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**Public**  
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## **Second Evaluation Round**

### **Compliance Report on Estonia**

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

## I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Estonia at its 19<sup>th</sup> Plenary Meeting (29 June - 2 July 2004). This report (Greco Eval II Rep (2003) 4E) was made public by GRECO, following authorisation by the authorities of Estonia, on 6 July 2004.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Estonia submitted their Situation Report (RS-report) on the measures taken to implement the recommendations on 28 December 2005. The Estonian authorities submitted additional information on 12 September 2006.
3. At its 26<sup>th</sup> Plenary Meeting (5-9 December 2005), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Germany and Latvia to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Matthias KORTE on behalf of Germany and Mr Aleksejs LOSKUTOVS on behalf of Latvia. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of Estonia, to comply with the recommendations contained in the Evaluation Report.

## II. ANALYSIS

5. It was recalled that GRECO in its Evaluation Report addressed 15 recommendations to Estonia. Compliance with these recommendations is dealt with below.

### **Recommendation i.**

6. *GRECO recommended to introduce practical means for the management of temporarily seized property, such as company shares, in order to facilitate seizure of such property.*
7. The authorities of Estonia report that practical means for the management of seized property are addressed in a draft law amending the Code of Criminal Procedure, which has been submitted by the Minister of Justice to the Government in June 2006. This draft will be submitted to Parliament mid-October 2006. The draft law will, *inter alia*, make the sale of seized property possible without the consent of the owner in order to retain the value of the property. It will furthermore authorise the government to enforce a decree prescribing further rules for managing seized property to make confiscation possible.
8. GRECO takes note of the information provided by the Estonian authorities and welcomes the drafting of regulations on the management of seized property. However, GRECO notes that practical means for the management of temporarily seized property as required by the recommendation have not yet been introduced.
9. GRECO concludes that recommendation i has been partly implemented

### **Recommendation ii.**

10. *GRECO recommended to consider enhancing the possibilities for confiscation with regard to property held by a third party.*

11. The authorities of Estonia report that the Department of Criminal Policy of the Ministry of Justice carried out an "Analysis of the regulation of confiscation and recommendations for legislature" in February 2006.<sup>1</sup> On the basis of this analysis a draft law amending the Penal Code and the Code of Criminal Procedure has been prepared. This law, if adopted as foreseen, will enhance the possibilities to confiscate instrumentalities and proceeds of crime in the hands of third parties, *inter alia*, by providing for confiscation in situations where a third party has acquired the assets to be confiscated from the offender as a gift or in any other manner for a price which is considerably lower than the normal market price.<sup>2</sup> The draft law was approved by the government on 29 June 2006 and will be sent to Parliament mid-October 2006.
12. GRECO takes note of the information provided by the authorities of Estonia. Although it is not clear if all relevant cases are covered in the draft amendments to the Penal Code and the Code of Criminal Procedure<sup>3</sup>, GRECO considers that by drafting these amendments appropriate consideration has been given to enhancing possibilities for confiscation with regard to property held by third parties.
13. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

#### **Recommendation iii.**

14. *GRECO recommended 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.*
15. The authorities of Estonia report with regard to the first part of the recommendation - i.e. to develop a harmonised policy and training for targeting the proceeds of crime - that since autumn 2005 there is one prosecutor in each circuit prosecutor's office (altogether there are 4 such circuits in the country) whose task is to advise investigators and prosecutors in relation to the targeting of proceeds of crime (seizure and confiscation) and to ensure that the assets of suspects are recorded, criminal proceeds are seized and all necessary preparations for

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<sup>1</sup> The main conclusion of this analysis with respect to 3<sup>rd</sup> persons was that the current system is ineffective because confiscation can be applied only to the assets owned by the offender.

