplinary) penalties be imposed on the officer at fault (Article 19). In November 2004 the LPO was amended by provisions recognising the right of every individual to good administration, more strict definitions of abuse of office and bureaucracy, and a more expanded definition of "an officer" to cover private persons performing public functions.

38. Investigations into the alleged offences, including corruption, are furthermore conducted by the Parliament's Anti-Corruption Commission. Established in 2000, and deriving from the Economic Crime Investigation Commission, this body investigates up to 5,000 complaints from citizens per year on issues involving public interest. The Commission also monitors the implementation of the National Anti-Corruption Programme and legislation adopted in pursuance thereof.

39. Other checks are carried out on public authorities. According to the revised Law on the State Control, if systematic, material violations or violations of public interests are revealed during the government audit, the State Control shall take preventive measures and inform law enforcement authorities thereof. Auditors in particular, shall assess whether the management, use and disposal of the state and municipal property and budget are carried out in accordance with law. As set out in the Public Auditing Requirements, auditors should prepare audit procedures enabling them to detect errors and violations of legal acts. In addition, under the co-operation agreement between the National Audit Office (NAOL), the FCIS and the SIS, the NAOL auditors shall inform respective institutions on detected evidence of crime or other violations of law within their competence. The NAOL auditors are also entitled to report suspicions of corruption offences to the competent institutions.

Recruitment, career and preventive measures

40. The Law on Civil Service (hereinafter LCS) guarantees career civil servants a career corresponding to their qualifications (Article 16). A person accepted for the position of a civil servant must meet the general requirements laid down in Article 9[6] and special requirements contained in the job description. Appointment to the position is based on the results of a selection procedure carried out either by announcing a tender[7] or proceeding without making such an announcement (in cases of political appointments and appointments of temporary civil servants) (Articles 11-12, 14). Same recruitment procedures apply at national and local level. The Law further sets out the limitations on the right to occupy a civil servant's position by imposing a prohibition to readmit persons into the civil service during a period of three years following their

[4] In 2003, the Ombudsmen Office investigated 1,888 complaints filed by citizens. Well-grounded complaints which led to investigations and decisions, amounted to 39%.

[5] In 2003, 18 cases were referred to pre-trial investigation bodies, out of which criminal proceedings were instigated in 15 cases

[6] E.g. be a citizen of the Republic of Lithuania, speak the Lithuanian language, be no younger than 18 years of age and no older than 62 years and 6 months. Article 9 of the LCS also lays down the requirement to have an appropriate professional qualification necessary for holding a position of a certain level.

[7] Announcements on selection tenders for the positions of heads of institutions and civil servants are published in the supplement to the *Official Gazette*

dismissal for certain grave breaches for which they did not bear criminal or administrative responsibility. The LCS is applicable to statutory civil servants (police officers, officials within the Ministries of the Interior, Defence, the Intelligence Service, etc.) only insofar as other laws, which normally contain more strict rules as far as corruption prevention is concerned, do not regulate their status.

41. A special procedure for the provision of information on a person seeking or holding office within a state or municipal agency has been established to ensure that only persons of high moral standing can hold office within these institutions (the Corruption Prevention Law, Article 9). Such information is provided by the SIS, with the consent of the person concerned, upon a written request from the head of an institution, a state politician, or at the initiative of the SIS or other law enforcement or control institutions.[8]

Training

42. Training of civil servants exists in two forms. Induction training (acquiring knowledge and developing skills) is organised for those admitted to the position of a career civil servant. Raising the level of qualification is the second form of training aimed at expanding specialised professional and management skills. It is provided at the initiative of a civil servant or a state/ municipal institution during the entire time of service or when the civil servant is seeking a promotion. The training system is decentralised and falls within the purview of a state or municipal institution accepting persons into the civil service (LCS, Article 47).

43. Anti-corruption training is obligatory for certain categories of civil servants most vulnerable to corruption (i.e. customs officials). In May 2003, the Civil Service Department under the Ministry of Interior approved the general anti-corruption training programme for all civil servants, which covers *inter alia* principles of transparent state management and ethical standards. Moreover, the Anti-Corruption Education Division of the SIS currently offers specialised anti-corruption courses to certain institutions (e.g. municipal institutions, Customs Department, etc.). These courses, however, are not mandatory and are provided at a fee. Finalisation of yet another educational initiative – compulsory courses on anti-corruption education for senior officials – is underway.

