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**DIRECTORATE GENERAL I – LEGAL AFFAIRS**  
**DEPARTMENT OF CRIME PROBLEMS**

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## **Second Evaluation Round**

### **Evaluation Report on Estonia**

Adopted by GRECO  
at its 19<sup>th</sup> Plenary Meeting  
(Strasbourg, 28 June – 2 July 2004)

## **I. INTRODUCTION**

1. Estonia was the fourth GRECO member to be examined in the Second Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Keith McCarthy (Head of Inland Revenue Anti Money Laundering Unit, United Kingdom), Mr Pekka KOPONEN (State Prosecutor, Office of the Prosecutor General, Finland) and Mr Tibor SEPSI (Legal Advisor, Ministry of Justice, Department of Public Law, Budapest (Hungary)). This GET, accompanied by two members of the Council of Europe Secretariat, visited Tallinn from 20 to 24 October 2003. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval II (2003) 2E) as well as copies of relevant legislation.
2. The GET met with officials from the following governmental organisations: Ministry of Justice (international and criminal law division, internal audit department, Central Register of Companies), the Legal Chancellor, State Chancellery (department in charge of civil service and coordination matters) Ministry of Interior (Internal Security Department, Economic Crime Department of the Central Criminal police, Foreign Relations Bureau, Border Guard, Financial Intelligence Unit, Internal Audit and Internal Control Departments), Ministry of Finance (Financial Control Department, Tax Fraud Investigation Centre, Internal Audit Department, Estonian Customs Board – Department for Disciplinary Measures and Corruption, National Accounting Standards Board) State Security Police, Public Prosecutor's Office, Tallinn City Court, State Audit Office and the Audit Department of the City of Tallinn. Moreover, the GET met with members of the following non-governmental institutions: the Bar Association, Association of Estonian Cities, Estonian Telecom Group, Union of Journalists, Chamber of Commerce, Jaan Tõnnisson Institute (acting as Estonian Transparency International Chapter).
3. It is recalled that GRECO agreed, at its 10<sup>th</sup> Plenary meeting (July 2002), that the 2<sup>nd</sup> Evaluation Round would run from 1<sup>st</sup> January 2003 to 30 June 2005 and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would deal with the following themes:
  - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;
  - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
  - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.
4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Estonian authorities in order to comply with the requirements deriving

from the provisions indicated in paragraph 3. In this respect, it should be noted that on 6/12/2001 Estonia ratified the Criminal Law Convention on Corruption, which entered into force on 1 July 2002. The report contains first a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Estonia in order to improve its level of compliance with the provisions under consideration.

## **II. THEME I – PROCEEDS OF CORRUPTION**

### **a. Description of the situation**

5. The present Estonian Penal Code (hereinafter PC), adopted on 6 June 2001, entered into force on 1 September 2002. Several new provisions on confiscation and corruption have been included. The Penal Code implementation Act - entered into force on 1 September - provides for transitional measures. A new Criminal Procedure Code (CCP) is expected to enter into force in July 2004.

#### Provisional measures

6. Estonia has indicated that the communication, freezing or seizure of bank, financial or commercial records is possible in relation to proceeds of corruption offences, on the basis of Section 49 CCP<sup>1</sup>. There are no figures available on the number of cases in which interim<sup>2</sup> or final measures have been applied but at least three corruption cases are known where assets have been seized (for a total of 200,000 €). The absence of figures on the number of confiscation decisions was explained by the fact that the Penal Code was only adopted recently. A specific investigation targeting the proceeds deriving from a serious crime, notably corruption, is systematically initiated, at the level of the Central Criminal Police.
7. Seizure is regulated by the Code of Criminal Procedure (hereinafter CCP). This measure is applicable during investigations relating to any criminal offence, including corruption. If a preliminary investigator has sufficient grounds to believe that an “object” which is relevant to a criminal matter may be located, s/he shall conduct a search to find it. If the exact location is known, the seizure shall be carried out (Section 139) and measures for the “preservation” of this object (or document) during a search or seizure (Section 140) must be provided. Seizure orders of the preliminary investigator require the consent of a prosecutor (Section 146). Specific provisions are applicable to the seizure of certain goods, such as buildings and cars. The seizure of property within the framework of a money laundering case (Section 146(1)) is carried out on the basis of the investigator’s or prosecutor’s order, as approved by a judge. By virtue of the Money Laundering Prevention Act (Section 15(2)), the Estonian Financial Intelligence Unit (FIU) has the power to suspend a transaction or impose restrictions on an account for a period of up to two working days.<sup>3</sup>

<sup>1</sup> Subs. 3 reads as follows: “The demands made by preliminary investigators, courts and prosecutors for the submission of documents or production of objects are binding on everyone. (...)”.

<sup>2</sup> The Estonian authorities advised that no official record is specially kept on the assets seized

<sup>3</sup> These measures can be prolonged for a further period of 10 days, according to the new Money Laundering and Terrorism Financing Prevention Act (MLTFPA) adopted to implement the revised EU

### Management of seized assets

8. As regards the management of proceeds which have been seized or frozen, the applicable rules are those regulating the storage and outcome of physical evidence and seized property (CCP, Sections 62 and 63). Property seized must be returned to its legitimate owner or possessor, unless its purpose was the commission of an offence, it was used in the commission of an offence or it was acquired without a special permission. In such cases, the goods must be transferred to an appropriate agency or shall be destroyed. Property received as a result of a criminal offence must be transferred into public revenues if the legal possessor cannot be established. *Physical evidence* must be stored in the premises of the preliminary investigation authority or court in charge of the case, or premises of its legitimate owner. It may also be deposited into storage with liability.

### Confiscation

9. Confiscation is a discretionary measure which is decided by court. The general rules on confiscation are contained in Sections 83-85 of the Penal Code (PC). These apply to confiscation in any case, including corruption offences. According to Section 83(1), confiscation is possible with regard to the instrumentalities as well as with regard to the proceeds of a crime.<sup>4</sup>
10. According to Section 83(3) it is possible to use confiscation when the object is held by a third party in bad faith. The Estonian authorities pointed out that in practice it was extremely difficult to prove bad faith and that, accordingly, it was difficult to use confiscation in such situations.
11. Moreover, value confiscation is possible (Section 84), however, only with regard to the proceeds of a crime.

### Mutual legal assistance

12. International cooperation is based on the general provision of Section 397 CPC: legal assistance takes place primarily on the basis of applicable international agreements, or the principles arising from Council of Europe Conventions where no legally binding relationship exists. When Estonia is the requesting State, Section 413 CCP entitled *Submission of applications for the seizure or transfer of property to a foreign State* provides that such an application shall be submitted by the Minister of Justice or a legal authority appointed by the Minister. As requested State, Estonia is bound by the detailed provisions of Section 411 CCP on *Seizure and transfer of property at the request of a foreign State*. The return of assets by Estonia to a requesting state is mandatory in the cases provided for in an international agreement (Section 85 PC). Estonia has ratified the 1959 Convention on mutual Assistance in Criminal Matters and its first additional protocol, as well as the

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Directive, and entered into force on 1 January 2004.