<sup>2</sup> This law, if adopted as foreseen, will allow for the confiscation of instrumentalities belonging to third parties, if the third party has, at least through recklessness, aided in the use of these instrumentalities for the commission or preparation of the offence, has acquired them, in full or in essential part, on account of the offender, as a gift or in any other manner for a price which is considerably lower than the normal market price or knew that these were transferred to him/her in order to avoid confiscation (Section 83, subsection 3 of the draft law). Furthermore, assets acquired through an offence can be confiscated from a third party if these assets were acquired in full or in essential part, on account of the offender, as a gift or in any other manner for a price which is considerably lower than the normal market price, or if the third person knew that the assets were transferred to him/her in order to avoid confiscation (Section 831, subsection 2, of the draft law). Finally, the draft also foresees in so-called 'extended confiscation' of assets acquired through a criminal offence. This 'extended confiscation' allows the court to confiscate assets from a third party, if it has convicted a person to more than 3 years imprisonment and if the nature of the criminal offence, the difference between the legal income, financial situation and the standard of living of the offender or another reason gives cause to presume that the offender has acquired these unlawfully and if the third party acquired these assets, in full or essential part, on account of the offender, as a gift or in any other manner for a price which is considerably lower than the normal market price, or if the third party knew that the assets were transferred to him/her in order to avoid confiscation (Section 832, subsection 2, of the draft law).

<sup>3</sup> For example, if a natural person bribes someone in order to get a contract for his/her company, it should be possible to confiscate the profits acquired by the legal persons. It is not clear if this case is covered by Section 831, subsection 2, of the draft law, as these profits are neither assets acquired as a gift or for a price lower than the normal market price, nor assets transferred to the legal person in order to avoid confiscation.

confiscation are made.<sup>4</sup> Policemen, prosecutors and others have furthermore taken part in different specialised training sessions on proceeds of crime and corruption throughout 2005 and 2006. In addition, the Financial Intelligence Unit (FIU) has organised training sessions on seizure and confiscation of proceeds of crime for the police, prosecutors, tax and customs officials (e.g. since January 2006 there have already been 2 such sessions). Furthermore, the prosecutor from the Northern circuit prosecutor's office has been trained at the beginning of 2006 in the prosecutor's office of the Netherlands and in the framework of the Phare Twinning Project ("Reducing Corruption in Estonia")<sup>5</sup> several training seminars have taken place in May 2005 for prosecutors, judges, police officials, administrative workers of municipalities, border guards, tax and customs officials. A special workshop within this project dealt with seizure and confiscation of the proceeds of corruption. Finally, it is planned to set up specialised units to target the proceeds of crime within the Central Criminal Police in 2008 on the basis of a special EU project. These units will be in charge of co-ordinating activities and training with respect to detecting proceeds of crime.

16. With regard to the second part of the recommendation - i.e. to encourage a more systematic use of the provisions on seizure and confiscation - the authorities of Estonia state that there have been no cases where confiscation has been used in relation to corruption recently (Article 301 of the Penal Code) but that the measures mentioned above should enhance the use of confiscation in the future.
17. With regard to the third part of the recommendation - i.e. to encourage the collection and analysis of statistics on the use of seizure and confiscation - the authorities of Estonia state that there are several judicial registers managed by different authorities. In the Register of Criminal Procedures, which became operational in 2004, data on criminal procedures is gathered with a view to keep track of ongoing criminal proceedings. All prosecutors are obliged to insert relevant data into this register. The Criminal Policy Department of the Ministry of Justice analyses the data inserted in the register. However, as yet this register only contains data on seizure but not yet on confiscation. The data on confiscation is accrued in the database on court statistics and court decisions, the quality of which is still being improved. On 29 September 2005, the Government approved a proposal of the Minister of Justice for a new electronic database, in which all activities from the beginning until the end of a criminal procedure are to be collected. It is planned that this database will become operational by 2007 or 2008.
18. GRECO takes note of the information provided by the authorities of Estonia. It welcomes the measures adopted to implement the recommendation. However, on the basis of the above information, GRECO cannot conclude that a harmonised policy for targeting the proceeds of crime is now in place at the level of the police and prosecution. Moreover, in the absence of more detailed information on the training that has been given, it cannot assess whether sufficient training specifically for targeting the proceeds of crime has been provided. Furthermore, GRECO is of the opinion that additional measures can be adopted to encourage the effective use of seizure and confiscation, as required by the second part of the recommendation. For example, guidelines can be issued and additional training<sup>6</sup> can be organised making use of information on why seizure or confiscation has not been ordered or has not been successfully applied in corruption cases.

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<sup>4</sup> This was so decided in an internal meeting of prosecutors on 26 August 2005.