Conflicts of interest

44. The legal framework to prevent conflicts of interest in the civil service is provided for by the LCS and the Law on the Adjustment of Public and Private Interests in the Civil Service (LAPP). Their overall objective is to ensure that, within a decision-making process, priority is given to public interests and that public servants do not receive benefits from performing their duties. According to the LSC (Article 17), civil servants, unless otherwise prescribed by law, must not:

- be elected (appointed) members of management bodies of enterprises;
- enter into contracts on behalf of the state or municipal institution with companies, in which they or their relatives administer over 10% of the authorised capital or shares;
- represent national and foreign enterprises, foreign state institutions, go abroad using the means of national or foreign enterprises, study or otherwise dispose of their funds; and

[8] The provision of information is obligatory in respect of those subject to appointment by the Parliament, the President of the Republic, the Chairman of the Parliament, the Government or the Prime Minister as well as those aspiring to the position of heads of state or municipal institutions, their deputies, vice ministers, secretaries of state at the ministries, under secretaries of ministries, the appointed deputies of mayors of municipalities, heads of institutions subordinate to the ministries and their deputies.

- hold more than one civil service position.[9]

45. It is the duty of a civil servant (as well as of state politicians) to file a uniform annual declaration of private interests and, in case of new circumstances, an additional declaration (LAPP, Article 4). Furthermore, there is an obligation of self-exclusion in situations giving rise to conflicts of interest (LAPP, Article 11), the obligation to notify new job proposals (Article 16) and accepted proposals (Article 17). The Chief Official Ethics Commission (COEC), established in 1999 as a state control body accountable to the Parliament, is responsible for accumulating information on senior officials employed in the public service, including the data presented in their declarations of private interests (other officials' declarations are collected within their respective institutions). The Commission receives over 3500 such declarations annually. Upon the COEC's decision, the summary annual data on declarations of private interests are made public and are available on the Internet.

46. The COEC furthermore investigates inquiries, complaints and petitions by public institutions, officials and citizens at large on persons employed in the public service who are allegedly violating the LAPP or other legal acts. Upon receipt of substantiated information about a breach, either the COEC or the institution where the said civil servant is employed inspects his/her official activity and establishes whether or not a breach has been committed. In this respect, it should be noted that Article 22 of the LAPP imposes an obligation on head of institutions to present all the information concerning violations of the LAPP. Having established an infringement, the COEC appeals to the court on the termination of employment contracts and/or transactions and on the imposition of administrative penalties on the infringers. The COEC also examines requests from individuals to determine whether their activities contradict the requirements set by law.

47. No system of rotation of civil servants employed within the parts of the administration considered most susceptible to corruption has been established. However, with respect to persons leaving the civil service, a one year limitation period is imposed upon taking up the employment, exercising the right of representation, entering into contracts or using individual privileges in areas corresponding to such persons' former duties in the sector of public administration (LAPP, Articles 18-20).

Gifts

48. The basic rule on gifts is the provision on passive bribery contained in the Penal Code (Article 225). Restrictions on the acceptance of gifts and services are also provided for in the Civil Code (Article 6.470, para. 5), the LAPP (Article 14), the LCS (Article 3), and the Rules of Ethics of the Conduct of Civil Servants (par. 5.1). The general principle is that persons employed in central or local public service must not directly or indirectly accept gifts, cash or services, or provide them, if this may cause a conflict of public and private interests. Pursuant to Articles 225, 226 and 230 of the Criminal Code, acceptance by a civil servant of a gift, the value of which does not exceed 1 MLW, constitutes a misdemeanour and shall be punished irrespective of the fact whether the gift was provided in cash, in tangible objects, by making a discount, etc. A gift could be accepted "*according to international protocol or traditions*," and if it is valued in excess of 1 minimum living wage (i.e. 125 LTL or approx. 40 Euros), it must be declared within one calendar month. Such a

[9] Until 13 December 2004, Article 14, par. 4 of the LCS contained a provision whereby civil servants were prohibited to work as hired employees, advisers, experts or consultants for private legal entities, state or municipal companies, and receive a salary other than that provided for in the law. This provision was recognised by the Constitutional Court ruling as contradicting the Constitution and the constitutional principle of the rule of law. The Court confirmed that the restrictions for another work for the civil servants provided in the law should only contribute to evade the conflict of public and private interest in the civil service.

declaration must be appended to civil servants' regular annual declaration. The gifts valued in excess of 5 MLW shall be considered the property of the state or municipality (Article 14, LAPP).

