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

(Theme I)

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I. INTRODUCTION

1. Lithuania joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 1E) in respect of Lithuania at its 8th Plenary Meeting (8 March 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 12E) at its 23rd Plenary Meeting (20 May 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (http://www.coe.int/greco).

2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:

   - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).

   - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).

3. The GRECO Evaluation Team (hereafter referred to as the "GET") carried out an on-site visit to Lithuania from 26 to 30 January 2009. The GET for Theme I (26-27 January) was composed of Mr Finbarr McAuley, Professor of Law, Faculty of Law, *University College Dublin* (Ireland) and Ms Slagjana Taseva, Professor in Criminal Law, Dean, *European University in the Republic of Macedonia* ("The former Yugoslav Republic of Macedonia"). The GET was supported by Mr Christophe Speckbacher from GRECO's Secretariat. Prior to the visit the GET experts were provided with a reply to the Evaluation questionnaire (document Greco Eval III (2008) 8E, Theme I).

4. The GET met with officials from the following governmental organisations: Ministry of Justice (International Law Department, Criminal Justice Department, Law Institute), Special Investigation Service, Police department (Criminal Law Division), Customs Department (Investigation Division), Prosecutor General's Office, Vilnius County Prosecution Office, Supreme Court, Vilnius Second District Court. The GET also met with representatives from the NGO Transparency International and from the Lawyers Council.

5. The present report on Theme I of GRECO's Third Evaluation Round – Incriminations – was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Lithuanian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. 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.

6. The report on Theme II – Transparency of party funding – is set out in Greco Eval III Rep (2008) 10E, Theme II.

II. INCRIMINATIONS

Description of the situation

7. Lithuania ratified the Criminal Law Convention on Corruption (ETS 173) on 8 March 2002. The Convention entered into force in respect of Lithuania on 1 July 2002. Lithuania did not make any reservations to the Convention.

8. The country has not ratified (nor signed) the Additional Protocol to the Criminal Law Convention (ETS 191).

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

Definition of the offence

9. Active bribery of public officials is criminalised in Article 227 of the Criminal Code (hereafter: CC). This Article on active bribery establishes different forms of the offence: (1) bribery for a legal act or omission (paragraph 1); (2) aggravated bribery (paragraph 2) (a) for an illegal act or (b) involving a bribe of significant value (approximately €9,413); and (3) petty bribery involving a bribe of less than €38 (paragraph 3). In addition, Article 227 provides for the defence of 'effective regret' (see further paragraph 59 below).

> **Article 227 CC (Offering Bribes)**
>
> 1. Any person who directly or indirectly offers, promises to give or gives a bribe to a public servant or a person of equivalent status for a desired legal act or omission in the discharge of his authority, or to an intermediary, seeking the same results, shall be punished by restriction of liberty or a fine, or detention, or imprisonment for a term of up to 2 years.
>
> 2. Any person who commits the acts specified in paragraph 1 of this Article, by offering, promising to give or giving a bribe with a value in excess of 250 MSLs[1], or who commits such acts seeking an illegal act by the bribed public servant or person of equivalent status in the discharge of his authority, shall be punished by imprisonment for a term of up to 4 years.
>
> 3. Any person who, seeking to bribe a public servant or a person of equivalent status, offers, promises or gives him or an intermediary a bribe with a value not in excess of 1 MSL[2], commits a misdemeanour, and shall be punished by restriction of liberty or a fine, or detention.
>
> 4. A person shall be released from criminal liability for offering a bribe if he is extorted or provoked to give a bribe and he, after offering, promising or giving a bribe, notifies an appropriate law enforcement institution of it before he is given a notice of suspicion, or a bribe is offered, promised or given by him with the knowledge of an appropriate law enforcement institution.
>
> 5. Any legal person shall also be held liable for the acts specified in paragraphs 1, 2 and 3 of this Article.

[1] MSL refers to 'minimum subsistence level', which is valued at 130 Lithuanian Litas (hereafter: LTL) (approximately €38); consequently 250 MSL is 32,500 LTL (approximately €9,413).
[2] 130 LTL (approximately €37.65)

10. Passive bribery of public officials is criminalised by Article 225 CC. Article 225 CC to some extent mirrors Article 227. It also establishes different forms of the offence: 1) as before, bribery for a legal act or omission (paragraph 1); 2) aggravated bribery for an illegal act or omission (paragraph 2); 3) aggravated bribery involving a bribe of significant value, whether for an legal or illegal act (paragraph 3); 4) petty bribery, whether for an legal or illegal act, involving a bribe of less than €38 (paragraph 4).

> **Article 225 CC (Taking Bribes)**
>
> 1. Any public servant or any person of equivalent status who, for his own benefit or the benefit of others, directly or indirectly accepts, makes a promise or enters into an agreement to accept a bribe, or who solicits or provokes the giving of such a bribe for a legal act or omission in the discharge of his powers, shall be punished by deprivation of the right to work in a certain job or engage in certain activities, or by imprisonment for a term of up to 4 years.
>
> 2. Any public servant or any person of equivalent status who, for his own benefit or the benefit of others, directly or indirectly accepts, makes a promise or enters into an agreement to accept a bribe, or who solicits or provokes the giving of such a bribe for an illegal act or omission in the discharge of his powers, shall be punished by deprivation of the right to work in a certain job or engage in certain activities, or by imprisonment for a term of up to 6 years.
>
> 3. Any public servant or any person of equivalent status who, for his own benefit or the benefit of others, directly or indirectly accepts, promises to accept or enters into an agreement to accept a bribe with a value in excess of 250 MSLs, or who solicits or provokes the giving of such a bribe for a legal or an illegal act or omission in the discharge of his powers, shall be punished by imprisonment for a term from 2 to 8 years.
>
> 4. Any public servant or any person of equivalent status who, for his own or the benefit of others, directly or indirectly accepts, promises to accept or enters into an agreement to accept a bribe with a value not in excess of 1 MSL, or who solicits or provokes the giving of such a bribe for a legal or an illegal act or omission in the discharge of his powers, commits a misdemeanour, and shall be punished by deprivation of the right to work in a certain job or engage in certain activities.
>
> 5. Any legal person shall also be held liable for the acts specified in this Article.

Elements/concepts of the offence

"Domestic public official"

11. Article 230 provides a definition of a 'public servant' as used, *inter alia*, in the Articles above on bribery.

> **Article 230 (Definition of public servant)**
>
> 1. For the purposes of this Chapter, public servants mean persons working in public service – state politicians or public administration officials – under the Law on Public Service and other persons who, working in state or municipal institutions or agencies, judicial, law enforcement, national audit and supervisory institutions as well institutions of equivalent status, perform functions of an authority representative or hold administrative powers, as well as official candidates to such positions.
>
> 2. A person holding appropriate powers in an institution of another state, an international public organisation or international judicial institutions as well as official candidates to such positions shall be held to have the status equivalent to that of a public servant.

> 3. In addition, a person who is employed at any state, non-governmental or private agency, enterprise or organisation, or engages in professional activities and holds appropriate administrative powers, or is entitled to act on behalf of this agency, enterprise or organisation, or provides public functions shall be held to have the status equivalent to that of a public servant.

12. The Lithuanian authorities report that this definition complies with the requirements of the Convention: it covers the separate categories of persons listed in Article 1(a) and (b) of the Convention (officials/public officers, mayors, ministers, prosecutors, judges and holders of judicial office) and, in addition, also covers official candidates to such positions. Paragraph 3 of Article 230 furthermore extends the scope of coverage of the concept of 'public servant' to also include persons working for non-governmental and private agencies, enterprises and organisations if they hold appropriate administrative powers, are entitled to act on behalf of the agency, enterprise or organisation in question or provide public functions (see also the developments on private sector corruption hereinafter, paragraphs 29 ff).

"Promising, offering or giving" (active bribery)

13. Article 227 CC on active bribery explicitly includes the terms 'offers, promises to give or gives'. The replies to the questionnaire contained no further explanations as to how these concepts are to be interpreted but some Supreme Court judgements illustrate the way active bribery provisions are applied[3]

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

14. Article 225 CC on passive bribery refers to "accepts, makes a promise or enters into an agreement to accept a bribe, or who solicits or provokes the giving of such a bribe". The replies to the questionnaire contained no further explanations as to how these concepts are to be applied. Some Supreme Court judgements illustrate the way passive bribery provisions are applied, *inter alia* SCL ruling of 21 February 2006 (see annex) in which the defendant was convicted for "promising to accept" a bribe of LTL 600 (approximately €174).