<sup>5</sup> Project description and report can be found in English on web-page: <http://www.korruptsioon.ee/6187>.

<sup>6</sup> GRECO did however learn that additional training for prosecutors and judges will be provided following the adoption of the new Code of Criminal Procedure. This training is scheduled to take place in April/May 2007.

19. GRECO concludes that recommendation iii has been partly implemented

**Recommendation iv.**

20. *GRECO recommended that co-operation between law enforcement and Financial Intelligence Units (FIUs) on a regular basis at appropriate levels be established.*
21. The authorities of Estonia report that, in 2004, the Police Authority and the Tax and Customs Boards signed an agreement on information sharing in money laundering cases. Furthermore, since October 2005 there is a “contact” prosecutor in the Northern circuit prosecutor’s office who reports on the suspicious transactions which might lead to criminal proceedings. In June 2005, a training programme on money laundering (Integrated programme to strengthen the capacity of the Estonian Anti Money Laundering Institutions) was set up within the framework of the Phare/Transition Facility: 50 investigators, 20 prosecutors and 4 judges are benefiting from this training programme. In June 2006, a two-day communications seminar was organised for the heads of the units responsible for investigating economic crimes from different law enforcement agencies. This seminar addressed, *inter alia*, co-operation between police and the FIU. In addition to this, there are regular meetings between law enforcement authorities and the FIU to discuss co-operation matters. Both the training, often organised at the initiative of the FIU, and the regular meetings have significantly improved information sharing and co-operation between the FIU and law enforcement authorities. A manual for detecting and investigating money laundering has been prepared by an International Expert and will be published in the second half of 2006.
22. GRECO takes note of the information provided by the authorities of Estonia. It recalls that in its Second Round Evaluation Round it pointed towards the need, in this context, to pay greater attention to the links between corruption, money laundering and organised crime. GRECO would therefore have welcomed further information on this. Nevertheless, it welcomes the measures taken to strengthen the co-operation between the FIU and law enforcement with regard to combating money laundering, and considers the new co-operation arrangements will undoubtedly also improve the sharing of knowledge on predicate offences, such as corruption, and on organised crime.
23. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

**Recommendation v.**

24. *GRECO recommended 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.*
25. The authorities of Estonia indicate that the structure and organisation of the work of the State Audit Office (SAO) was changed in 2004 with a view to improving the planning and assessment of SAO recommendations. A 5<sup>th</sup> audit department was created, in January 2006, to exercise economic control over the maintenance and use of the local government assets and any funds established by a local government. The SAO also exercises economic control over local governments with regard to immovable and movable property that has been transferred by the state, allocations for specific purposes and subsidies granted from the state budget, and funds allocated for the performance of state functions.

26. Furthermore, in February 2004 a Parliamentary Select Committee on the Control of the State Budget was established. The objective of the Committee is to ensure efficient, effective and lawful use of the state assets and budget funds by the Government, and to exercise, in co-operation with the SAO, control over the activities of the Government in the implementation of the state budget. Among other tasks, the Committee reviews issues concerning auditing of the public sector; examines audit reports and overviews by the SAO as well as questions raised by the Auditor General; forms an opinion, based on the information received from the SAO on cases of obstruction of its activities. The Committee reports to the Parliament *Riigikogu* at least once a year. In addition to monitoring by the Committee, the SAO reviews the implementation of its recommendations through an electronic module and follow-up audits.
27. Estonia uses internal audit units in auditing the annual reports of book-keeping of ministries. The quality of the Ministries' audit is assessed by the Financial Control Department of the Ministry of Finance. The aim of the internal audit is to support the management of an organisation in their activities. The implementation of the recommendations made by internal audits is up to the management and there are no mechanisms in order to force the management to implement the recommendations.
28. GRECO takes note of the measures adopted by the authorities of Estonia. It would appear that the structure and work of the SAO has been strengthened and control of government spending by, *inter alia*, the activities of the Parliamentary Select Committee has been stepped up. Although it is not entirely clear to what extent the developments referred to by the Estonian authorities have actually lead to an improved control and management of corruption risks in public administration, it does appear that the issues that were raised in the Second Round Evaluation Report have been reviewed.
29. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