Code of ethics

49. During the on-site visit, the GET was informed that, in pursuance of the National Anti-Corruption Programme, in 2003 two drafts of the Code of Conduct of Civil Servants (hereinafter CCS) were prepared and presented to Parliament.[10] Both drafts set out the standards of corruption-free behaviour for public officials and define the bodies responsible for supervising and controlling public officials' compliance with the Code. However, one of the drafts proposes more severe disciplinary sanctions in cases of breach of the Code (i.e. dismissal) as well as a more effective monitoring and disclosure mechanism. Once adopted, the CCS shall apply to civil servants, state officials, employees of non-profit institutions, state and municipal companies, and public institutions authorised to perform public administration functions and/or services. State politicians, judges, prosecutors, and some other categories that have elaborated their own codes of conduct or are in the process of doing so[11] will not be governed by the Code.

50. At present, activities of civil servants with respect to ethics are regulated by the following legal acts: the LCS, the LAPP and the Rules of Ethics of the Conduct of Civil Servants. Every public institution has established an internal *ad hoc* or permanent commission to control the observance of the above laws and standards of ethics/conduct. The Civil Service Department performs civil service management functions, including the administration of the Civil Servants' Register, which contains *inter alia* the data on penalties inflicted on civil servants. No information concerning the penalties inflicted on civil servants for the failure to obey ethics requirements is, however, collected in a centralised manner.

Reporting corruption

51. Current legislation does not contain any general provision on the reporting of suspicions of offences by public officials, with the exception of the area of law enforcement. Thus, according to the Code of Ethics of the Police, police officers are obliged to report suspicions of offences, including corruption, to their immediate supervisors. Non-compliance with this obligation may result in criminal liability based on Article 21 of the Law on Police Activities. Both drafts of the Code of Conduct pending in Parliament provide for the obligation of all civil servants to inform their immediate superiors or heads of institution about cases relating to corruption, fraud or attempts to illegitimately influence civil servants.

52. At the time of the visit, the draft Law on Protected Disclosures was still under discussion in Parliament. If adopted, the Law would provide for the protection of interests of and establish guarantees for employees or other persons who report corruption-related acts. The main guarantees for whistle blowers include the prohibition of applying illegal measures against them and, in the event that such measures are applied or a person is threatened with their application, the right to appeal to the institution duly authorised by the Government to examine whistle blowers' reports or other law enforcement institution. The draft law, moreover, prohibits the termination of a labour contract with an employee who reports a corruption-related violation without the consent of the institution authorised by the Government and sets out measures to be applied to the employer violating these requirements.[12]

[10] One prepared by the SIS and another by a Working Group under the chairmanship of the Ministry of Interior

[11] According to the COEC survey, 16 codes of conduct/ethics have been promulgated or are currently being drafted by various public institutions.

[12] During consideration of this report, the Lithuanian authorities reported that the draft Law had been rejected by Parliament.

53. The GET was further informed that the protection of whistle blowers, in particular, guarantees against application of illegal measures to them, are already provided for by the general legislation concerning the wider public. It includes the CPC, the Law on Operational Activities and the Law on the Protection of Participants in Criminal Proceedings and Operational Activities, Officials of Justice and Law Enforcement Institutions against Criminal Effect.

Disciplinary proceedings

54. The Rules of the Official Penalties Prescription to the Civil Servants[13] regulate disciplinary proceedings. With regard to career civil servants, the investigation of malfeasance is assigned to an administration manager or a special ethics commission. With regard to statutory civil servants, the structural division specifically designated to investigate official breaches by officers carries out the investigation[14]. The aforementioned COEC is also entitled to conduct disciplinary investigations, in particular with respect to violations of the LAPP. The sanctions imposed on civil servants are reproof, reprimand, severe reprimand and dismissal from office (LSC, Article 29). For violation of the LAPP, a fine from 500 to 1000 Litas may be imposed pursuant to Article 202-1 of the Administrative Code. If a wrongful act was committed by the person who had formerly been subject to administrative penalty for similar violation, s/he shall be sanctioned by a fine from 1000 to 2000 Litas or dismissed from office (such penalty may applied not only to civil servants but also to state politicians). Civil servants may appeal against decisions concerning the imposition of official penalties to the administrative court.

55. There cannot be simultaneous actions for disciplinary and criminal proceedings. If malfeasance includes evidence of a breach of administrative law or evidence of criminal act, the prescription of official penalties is suspended and the investigation material is passed to the institution competent to investigate the case. If this institution dismisses the investigation or indemnifies the person for criminal or administrative amenability, the procedure of prescription of the official penalty is continued from the day of enacting or standing up of such a decision (Rules, par. 14). In 2003, 303 official penalties were imposed on civil servants, including two dismissals from the office.

b. Analysis

56. The GET noted a significant progress within public administration in terms of addressing the phenomenon of corruption in the recent years. The legislation on the structure and the activities of public administration, as well as the establishment of a civil service has now been put in place, and a number of important reforms are underway. Public officials demonstrated their willingness to tackle corruption in a systemic manner, particularly in areas where it tends to be most prevalent, such as the customs, taxation and public procurement.