"Any undue advantage"

15. Articles 225 and 227 CC do not explicitly use the term 'undue advantage', but instead refer to a 'bribe'. The Lithuanian authorities report that any kind of illegally obtained property benefit, i.e. tangibles or material services provided, can constitute a bribe (e.g. money, securities, works of art, immovable or movable property, legal and other instruments certifying title to property or

[3] - Supreme Court Ruling of 3 April 2007 (Criminal Case No. 2K–274/2007),: V. N. was sentenced for, seeking on 7 May 2006, to bribe two traffic police officers in the car in which he was being taken to the hospital for a blood test to determine his level of alcohol intoxication. He had spontaneously put a bribe of LTL 90 (EUR 26) in the compartment between the two front seats of the car to avoid being taken to the hospital and be registered for the violation.
- Supreme Court ruling of 14 March 2006 (Criminal Case No. 2K-195/2006),: L. Š. was sentenced for bringing on 14 January 2005, to a room of the regional court, a plastic bag that contained two sealed envelopes and food. The envelopes were addressed by L. Š. to A. V., a judge of the regional court, and S. P., secretary of hearings of the regional court. The envelopes contained LTL 200 (EUR 58) and LTL 100 (EUR 29) respectively. After an explanation given to A. V. and S.P. that it was a small gift rather than a bribe, L. Š. left the bag in the room, by the coat stand, and rushed out of the room.
- Supreme Court ruling of 23 March 2004 (Criminal Case No. 2K-156/2004),: the Court confirmed a judgement of Šiauliai city regional court of 13 August 2003, in which S.N. was sentenced for giving on 29 July 2002, a senior inspector at Criminal Police Organized Crime Investigation Service of Šiauliai city Police Headquarters, a bribe – eau de toilette *Gucci Envy* worth LTL 126 (EUR 36) for a desired legal act by this public servant in the discharge of her powers.

interests thereto; material services, e.g. free-of-charge repair of a car or a house, interest-free loan, reduction of taxes, etc.). They also indicate that immaterial advantages (i.e. services, honorary positions or titles etc.) are not considered to be included in the concept of a bribe. On the other hand, the value of a bribe does not affect the liability as such: it may only mitigate or aggravate it, with bribery involving a bribe of value of less than 130 LTL (approximately €38) being considered a misdemeanour and a similar act involving a bribe of a value of more than 32,500 LTL (approximately €9,413) being considered aggravated bribery, carrying a higher maximum sentence. Case-law of the Supreme Court underlines that any material advantage with some value is to be considered a bribe. In its judgment of 20 March 2007 the Supreme Court of Lithuania overturned a judgment of the Court of Appeal (and a similar judgment of the Court of First Instance), in which a person had been acquitted for having offered a bribe of 20 LTL (approximately €6) to two traffic police officers. The Supreme Court emphasised that "drivers (…) usually give a bribe of less than 1 MSL [i.e. less than €38]. Such court rulings [i.e. those of the Court of Appeal and Court of First Instance] may encourage the other court to make similar rulings in analogous cases. As a result, court practice may lead to persons, giving bribes to a public servant up to 1 MSL for committing unlawful actions, not being held criminally liable at all. This may very negatively effect the state's effort to strengthen the control of bribery".

"Directly or indirectly"

16. The Lithuanian authorities indicated without further explanations that Article 225 CC on passive bribery explicitly uses the terms 'directly or indirectly' and that Article 227 on active bribery uses the expression 'him or an intermediary'. During the on-site discussions, the GET found out that the words "directly or indirectly" have in fact a meaning different from that of the Convention in that they primarily mean an "explicit or implicit" offer or solicitation. It was sometimes argued, however, that the expression "directly or indirectly" has a dual meaning and also refers to the involvement or not of an intermediary.

"For himself or herself or for anyone else"

17. Article 225 CC on passive bribery explicitly refers to third party beneficiaries of the bribe by use of the words "for his own benefit or the benefit of others". There is no similar reference in Article 227 CC on active bribery.

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

18. Both Articles 225 and 227 use the expression "in the discharge of his powers [or his authority]".

19. As indicated above, Articles 225 and 227 CC make a distinction between acts and omissions which are legal or illegal, with those involving a breach of duty on the part of the public official being subject to more severe sanctions than acts and omissions which were lawful[4].

[4] SCL ruling of 25 April 2006 (criminal case 2K-289/2006): D. G. was sentenced for accepting for her own benefit, while working as a public servant, a bribe for an illegal act, namely, for accepting, while working as a chief specialist at the State Food and Veterinary Service, LTL 400 (EUR 116) and nuts worth LTL 50 (EUR 14.5) from Company *X* Director A. J. on the premises of this company on 7 February 2003, for writing an illegal document – a statement about meeting the necessary requirements of food handling − in which she stated that products unsuitable for eating – 3,784 kg of hazelnuts – were destroyed, in this performing her official functions, yet, without having the required mandate for that.

"Committed intentionally"

20. Pursuant to Article 16 CC, a person can be held liable for committing a crime or a misdemeanour by negligence only in the cases prescribed by the special part of the Criminal Code. As neither Article 225 nor Article 227 stipulates that these offences can be committed by negligence, these offences can only be committed intentionally.

Sanctions

21. The applicable sanction for active bribery under Article 227 CC, paragraph 1, is restriction of liberty[5] or a fine or detention (arrest)[6] or a maximum of two years' imprisonment. The replies to the questionnaire contained no further information on the pecuniary penalties. These are in fact to be determined through a combination of the provisions of Article 11 CC (which makes a distinction between minor crimes, less serious crimes, serious [major] crimes, and grave crimes, depending on the applicable penalties – see the text of Article 11 in footnote 12), Article 12 (on misdemeanours) and Article 47CC[7] (which provides for a maximum amount of fines – expressed in terms of minimum standard of living or MSL – applicable in respect of each category of offences). Active bribery – but also passive bribery and trading in influence / bribery of intermediaries – fall under various categories of offences, depending on the paragraphs considered[8].

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[5] **Restriction of Liberty** is defined at Article 48CC. In particular, **"**persons sentenced to restriction of liberty shall be under the obligation: 1) not to change their place of residence without giving a notice to a court or the institution executing the penalty; 2) to comply with mandatory and prohibitive injunctions of the court; 3) to give an account, in accordance with the established procedure, of compliance with the prohibitive and mandatory injunctions." In addition, the court may impose one or more restrictions or injunctions (e.g. not having contacts with certain persons, staying at home at certain times, compensating for the property damage etc.).

[6] The English translation of the Criminal Code made available to the GET, which uses the word arrest instead of detention, specifies under Article 49 CC, i.a, that **arrest (or detention)** means "a short-term imprisonment served in a short-term detention facility". The term of arrest shall be counted in days. It shall be imposed for a period from 15 up to 90 days for a crime and from 10 to 45 days for a misdemeanour. The term of arrest for a criminal act shall not be indicated in the sanction of an article. It shall be specified by a court when imposing the penalty. If arrest is imposed for a period of 45 days or less, a court may order to serve it on days of rest. Where a person violates this procedure for serving arrest, the court may decide that the procedure be changed to the regular procedure for serving arrest.

[7] **Article 47. Fine**

1. A fine shall be a pecuniary penalty imposed by a court in the cases provided for in the Special Part of this Code.
2. A fine shall be calculated in the amounts of minimum standard of living (MSL). The minimum amount of a fine shall be one MSL.
3. The amounts of a fine shall be determined as follows:
   1) for a misdemeanour – up to the amount of 50 MSLs. **[this is the case for art.227 para.3, 225 para.4, 226 para.2]**
   2) for a minor crime – up to the amount of 100 MSLs; **[this is the case for art.227 para.1, and 226.para.1]**
   3) for a less serious crime – up to the amount of 200 MSLs; **[this the case for art.227 para.2, and 225 para.1 and 2]**
   4) for a serious crime – up to the amount of 300 MSLs; **[this is the case for art.225 para.3]**
   5) for a negligent crime – up to the amount of 75 MSLs.
4. The amount of a fine for a legal entity shall be up to 50 000 MSLs.
5. The sanction of an article shall not indicate the amount of a fine for a committed criminal act. It shall be specified by a court when imposing the penalty.
6. Where a person does not possess sufficient funds to pay a fine imposed by a court, the court may, in compliance with the rules stipulated in Article 65 of this Code and subject to the convict's consent, replace this penalty with community service.
7. Where a person evades voluntary payment of a fine and it is not possible to recover it, a court may replace the fine with arrest. When replacing the fine with arrest, the court shall act in compliance with the rules stipulated in Article 65 of this Code.

[8]

Active bribery (art. 227 CC)	Passive bribery (art. 225 CC)	Trading in influence (art. 226)
Para. 1: minor crime	Para. 1: less serious crime	Para. 1: Minor crime
Para. 2: less serious crime	Para. 2: Less serious crime	Para. 1: Minor crime

22. If the act involves a bribe with a value of 250 MSLs (32,500 LTL / approximately €9,413) or more or if it involves an illegal act or omission on the side of the passive party the applicable sanction (pursuant to Article 227, paragraph 2) is four years' imprisonment. However, if the bribe has a value of not more than 1 MSL[9] (130 LTL / approximately €38) the bribe-giver can only be sentenced to restriction of liberty, detention (arrest) (Article 227, paragraph 3 CC), or a fine.

23. For passive bribery (Article 225, paragraph 1 CC) the applicable sanction is deprivation of the right to work in a certain post or to engage in certain activities or a term of imprisonment of a maximum of four years'. In case of an illegal act or omission, the bribe-taker can, as before, be deprived of the right to work in a certain post or to engage in certain activities or s/he can be sentenced to a maximum term of six years' imprisonment; if the bribe has a value of 250 MSL (32,500 LTL / approximately €9,413) or more, regardless of whether the act or omission involved was legal or illegal, the maximum term of imprisonment will be two to eight years'. Finally, if the bribe has a value of not more than 1 MSL the public official concerned can only be deprived from the right to work in a certain position or to engage in certain activities.