<sup>4</sup> In addition, it is possible to confiscate "the direct object of the commission of an intentional offence" according to Section 83(2) if that is provided by law. Section 301 of the PC provides that this type of confiscation is possible in cases of corruption.

Convention on laundering, search, seizure and confiscation of proceeds of crime of 1990.

### Money laundering

13. Money laundering is criminalised under Section 394 of the PC, and defined by the Money Laundering Prevention Act (Section 2) as “the conversion or transfer of, or the performance of legal acts with, property acquired as a direct result of an act punishable pursuant to criminal procedure, the purpose or consequence of which is the concealment of the actual owner or the illicit origin of the property.”<sup>5</sup> The offence is punishable by a fine or up to 5 years’ imprisonment (2 to 10 years under certain aggravating circumstances) or pecuniary sanctions if the offence is committed by a legal person.
14. The definition of the money laundering offence implies that all corruption offences are possible predicate offences, even when they have been committed abroad<sup>6</sup>; accepting of gratuities (Section 293), accepting [a] bribe (Section 294), arranging receipt of gratuities (Section 295), arranging [a] bribe (Section 296), granting of gratuities (Section 297), giving [a] bribe (Section 298), counterfeiting or falsification of documents by officials (Section 299) and violation of requirements for public procurement (Section 300). The Penal Code also incriminates “Bribery of electorate” (Section 164), embezzlement (Section 201) and unlawful influence on public authorities by a criminal organisation (Section 255). Finally, Sections 289 to 292 deal with offences connected with the exercise of official duties (misuse of official position, negligence etc.). Most offences are construed in a broad way, excluding distinctions between domestic and foreign officials. Moreover, the definition of the concept of “official” applies to both the private and public sectors<sup>7</sup>.
15. It should be noted that trading in influence is not an offence in the PC and that Estonia has made a reservation to the Criminal Law Convention on Corruption to this effect. The Estonian authorities have argued that trading in influence is largely covered by the offence “accepting of gratuities”.
16. According to the Money Laundering Prevention Act, suspicious transactions indicating money laundering must be reported to the Financial Intelligence Unit (FIU) by entities such as credit institutions, financial institutions, real estate agencies, lotteries etc.<sup>8</sup>: Moreover, there are no figures available either with regard to money laundering cases linked with corruption, and according to the Central Criminal Police, no cases of money laundering have been dealt with, with corruption as the predicate offence.

### **b. Analysis**

17. As Estonia has been and still is undergoing legislative changes, the assessment of the practical progress is difficult. There is generally no Court practice available concerning the operation of the legislation relating to confiscation and provisional measures, such as seizure, nor with regard to

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<sup>5</sup> The definition was amended on 1 January 2004

<sup>6</sup> PC, Sections 7, 8 and 9.

<sup>7</sup> See Section 288 in appendix 1.

<sup>8</sup> The list of such entities was extended on 1 January 2004.

money laundering. Consequently, the GET was unable to make an overall judgement on the effectiveness of the legislation in place. Further, statistics on these matters were not available either.<sup>9</sup>

18. The GET believes that Estonia now needs a period of stability in order to build experience in the area under evaluation to allow law enforcement agencies, prosecutors and the legal professions time to become accustomed to the legislation.
19. The GET noted that the Code of Criminal Procedure provides an adequate legal framework for the use of provisional measures, such as seizure, of an “object relevant to a criminal matter”, thus including both instrumentalities and proceeds of a crime. As regards the management of seized objects, the GET was concerned about repeated remarks from Estonian officials that seizure of company shares could have consequences for the value of the shares as well as with regard to the decision-making powers within the legal person. It appeared to the GET that seizure of such assets may not be resorted to as long as the situation is not clarified. In this respect, the GET recalled that solutions have been found in other countries for a fair balance between the suspect’s interests and the needs of a proceeds-targeting approach (e.g. conversion of shares into another financial product with a stable market price or interest rate<sup>10</sup>, application of restraint orders to stop the dissipation of the value of the shares, appointment of a civil administrator, etc). **The GET recommends to introduce practical means for the management of temporarily seized property, such as company shares, in order to facilitate seizure of such property.**
20. Moreover, confiscation, which is provided for by the Penal Code, covers confiscation with regard to both the instrumentalities and the proceeds of a corruption offence. Value confiscation of the proceeds of a crime is possible. It is also possible to confiscate when the object has been transferred to a third party in bad faith. Accordingly, Estonia is in principle in compliance with the requirements of the Criminal Law Convention. As the practical experience of the use of these provisions is very limited, it was not possible for the GET to assess to what extent the system works in reality. It was, however, concerned about the indication from Estonian prosecutors that confiscation of objects held by a third party in practice is difficult or almost impossible. The GET noticed that the current provisions appear to be insufficient to ensure that offenders do not sidestep the legislation by dissipating assets to a third party. The requirement that this person is aware of the manipulation (knowingly in order to avoid confiscation) is aimed at protecting *bona fide* third persons, but in the absence of a reasonable level of suspicion (for example, the person should have known), the good faith may be difficult to challenge by the prosecutorial bodies. **Therefore, the GET recommends to consider enhancing the possibilities for confiscation with regard to property held by a third party.**

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<sup>9</sup> The GET was informed after the visit that one money laundering case was at present before the courts.

<sup>10</sup> The Estonian authorities’ comments revealed that the current legislation does not provide for the possibility of such conversions.

21. The GET also noted that the targeting of proceeds of crime and corruption could suffer from the working culture of investigative and prosecutorial bodies. From the interviews held with practitioners, the GET found that with few exceptions (the tax investigation Board and the State Security Police), the police does not usually focus on more than the offence. Rapid temporary measures to secure evidence with regard to the instrumentalities and proceeds are not being used. Representatives of the law enforcement agencies met by the GET recognised that matters relating to confiscation would be dealt with by the Prosecutor and consequently the GET could see a culture developing whereby the investigators were only concerned with their criminal investigations. It is expected that the new criminal procedure code will make the investigation process more coherent and swift by granting the overall direction of investigations to the prosecution. The GET was also told that the Prosecutor's Office would be more focused on drug and corruption cases in the future. At the same time a special unit is to be set up between the Police and the Prosecutor's Office to look at local government corruption as a priority in 2004. The GET recognised these measures as positive steps to enhance Estonia's commitment to combat corruption. Such integrated approaches would also provide an ability to recognise linkage with organised crime and money laundering issues.
22. In light of the above considerations, **the GET recommends to develop, at the level of the police and prosecution, a harmonised policy and training for targeting the proceeds of crime, including of corruption-related offences, and to encourage a more systematic use of the provisions on seizure and confiscation as well as the collection and analysis of statistics on the use of such measures.**
23. Estonia has adopted the "all crimes approach" so that all corruption-related offences provided in the penal code are predicate offences to money laundering (trading in influence is not criminalised. All relevant banking information is available to the investigative bodies (not only concerning the movements of funds, but also their amount and the status of the accounts) etc. The GET was also informed that a proposal aimed at introducing the reversal of the burden of proof - during the administrative proceedings for temporary measures provided for by the Money-Laundering Prevention Act - was being discussed in Parliament. The practitioners met by the GET were generally satisfied with their investigative powers and the sources of information available, be it at the level of the preliminary investigation or later.
24. There is no established court practice relating to money laundering offences and the GET was informed that there was no specific training for Police Officers in relation to money laundering issues, which could explain the absence of money laundering cases. The GET considered that this needed to be urgently addressed and it understood that a new training programme was planned to start in December 2003. The GET also noted that the FIU in Estonia had 6 staff, 4 of whom dealt with cases. 89% of suspicious transaction reports received during 10 months of 2003 came from banks, the reporting from other areas being quite low. In Estonia 90% of all financial transactions through banks is by way of electronic transfer. The GET understood that the Money Laundering Prevention Act (MLPA) will be amended in 2004 to bring lawyers and accountants within the reporting