#### **Recommendation vi.**

30. *GRECO recommended to pursue efforts to tackle the problem of corruption at the local level, and to provide for an efficient monitoring of local authorities.*
31. The authorities of Estonia indicate that the State Audit Office (SAO) was vested with the authority to audit local governments in order to reduce incentives for corruption, by virtue of the State Audit Office Act and Local Government Organisation Amendment Act of 31 May 2005, which entered into force on 1 January 2006 (see also the comments made above under recommendation v). In August 2005, the European Commission financed a Phare twinning project on "The Development of Local Governments' Public Internal Financial Control System" which is now completed. Its primary aim was the development of local governments' public internal control system (see <http://www.korruptsioon.ee/17573>).
32. GRECO takes note of the information provided. It considers that Estonia has pursued its efforts to tackle the problem of corruption at local level, in particular by increasing the monitoring capacity of local authorities through the SAO and the local government public internal control system. In the absence of more concrete information, GRECO is not in a position to assess the impact of these measures in practice. It hopes, however, that the efforts made in this important area will be pursued and lead to concrete results in the prevention of and fight against corruption.
33. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

### **Recommendation vii.**

34. *GRECO recommended 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.*
35. The authorities of Estonia state that the Government approved a comprehensive anti-corruption strategy 2004-2007 "Honest State" on 19.2.2004 (before the adoption of GRECO's Second Round Evaluation Report). The objectives of the strategy are two-fold: to limit opportunities for corruption to take place and to increase the probability that a person who has committed an act of corruption will be punished. The anti-corruption strategy consists of 21 measures, almost all of which are said to have been implemented (see <http://www.korruptsioon.ee/6190>). As regards the municipal level, according to Section 3 of the Local Governments Act municipalities are autonomous, as a consequence the state cannot co-ordinate of anti-corruption activities at the local level.
36. GRECO takes note of the information provided by the authorities of Estonia. It welcomes the revised anti-corruption strategy, which had however already been adopted before the adoption of GRECO's Second Evaluation Round Report. It notes furthermore that measures contained in the strategy address corruption at both the central and municipal level, which will undoubtedly make existing efforts against corruption more coherent.
37. GRECO concludes that recommendation vii has been dealt with in a satisfactory manner.

### **Recommendation viii.**

38. *GRECO recommended to raise the awareness among public officials of existing anti-corruption regulations and guidelines and of their duty to implement them.*
39. The authorities of Estonia stress that measures have been adopted to inform both the general public and public officials. In March 2005 a special corruption-related web page was published in the Ministry of Justice Website, highlighting corruption problems (see [www.korruptsioon.ee](http://www.korruptsioon.ee)). The range of topics covered the definition and explanation of different types of corruption, corruption cases in Estonia, scientific studies on corruption, legislation and practical information. This web page also contains practical guidelines for public officials, including on procedures to submit declarations of "economic interests".
40. In addition, in 2006 the State Chancellery launched an empirical study on the civil service ethos: "Roles and attitudes in the Estonian Public Service".<sup>7</sup> As a result of it, as well as of the survey on "Corruption in Estonia: a survey of three target groups" launched in 2005 by the Ministry of Justice<sup>8</sup>, it is envisaged to establish a "map" (policy paper) on the values, problems and needs to be addressed. The State Chancellery has a webpage on ethics and integrity issues (see <http://www.riigikantselei.ee/?id=2582>).

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<sup>7</sup> The report of the study is available in Estonian [http://www.riigikantselei.ee/failid/avaliku\\_teenistuse\\_uuring\\_2006.pdf](http://www.riigikantselei.ee/failid/avaliku_teenistuse_uuring_2006.pdf). For a summary of this report in English see: [http://www.nispa.sk/portal/conf\\_paper\\_detail.php?cid=14&p=651&pid=3001](http://www.nispa.sk/portal/conf_paper_detail.php?cid=14&p=651&pid=3001).

<sup>8</sup> This survey is being repeated in the second half of 2006. The results will be available in the beginning of 2007.