24. The system of calculation based on the categorisation of offences and the corresponding amount of fines in terms of MSL leads to the following fines: the maximum amount of fines ranges between 1 900 and 11 400 € under Article 225 CC, between 1900 and 3 800 € under Article 226 CC, and between 1 900€ and 7 600 € under Article 227 CC. According to Article 42 CC, a single crime or misdemeanour cannot give rise to more than one of the above penalties (they are not cumulative). Articles 63 and 64 CC regulate the determination of the applicable penalties where a person commits several offences.

25. The applicable sanctions for some other comparable crimes are as follows: a) for abuse of office (Article 228 CC): deprivation of the right to be employed in a certain position or to engage in a certain type of activities or by a fine or by arrest (detention) or by imprisonment for a term of up to four or 6 years (depending on the situation); b) for fraud (Article 182 CC), the basic offence without aggravating or mitigating circumstances is punishable with community service or a fine or restriction of liberty or arrest (detention) or imprisonment for a term of up to three years; c) for embezzlement (Article 184 CC), the basic offence without aggravating or mitigating circumstances is punishable with community service or a fine or restriction of liberty or imprisonment for a term of up to two years.

Bribery of members of domestic public assemblies (Article 4 of ETS 173)

26. The Lithuanian authorities indicate that members of domestic public assemblies are considered to be 'public servants' within the meaning of Article 230 CC. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials thus also apply to bribery of members of domestic public assemblies. To *inter alia* illustrate that the concept of public servant also covers members of domestic public assemblies in general, and municipal councils in particular, the Lithuanian authorities give the example of a case in 2005 (SCL ruling of 11 October 2005) in which two persons were convicted for "organising an attempt to bribe" and one person for attempting to bribe a member of the Vilnius City Municipality Council to vote for one of the candidates in the elections for the mayor. The case against these three persons involved an

Para. 3: misdemeanour	Para. 3: major [serious] crime	Para. 2: misdemeanour
	Para. 4: misdemeanour	

[9] See footnote 1

attempt: they "failed to complete the criminal act due to causes not depending on their will" (the member of the municipal council refused to accept the bribe). After the on-site visit, the Lithuanian authorities indicated that the Supreme Court passed a ruling requalifying the offences as completed criminal acts of bribery instead of attempt (decision of 10 February 2009, Criminal Case No. 2K-7-48/2009).

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

27. Article 230, paragraph 2 CC provides "A person holding appropriate powers in an institution of another state (…), as well as official candidates to such positions shall be held to have the status equivalent to that of a public servant". Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign public officials. To date, there has been no court decision concerning bribery of foreign public officials.

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

28. Members of foreign public assemblies are considered to be public servants in a similar manner as foreign public officials are (see above): in a definition of a public servant in Article 230, paragraph 2 CC, it is explicitly provided that persons "holding appropriate powers in an institution in another state" (which includes public assemblies) are to be regarded as public servants. Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply to bribery of members of foreign public assemblies. There has been no court decision to date concerning bribery of members of foreign public assemblies.

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

Definition of the offence

29. As indicated in paragraph 12, the abovementioned provisions of the Criminal Code (Articles 225 and 227 CC) are also applicable to bribery in the private sector as well as in the non profit-making sector. To this end, Article 230, paragraph 3 CC extends the definition of a public servant to also include persons being employed by private agencies, enterprises or organisations, provided they hold appropriate administrative powers, are entitled to act on behalf of the agency, enterprise or organisation, or provide public functions.

> **Article 230 (Definition of public servant)**
>
> (…)
> 3. In addition, a person who is employed at any state, non-governmental or private agency, enterprise or organisation, or engages in professional activities and holds appropriate administrative powers, or is entitled to act on behalf of this agency, enterprise or organisation, or provides public functions shall be held to have the status equivalent to that of a public servant.

30. The above definition considers that such persons have a "status equivalent to that of a public servant". This is mirrored in the wording used in Articles 225 (passive bribery), 226 (trading in influence/bribery of an intermediary) and 227 (active bribery) of the Criminal Code which all speak of persons of "equivalent status" besides public servants.

Elements/concepts of the offence

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

31. With regard to the scope of perpetrators, as becomes clear from Article 230, paragraph 3 CC, bribery in the private sector is only criminalised as regards persons holding "appropriate administrative powers", or "entitled to act on behalf of this agency, enterprise or organisation" or "provide public functions".

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

32. With the applicability of Articles 225 and 227 CC to private sector bribery the offence is not limited to business activities but also applies to the non-profit sector, and also does not (necessarily) require a breach of duties on the part of the passive party to the offence, although a breach of duties is liable to a more severe sanction under respectively Article 225, paragraph 2 and Article 227, paragraph 2 CC.

Other elements of the offence and sanctions

33. The elements of the offence, other than the ones mentioned in the two preceding paragraphs, and the applicable sanctions detailed under bribery of domestic public officials apply to bribery in the private sector. There have been no cases of private sector bribery so far.

Bribery of officials of international organisations (Article 9 of ETS 173), members of international parliamentary assemblies (Article 10 of ETS 173) and judges and officials of international courts (Article 11 of ETS 173)

34. Article 230, paragraph 2, CC provides that "a person holding appropriate powers in (…), an international public organisation or international judicial institution as well as official candidates to such positions shall be held to have the status equivalent to that of a public servant". Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply to bribery of officials of international organisations, members of international parliamentary assemblies and judges and officials of international courts. To date, there have not been any court decisions concerning bribery of officials of international organisations, members of international parliamentary assemblies or judges and officials of international courts.

Trading in influence (Article 12 of ETS 173)

Definition of the offence

35. Trading in influence has been criminalised by Article 226 CC, which covers passive trading in influence. This provision is entitled "trading in influence" or "bribery of intermediaries", depending on the English translation considered.

> **Article 226 (Trading in influence)**
>
> 1. Any person who, by using his social position, office, powers, family relations, acquaintances or any other kind of possible influence on a state or municipal institution or agency, an international public organisation, their servant or a person of equivalent status, in exchange for a bribe promises to exert influence on an appropriate institution, agency or organisation, a public servant or a person of equivalent status so that they accordingly act or refrain from acting legally or illegally, shall be punished by

detention or imprisonment for a term of up to 3 years.

2. Any person who commits the act specified in paragraph 1 of this Article in exchange for a bribe of minor value commits a misdemeanour, and shall be punished by a fine or detention.

3. Any legal person shall also be held liable for the acts specified in this Article.

Elements/concepts of the offence

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

36. Article 226, paragraph 1 CC refers to "promises to exert influence on an appropriate institution, agency or organisation, a public servant or a person of equivalent status". The GET was advised on site that if the person does not really have the social position to influence another person, but only claims or confirms that s/he is capable to do so, probably this would not be prosecuted for trading in influence but for fraud.

"Promising, offering or giving" (active trading in influence)

37. These elements are not present in the incrimination.

"Request or receipt, acceptance of an offer or promise" (passive trading in influence)

38. Article 226, paragraph 1, CC refers to the trading in influence in return for a bribe and does not use the terms "request or receipt, acceptance of an offer or promise [of an undue advantage]".

"Any undue advantage"

39. Article 226, paragraph 1, CC does not refer to an undue advantage, but as before with regard to the provisions on bribery (Articles 225 and 227, see paragraph 15 above) refers to 'a bribe', which is understood to be "any kind of illegally obtained property benefit, i.e. tangibles or material services provided". As before, this – in principle – does not include advantages which do not have any material value (but would, for example, only be of value to the passive party to the trading in influence offence).

"Directly or indirectly"

40. Article 226, paragraph 1, CC does not specify whether the offence can also be committed through intermediaries.

"For himself or herself or for anyone else"

41. Article 226, paragraph 1, CC does not specify whether the undue advantage (or the bribe) can be for the person exerting the influence or for someone else.

"Committed intentionally"

42. As indicated above (see paragraph 20), pursuant to Article 16 CC a person can be held liable for committing a crime or a misdemeanour by negligence only in the cases prescribed by the special

part of the Criminal Code. As Article 226 does not stipulate that trading in influence can be committed by negligence, this offence can only be committed intentionally.

Other concepts/elements

43. The Lithuanian authorities state that it is irrelevant whether the influence is exerted or not or whether it leads to the intended result or not.

44. It would seem that in some respects Article 226 CC is broader than Article 12 of the Convention. First of all, it is not limited to influence over the decision-making of public officials. By use of the words "they accordingly act or refrain from acting legally or illegally" the Article appears to cover the influence over all activities, decision-making and other. Secondly, as Article 226 refers to "an appropriate institution, agency or organisation, a public servant or a person of equivalent status" it would seem that, unlike Article 12 of the Convention, the offence is not limited to the public sector but also includes trading in influence in the private sector. Thirdly, Article 226 does not require the influence itself to be improper, but only that a bribe is given to influence another person or entity, whether this influence is improper or not.

Sanctions

45. The sanction applicable to passive trading in influence is detention or imprisonment (see the distinction at paragraph 24) for a period of up to three years. However, paragraph 2 of Article 226 CC explicitly provides that if the bribe given in exchange for exerting influence is of a minor value the sanction is a fine or detention. The Lithuanian authorities indicate that practitioners always regard the expression "minor value" as meaning the threshold of 1MSL used in the provisions on active and passive bribery of officials (see also paragraph 9ff of this report).

Court decisions

46. The Lithuanian authorities report on one judgment of the Supreme Court of Lithuania of 13 September 2005, in which one person was charged with trading in influence under Article 226, paragraph 1 CC. The person in question promised another person to use his acquaintance with a senior inspector of the traffic police to get a less severe administrative penalty imposed upon him/her in exchange for 1,000 LTL (approximately €300)[10].