regime. If this will be the case, the FIU is likely to receive significantly more suspicious transaction reports. Bearing in mind that the anti-money laundering reporting system built around the FIU is at present considered as an important tool for the detection of possible corruption cases in Estonia, the GET is of the opinion that Estonia probably needs to recruit rapidly more FIU officers in order to ensure that STRs are dealt with expeditiously and properly. Alternatively, once the Bar Association are brought within the reporting regime, the FIU might consider, bearing in mind the resource problems it has currently<sup>11</sup>, whether Lawyers (and other independent professions) could report to their self regulatory organisation thus alleviating the inevitable increase in reports that the FIU are likely to have to deal with.

25. Throughout discussions during the on-site visit the GET was continually reminded that the sharing of knowledge and intelligence between departments was particularly weak. Some of the GET's interlocutors complained that there was no recognised forum for liaison ensuring the sharing of good practice between the FIU, law enforcement agencies, and entities subjected to the reporting duty. At the same time the FIU reported that they were noticing more use of the tax differences between the three Baltic States to launder proceeds. The GET was concerned that companies could be used as "Money Box" type devices enabling funds to be laundered.
26. As far as the link between corruption and organised crime is concerned, the GRECO's First Round Evaluation Report calls for greater attention and awareness in this area and even if it seems that authorities, such as the Customs and Border Guard have become more aware of this problem and that several measures have been taken, the GET considers that there are reasons to pay greater attention to the links between corruption, money laundering and organised crime. Therefore, GRECO **recommends that cooperation between law enforcement and Financial Intelligence Units (FIUs) on a regular basis at appropriate levels be established.**

### III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

#### a. **Description of the situation**

##### General information

27. Estonia has three public administrative levels: State, counties (which represent the State) and municipalities. The latter traditionally enjoy a high degree of independence.
28. Basic/general principles regulating the functioning of public administrations are provided by the Constitution (Section 3 on the rule of law, Section 30 on the filling of positions according to procedures established by law, Section 31 on public servants to engage in commercial associations, political parties, etc). The Constitution is complemented by legislation providing for a more detailed framework, in particular the Public Service Act.

##### Anticorruption strategy

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<sup>11</sup> The staffing has increased since the visit (11 posts, of which 4 are not filled).

29. No information was provided in the response to the questionnaire as to the existence of an anti-corruption strategy specifically targeting public administrations. However, the GET understood during the visit that a general anti-corruption strategy had been adopted a few years earlier, but had been abandoned. The Estonian authorities informed the GET that a new anti-corruption strategy was being considered, following the change of government<sup>12</sup>.

### Transparency

30. Transparency in public administration is regulated by various legal texts. The Constitution (Articles. 44 and 46) guarantees free access to information disseminated for public use, and the possibility for “everyone (...) to address state agencies, local governments, and their officials with memoranda and petitions.” The Response to Petitions Act (Art. 3) provides that “State agencies, local governments and their officials are obliged to register the memoranda and petitions, addressed to them and to respond to them in writing no later than within one month, as of the receipt of the petition or memorandum. In case additional study is needed, the state agencies, local governments and their officials may extend the term by up to two months.” The Public Information Act, the purpose of which is to ensure access to information based on the principles of an open and democratic society in order for the public to monitor the performance of public bodies, provides for conditions and modalities of access to information (Art. 1 to 5) and obligations of holders of information (Art. 9, 18 and 28), which includes a proactive approach in providing information to the public, for example information relating to draft legislation, statistics, information on government agencies, salary rates, job descriptions etc. Moreover, the Act obliges public officials to assist those who request access to public information.
31. The Estonian authorities have underlined that it has become customary to discuss almost all public decisions and drafts beforehand and to co-ordinate them with all the authorities/persons concerned. Normally, a coordination working group is established. In certain cases, the obligation to involve the public is also stipulated by the law. The Planning Act, for instance, obliges county governors to organise a public exhibition in the case of a county planning. According to Section 20 of the Act, “Every person is entitled, during the public exhibition, to submit proposals and objections in respect of the planning.”

### Control of administrations

32. Control over administrative decisions is exercised in different manners:
- Firstly, as established by the Administrative Procedure Act, is the administrative challenge by “a person who finds that his or her rights are violated or his or her freedoms are restricted by an administrative act or in the course of administrative proceedings”. However, “a challenge cannot be filed against an act or measure of an administrative authority over which the Government of the Republic exercises supervisory control” (Section 71). As

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<sup>12</sup> This new national anti-corruption strategy “Honest State” was approved by the Cabinet of Ministers on 19 February 2004. There are altogether 21 anti-corruption measures to be implemented.

a general rule, the complaint has to be filed through the administrative authority concerned with the authority exercising supervisory authority, and, where there is no supervisory authority, the matter is to be adjudicated by the administrative authority which issued the challenged act. The challenge may aim at the following: “1) repeal of an administrative act; 2) repeal of a part of an administrative act unless partial challenge of the administrative act is restricted by law; 3) ordering issue of a precept for the issue of an administrative act, new resolution of a matter or taking a measure”. In addition, certain elements may be challenged separately from the act in question: a delay or omission, a refusal to remove an official, the return of an application for issue of the administrative act, and other acts provided by law;

- Secondly, the Legal Chancellor has a controlling function, as regulated by the Legal Chancellor’s Act. Acting as an independent official, the Chancellor checks whether legislation of general application issued by the legislative and executive powers as well as of local governments is in conformity with the Constitution and the Laws (Article 1). In addition, “Everyone has the right of recourse to the Legal Chancellor to supervise the activities of state agencies, including the guarantee of the constitutional rights and freedoms of persons” (Article 19);
- Thirdly, there is control by the Administrative courts. Orders, directives, resolutions or other acts (including public law contracts, delays and omissions) - issued by agencies, officials or other persons who perform administrative functions - can be challenged in the administrative courts by ways of an action or protest (by a person, agency or association of persons).