57. Lithuania has adopted a state anti-corruption programme, which is regularly updated and is monitored by the Parliamentary Anti-Corruption Commission. In addition, all ministries and all 60 local governments have developed their own sector or local anti-corruption programmes for the implementation of the objectives set at national level. During the GET's visit, however, it became evident that there were strong discrepancies between the national anti-corruption strategy and local and sector anti-corruption programmes. The GET also understood that the majority of the latter programmes existed only on paper and/or were not implemented in practice. Consequently, the GET recommends **to provide for an efficient monitoring of the anti-corruption programmes adopted at sector and local levels.**

[13] Approved by Resolution No. 977 of the Government of the Republic of Lithuania on 25 June 2002

[14] Their names may vary, including internal investigation services, internal control divisions, general inspectorates, etc.

58. The information gathered by the GET also suggests that the transparency of public administration has improved significantly as a result of the introduction of new legislation in this area. The GET welcomed the fact that governmental and municipal offices are obliged to provide responses to written requests for information within a reasonable time and that information may only be withheld exceptionally. Refusal to provide information may be challenged before administrative courts, although, as the GET understood, citizens were not always aware of their rights in this respect.

59. From the point of view of corruption prevention, the GET was generally satisfied with the system concerning staff policy. The Law on Public Service contains necessary elements, including transparent recruitment and remuneration procedures, career system, induction and in-service training programmes, including anti-corruption awareness, and strict liability for maladministration. Civil servants are recruited through open public competition, and may be dismissed for violations of law, failure to meet necessary professional qualifications, as well as certain other breaches provided by the LCS.

60. The GET found the legal framework concerning conflicts of interest generally satisfactory. The GET noted that a limitation period of one year was established for former civil servants before being allowed to take up employment in the private sector in order to prevent conflicts of interest. However, no system of rotation of civil servants has as yet been established. In the GET's opinion a possibility of periodic rotation, as it is foreseen in the recently revised Anti-Corruption Strategy, would appear appropriate in sectors of public administration particularly vulnerable to corruption. Consequently, the GET recommends **to consider introducing the regular rotation of staff, or similar measures, in such areas which entail a particular risk of corruption.**

61. As far as gifts acceptance practice is concerned, several legislative acts contain restrictions on the acceptance of gifts or services if this may cause a conflict of private and public interests. However, throughout the visit the GET's attention was drawn to the existence of Article 6.470 of the Civil Code, which recognises the long-standing practice in Lithuania of making and accepting gifts for certain professionals, namely, administrators and other employees in health and social care establishments. The value of such gifts, according to this law, can be up to 125 Litas (approx. 40 Euros). The GET had certain misgivings about a system where the acceptance of gifts of a substantial value could be seen to be encouraged by the legislation. Consequently, the GET recommends **to progressively eliminate the practice of accepting gratuities in the health and social care sectors.**

62. The GET recalled that Lithuania already received a recommendation during the First Evaluation Round (Greco Eval I Rep (2002) 1E) *"to develop a code of conduct/ethics for all public officials, preferably including anti-corruption measures, such as reporting indicia of corruption etc, as a complement to legislation*". During the present evaluation, the GET was made aware that two draft Codes of Conduct were pending before Parliament. The GET encourages the Lithuanian authorities to have one such Code adopted as soon as possible covering all its public officials to the extent possible. In this respect, the GET was also of the opinion that, in order for a Code to be implemented, debate, discussions, as well as training (including on the reporting of suspicions of corruption) are necessary elements to make it a "living instrument". Consequently, the GET recommends **to introduce, pending the adoption of the Code of Conduct, regular in-service training on public ethics for public officials at all levels.**

IV. THEME III – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

General definition

63. Legal persons are either public or private. Public legal persons are established by the state or municipalities, their institutions or other non-profit seeking persons and include state and municipality enterprises, state and municipality institutions, public institutions, religious communities, etc. Their overall objective is to meet a public interest. Public legal persons shall have a special legal capacity, whereby they may be in possession of or achieve only such civil rights and assume such duties, which are not at variance with their incorporation documents or objectives (Civil Code, Article 2.74). Private legal persons are legal persons, which aim at meeting a private interest (Civil Code, Article 2,34, paras. 1-3). Most important types of private legal persons are as follows:

a) Limited liability companies are enterprises with statutory capital divided into shares (Law on Companies, Article 2, para. 1). There are two types of limited liability companies, private limited liability companies with statutory capital of not less than 10,000 Litas (2,900 Euro) and the number of shareholders not exceeding 250 (Law on Companies, Article 2, para. 4), and public limited liability companies with statutory capital of not less than 150,000 Litas (43,500 Euro). The shares of a private limited liability company may not be offered for sale or traded in publicly, whereas it is allowed in the case of public limited liability companies. The registered office of both private and public limited liability companies must be situated in Lithuania (Article 2, para. 7);

b) Partnerships are enterprises established on the basis of partnership agreement by natural or legal persons. In general partnerships, all members (from 2 to 20) are general partners, i.e. with unlimited liability (Law on Partnerships, Article 2, para. 2). General members of other partnerships, owners of individual enterprises, the state, municipalities, state and municipal enterprises, budgetary institutions and European economic interest groups may not be general partners in partnerships (Article 7, paras. 5-6). In limited partnerships, members are both general (with unlimited liability) and limited (with limited liability) partners (Article 2, para. 2). Their number cannot be less than 3 (2 general partners and 1 limited partner) and not more than 20 (Article 7, para. 4);

c) Agricultural companies are companies formed for production and commercial activity, whose income over the period of an economic year for agricultural production and services rendered to agriculture, comprises over 50% of all production income (Law on Agricultural Companies, Article 3, para. 4); and

d) Co-operative societies (co-operatives) are enterprises established by legal and/or natural persons for the purpose of meeting economic, social and cultural needs of its members (Law on Co-operative Societies (Co-operatives) Article 2, para. 2).

64. Private legal persons may be in possession of or achieve any civil rights and assume duties with the exception of those which may emerge only when the characteristics of a natural person such as gender, age and consanguinity are in place. In cases provided by law, legal persons may be engaged in a certain type of activity only after having been granted a licence. A legal person must be in possession of all licences (permits), which are defined in the law as a necessary prerequisite for its activities (Civil Code, Article 2.77).

Establishment

65. Requirements for establishing legal persons depend on the form of legal entity. A company normally has to sign the document of incorporation and articles of association, pay subscribed shares (at least minimum), approve incorporation report and elect management bodies (Company Law, Article 11). There are no nationality requirements for founders in any legal form of legal entity except for political parties[15]. The minimum number of members is foreseen for associations[16] (minimum three) and political parties (minimum a thousand). Individual enterprises may be incorporated only by one founder. The act of foundation of a state budgetary institution shall be passed by the Parliament, the Government, ministries, district governors and other state institutions. The act of foundation of a municipal budgetary institution shall be passed by common (municipal) councils in accordance with the procedure set out by law (Law on Budgetary Institutions, Article 3).

Registration and transparency measures

66. In order to acquire the rights of a legal person, the Civil Code obliges all such persons to register in the Register of Legal Entities managed by the State Enterprise Centre of Registers. The registration takes place within 10 days following the submission of relevant documents (completed application form, articles of association, document confirming the payment of registration fee, etc.). There is no obligation for shareholders of private companies to be registered in the Register of Legal Entities, except in cases of a single shareholder. Articles of association and other data need to be confirmed by a notary prior to registration. This requirement does not extend to political parties and religious organisations whose documents are certified by the Ministry of Justice. All documents submitted to the Register are public if they are defined as such. The Civil Code and the Law on the Register of Legal Entities contain the list of circumstances under which the legal entities are obliged to submit updated information to the Register. Non-compliance with these provisions may result in administrative liability or civil penalties.

Limitations on exercising functions in legal persons

67. Restrictions on legal persons to hold interests in another legal person are usually set for legal persons with unlimited liability. As mentioned above (cf para. 64.b), general members of other partnerships, owners of individual enterprises, the state, municipalities, State and municipal enterprises, budgetary institutions, partnerships and European economic interest groups may not be general partners of partnerships. General partners of a limited partnership may not be limited partners at the same time and *vice versa* (Law on Partnerships, Article 7, para. 7). It is also prohibited for state and municipal enterprises to be members of other legal persons (State and Municipal Enterprise Law, Article 3, para. 3). Furthermore, a system of disqualifications has been established, whereby depending on the activity of a legal person, there is a possibility to disqualify persons found guilty of offences from acting in a leading position in finance institutions (Law on Credit Institutions, Article 20, para. 3), banks (Law on Banks, Article 34, para. 2), and insurance companies (Law on Insurance, Article 20, para. 3).

68. The Register of Legal Entities keeps publicly accessible data about all restrictions on the activities of legal entities and/or their representatives acting for the benefit or in the interest of the legal entity, as well as information about the institution that made the decision on the restriction of

[15] Political parties can only be founded by citizens, Political Parties Law, Article 3.