Bribery of domestic arbitrators (Articles 1-3 of ETS 191)

47. As indicated above (paragraph 8), Lithuania has not ratified the Additional Protocol to the Criminal Law Convention (ETS 191). However, the Lithuanian authorities indicate that bribery of domestic arbitrators is criminalised in Lithuania by the provisions on bribery in Articles 225 and

[10] SCL ruling of 13 September 2005: E.K. was charged under paragraph 1 of CC Article 226 with, by using his acquaintance with R.K., a senior inspector of the search subdivision of the traffic patrolmen team of public police of Kaunas City Police Headquarters, on July 31, 2003, in exchange for a bribe of LTL 1,000 (EUR 300) promising V.M., a victim, to exert influence on E.K. so that he acts illegally, i.e. imposes a lighter administrative penalty under Article 127 (2) of the Code of Administrative Violations of Law on V.M., rather than an administrative penalty under Article 130 of the Code of Administrative Violations of Law, and, continuing his criminal act, on 1 August 2003, taking a bribe of LTL 1,000 from V.M., a victim, LTL 500 (EUR 150) of which he took to the office of V.K., senior inspector of the search subdivision of the traffic patrolmen team of public police of Kaunas City Police Headquarters, and put on his desk, and the other LTL 500 he decided to keep as a payment for intermediation (taking bribes of an intermediary), was acquitted by the judgement of Kaunas city regional court of 3 November 2004, after the court failed to establish that he was involved in the act having features of this offence.

227 CC, in that an arbitrator is also considered to be a public servant pursuant to Article 230, paragraph 1 CC. Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply to bribery of domestic arbitrators. To date, there have not been any court decisions concerning bribery of domestic arbitrators.

Bribery of foreign arbitrators (Article 4 of ETS 191)

48. According to the Lithuanian authorities, Sections 225 and 227 CC also cover bribery of foreign arbitrators, as Article 230, paragraph 2 CC extends the definition of a public servant to "a person holding appropriate powers in an institution of another state". Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply to bribery of foreign arbitrators. To date, there have not been any court decisions concerning bribery of foreign arbitrators.

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

49. The concept of trial by jury is not known in the Lithuanian legal system.

Bribery of foreign jurors (Article 6 of ETS 191)

50. Bribery of foreign jurors is not criminalised in the Lithuanian legal system.

Other questions

Other relevant provisions

51. During the on-site visit, reference was often made to the provisions of Article 228 on abuse of office, which appears in the same chapter as the corruption offences discussed earlier. This provision is often used in Lithuania where the evidence is likely to be insufficient to obtain a conviction for bribery. Whereas paragraph 1 covers a type of offence that is quite common in other countries, paragraph 2 makes it an aggravating circumstance to commit the offence with the objective of seeking a personal gain "in the absence of characteristics of bribery". The penalties are identical to those concerning passive bribery involving an illegal act (professional disqualification and up to 6 years' imprisonment).

> **Article 228. Abuse of Office**
>
> 1. A civil servant or a person equivalent thereto who abuses his official position or exceeds his powers, where this incurs major damage to the State, an international public organisation, a legal or natural person,
> shall be punished by deprivation of the right to be employed in a certain position or to engage in a certain type of activities or by a fine or by arrest or by imprisonment for a term of up to four years.
>
> 2. A person who commits the act provided for in paragraph 1 of this Article seeking material or another personal gain, in the absence of characteristics of bribery,
> shall be punished by deprivation of the right to be employed in a certain position or to engage in a certain type of activities or by imprisonment for a term of up to six years.
>
> 3. A legal entity shall also be held liable for the acts provided for in this Article.

Participatory acts

52. Participatory acts are covered by Articles 24 and 26 CC. Article 24 defines the different types of complicity (perpetrator, organiser, abettor, accessory). By virtue of Article 26, the participation of an organiser, an abettor or an accessory is punishable under the provisions applicable to the offence committed by the perpetrator.

Jurisdiction

53. The GET observed that Under Article 7 CC, Lithuania assumes universal jurisdiction for a series of crimes provide for in international treaties[11]; these do not include bribery and trading in influence offences. The general provisions of Articles 4 and 5 CC are thus applicable; these set out the Lithuanian rules on criminal jurisdiction, which provide for jurisdiction of *inter alia* all bribery and trading in influence offences committed within the territory of Lithuania (principle of territoriality, Article 4, paragraph 1 CC), as well as those committed abroad by Lithuanian citizens and permanent residents of Lithuania (principle of nationality, Article 5 CC). It should be noted that the principle of territoriality in Lithuanian law has a wide scope because of application of the 'doctrine of ubiquity' (in the widest sense), allowing Lithuania to assume jurisdiction if only a part of the offence takes place in Lithuania (Article 4, paragraph 3) or even if just its effects are felt in Lithuania (Article 4, paragraph 2).

> **Article 4. Validity of Criminal Statute in Respect of Persons Who Commit Criminal Acts within the Territory of the State of Lithuania or on Board Sea and River Vessels or Aircraft Flying the Flag of the State of Lithuania or Carrying its Distinctive Symbols**
>
> 1. Any person who commits criminal acts within the territory of the State of Lithuania or on board sea and river vessels or aircraft flying the flag of the State of Lithuania or carrying its distinctive symbols shall be held liable under this Code.
> 2. The place of commission of a criminal act shall be the place in which the person acted or had to act or could have acted, or the place in which the consequences laid down in the criminal statute occurred. The place of commission of a criminal act by accomplices shall be the place in which this act was committed or, if one of the accomplices operated elsewhere, the place where he carried out his activity.
> 3. A single criminal act committed both within the territory of the State of Lithuania and abroad shall be considered to have been committed within the territory of the State of Lithuania if it was commenced, completed or forestalled within the territory of the Republic of Lithuania.
> 4. When persons, who under international legal norms enjoy immunity from criminal jurisdiction, commit a criminal act within the territory of the Republic of Lithuania, the issue of criminal liability of the said persons shall be dealt with in accordance with both international agreements to which the Republic of Lithuania is a party and this Code.
>
> **Article 5. Criminal Liability of Citizens of the Republic of Lithuania and other Permanent Residents of Lithuania for Crimes Committed Abroad**
>
> Citizens of the Republic of Lithuania and other permanent residents of Lithuania shall be held liable for crimes committed abroad under this Code.

[11] 1) crimes against humanity and war crimes (Articles 99-113); 2) trafficking in human beings (Article 147); 3) purchase or sale of a child (Article 157); 4) production, storage or handling of counterfeit currency or securities (Article 213); 5) money or property laundering (Article 216); 6) act of terrorism (Article 250); 7) hijacking of an aircraft, ship or fixed platform on a continental shelf (Article 251); 8) hostage taking (Article 252); 9) unlawful handling of nuclear or radioactive materials or other sources of ionising radiation (Articles 256, 256(1) and 257); 10) the crimes related to possession of narcotic or psychotropic, toxic or highly active substances (Articles 259-269); 11) crimes against the environment (Articles 270, 270(1), 271, 272, 274).

54. In accordance with Article 8 CC, the jurisdiction of Lithuania in respect of offences committed abroad is subject to the dual criminality requirement (such offences are prosecutable in Lithuania only if they are an offence also in the place of commission).

> **Article 8. Criminal Liability for the Crimes Committed Abroad**
>
> 1. A person who has committed abroad the crimes provided for in Articles 5 and 6 of this Code shall be held criminally liable only where the committed act is recognised as a crime and is punishable under the criminal code of the state of the place of commission of the crime and the Criminal Code of the Republic of Lithuania. Where a person who has committed a crime abroad is prosecuted in the Republic of Lithuania, but a different penalty is provided for this crime in each country, the person shall be subject to a penalty according to laws of the Republic of Lithuania, however it may not exceed the maximum limit of penalty specified in the criminal laws of the state of the place of commission of the crime.
> 2. A person who has committed the crimes provided for in Articles 5, 6, and 7 of the Criminal Code of the Republic of Lithuania shall not be held liable under this Code where he:
> 1) has served the sentence imposed by a foreign court;
> 2) has been released from serving the entire or a part of the sentence imposed by a foreign court;
> 3) has been acquitted or released from criminal liability or punishment by a foreign court's judgement, or no penalty has been imposed by reason of the statute of limitation or on other legal grounds provided for in that state.

55. To date, there has been no court decision dealing with jurisdiction issues in relation with bribery offences.

Statute of limitations

56. Article 95 CC provides that the length of the limitation period applicable to a judgement of conviction depends on the type of offence: a) two years for misdemeanours; b) five years for a 'negligent or minor intentional crime'; c) eight years for a 'medium intentional (or 'less serious') crime'; d) ten years for a 'major (or 'serious') crime'; e) 15 years for a 'grave crime'.

57. The replies to the questionnaire contained no further explanations as to how corruption offences fit into these categories. In fact, the categorisation of penalties is based on the level of punishment applicable, as provided for under Article 10 to 12 CC (which sometimes use a slightly different English translation of concepts[12]). The limitation periods are thus as follows:

[12] "**Article 11. Crimes**
1. A crime shall be a dangerous act (act or omission) forbidden under this Code and punishable with a custodial sentence.
2. Crimes shall be committed with intent and through negligence. Premeditated crimes are divided into minor, less serious, serious and grave crimes.
3. A minor crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration of three years.
4. A less serious crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of three years, but not exceeding six years of imprisonment.
5. A serious [major] crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the duration in excess of three years, but not exceeding ten years of imprisonment.
6. A grave crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of ten years."
Article 12. Misdemeanour
A misdemeanour shall be a dangerous act (act or omission) forbidden under this Code which is punishable by a non-custodial sentence, with the exception of arrest.