33. As far as internal control is concerned, Estonia has in place<sup>13</sup>:

- an *internal control system*, the implementation of which lies within the responsibility of the Heads of government and state agencies, and which aims at ensuring compliance with legislation, protection of property from damage, illegitimate use, incompetent management etc.;
- an *internal audit system*, implemented by (internal) auditors or auditing units; only some bigger municipalities have their own audit unit (and sometimes a fraud department, for instance in Tallinn city<sup>14</sup>) which reports to the revision committee composed of members of the municipal council;
- a *supervisory control mechanism*, to ensure the legality and purposefulness of the activities of government and state agencies, carried out by the Government, ministers, State Secretaries, directors general and county governors<sup>15</sup> (including the suspension and invalidation of legal and other acts emanating from administrations under their supervision).

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<sup>13</sup>Sections 92-98 of the Government of the Republic Act.

<sup>14</sup> According to information provided after the visit, this fraud department would not exist as such anymore

<sup>15</sup> Citizens from municipalities may address county governors with complaints against municipal decisions.

34. In addition, general control is assured by the Financial Control Department of the Ministry of Finance<sup>16</sup> and the State Audit Office (hereinafter SAO). The latter counts at present over 80 staff, distributed among the Financial Audit Department, Operational Risks Audit Department, the Performance Audit Department and support services. Its scope of control is quite large, applying to all State bodies and public legal entities, as well as certain foundations, companies and non-profit organisations and companies<sup>17</sup>. There are some restrictions as regards local authorities<sup>18</sup>.

#### Recruitment and employment in the State administration

35. The human resources system in the public sector in Estonia is unified as regards the basic rights and obligations of public officials (contained in the Public Service Act and Anti-Corruption Act), but decentralised as regards recruitment policies, statutory regulations, specific training etc., which are determined by the individual ministries, public authorities etc. As far as recruitment of staff is concerned, the GET was informed that at State level announcements of competitions are mandatory for higher officials; for other staff this is not mandatory.. Moreover, every State agency must have a selection committee. Responsibility for the overall legislation lies with the Ministry of Justice, while the Ministry of Finance is responsible for the remuneration system, and the Ministry of Interior for staff policy applicable to local governments. The Government establishes on an annual basis training priorities and the State Chancellery is in charge of overall coordination. About 70% of public officials work for the State (including counties), 30% for the municipalities. Staff for temporary assignments are subject to labour law contracts. Political advisers are employed in the service for a specified period of time (for the term of office of a minister/President/the Riigikogu) based on the Public Service Act. They are not subject to labour contracts, but are appointed to office by a directive or order. The situation is similar at the municipal level.
36. The Public Service Act sets out the requirements for becoming a State or local government official (Estonian citizenship, 18 years of age or 21 for higher positions) and the conditions for the dismissal of officials. The Act excludes the following candidates<sup>19</sup>:
- a person sentenced for an intentionally committed criminal offence;
  - a person under preliminary investigation for, or accused of, a criminal offence for which the law prescribes imprisonment;

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<sup>16</sup> It reports to the Government on the overall effectiveness of internal audit in the public sector in Estonia.

<sup>17</sup> According to the new State Audit Office Act of 2002, Para 7, sub-section 1, clauses 4-7: "foundations founded by the state or a legal person in public law; non-profit associations whose members include the state or a legal person in public law; companies where the state or legal persons in public law jointly or separately exercise dominant influence through a majority holding or in any other manner, and the subsidiaries of such companies; companies which have obtained loans from the state or whose loans or other contractual obligations are secured by the state".

<sup>18</sup> Para 7, sub para (2): "The State Audit Office shall exercise economic control over local governments in so far as they use immovable and movable property of the state transferred into their possession, allocations for specific purposes and subsidies granted from the state budget, and funds allocated for the performance of state functions."

<sup>19</sup> Paras 8 and 9 provide for specific requirements and exclusions applicable to police staff.

- a person deprived of the right to work in a particular position or to operate in a particular area of activity by a court judgment which has entered into force, in such office or area of activity;
- persons who are in a close relationship (grandparents, parents, brothers, sisters, children, grandchildren) or in a close relationship by marriage (spouse, spouse's parents, brothers, sisters, children) with an official or the immediate superior who has direct control over the corresponding position;
- a person who has been punished for an act of corruption under administrative or criminal procedure.

### Training

37. The GET was informed that the educational institutions (universities and institutions of higher education) provide training to public officials on ethical behaviour. The Public Defence Academy organises courses in ethics (including police ethics).

### Conflicts of interest

38. A number of provisions prevent conflicts of interests. The Public Service Act (PSA) and the Anti-Corruption Act (ACA) impose restrictions on membership in commercial associations<sup>20</sup>, participations in enterprises<sup>21</sup>, employment with another employer<sup>22</sup>, the conclusion of transactions<sup>23</sup>, including self-dealings. According to the ACA, transactions concluded in violation of the prohibitions listed in the text are void. These two Acts also provide for obligations of officials to declare economic interests. Declarations by the most senior officials are public. The ACA provides for a declaration procedure and failure to declare is subject to a sanction (fine).
39. The PSA imposes restrictions aimed at limiting the phenomenon of the improper movement of a public official to the private sector ("*pantouflage*")<sup>24</sup>. There is no general prohibition for officials to have a remunerated activity in parallel to their official duties, but a permission is needed from their administration.
40. There is no system of obligatory rotation of staff, but the Estonian authorities have mentioned that in practice, rotation is occasionally applied.

### Codes of Ethics

41. In addition to the legal and ethical guidelines provided in the Anti-Corruption Act (ACA) and the Public Service Act (PSA), there is the Estonian Public Service Code of Ethics which is appended to the PSA. It comprises 20 principles relating to the duties of officials: to act in a neutral and impartial way

<sup>20</sup> PSA, Para. 69.

<sup>21</sup> PSA, Para 72.

<sup>22</sup> PSA, Para 73.

<sup>23</sup> PSA, Para 76 and ACA Para 24.

<sup>24</sup> Para 74: "A state official released from office shall not, within three years after the date of release from office, enter into the service of an employer over whom, or join a commercial association over which, he or she exercised supervision regularly within the last three years. He or she shall also not receive income from such employer or commercial association within three years after the date of release from office".

and pursuant to law, to avoid creating situations raising suspicions of partiality, to treat entrusted property economically, expediently and prudently etc. Section 84 of the PSA, on disciplinary offences, provides that such offences include “a wrongful act which is in conflict with generally recognised moral standards or ethics standards set for officials (...) regardless of whether the act is committed in or out of service”. The Public Service Act also regulates the taking of an oath<sup>25</sup>, which is to be signed by the recruit.

### Gifts

42. According to the ACA (Section 26), officials may not solicit nor accept gifts and other benefits, including those intended to their close relatives. Gifts received in violation of these restrictions must be handed over to the official's employer; the violations concerned constitute misdemeanours.

### Obligation to report corruption

43. According to Section 23 of the ACA, “an official is required to notify the immediate superior or Head of the agency and the police in writing of any offering, giving or acceptance of a bribe which becomes known to him or her”. Failure to report is subject to mandatory release from office.