[16] An association is a public legal person with limited liability and its own name, whose goal is to co-ordinate the activity of association members, represent and protect the interests of the latter and to serve other public interests (Law on Associations, Article 2, para. 1).

activities or on the cancellation of such a restriction and the date the decision (judgment) entered info force.

Legislation on the liability of legal persons

69. Article 20 of the Penal Code stipulates that a legal person shall be liable for criminal acts, for the commission of which the Special Part of the Code provides the responsibility for legal persons.[17] The catalogue of offences for which legal persons may be held liable, includes passive (Article 225) and active (Article 227) corruption, money laundering (Article 216), carrying out forbidden economic and commercial activities, establishing and operating a fictitious enterprise, and tax evasion. The liability of a legal person is conditioned upon the commission of a criminal act by a natural person acting for the benefit of the legal person in the exercise of the authority to represent, to decide on behalf of, or to control it. A legal person can moreover be held liable where the lack of supervision or control made possible the commission of the criminal act for the benefit of the legal person by its employee or authorised representative (Article 20, para. 3). There need not be any benefit of the crime in order to impose a sanction and the perpetrator must not necessarily be identified.[18] The liability of legal persons does not exclude criminal liability of a natural person, who commits, organises, incites or assists in the commission of the crime (Article 20, para. 4).

70. If the proceedings in respect of criminal offences have been instituted separately against the legal and the natural persons, the offences must be jointly investigated. In such cases the procedural acts are carried out and decisions in respect of the legal person are made in compliance with the general rules provided by the CCP. If the criminal prosecution of the natural person cannot be conducted due to legal obstacles, the proceedings in respect of offences committed by the legal person can be instituted separately. A training programme was developed by the Judicial Training Centre, in co-operation with the Ministry of Justice, for the members of the judiciary to facilitate the adjudication of cases involving corporate criminal liability. Moreover, in November 2004, a set of guidelines was adopted by the Prosecutor's Office on the application of criminal liability to legal entities, including for corruption-related offences. At the time of the GET visit, only one case was pending before court, in which proceedings were instituted against two legal persons for alleged tax evasion.

Sanctions and other measures

71. The following penal sanctions are foreseen for a legal person: a fine of a maximum of 1,250,000 Litas (approx. 362,000 Euros); a restriction of activities; and liquidation (PC, Article 43). After imposing a sanction, the court may decide to publicise the punishment via the media. Failure by a legal person's employee to carry out the imposed sanction amounts to criminal misdemeanour and is punished by fine or detention (PC, Article 244). For a single criminal act, only one sanction can be imposed. The Register of Legal Entities keeps information about legal entities which have been charged, by an effective court judgement, with the commission of corruption-related acts, or whose employee or an authorised representative has been found guilty, by an effective court judgment, of corruption-related acts while acting for the benefit or in the interests of the legal entity concerned. If the court's decision is revoked, such decision shall be notified to the Register's administrator within 14 days.

[17] The Code does not provide for criminal liability of the State, municipalities, state and municipal institutions and public international organisations.

[18] No court rulings, however, could confirm this latter provision due to the very recent introduction of norms establishing criminal amenability.

72. In addition, to ensure the undisturbed investigation of a case and the subsequent rendering of a judgment, the following two temporary coercive measures may be imposed upon a legal person at pre-trial stage: temporary suspension and temporary limitation of its activities (CCP, Article 389). These measures are imposed following a motivated request from the prosecutor, by the ruling of the pre-trial judge or by virtue of the court order. In case of sufficient grounds, the imposition of these measures may be prolonged following the same procedure.

Tax deductibility

73. Deductibility of bribes is prohibited by the general provision of the Profit Tax Law forbidding the deduction of costs that are not ordinary in the entity's business activity and are not indispensable for the entity to earn income or obtain economic benefit. Since both giving and receiving bribes are criminal activities under the legislation, bribes are not regarded as ordinary costs in the business activity and are not indispensable to obtain economic benefit. No distinction is made between bribes and small facilitation payments for the purpose of tax deductibility, hence the latter are also not tax deductible. During the GET's visit, the Tax Inspectorate indicated that special attention is paid to certain costs which may be inserted to cover up bribes or other illicit payments, particularly in the construction industry and public procurement.