Active bribery (art.227 CC)	Limitation period	**Passive bribery (art. 225 CC)**	Limitation period	**Trading in influence (art. 226)**	Limitation period
Para. 1: minor crime	5 years	Para. 1: less serious crime	8 years	Para. 1: Minor crime	5 years
Para. 2: less serious crime	8 years	Para. 2: Less serious crime	8 years	Para. 2: misdemeanour	2 years
Para. 3: misdemeanour	2 years	Para. 3: major [serious] crime	10 years		
		Para. 4: misdemeanour	2 years		

58. Article 95 paragraph 2 CC provides that the statutory limitation period is calculated from the day the offence is committed up to the day of the delivery of a conviction. Leaving aside genocides and other similar crimes for which there is no limitation, there are two series of special circumstances according to paragraph 3 and 4: 1) the calculation is interrupted where the suspect has been hiding from the pre-trial investigation or the trial; 2) where a person commits a new criminal act before the expiry of the terms prescribed, the calculation is interrupted and in respect of the first criminal offence, it shall commence from the day when a new crime or misdemeanour was committed.

Defences

59. Article 227 CC on active bribery provides in paragraph 4 for the special defence of effective regret, a mechanism which is provided also in general under Article 62 CC.

> (...)
> 4. A person shall be released from criminal liability for grafting where he was demanded or provoked to give a bribe and he, upon offering, promising or giving the bribe and before the delivery of a notice of suspicion raised again him, notifies a law enforcement institution thereof or offers, promises or gives the bribe with the law enforcement institution being aware thereof.
> (…)

60. Pursuant to this paragraph criminal liability for active bribery will be waived in situations in which the bribe-giver has been a "victim" of extortion or has been provoked into giving a bribe and – after having offered, promised or given the bribe – notifies law enforcement authorities before s/he has been given a notice of suspicion (or if the bribe is offered, promised or given with the knowledge of law enforcement authorities). The replies to the questionnaire do not specify whether the prosecution service has any discretion in this regard or has to release the bribe-giver from criminal liability if s/he comes forward and asserts to be a victim of extortion, or whether these claims of extortion are investigated. According to information provided separately, the decision to drop the charges is taken by the prosecutor and subject to the judges' review and approval. Bribes are always confiscated, except where the briber acted in the context of a controlled delivery, under the supervision of a law enforcement agency.

Statistics

61. The Lithuanian authorities have provided the following statistics regarding the number of criminal prosecutions initiated and persons convicted in the period 2005-2007.

		2005	**2006**	**2007**	**2008**
Passive bribery (Art. 225)	Number of persons prosecuted	29	30	34	13
	Number of persons convicted	16	19	12	13

Trading in influence (Art. 226)	Number of persons prosecuted	0	0	0	1
	Number of persons convicted	0	0	0	0
Active bribery (Art. 227)	Number of persons prosecuted	21	311	279	238
	Number of persons convicted	20	258	276	226

Legislative amendments

62. The Lithuanian authorities report that in February 2008 a working group was set up to develop amendments concerning the application of the limitation period with regard corruption offences and violations of ethical standards. The working group elaborated amendments to the Civil Service Law and the Criminal Code. Draft Law (No. XP-3256) amending Articles 225, 226 and 227 of the Criminal Code *inter alia* intends to improve the system of sanctions for corruption offences by providing for more severe penalties (which would lead to some extent to another categorisation of offences and hence to longer limitation periods), by making confiscation a more systematic requirements for the courts, and by having more alternative sanctions.

III. ANALYSIS

In general

63. Lithuanian law makers have chosen to keep the provisions incriminating corruption as concise and inclusive as possible. Article 225 of the Criminal Code (CC) is designed to cover the various situations of active bribery (concerning the public and private sector), Article 227 CC those of passive bribery (concerning the public and private sector) and Article 226 CC those on trading in influence (the official title of the Article is "bribery of intermediaries"). By virtue of additional provisions extending the concept of "public official", contained in Article 230 CC, these three Articles are also meant to cover officials employed/operating abroad or at international level, including arbitrators and jurors.

64. The Lithuanian Supreme Court (LSC) plays an important role in ensuring consistency of the handling of corruption cases by judicial authorities, especially by producing an overview of court practice containing guidance[13] for the application and interpretation of legal provisions. Issue n°26 of the bulletin on court practice is entitled "Overview of the summary of Court Practice in Criminal Cases of Crimes and Misdemeanours against the Civil Service and Public Interests (Criminal Code Articles 225, 226, 227 and 229)"; the GET was pleased to note that the conclusions of this document reflect a progressive approach and interpret the domestic provisions in a manner which is in line with the Convention and sometimes goes beyond it. In particular, it is clear in legislation that the active and passive bribery offences are dissociated and that the briber and bribee can be prosecuted independently (this was often confirmed during the interviews). The LSC has also made it clear that there is no need to demonstrate the existence of a corrupt agreement, nor that it has been accepted or fulfilled. As regards the basic elements of the active bribery offence, Article 227CC refers to the *offering, promising to give and giving of a bribe*. As regards the basic elements of the passive bribery offence, Article 225 CC refers to the *accepting, making a promise or entering into an agreement to accept a bribe, or soliciting or*

[13] The Constitutional Court has ruled on 28 March 2006 that the Supreme Court cannot be consulted for an opinion by the lower courts anymore as this would affect their own independence of judgement. Besides, the GET was advised that although the overview of court practice obviously remains only a guidance document, the Supreme Court case law has to be taken into account by the lower courts.

provoking the giving of such a bribe. The LSC's court practice analysis underlines clearly that both types of offences shall be considered as completed when any one of the elements is met. In this respect, the GET noted that the passive bribery definition does not include the element of "receiving" of a bribe; the on-site discussions showed that the concept of "accepting of a bribe" is understood broadly as including both the case where a bribe has been given spontaneously by the briber and the bribee has shown some level of acceptance, as well as the case where there is a prior solicitation or an underlying (tacit or formal) agreement for instance. This is confirmed in the LSC's analysis which – although it never uses the word "receiving" either – makes it clear that accepting material values or services given by a briber as a gift even in the absence of a demand, agreement, promise or formal acceptance qualifies for an act of passive bribery under Article 225 CC, if they come as a reward or remuneration for an act or inaction; this applies whether the advantage in question was given before or after the bribee's act or inaction took place, and whether the briber's expectations were satisfied or not.

65. This being said, in the GET's view police and prosecution authorities are apparently confronted with a standard of evidence which is excessive. On various occasions, the information provided suggested that the criminal law provisions on bribery and trading in influence are used or interpreted in a restrictive manner[14], unlike what the legal dissociation between active and passive bribery as well as the progressive case-law analysis of the LSC would suggest. Although courts reportedly accept that to substantiate a corruption offence, it is not necessary to go so far as to apprehend the offender whilst committing the offence, the discussions held on site showed that there is a need in practice to obtain direct evidence for the criminal intent and the concrete act of bribery (typically this implies in Lithuania using covert investigative techniques or confronting the suspect with the evidence to obtain his/her confession)[15]. It was acknowledged during the discussions that even where witnesses and/or good information are available, offences which have already occurred and are not likely to be repeated are difficult to handle and such cases would need to be dropped (for cases likely to be repeated, a simulated offence or controlled delivery would be used by law enforcement agencies).

66. Because it is acknowledged that corruption offences are sometimes particularly difficult to prosecute, other offences or provisions are used instead, especially those on abuse of office of Article 228 CC (see paragraph 51) – which appears under the same chapter as bribery offences: the GET was given to understand that this provision is applied in corruption cases quite frequently[16] because the level of evidence required is much lower. This being said, Article 228 CC also raises difficulties because of the concept of "major damage to the state" which has never been defined, according to most practitioners met on-site. The Lithuanian authorities might wish to remedy this situation.

67. Moreover, the GET noted that sometimes, the provisions on attempt of Article 22 CC are still used in conjunction with those incriminating bribery and trading in influence/bribery of

[14] For instance, police representatives stressed that in the absence of any more concrete and real facts (money changing hands, performance of an act), no prosecutor would take a case to court solely with the evidence for an agreement in which a briber would have offered an advantage to the bribee if he accepted to perform a certain act in return). A representative of the Ministry of Justice stressed that in practice, it is not enough for the bribee to just take or accept a bribe, s/he should also have performed the act for which the bribe was given in order to be prosecuted. Prosecutors stressed that if a briber gave money without a word to a public employee who is dealing with his/her application for a permit, it is most likely that in practice, it is the public employee who would be prosecuted for abuse of office in case s/he accepted the bribe.

[15] Attention of the GET was drawn to various cases against Lithuania which have reached the European Court of Human Rights because of the aggressive use of certain special investigative techniques, including provocation.