### Disciplinary procedures

44. As to disciplinary procedures, the general principle contained in Para 86 of the PSA is that a person or administrative agency authorised to appoint an official to office has the right to impose a disciplinary punishment. Disciplinary investigations are usually carried out by the governmental agencies' internal control units. The bringing of administrative or criminal charges against an employee does not prevent the imposition of a disciplinary punishment for the same act (Employees Disciplinary Punishments Act, Section 10)

## **b. Analysis**

45. The provisions of public administration in Estonia which cover State and local administrative agencies, impose a number of obligations on public servants. The ACA and the PCA form a solid legal framework for all public officials.
46. The GET found that the rules providing transparency of the Estonian public administration are satisfactory. It was confirmed to the GET that the Public Information Act had brought dramatic changes, such as a broad information flow available on-line (electronically), facilitated access to public documents, press attachés in every Ministry etc. The obligations on authorities under the Public Information Act not only to provide information, but also to assist the public in accessing documents, are important features of this law. Furthermore, there is a practice of public consultation.
47. The GET found no general problems concerning the legal framework for the control of the State administration. A number of measures to

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<sup>25</sup> “I swear to be faithful to the constitutional order of Estonia and to perform in a conscientious and accurate manner the functions which the office entrusted to me requires. I am aware that the law prescribes liability for a breach of duties or the public service code of ethics.”

challenge/control administrative decisions are in place, and there are a number of possibilities for judicial review of administrative acts. The GET also found that the auditing mechanisms at State level had improved in quality and professionalism, and they take into account corruption-related issues. The SAO produces risk assessments in certain sectors<sup>26</sup> and compliance with the ACA is sometimes monitored. The results of such assessment and monitoring are published. It was admitted that certain areas remain problematic; granting of licences, allocation of subsidies and grants with insufficient follow-up by the ministries, public contracts awarded to companies owned by relatives or in which decision makers have interests, non-compliance with the regulations on public procurement due to the technicity of the matter and a lack of expertise of public administrations etc.

48. The GET was convinced that the ministries' audit units and the SAO could play a major role in the overall monitoring of the organisation, functioning and decision-making processes of public administrations. However, the GET understood that the audit units of the ministries would benefit from enhanced powers in order to ensure an effective monitoring. As far as the SAO is concerned, it appeared that there is no follow-up mechanism for assessing whether its recommendations to individual administrations are implemented (neither has the SAO any disciplinary power); the GET was of the opinion that better use of the SAO's audits could be made. **The GET recommends to review the monitoring, assessment and follow-up by the ministries' audits and the State Audit Office, with a view to rendering the prevention of corruption in public administration more efficient.**
49. It appeared that local governments/authorities are considered highly vulnerable to, and affected by, corruption. Several institutions are aware of this and have consequently focused their attention on the issue. The GET was told repeatedly that corruption would be frequent in connection with public procurement (there have been cases of conflicts of interests and contracts allocated to companies owned by relatives) but there has never been a single case brought to light where a bribe/kickback was paid in exchange for a contract/deal. The GET was also told that decision-making with regard to town planning at local levels would suffer from undue influence over politicians. Moreover, it appeared that the local audit mechanisms are not sufficiently effective for various reasons, such as difficulties to retain qualified staff, rapid staff turnover<sup>27</sup> and inability of local audit and control mechanisms to counterbalance political figures due to the politicisation of control procedures and appointments. The GET, who did not meet with representatives from the local police services, was told on various occasions that the police prefectures, which now had the task of investigating local level corruption, also suffered from undue influence from local executives and from a lack of practice with corruption cases.
50. The GET considers that this situation – already underlined in GRECO's First Round Evaluation Report on Estonia - needs urgent review. The GET

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<sup>26</sup> For instance, a report was published in February 2003 on «Assessment of risks related to the payment of subsidies for popular sports activities», another one in July 2003 on "Risks related to the Use of Funds Allocated from the State Budget to the Estonian Qualification Authority".

<sup>27</sup> In Tallinn City, the structure (and staff) of the fraud and audit departments have changed four times in two years.

understood that the previous Anti-Corruption Strategy<sup>28</sup> did address this issue. The Anti-Corruption Act was amended in 2001 in order to apply also to local public officials and the scope of the SAO's control was extended to cover, at least to some extent<sup>29</sup> –municipalities. Further, in February 2003, the Chancellor of Justice has been entrusted with the examination of complaints against local authorities. The importance of the alleged problems suggests that further efforts are needed. **The GET recommends to pursue efforts to tackle the problem of corruption at the local level, and to provide for an efficient monitoring of local authorities.**

51. There is no general anti-corruption policy in place targeting the public sector as a whole, nor is there a nation-wide assessment system of the effectiveness of anti-corruption measures taken in this area. A new anti-corruption strategy<sup>30</sup> was under consideration during the visit of the GET. In this context and bearing in mind the relatively high level of decentralisation of public administration in Estonia, the GET considered that a concentrated institutional approach in this field could serve as basis for more efficient measures against corruption. **The GET recommends to adopt the revised general anti-corruption strategy and policy with a view to making the existing efforts against corruption in public administration more coherent both at central and municipal level.**
52. The GET found it difficult to gain a full picture of the staff policy as ministries and local authorities have to a large extent their own staff management policies and practices. The GET was told that recruitments require the involvement of a selection committee in every governmental agency which also determines the procedure to be followed. Recruitment announcements and competitions are not mandatory, except for higher officials (advisers, heads of units) but the GET was told that such methods are also frequently applied to other officials. As a rule, salaries should be made public (there are some exceptions) and the diversity in the system of remuneration at both state and local level is relatively high according to data available. Receiving gifts and other advantages in the public service is subject to far reaching legal restrictions.
53. As stated above, the rules of the PSA and the ACA form a solid legal framework for all public service officials in Estonia. These regulations are detailed and, in particular the ACA includes direct rules on the conduct of public officials. Moreover, Estonia has also a Public Service Code of Conduct and an oath to be sworn by all newly recruited public service employees. Estonia should be commended for this comprehensive set of written rules,

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<sup>28</sup> It was adopted on 25 March 2003 and abandoned after the new Government was appointed in April; a new anti-corruption commission was established in May, which would be in charge of preparing a new strategy.

<sup>29</sup> The SAO can control the use of state subsidies and property, but they are not able to check the final users. According to the SAO Act Para 7 (2) "The State Audit Office shall exercise economic control over local governments in so far as they use immovable and movable property of the state transferred into their possession, allocations for specific purposes and subsidies granted from the state budget, and funds allocated for the performance of state functions". Furthermore, according to an amendment of the State Audit Office Act that is to be sent to the Cabinet of Ministers on 30 March 2004, the SAO's control over municipalities will be expanded so that the SAO receives the mandate to audit the funds of local governments.