Fiscal authorities

74. There is no explicit obligation for fiscal authorities to report corruption offences. Nevertheless, in accordance with the Law on Tax Administration, information about a taxpayer may be submitted to the law enforcement bodies and other state institutions if it is necessary for the performance of their tasks (Article 22, para. 3.2). Special provisions in the Law govern the submission of information that is regarded as constituting a state, official or commercial secret. According to information provided to the GET, in January 2003 the Tax Inspectorate adopted an internal Order containing the methodology for identifying cases of corruption and specifying the actions of tax officials when detecting them. Every staff member of the Tax Inspectorate is familiarised with these rules upon recruitment or when taking up auditing obligations. Moreover, each report or statement produced as a result of tax audits is assessed from a criminal law perspective. If crime is identified, the material of the case is transmitted to the FCIS or the SIS. Out of approximately 1500 reports drawn up in 2003, 180 reports were referred to the FCIS.

75. Fiscal authorities, moreover, co-operate with the FCIS by transmitting information on possible traces of money laundering detected during the tax audits. The Government establishes the information that must be communicated to the FCIS, and the procedure for its communication. The co-operation between state institutions (such as the State Tax Inspectorate, Customs Department, FCIS, SIS, etc.) is provided for in Article 7 of the Law on the Prevention of Money Laundering and in existing intra-institutional agreements.

Accounting Rules

76. Financial statements of economic entities may be kept in state or private archives. Accounting documents submitted for custody to state archives shall be kept indefinitely, whereas those submitted to private archives have to be kept for 15 years.

77. Administrative responsibility and criminal liability are provided for negligent accounting, subject to the extent of damage inflicted. Non-management of accounts, negligent accounting, as well as omission to store accounting documents for a period prescribed by the law, are punished by the deprivation of the right to have a certain job or to engage in certain activities or by fine or restriction of liberty, or arrest or imprisonment of up to two years (PC, Article 223, para. 1).

Fraudulent accounting, as well as dissimulation, destruction or damage to accounting documents are punished by a fine or arrest or imprisonment of up to four years (PC, Article 222, para. 1). Both natural and legal persons may be held liable for the aforementioned acts.

Role of auditors and other professionals

78. Government Resolution No. 930 adopted in June 2004 imposes an express obligation on auditors to report STRs to the FCIS as well as an obligation to draw up a list of indicative elements of traces of potential money-laundering offences. Non-compliance with the Resolution result in administrative sanctions. So far, no training has been organised for auditors on the application of the above Resolution (auditors, however, participate in training sessions organised by the FCIS). If an auditor is found guilty of a corruption offence, s/he will be referred to the Court of Order of Auditors and his/her licence may be suspended for a period of 1 to 3 years or longer, or withdrawn.

79. As for legal practitioners, under the Law on the Prevention of Money Laundering (Article 9, paras. 5-6), lawyers and lawyers' assistants are obliged to report money laundering offences to the FCIS. Nevertheless, no direct contact with law enforcement institutions is envisaged. In case of suspicion of corruption, lawyers shall forward the evidence thereof to the Council of the Lithuanian Bar Association, which shall report it to the FCIS. The obligation to report does not extend to lawyers when ascertaining the legal position for their client, defending or representing him/her, or acting on his/her behalf in court proceedings (Article 7).

b. Analysis

80. The Lithuanian legal system provides for different types of legal persons which cover a wide range of purposes and objectives. Requirements for establishing legal persons depend on the form of legal entity, however, all legal persons are subject to registration, which consists of two stages. Firstly, the notary certifies the correctness of data prescribed for registration of a specific legal person, and secondly, if such data is correct and all legal requirements have been fulfilled, the legal person is registered. The data contained in the Register is continuously updated and failure to register the required documents or information or to keep it up to date is subject to administrative penalties. Moreover, the Register accumulates the data on restrictions of activities of legal entities and their representatives, as well as information about the institution that made the decision on the restriction of activities or on the cancellation of such a restriction and the date the decision (judgment) entered info force. All information contained in the Register is public.

81. The principle of corporate criminal liability was introduced in 2002 through amendments to the Penal Code. The offences in respect of which such liability has been established include active and passive corruption, money laundering, forbidden economic-commercial activities, the setting up and operation of a fictitious enterprise and tax evasion. Trading in influence, however, is not covered, and Lithuania made no reservations in this respect when ratifying the Criminal Law Convention on Corruption. Consequently, the GET recommends **to establish liability of legal persons for the offence of trading in influence, in accordance with the Criminal Law Convention on Corruption.**

82. As the legislation on corporate liability is quite recent, it has not yet been widely applied, hence there is little developed practice with only one prosecution pending relating to tax evasion, not corruption. Concomitantly, there have not yet been any convictions with the effect that certain aspects of the legal provisions remain to be tested or subject to interpretation by the courts. The Lithuanian authorities appeared to be of the opinion that criminal liability of legal persons may be established even where no natural person has been identified or convicted. Also, with regard to

legal persons found guilty of criminal acts committed for their benefit by natural persons in a leading position within the legal person or by a natural person under the authority of the legal person as a result of lack of supervision and control, the Lithuanian authorities considered that it was not necessary for the legal person to actually benefit from the act carried out by the natural person but that a potential benefit was sufficient. In the absence of any practice, these positions were not contested.