[16] In 2008, 34 criminal court hearings were held which involved 51 persons. 37 persons were convicted under article 228CC. Compare with the number of passive bribery cases, which is lower, mentioned at paragraph 61.

intermediaries, and this, in circumstances in which the criminal acts should normally qualify as completed offences (where the solicited party refuses to pay a bribe, for instance); it could well be that this too, is a consequence of particularly high standards of evidence in practice. The GET considers that there is a risk of inconsistency since unilateral acts of corruption such as giving, offering, soliciting a bribe are currently prosecutable as such, whether or not the other party responds positively to that kind of proposal. The way the bribery offences are defined in Lithuania, which – interestingly – includes non explicit behaviours of the briber or bribee (see the expression "provoking the giving of a bribe" used in the incrimination of passive bribery, as well as – below - the meaning given to the word "indirectly" used both by the active and passive bribery incriminations) should in principle leave no doubt that the offence is completed instantaneously. The extent of the problem could be less important than what the GET initially was led to believe[17] and besides, the Supreme Court and the Prosecutor General's Office have recently paid particular attention to this issue in a way that should logically put an end to it[18].

68. To conclude, it is a challenging exercise for the GET to make a fair and detailed analysis of the legal obstacles affecting the implementation of bribery and trading in influence provisions. It is clear, however, that other countries have managed to establish a standard of proof allowing prosecutorial authorities to infer evidence also from objective factual circumstances and to bring to trial a greater variety of corruption cases, including those that do not involve repetitive offences or offences committed (and/or that have produced their effects) in the past. The GET therefore recommends **to take additional measures (training, circulars and other awareness raising initiatives) to encourage the use of objective factual circumstances to substantiate bribery and trading in influence offences.**

69. The provisions on active and passive bribery (respectively Articles 227 and 225 CC) incriminate bribery for the purposes of obtaining either a positive or negative act from the bribee. A particular feature of the Lithuanian legislation is that it distinguishes between a "legal" and "illegal" act of the bribee i.e. an act that falls within the mandate and powers of the bribee and that would be admissible according to law, as opposed to one that does not. Bribery connected with an illegal act is an aggravating circumstance. The GET noted that negative acts (omissions) appear under both circumstances but the on site discussions have not revealed any particular problems with the distinction between a legal and an illegal omission to act.

70. Articles 225 (passive bribery), 226 (trading in influence/bribery of intermediaries) and 227 (passive bribery) CC refer to bribes and define the seriousness of the offence according to its value. Opinions diverged strongly during the discussions as to whether non material advantages could be considered as bribes; some practitioners clearly stressed that diploma, distinctions or sexual services are not included, whereas others explained that the concept of bribe encompasses every benefit as long as it can be attributed a market value according to a solution that has progressively arisen from case law. From this point on, some practitioners took the view that this jurisprudential solution would allow to attribute a market value to any form of bribe, whilst others considered that this solution would not always work because the benefit in question should have a value on the legitimate/legal market, a condition that would exclude certain forms of

[17] It would appear that the summary of certain court cases provided to the GET referred mistakenly to the word "attempt".

[18] See at paragraph 26, the Supreme Court decision rendered after the GET's visit, on 10 February 2009 (Criminal Case No. 2K-7-48/2009). Also, the Prosecutor General's Office has issued and disseminated a guiding document dated 23 January 2009, entitled "Overview of Prosecutors Practice in Criminal Cases of Corruption (Bribery, Bribery of an intermediary, Graft and Abuse of Office) heard by the Courts in 2008". It contains an analysis of cases and a set of conclusions in which it is stressed that using the provisions on attempt is "incorrect and inconsistent with the existing court practice"; it also underlines the importance for prosecutors to lodge an appeal in those cases where the court verdict is based on the provisions on attempt.

advantages that are illegal by nature (e.g. sexual services/prostitution). The GET also believes that certain forms of bribe cannot always be attributed a market value, either because of their uniqueness or because they represent a benefit only for the bribee in his/her personal situation, not to mention certain forms of immaterial bribes/advantages such as diplomas and distinctions which are hardly assessable in terms of market value. For the GET, it is quite clear that the situation needs clarification and that a broader concept should be used, that would be in line with the concept of "undue advantage" used in the Convention. The GET recommends **to extend the concept of bribe in the incriminations of bribery and trading in influence so as to cover clearly any form of benefit (whether material or immaterial and whether such benefits have an identifiable market value or not), in line with the concept of "any (undue) advantage" used in the Criminal Law Convention on Corruption (ETS 173).**

71. The incrimination of active bribery in Article 227 CC refers to bribery involving an "intermediary" to offer, promise or give an undue advantage (a "bribe", in the case of the Lithuanian law). The passive bribery incrimination of Article 225 CC only uses the expression "directly or indirectly" (which is also used in Article 227 CC) and as the GET was advised on site, the expression was initially meant for another purpose, namely to describe the way the solicitation or acceptance takes place (explicitly or implicitly). Case law would have filled the gap and interpreted the expression "directly or indirectly" so as to also cover the involvement of intermediaries; this is also reflected in the LSC analysis document and in principle, practitioners should thus be aware of this jurisprudential development. Besides, under the active bribery offences of Article 227 CC, there are strictly speaking no provisions incriminating bribery where the beneficiary of the bribe is a third party (whether a natural or legal person), although this type of situations are clearly covered under the passive bribery provisions of Article 225 CC, which include the expression "for his own benefit or the benefit of others". Although the Lithuanian authorities stress that in a concrete case, it does not matter who the ultimate beneficiary is, as long as the other elements of the active bribery offence are substantiated, the GET found no satisfactory explanation for this apparent lacuna. Above all, there is a risk that, in practice, Article 227 CC be interpreted narrowly – in comparison with Article 225 CC. In view of these considerations, the GET recommends **making it clear for everyone that instances in which the advantage is not intended for the bribe-taker him/herself but for a third party are covered by the provisions on active bribery under Article 227 of the Criminal Code.**

Private sector corruption

72. Articles 225 and 227 CC criminalising passive and active bribery, respectively, cover also bribery in the private sector. This is done through the reference in these Articles to the concept of persons of a status equivalent to public servant, which is specified in Article 230 paragraph 3 CC, as indicated in the descriptive part (see paragraphs 29 ff). A strength of the approach followed by Lithuania is that by covering with the same provisions the public, private and non profit sector, as well as independent professionals, there are no loopholes or practical difficulties possibly connected with the determination of the provisions applicable to private sector entities in charge of a public service or public-private partnerships for instance. Besides the general strengths and weaknesses of the incrimination of bribery (discussed in other paragraphs of this report), the GET wishes to recall that Articles 7 and 8 of the Convention require to incriminate bribery in the private sector as far as the relevant bribery acts involve "any persons who direct or work for, in any capacity, private sector entities"; this is not limited to managers and employees[19]. Article 230

[19] As indicated in paragraph 24 of the explanatory report, "this sweeping notion is to be interpreted broadly as it covers the employer-employee relationship but also other types of relationships such as partners, lawyer and client and others in which there is no contract of employment. Within private enterprises it should cover not only employees but also the management

paragraph 3 CC covers any person employed by, or entitled to act on behalf of, a private agency, enterprise or organisation, which seems globally in line with the requirements of the convention. To date, there have been no opportunities to test the private sector bribery incrimination in Lithuania[20], therefore there is little to comment about. In any event, the Lithuanian authorities may wish to examine the reasons for this situation.

Trading in influence

73. Trading in influence is criminalised to some extent under Article 226 CC, which – as indicated earlier – is sometimes entitled "trading in influence" and sometimes "bribery of intermediaries". The expression "any person who (…) in exchange for a bribe promises to exert influence on an appropriate institution, agency or organisation, a public servant or a person of equivalent status (…)" goes beyond the requirements of the Convention and covers trading in influence where the target of the influence is also a private sector or non profit organisation or person. This being said, the definition of the offence lacks various elements required under the Convention, such as a) the active part of the offence (criminalisation of the behaviour of a person seeking from another one to exert his/her influence); b) the various forms of the bribery action (receiving, requesting, accepting in addition to those obviously missing for the active part); c) the various possible outcomes and consequences of the influence that should not matter for the purpose of the incrimination (whether the possession of influence is real or not, whether it is exerted or not, or produces the result expected or not, etc.). There has only been one case so far recorded in Lithuania (it was ongoing at the time of the visit) and the Lithuanian Supreme Court has not had an occasion to analyse much material or produce significant guidance in the area of trading in influence / bribery of intermediaries. It has only pointed out that it does not matter whether or not the intermediary making a promise (to exert his/her influence), in return for a bribe has already received, promised or agreed to accept the bribe. During the on site discussions, the GET could not gather a clear picture as to whether the various elements of Article 12 of the Convention are included. On one occasion, it was stressed that if the person "selling" his/her influence appears not to possess any real influence, he/she would be prosecutable for fraud; this confirms that this offence is sometimes misunderstood and Lithuania clearly needs to amend the relevant legal provisions. The GET recommends **to incriminate trading in influence in line with Article 12 of the Criminal Law Convention on Corruption (ETS 173).**

Additional Protocol

74. The provisions of Article 230 CC define the concept of "public servant" and thus the scope *ratione personae* of the bribery and trading in influence / bribery of intermediaries offences. It has been designed in broad terms so as to include in principle the various categories of public officials contemplated in the Convention, including members of domestic, foreign and international assemblies, and persons employed by international organisations (the GET could not, however, determine the exact implications of the expression "a person holding appropriate powers in an institution of another state"). It goes beyond the Convention in that candidates to such functions are also included.

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from the top to the bottom, including members of the board, but not the shareholders. It would also include persons who do not have the status of employee or do not work permanently for the company - for example consultants, commercial agents etc.- but can engage the responsibility of the company.