<sup>30</sup> A new national anti-corruption strategy "Honest State" was approved by the Cabinet of Ministers on 19 February 2004

which cover almost every aspect of anti-corruption measures; conflicts of interest in various forms, gifts, declaration of assets and economic interest, reporting of corruption, “revolving doors”, etc. Following discussions during the visit, the GET was not convinced, however, that there is full awareness among public officials of the anti-corruption rules in place. Therefore, **the GET recommends to raise the awareness among public officials of existing anti-corruption regulations and guidelines and of their duty to implement them.**

54. From the discussions during the on-site visit, it would appear that the system of declaration of economic interests works satisfactorily in general (reports are made on late declarations, the Parliamentary Committee handling the declarations of the most senior country officials enjoys a good reputation, efforts are made to ensure that the declarations are filed timely, suspicious cases have been sent to the police etc.). Declarations of the most senior State and local officials are published, and the others can be disclosed (with the permission of the officials concerned). Although the ACA provides for the necessary measures to check the correctness of the declarations, certain interlocutors felt that their powers were insufficient as it was difficult in practice to access the necessary data for verification purposes. **The GET recommends to review the system of public officials’ declarations of assets and interests, in particular in respect of the access to data necessary for the control of such declarations.**
55. The GET noted that, although there is a general duty of public officials to inform their respective superior and the police of corruption, –this is limited to the reporting of bribery, an approach which appears too narrow. The GET was not informed of any measures to protect officials who would make such reports. Given the fact that Estonia is a small country where to some extent “everybody knows everybody”, it is possible that the reporting of corruption needs to be further encouraged by an institutionalised protection.<sup>31</sup> **The GET recommends to extend the duty to report corruption beyond bribery, and to establish institutionalised protection for those who report in good faith.**
56. Finally, the GET received limited information on the implementation and actual impact of the existing preventive mechanisms and it seems that there has been no assessment of their effectiveness so far. In addition, there is no overall collection of data on disciplinary proceedings initiated and sanctions applied for corruption cases/breaches of duty etc. Most agencies visited by the GET were, however, able to provide some figures. Therefore, **the GET recommends to prepare general assessments on the implementation and impact of preventive measures against corruption.**

#### **IV. THEME III – LEGAL PERSONS AND CORRUPTION**

##### **a. Description of the situation**

###### Definitions

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<sup>31</sup> The GET was informed after the visit, that the extension of the reporting duty and protection measures were provided for in the new anti-corruption strategy

57. According to Section 6 of the Civil Code:

- “(1) A legal person under private law is a legal person which has been established in private interests. General partnerships, limited partnerships, private limited companies, public limited companies, co-operatives, foundations and non-profit associations are legal persons in private law. Other legal persons under private law may be prescribed by law.
- (2) A legal person under public law is a legal person which has been established by an Act in the public interest.
- (3) The state and local governments participate in civil law relationships as legal persons under public law. The state and local governments exercise the civil rights of a legal person and perform civil obligations through their agencies.
- (4) Provisions concerning legal persons apply to the state and local governments in so far as these are not contrary to the nature of the state or local government.”

### Registration

58. The Commercial Code of Estonia lists five forms of business entities which are created by entry into the Commercial register: Sole proprietorship, General partnership, Limited Partnership, Private limited Company and Public limited Company. Detailed provisions regulate their constitution.
59. For entering a company in the Commercial Register, the founders must draw up a Memorandum of Association (which must be signed by all founding members and notarised) and submit a petition for registration signed by all members of the Management Board. Upon foundation, the founders shall open a bank account in the name of the company and the required minimum share capital must be paid to the account before the registration of the company. Contributions may be monetary or non-monetary. In case a monetary contribution exceeds a certain amount, an evaluation is required by an auditor. The evaluation of a non-monetary contribution paid in to a public limited company must be audited by an auditor.
60. In case the founder is a foreign company, an official certificate proving the existence of the company in the country of incorporation is required. This certificate as well as a foundation resolution must be notarised in the foreign country by a public notary and then legalised in Estonia. If a foreign commercial undertaking wants to permanently offer goods or services in its own name in Estonia, it should enter its branch in the Commercial Register. In the cases provided by law, a commercial undertaking must obtain a license in order to open a branch in Estonia. The foreign company is liable for the obligations of the branch (which is not a legal person). To register a branch, the application must contain the same data about the branch and the parent company as for a share company. The application also has to state the country under whose legislation the corporation operates. A foreign company must appoint a director or directors for the branch. A director must be a natural person with active legal capacity. The residence of at least one director must be in Estonia. A bankrupt person or a person who's right to engage in economic activity has been taken away pursuant to law cannot be a director. Separate records must be held for the transactions of the branch, which provide a true and fair basis for

determination of the income and expenses attributable to the branch. The branch must generally follow the Estonian Accounting Law, with only minor exceptions stipulated in that law especially for branches (e.g. branches are not required to have a statutory audit performed).

### Restrictions and disqualifications

61. There are no restrictions on legal persons to hold interests in another legal person, nor restrictions on the number of accounts a company can hold. A court can disqualify a convicted person from acting in a certain position or field of activity for up to three years (Section 49 PC).

### Legislation on the liability of legal persons and sanctions

62. With the (new) Penal Code, Estonia has introduced criminal liability of legal persons. The general principles are contained in Section 14 PC, according to which a legal person may be held responsible for an act committed by one of its bodies or senior officials if the act was committed in the interest of the legal person; there is no precondition of a identification or conviction of a natural person. Proceedings against a legal person do not preclude action against the natural person who committed the offence or the instigator. Finally, according to the same provision, corporate liability under the PC is not applicable to the State, local governments and legal persons of public law. The GET understood that the benefit obtained through the commission of the offence may be only potential<sup>32</sup> and the liability of a legal person is normally determined in the framework of the same proceedings as those brought against the physical perpetrator.
63. Corporate criminal liability is specifically applicable in relation to any of the acts of corruption committed in violation of Sections 293 to 298 of the PC. The sanctions are pecuniary punishment and, in case of active or passive bribery, the compulsory dissolution of the legal person. The sanctions for money laundering are also of a pecuniary nature and, if the offence is repeated, the dissolution of the legal person may be ordered (Section 394 of the PC).
64. There is no record of companies found liable for acts of corruption. No information was provided as to possible specific mechanisms to prevent the circumvention of sanctions imposed. No investigations have yet been initiated for corruption-related offences due to the recent introduction of corporate criminal liability (September 2002).

### Deductibility of corruption-related expenses and transparency

65. As regards fiscal aspects, the principle is that all certified business-related expenditures are tax deductible (Section 32(1) of the Income Tax Act); the Estonian authorities indicated that expenditures linked with corruption are not business-related and therefore not subject to tax deductibility. Apart from internal preventive measures, tax officials are under the general obligation to notify in writing the immediate superior or head of agency and the police of any bribery case coming to his/her knowledge (cf. Section 23 of the Anti-Corruption Act). There is no further mechanism, e.g. for the reporting of suspicions of

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<sup>32</sup> The concept of benefit used under the Estonian PC corruption-related provisions should be understood so as to include also those cases where the assets of the legal person did not increase as the result of a punishable act, e.g. A legal person may be sentenced for giving a bribe to an official, if this has been committed by its senior employee in order to expedite the review of documents presented by the legal person in the framework of an application for a licence (to conduct a certain activity). The intention is ascertained at the moment of the offence. Thus, it is enough if a legal person was accruing its own benefits at the moment of the offence.

money laundering. The access of law enforcement bodies (and prosecutors, judges, the FIU etc.) to tax records is guaranteed by Section 29 of the Taxation Act (for reasons of crime detection as well as prevention). The request is to be made in writing.