83. In view of the above, at the time of the evaluation, the GET was unable to form an opinion on the effectiveness in practice of the provisions on corporate criminal liability with respect to corruption offences. The GET considers that the situation needs to be followed up in order to implement the new legislation in practice. Moreover, the GET identified a clear need to improve the level of awareness of corporate liability of the SIS, the Police, the Prosecution authorities, the Judiciary and the fiscal authorities. This calls for extensive information and training to the aforementioned authorities. Consequently, the GET recommends **to ensure that investigating, prosecuting and adjudicating authorities have the necessary training in order to fully apply the provisions on corporate criminal liability. Moreover, appropriate information on these matters should also be provided to the tax authorities.**

84. The GET could not form an opinion on the effectiveness in practice of the sanctions concerning legal persons in corruption cases, as no established practice nor statistics are available.

85. With regard to the role of various professionals in combating corruption, the GET was concerned that auditors do not appear to receive any particular training in identifying corruption nor have they ever reported suspicions of corruption to the Police or to the SIS. Even with regard to the duty to report suspicions of money laundering, auditors seem to have not yet come to terms with their obligation nor have they put in place the necessary procedures to report to the FCIS as required by law. Bearing in mind that the anti-money laundering legislation imposes an obligation to report suspicions of money laundering to the FCIS, as well as realising that there was a lack of understanding and the need of training for reporting corruption as a predicate offence, the GET *observes that the Lithuanian authorities could usefully explore, in dialogue with the professional body of the auditors, what, if any, measures could be taken to improve the situation in relation to reports of suspicions of corruption as a predicate offence to money laundering to the competent authorities.*

V. CONCLUSIONS

86. Lithuania has an adequate legal framework to deal with the seizure and confiscation of proceeds of corruption. To make full use of the existing provisions, the resources of the Special Investigation Service, which is the main authority entrusted with the investigation of corruption offences, should be reinforced. With regard to public administration, a good legal framework has been established, and the system appears to be generally transparent. The foreseen adoption of the Code of Conduct for Public Officials will be a further important step in this direction which Lithuania should take as soon as possible. The national anti-corruption strategy is well-developed. However, the sector and local levels need to be closely monitored in order to provide consistency with the national level. The recent introduction of corporate criminal liability in Lithuania is commendable. However, further implementation of this legislation requires extensive awareness and the provision of appropriate information to the relevant authorities. Moreover, professionals such as accountants and auditors should become more actively involved in detecting and revealing corruption offences in particular by complying with their reporting obligation on money laundering.

87. In the light of the foregoing, GRECO addresses the following recommendations to Lithuania:

i. **to consider providing the Special Investigation Service with adequate resources and enhance its in-house specialised knowledge with a view to enabling the Service to trace instrumentalities and proceeds of crime, particularly with regard to legal persons, in a more effective manner** (paragraph 24);

ii. **to enhance, through guidelines and training, the practical side of management of temporarily seized property (such as enterprises or company shares) among responsible authorities** (paragraph 25);

iii. **to provide for an efficient monitoring of the anti-corruption programmes adopted at sector and local levels** (paragraph 57);

iv. **to consider introducing the regular rotation of staff, or similar measures, in such areas which entail a particular risk of corruption** (paragraph 60);

v. **to progressively eliminate the practice of accepting gratuities in the health and social care sectors** (paragraph 61);

vi. **to introduce, pending the adoption of the Code of Conduct, regular in-service training on public ethics for public officials at all levels** (paragraph 62);

vii. **to establish liability of legal persons for the offence of trading in influence, in accordance with the Criminal Law Convention on Corruption** (paragraph 81);

viii. **to ensure that investigating, prosecuting and adjudicating authorities have the necessary training in order to fully apply the provisions on corporate criminal liability. Moreover, appropriate information on these matters should also be provided to the tax authorities** (paragraphs 83).

88. Moreover, GRECO invites the Lithuanian authorities to take account of the *observation*s (paragraphs 28 and 85) in the analytical part of this report.

89. Finally, pursuant to Rule 30.2 of the Rules of procedure, GRECO invites the Lithuanian authorities to present a report on the implementation of the above-mentioned recommendations by 30 November 2006.