[20] Possible reasons for this include the fact that current priorities of the anti-corruption authorities lie elsewhere, and that whistleblower protection – that could help reveal such cases – is still considered insufficient in Lithuania.

75. Lithuania has not ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and although the replies to the questionnaire suggested that there are certain loopholes as regards the incrimination of bribery of jurors, the authorities have sometimes taken the view during the on site visit that despite that, the country's legislation already complied with the various provisions of the protocol, especially since Article 230 is very inclusive and extends the provisions on bribery and trading in influence also to the private and non governmental sector. Other representatives sometimes considered that because the country has no jury system, it is not necessary to specifically incriminate bribery in respect of jurors or ratify the Protocol. If this was true, Lithuania would not be in a position to prosecute offences involving such persons (for instance where a Lithuanian national would bribe a foreign juror) nor to cooperate internationally with other countries that have criminalised corruption in relation to jurors (where dual criminality or reciprocity requirements apply). As regards arbitrators, the Lithuanian authorities explain that arbitration functions would fall under Article 230 paragraph 1 CC as regards those exerted domestically, and under Article 230 paragraph 4 CC as far as foreign arbitrators are concerned (see descriptive part, paragraph 11ff). Although Article 230 CC is very inclusive, the GET wondered whether its provisions capture well enough the specificities of the arbitration function (for instance where a foreign arbitrator who may not hold any powers in an institution of another state may just be appointed by two parties to decide on any disputes). The GET believes that Lithuania thus needs to put beyond doubt that bribery of arbitrators and jurors is adequately criminalised and clarify its position vis a vis the Protocol. The GET therefore recommends **to ensure that active and passive bribery of domestic and foreign arbitrators and jurors is criminalised in accordance with Articles 2 to 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and to sign and ratify this instrument as soon as possible.**

Sanctions

76. The figures on the number of cases prosecuted and convictions for bribery and trading in influence apparently do not reflect the reality of the importance of corruption in Lithuania; estimates were given as to the proportion of complaints reported to the police that eventually lead to a prosecution (about 10%), the proportion of convictions being, ultimately, quite high (a conviction would be reached in 80 to 90% of cases prosecuted, according to the authorities). As the GET was told, the costs of proceedings in court can be an issue and in certain areas (for instance the police), only about half of the cases where corruption was confirmed would have been sent to court, the other half being handled solely as disciplinary cases and sanctioned by administrative fines. As indicated above (see paragraph 66), a significant number of passive bribery cases are in fact prosecuted as abuse of office (Article 228 CC), but the maximum penalties do not diverge very much. The workload of the courts also depends on the priorities of the law enforcement and prosecutorial authorities; as the figures of paragraph 61 show, the number of cases has dramatically increased in 2006 and 2007, especially as regards active bribery. This would result from a change in attitude consisting at present to deal more strictly with active bribery offences, but also from priorities in the work of law enforcement agencies dealing with corruption[21].

77. There are two particular features in Lithuanian practice that have retained the GET's attention in this context. The first is the dilemma resulting from the prosecution of bribery offences where the bribe is worth just a few Euros and it has happened in the past that first instance courts and

[21] During the on site visit, the GET was advised that corruption within the police and local authorities was a priority. After the visit, the Lithuanian authorities indicated that the current priority areas include public procurement, restitution of land, the energy and health sectors.

appellate courts acquit offenders on the ground that certain forms of bribery are so common that it would be unfair to prosecute and convict those who are caught; it would appear that the Supreme Court remains vigilant on this issue and condemns this kind of reasoning (in a ruling of 20 March 2007, the Supreme Court considered that the smallness of bribes and the fact that certain forms of bribery are common should not justify an exemption from liability)[22]. Secondly, the GET heard various allegations which would indicate that the criminal justice system is affected by undue influences including corruption and lacks a climate of objective (perceived) impartiality[23], especially when cases involve high ranking or elected officials. As a matter of fact, the GET understood that the vast majority of convictions secured to date concerned low level officials and mostly minor forms of bribery. Lithuania has some protective measures, such as those of Chapter XXXIV of the CC, including the offence of "hindering criminal justice bodies from doing their work", "contempt of court", "influence on a witness" etc. but they have never been applied. The GET draws the attention of the Lithuanian authorities about the importance of these allegations and the need to ensure public trust in the justice system.

78. On paper, the system of sanctions applicable to offences of bribery and trading in influence seems rather complex and it lacks consistency. In particular, the penalties for active bribery are generally milder than those applicable to passive bribery and the basic offence of Article 227 paragraph 1 CC (which aims to obtain a legal act or abstention) for instance contains various alternative penalties that are equally applicable in lieu of imprisonment: restrictive measures (such as house arrest), fines and up to 3 months' detention in a special facility. The fine levels are likely not to be proportionate and dissuasive against wealthy bribers or bribees (the highest amount is 11 400 € for passive bribery offences under Article 225 CC, 3 800 € for bribery of intermediaries / trading in influence under Article 226 CC, and 7 600 € for active bribery offences under Article 227 CC). Professional disqualifications are not applicable for active bribery (nor for trading in influence/bribery of intermediaries) as it is the case for passive bribery. The GET was told on various occasions that penalties pronounced in practice in corruption cases are very low, even if this is partly the result of the quantitative importance of prime time offenders (which is an extenuating circumstance). The GET did not manage to obtain statistical information about the

[22] SCL ruling of 20 March 2007:
The ruling was taken to release R.A. from criminal liability for having asked, in the official police car, (…) [the officers] not to issue an administrative violations' protocol and offering a bribe of LTL 20 (EUR 6). The Court of First Instance confirmed the charges (active bribery under Article 227(3) CC), yet acknowledged the crime as insignificant and pursuant to Article 37CC, released the accused from liability and discontinued the criminal case. While discontinuing the criminal case, the District Court referred to the lack of damage, characteristics of the object of crime and a fact that the person concerned attempted to avoid administrative rather than criminal liability. The Court of Appeal examined the motives listed by the prosecutor in the appellate complaint regarding the improper application of the criminal law, but agreed with the reasoning of the district court. The Supreme Court considered "that the courts applied the criminal law (CC Article 37) improperly in this case. The courts unduly ruled the crime committed by R.A as insignificant and hence groundlessly released him from criminal liability. The court which ruled that R.A. should be released from criminal liability mentioned, as one of the motives for the ruling, that sentencing R.A. pursuant to CC Article 227 (2) would contradict the liberalisation of criminal policy and would be anti-human. The chamber holds that, on the contrary, the fight against bribery is one of the legal policies of the state, one of the priorities of criminal policy and hence law enforcement bodies are obliged to strengthen the fight against this phenomenon in every possible way. If the rulings taken by the Kaunas district court and Kaunas county court were left effective, then the court practice in bribery cases would be shifted towards a totally unacceptable direction for the state. As seen from the court practice, drivers, for the omission of action of the part of police officers, i.e. non-issuance of administrative violation's protocol, usually give a bribe which is less than 1 MSL (less than EUR 38). Such court rulings may encourage the other courts to make similar rulings in analogous cases. As a result, the court practice may lead to exempting from liability all persons who would give to a public servant bribes worth less than 1 MSL for committing unlawful actions. This may very negatively affect the state's efforts to strengthen the control of bribery."

[23] Senior police officers, judges and prosecutors occasionally charged with bribery offences – reportedly also as a result of manoeuvres aiming to neutralise them, allegations that criminals enjoy complicities within these bodies, evidence deliberately leaked out during pre-trial investigations to neutralise it, public criticism and other forms of undue pressure exerted on the courts and witnesses, both by elected officials and defence lawyers, etc.

level of penalties pronounced by the courts to check whether they are proportionate, dissuasive and effective in practice. As the Lithuanian authorities pointed out, projects exist to review the level and categories of sanctions in order to make the anti-corruption legislation more robust and the sanctions more dissuasive. These efforts deserve to be supported. The GET therefore recommends **to review the sanctions applicable to bribery and trading in influence in order to increase their consistency as well as the level of penalties applicable (especially to active bribery and trading in influence / bribery of intermediaries), and to ensure they are effective, proportionate and dissuasive.**

79. The GET was told on site that there was a general tendency to show some understanding *vis a vis* active bribery because the real threat for the state and society would come from passive bribery, and because individuals sometimes would have no choice but to pay extra money to obtain the service due by the state. The GET understands the rationale of such an approach, but then it should suffice to rely on the provisions of Article 227 paragraph 4 CC and the system of effective regrets to offer some form of protection to victims of bribe extortion, without potentially diluting the liability of all those who commit an active bribery offence. The review of sanctions mentioned above should be the occasion to give a further signal about the change in policy which was apparently initiated in 2006, if one looks at the statistics on convictions for active bribery as presented in paragraph 61.