66. According to Sections 2 and 12 of the Accounting Act, all legal persons (whether private or public), must keep original accounting documents, registers, contracts, financial reports etc. for a period of seven years after the completion of the financial year (or the expiration of their term of validity for commercial documents connected with long-term obligations). The PC criminalises the manipulation of accounting documents, and the destruction or hiding of accounting records or books (Sections 289, 290, 299, 344, 345, 381).

#### Role of certain professions

67. Accountants, auditors and legal professions are not obliged *expressis verbis* to report suspicions of offences to law enforcement agencies, but under the Money Laundering Prevention Act (MLPA, Section 5), they can be considered as “intermediaries for transactions” (who are compelled to report to the FIU). A draft amending the MLPA has been prepared<sup>33</sup> to involve a wide range of professions in the prevention of money laundering, including auditors, accountants and tax consultants, notaries, advocates, traders with real estate and certain precious goods etc. However, Section 5 Sub-Section 2, of the MLPA regulates several situations where such a reporting duty would apply without regard to the amount of the transaction.

#### **b. Analysis**

68. Estonia has a developed legal framework comprising a variety of legal persons. There is also a registration system in place, which appears to be working satisfactorily. However, there is still considerable room for improvement, in particular as regards the implementation of relevant legislation.
69. Corporate criminal liability was introduced in September 2002 and there have not yet been any significant cases against legal persons brought to court, however, some cases are underway, mainly relating to one-man companies as indicated by prosecutors.
70. In the absence of practical experience with the application of the penal law provisions, it was difficult to assess the compliance of Section 14 of the Penal Code with Article 18 of the Criminal Law Convention on Corruption, in particular as regards the expressions "leading position", "power of representation" and "authority to take decisions". Notwithstanding this difficulty, the GET found that the wording of Section 14 of the PC (as it appears in the English translation) that the act has been committed by "a body or senior official" of the legal person appears to be too narrow in view of the Criminal Law Convention on Corruption, Article 18 (1). However, during the first reading of the present report, the Estonian representatives informed the GRECO Plenary that the original language version of Section 14 of the PC actually referred to “a body or leading official”. The GET also considered that Section 14 of the PC did not cover situations where “the lack of supervision or control by a natural person”

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<sup>33</sup> The new Act came into force on 1 January 2004.

made the corruption offence possible (Criminal Law Convention on Corruption, Article 18 (2)). Consequently, the **GET recommends to examine whether there is a need to redraft Section 14 of the Penal Code with a view to ensuring that it also applies to situations where corruption offences committed by legal persons are the result of a lack of supervision or control by a natural person.**

71. Legal persons convicted of corruption offences may be punished with a fine (50,000 – 250,000,000 kroons; approximately 3,200 – 16,000,000 €) and/or may lead to the compulsory dissolution of the legal person (Section 44 (8) PC) in the case of bribery (Sections 194 and 298 of the PC). The GET was of the opinion that these sanctions are rather dissuasive and can be adapted to the importance of a case.
72. Even if the use of penal sanction against legal persons is still in its early stages, administrative sanctions have been applied against legal persons on a number of occasions by the Tax and Customs administrations, mainly on companies. Administrative sanctions are widely used as a result of the fact that the definition of the criminal offence of tax fraud in Section 386 of the Penal Code (and other tax offences according to Sections 389-390) require a minimum amount of tax underpayment equivalent to only 500,000 kroons (approximately 32,000 €) or more. In this respect there is a risk that administrative sanctions might prevent a later prosecution for the same offence (*ne bis in idem* principle)
73. The GET's impression was that Estonian practitioners involved in combating corruption were not sufficiently familiar with operations involving legal persons and that little attention was paid to the problems of corruption through legal persons. The GET found that there seemed to be hardly any clear ideas about how the authorities could make use of the criminal responsibility of legal persons to their benefit in the future. In the struggle against corruption this kind of measures should not be disregarded, even if in most cases one would rely on the liability of physical perpetrators. In some more complicated corruption cases, the mechanism of corporate criminal liability might add an effective tool to the existing arsenal of anti-corruption instruments. Therefore, the **GET recommends to raise the awareness (guidance notes etc.) among crime preventing/investigating/prosecuting authorities of the possibilities for applying the rules on criminal liability of legal persons, and of problems of corruption linked with legal persons; these topics should also be included in training programmes for the police, prosecutors, judges, tax inspectors and State auditors.**
74. When it comes to practical problems relating to legal persons, the authorities concerned mentioned that all kinds of shell companies are used on purpose to avoid formal responsibility. Apparently, there is also a number of “dormant” companies (companies without net profit etc.) in Estonia, but the GET could not determine what kind of problems were connected with these.
75. At the same time, the commercial register – which is managed by the Central Register of Companies - seemed to be quite up-to-date in terms of electronic data processing, reliability, and comprehensiveness. Thus, useful information is available to the prosecuting authorities (members of boards, smaller

shareholders<sup>34</sup> etc.). It should also be mentioned that the control applied at this level is apparently working well too. According to statistics (January 2002 – October 2003), regional departments of courts issued more than 21,000 warnings as a result of missing or incorrect information, and over 2,000 fines were imposed by the courts.

76. However, the GET was told that for the time being, the major issue would be to develop cooperation between the authorities. First of all, in order to properly assess the real situation of companies, a better general cooperation would be needed between the Register staff and the operational bodies (tax Board, police etc.). Secondly, the GET found that the authorities would also need to coordinate their actions against legal persons during the pre-trial stage, for example to avoid that administrative actions prevent a later prosecution. **The GET recommends to enhance the cooperation between bodies involved in detection of corruption offences committed by legal persons (i.e. audit bodies, tax administration, police and prosecution) with a view to exchanging information on legal persons and business practices on a continuous basis and coordinate action taken by administrative and judicial authorities.**
77. The GET was told that all legal persons active in Estonia must comply with the accounting standards in place. These have been reformed in recent years and new standards have been adopted in January 2003 under the lead of the Accounting Standards Board (under the Ministry of Finance). The Estonian standards (applied mainly by Estonian companies and legal persons) are based on the International Financial Reporting Standards (IFRS). Foreign companies and large Estonian companies apply the IFRS directly. Audit services can only be provided by natural persons who have been licensed as auditors by the Ministry of Finance (about 350 at the time of the visit) and the GET was told that a background check is made before a licence is delivered. The GET did not come across major controversies as regards the legislation and standards in place. The GET found that accounting offences are sufficiently covered in the legislation. The GET was told that Section 390 of the Penal Code constitutes a powerful tool against incorrect data and obstruction to the tax authorities. Subsection 2 provides for a pecuniary punishment. All expenses must be properly certified to be accepted.
78. As already mentioned above (Theme II), the GET welcomes the extension of the SAO's control over certain legal persons, including foundations and non-profit organisations, which receive public subsidies or in which a public entity is significantly involved – and the possibility for the SAO to check the accounts and financial operations of legal persons involving both public and private interests, which can be sectors at risk as experience in other countries has shown. Moreover, the SAO has improved its methods and takes into account the issue of corruption, including on the basis of the International Organisation of Supreme Audit Institutions (INTOSAI) recommendations of 1998 on the Role of Supreme Audit Institutions in Preventing and Detecting fraud and Corruption<sup>35</sup>. Members of the SAO are obliged to report suspected cases of corruption to the police.