Effective regret

80. Paragraph 4 of Article 227 CC on active bribery provides for a system of effective regret by which a person cannot be held liable where s/he has responded positively to a request to give a bribe or was "provoked" to do so (the last part of the provision is meant to facilitate controlled deliveries of bribes and simulated offences),[24]. The Lithuanian authorities stressed that this liability exemption is applied quite regularly in practice and that several safeguards are in place to avoid that the system be abused in practice: a) the briber benefits from the provision only if s/he was solicited i.e. chronologically there should have been a preliminary request from the bribee, b) the briber must refer the matter to criminal justice bodies before law enforcement agencies find about it and s/he should do so voluntarily; in the past, the offender had to report the facts to the authorities right away but the current formulation aims at avoiding certain difficulties encountered in practice under the previous regime; c) the decision of the prosecutor to abandon charges must be approved by the judge; d) the bribe must be confiscated in all cases according to Article 72 CC (except in the context of police operations). The GET welcomed these elements but still regretted that the exemption from liability is mandatory for the prosecutors and the courts and that the latter have thus insufficient room to evaluate in a fair manner the co-responsibility of the briber in each individual case when exercising their control. Besides, although effective regret only applies where the bribee was provoked or solicited to pay a bribe, the wording of the exemption in Article 227 paragraph 4 covers any acts of the briber (including offering and promising of a bribe, which potentially makes him/her hardly qualify as a victim of extortion in every case); this renders the judicial margin of appreciation mentioned above even more important. The GET understands that in those circumstances where bribes are extorted by bribees who would otherwise refuse to perform their duties, it can be useful to have provisions on effective regret in place to dissuade and to detect this kind of behaviour. But this kind of provisions needs to be subjected to real judicial scrutiny. The GET therefore recommends **to analyse Article 227 paragraph 4 of the**

[24] As indicated in the descriptive part, article 227 paragraph 4 reads as follows: "4. A person shall be released from criminal liability for offering a bribe if he is extorted or provoked to give a bribe and he, after offering, promising or giving a bribe, notifies an appropriate law enforcement institution of it before he is given a notice of suspicion, or a bribe is offered, promised or given by him with the knowledge of an appropriate law enforcement institution."

Criminal Code and recent cases in which the defence of *effective regret* has been invoked, with a view to ascertaining the potential for misuse of this defence and, if need be, to take further appropriate measures.

Statute of limitation

81. Practitioners from various fields have pointed at difficulties with complying with the current statute of limitation applicable to prosecution. Except for the various misdemeanours where the 2 year period is extremely short and should be increased, the GET found the time limits for prosecution reasonably long enough. However, it is the way they are calculated that poses some problems: in particular, the limitation period runs until the day of the delivery of a possible conviction (and not with the accusation or initiation of criminal proceedings, as in other countries); therefore, there seems to be great reluctance from the prosecutorial authorities to file a case in court even 6 months before the statute elapses. Furthermore, since it is not possible to suspend the calculation of the time limit – apart from those cases where the offender has taken steps to evade the consequences of his actions (such as hiding) – it is alleged that defendants and lawyers use this to delay unnecessarily the proceedings (e.g. repeated sickness on the days of court hearing). The GET was told that there had already been various attempts to introduce possibilities to suspend and/or interrupt earlier the statute of limitation, but the Parliament had been unable up to now to adopt such a reform. These efforts should be pursued more vigorously, even though the current plans to increase the penalties for corruption-related offences could lead to prolong the statute of limitation itself. The GET recommends **to increase the flexibility of the statute of limitation (for the prosecution of offences), in particular by providing for the interruption or suspension of the period of limitation upon the institution of criminal proceedings.**

Jurisdiction

82. The replies to the questionnaire simply quoted the legal provisions applicable and provided no explanation as to how Article 4 and 5 CC apply with regard to the requirements of Article 17 paragraph 1 of the Convention. As indicated in the descriptive part, Article 4 paragraph 1 CC establishes the territoriality principle according to which Lithuania has jurisdiction for all offences committed in the country, independently from the nationality of the offender. In combination with paragraph 3 – which establishes domestic jurisdiction where the offence was commenced, completed or interrupted in Lithuania, meets to some extent the requirements of Article 17 paragraph 1 subparagraph a. Article 5 CC provides that nationals and other permanent residents of Lithuania are prosecutable domestically for offences committed abroad. The GET assumes that in most cases, public officials or members of domestic assemblies (in the spirit of Article 17 paragraph 1 subparagraph b of the Convention) would be either nationals or at least permanent residents, and therefore, the requirements of this second subparagraph can broadly be considered as satisfied.

83. The situation is more unclear when it comes to determining whether Lithuania has established jurisdiction for offences involving one of its public officials or members of its domestic public assemblies or any person mentioned in Articles 9 to 11 of the Convention who are at the same time one of its nationals (as required by Article 17 paragraph 1 subparagraph c of the Convention). The purpose of this provision is for the countries to protect their interest, for instance where a foreign company has bribed or tried to bribe a Lithuanian official abroad. This kind of situation does not fall under any of the provisions already discussed above, nor those of Article 6 CC which is limited strictly to national integrity and safety issues. The GET enquired during the on-site discussions whether Article 4 paragraph 2 CC would be applicable in this

context as it seems to give broad jurisdiction to Lithuania by virtue of the principle of ubiquity[25]. Practitioners could not give a clear answer to this.

84. The GET noted that Article 8 CC requires that for offences committed abroad by nationals and permanent residents, the offence is prosecutable in Lithuania if it is punishable also in the country were it was committed. This condition is not foreseen by the Convention and restricts unnecessarily Lithuania's jurisdiction. In view of the above, the GET recommends **(i) to ensure that Lithuania has jurisdiction in respect of bribery and trading in influence offences where the offence is committed in whole or in part in its territory, and in all situations where the offence involves one of its public officials or any other person referred to in Article 17 paragraph 1 subparagraph c of the Criminal Law Convention on Corruption; (ii) to abolish the dual criminality requirement for the prosecution of bribery and trading in influence offences committed abroad by its nationals, public officials or members of domestic public assemblies.**

IV. CONCLUSIONS

85. Lithuania has adopted a legal model of incrimination of corruption that puts emphasis on consistency: the same provisions apply to domestic and cross-border offences committed in the public sector, the private sector and even the non profit sector which, in principle, limits the risk of legal loopholes. The legislation makes a clear distinction between active and passive bribery offences and these offences reflect most of the main requirements of the Criminal Law Convention on Corruption, which is not the case for the trading in influence offence. Besides, Lithuania has not yet ratified the Additional Protocol to the Convention and the legal coverage of corruption of arbitrators and jurors is uncertain. Some adjustments are required to increase the consistency of the incriminations of bribery (spelling out clearly that it does not matter whether the beneficiary is the bribee him/herself or a third party) and to extend the concept of bribe (so as to encompass also immaterial advantages and those which have no identifiable market value). Improvements are also desirable as regards the level and consistency of sanctions, the provisions on effective regret and certain aspects of a more procedural nature such as the statute of limitation which currently elapses only at the date of the court verdict.

86. In practice, it appears that the level of proof required to convict a person for corruption is too high; thus, many possible corruption acts are not prosecuted (especially those which have already occurred and are not likely to be repeated), but once a case is taken to court, it is usually concluded with a conviction. The prosecution of corruption-related offences would take advantage of using more broadly evidence based on objective factual circumstances.

87. In view of the above, GRECO addresses the following recommendations to Lithuania:

i. **to take additional measures (training, circulars and other awareness raising initiatives) to encourage the use of objective factual circumstances to substantiate bribery and trading in influence offences** (paragraph 68);

ii. **to extend the concept of bribe in the incriminations of bribery and trading in influence so as to cover clearly any form of benefit (whether material or immaterial**

[25] Article 4 para.2 CC: "The place of commission of a criminal act shall be the place in which the person acted or had to act or could have acted, or the place in which the consequences laid down in the criminal statute occurred. The place of commission of a criminal act by accomplices shall be the place in which this act was committed or, if one of the accomplices operated elsewhere, the place where he carried out his activity."

and whether such benefits have an identifiable market value or not), in line with the concept of "any (undue) advantage" used in the Criminal Law Convention on Corruption (ETS 173) (paragraph 70);

iii. **making it clear for everyone that instances in which the advantage is not intended for the bribe-taker him/herself but for a third party are covered by the provisions on active bribery under Article 227 of the Criminal Code** (paragraph 71);

iv. **to incriminate trading in influence in line with Article 12 of the Criminal Law Convention on Corruption (ETS 173)** (paragraph 73);

v. **to ensure that active and passive bribery of domestic and foreign arbitrators and jurors is criminalised in accordance with Articles 2 to 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and to sign and ratify this instrument as soon as possible** (paragraph 75);

vi. **to review the sanctions applicable to bribery and trading in influence in order to increase their consistency as well as the level of penalties applicable (especially to active bribery and trading in influence / bribery of intermediaries), and to ensure they are effective, proportionate and dissuasive** (paragraph 78);

vii. **to analyse Article 227 paragraph 4 of the Criminal Code and recent cases in which the defence of *effective regret* has been invoked, with a view to ascertaining the potential for misuse of this defence and, if need be, to take further appropriate measures** (paragraph 80);

viii. **to increase the flexibility of the statute of limitation (for the prosecution of offences), in particular by providing for the interruption or suspension of the period of limitation upon the institution of criminal proceedings** (paragraph 81);

ix. **(i) to ensure that Lithuania has jurisdiction in respect of bribery and trading in influence offences where the offence is committed in whole or in part in its territory, and in all situations where the offence involves one of its public officials or any other person referred to in Article 17 paragraph 1 subparagraph c of the Criminal Law Convention on Corruption; (ii) to abolish the dual criminality requirement for the prosecution of bribery and trading in influence offences committed abroad by its nationals, public officials or members of domestic public assemblies** (paragraph 84).

88. In conformity with 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 31 January 2011.

89. Finally, GRECO invites the authorities of Lithuania to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.