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<sup>34</sup> Bigger shareholders (over 10% of shares) appear in the commercial register.

<sup>35</sup> [http://www.intosai.org/3\\_16EINC.html](http://www.intosai.org/3_16EINC.html)

79. As regards the taxation regime applicable to possible corruption-related expenditures, the GET found that a number of provisions of the Income Tax Act contain detailed provisions on the regime applicable to expenses linked with gifts, donations, the entertainment of guests, “non-business related expenses” (including those where no source document is available) etc. All are in principle subject to taxation. The main exceptions result from the tax incentives in favour of non-profit associations and organisations, religious associations, charities, political parties etc. Gifts and donations made to, and by, such legal persons are tax deductible. There are also provisions concerning non applicability of the income tax to gifts and donations to persons working for the State or local government scientific, cultural, sports, educational, law enforcement or social welfare institutions, persons who own a hospital etc. As regards the regime applicable to business in particular, Section 33(1) provides for the deductibility of “certified expenses incurred in connection with the provision of catering, accommodation, transportation or cultural services to guests and business partners” with a limit of 2% of the business income during a period of taxation. The GET considered that a number of provisions could be misleading in practice. Therefore, the GET was pleased to learn - after the visit – that as of 1 January 2004, the Income Tax Act clearly prohibits the tax deductibility of expenses linked with bribes (Sections 34 and 51). The GET welcomes this and observes that awareness-raising measures should be taken to make sure that the prohibition of tax deductibility of expenses linked to bribery is fully implemented in practice.
80. Whether certain expenditures are linked to corruption or not and whether criminal offences of that kind are/need to be detected depends naturally on the standards of tax inspection and auditing within companies (as well as on those applicable to other professionals such as lawyers, notaries etc.), and on the professional skills of such personnel. Similarly, the same question applies as to whether (suspicions of) criminal offences need to be reported. The GET did not meet with private sector accountants or auditors. As far as the tax authorities are concerned, their representatives stressed that the control of external corruption is “hardly compatible” with their tasks, although occasional collaboration with the police was mentioned. It remained unclear to the GET to what extent the general obligation for officials to report bribery cases (also) to the police is complied with in practice, especially as regards external corruption. The GET wished to stress that training and professional standards of tax inspectors and auditors are decisive in this respect.
81. Estonia is currently completing the modernisation of the taxation, legal services and accounting system. As indicated in the first part of this report, Estonia is still at an early stage with regard to the fight against money laundering. A draft amending the Money Laundering Prevention Act has been prepared to involve more clearly a large list of professions (they are already subject to the reporting and identification duty as “undertakings”) in the prevention of money laundering, including in particular auditors, accountants, tax consultants, notaries and advocates. The GET understood that a greater cooperation between these professions would also be important.
82. **The GET recommends to establish/enhance cooperation between the private bodies/persons obliged, to report suspicious transactions and the public bodies concerned.**

## V. CONCLUSIONS

83. In a relatively short period of time, Estonia has managed to establish a legislative framework which complies with European norms and standards to a large extent. This is an achievement for which Estonia should be commended. The full implementation of the new legislation will require more time for which reason it is difficult to fully assess the effectiveness of the regulations in place.
84. With regard to proceeds of corruption, appropriate legislation is in place, but there is a general lack of experience concerning the implementing authorities (police/prosecution) on how to use measures such as seizure and confiscation efficiently. Furthermore, efforts are being made to develop a sound and modern public administration and civil service. The legislation relating thereto is particularly impressive, but further efforts concerning the implementation of this legislation are required, in particular with regard to local authorities which are vulnerable to, and seem to be affected by, corruption. The absence of independent and properly functioning audit/control mechanisms, and the alleged politisation of institutions (in particular the police) are worrying signs. This problem, already encountered during the First Evaluation Round, requires urgent action. Regarding legal persons, the existing legislative framework is, overall, of a good standard. However, more time is needed before its efficiency can be properly evaluated. To a large extent awareness raising and closer cooperation between the implementing bodies concerned is called for.
85. In view of the above, GRECO addresses the following recommendations to Estonia:
- i. **to introduce practical means for the management of temporarily seized property, such as company shares, in order to facilitate seizure of such property (paragraph 19);**
  - ii. **to consider enhancing the possibilities for confiscation with regard to property held by a third party (paragraph 20);**
  - iii. **to develop, at the level of the police and prosecution, a harmonised policy and training for targeting the proceeds of crime, including of corruption-related offences, and to encourage a more systematic use of the provisions on seizure and confiscation as well as the collection and analysis of statistics on the use of such measures (paragraph 22);**
  - iv. **that cooperation between law enforcement and Financial Intelligence Units (FIUs) on a regular basis at appropriate levels be established (paragraph 26);**
  - v. **to review the monitoring, assessment and follow-up by the ministries' audits and the State Audit Office, with a view to rendering the prevention of corruption in public administration more efficient (paragraph 48);**

- vi. to pursue efforts to tackle the problem of corruption at the local level, and to provide for an efficient monitoring of local authorities (paragraph 50);
  - vii. to adopt the revised general anti-corruption strategy and policy with a view to making the existing efforts against corruption in public administration more coherent both at central and municipal level (paragraph 51);
  - viii. to raise the awareness among public officials of existing anti-corruption regulations and guidelines and of their duty to implement them (paragraph 53);
  - ix. to review the system of public officials' declarations of assets and interests, in particular in respect of the access to data necessary for the control of such declarations (paragraph 54);
  - x. to extend the duty to report corruption beyond bribery, and to establish institutionalised protection for those who report in good faith (paragraph 55);
  - xi. to prepare general assessments on the implementation and impact of preventive measures against corruption (paragraph 56);
  - xii. to examine whether there is a need to redraft Section 14 of the Penal Code with a view to ensuring that it also applies to situations where corruption offences committed by legal persons are the result of a lack of supervision or control by a natural person (paragraph 70);
  - xiii. to raise the awareness (guidance notes etc.) among crime preventing/investigating/prosecuting authorities of the possibilities for applying the rules on criminal liability of legal persons, and of problems of corruption linked with legal persons; these topics should also be included in training programmes for the police, prosecutors, judges, tax inspectors and State auditors. (paragraph 73);
  - xiv. to enhance the cooperation between bodies involved in detection of corruption offences committed by legal persons (i.e. audit bodies, tax administration, police and prosecution) with a view to exchanging information on legal persons and business practices on a continuous basis and coordinate action taken by administrative and judicial authorities (paragraph 76);
  - xv. to establish/enhance cooperation between the private bodies/persons obliged to report suspicious transactions and the public bodies concerned (paragraph 82).
86. Moreover, GRECO invites the Estonian authorities to take account of the observations made in the analytical part of this report.

87. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Estonian authorities to present a report on the implementation of the above-mentioned recommendations by 31 December 2005.