41. According to the Anti-corruption strategy it is planned to set up an "Ethics Council" within the State Chancellery. The Council will assist public authorities in implementing the Public Service Code of Ethics, in organising ethics training and increasing ethical awareness. However the establishment of the Council has been postponed. It was preceded by the creation, in September 2006, of a commission of experts responsible for designing and discussing the future tasks of the Council.
42. Furthermore, training on ethics (including on conflicts of interest) for civil servants is one of the Government's priorities (Public Service Training Priorities in 2006). The public service training system is decentralised and the State Chancellery only co-ordinates training programmes for civil servants and organises central training for them on the basis of training priorities. The Centre for Public Service Training and Development is the main partner of the State Chancellery in delivering training courses on public service ethics, it used to be part of the State Chancellery and now belongs to the Public Service Academy. Since 2003 the Centre has organised several introductory training seminars that include a module of public service ethics for new officials from central government and local government institutions. A comprehensive ethics study material on CD-ROM was published at the beginning of 2006 and 8 special training courses on ethics offered to 160 civil servants will be carried out by the Centre in 2006-2007. At the beginning of 2006 the training of trainers for 87 civil servants was conducted; of these, 18 were local government officials who, in turn, should deliver in-service training on ethics within their own organisation. Issues concerning ethics and corruption are also covered in a number of other training activities (e.g. training on good administration for local government officials) provided by the Centre. Training for new civil servants is part of the curricula for civil servants. Finally, in the framework of the structural funds of the EU further ethics and anti-corruption training will be provided from 2007 to 2013. The target group of this training will be broadened to include officials working in agencies administered by government agencies and officials of non-profit associations, state-founded or partly state-founded foundations. The number of officials being trained will reportedly increase from 28.000 to 60.000 officials.
43. GRECO takes note of the information provided. It welcomes the creation of a webpage within the Ministry of Justice's Website dedicated to corruption, the surveys that have been conducted, the establishment of a commission of experts, the intention, *inter alia*, to draw-up a policy paper on the values, problems and needs that should be addressed and to create an Ethics Council, and the training that has been provided and has been planned for 2007-2013 for a wider category of public officials than those who have received training so far. Considering the results of the survey on "Corruption in Estonia: a survey of three target groups" carried out in December 2004, under the auspices of the Ministry of Justice, which shows that public officials, like the general public, need further information on the phenomenon of corruption, the different relevant regulations that tackle this problem and the behaviour expected from them (see <http://www.korrupsioon.ee/9371>), GRECO strongly encourages the Estonian authorities to continue their efforts to raise awareness among public officials of existing anti-corruption regulations and their duty to implement them.
44. GRECO concludes that recommendation viii has been dealt with in a satisfactory manner.

#### **Recommendation ix.**

45. *GRECO recommended 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.*



46. The authorities of Estonia indicate that the Ministry of Justice has prepared a draft bill on the declarations of “economic interests”, which was sent to the Government in September 2006. There should be at least the following major changes in the system of such declarations, provided that the Bill (Anti-Corruption Act) is adopted by the Parliament<sup>9</sup>:

i. a clarification of the number of officials that will have to submit “declarations of economic interests” and on the restrictions to the obligation after leaving the Public Service. It has been decided, according to the current draft, to focus on high-ranking public officials. In addition, the draft law explicitly provides that other officials can be required by the head of their agency to submit a declaration of their economic interests. By focusing on a limited number of officials, the system can be made more effective.

ii. a clarification regarding the information to be submitted for the declarations (under current law, the data do not reflect the real economic interests of an official). Pursuant to the draft law, officials will have to declare, *inter alia*, obligations towards other people and other people’s obligations towards him, assets held abroad (etc.), and also houses and cars they actually use and not just those they own.

iii. the possibility of submitting declarations of economic interests electronically – a special electronic database will be designed with “filled-in in advance” declaration forms. Data originating from other databases (e.g. register of vehicles, etc) will be automatically inserted, so that an official will only have to fill in missing data.<sup>10</sup>

iv. enhanced accountability through public checks. The database will be public, except where there is an overriding interest to protect privacy, so that anybody can verify the accuracy of the declarations. The Parliamentary Select Committee on the Application of the Anti-Corruption Act and/or the relevant local government commission can check the declarations of listed officials on their own initiative and if so requested by any person. They will also be vested with the power to request public officials to provide additional information and to seek relevant information from other databases and third persons. The head of the agency for which the official is working can check the declarations made by the official, as can law enforcement authorities in the course of a criminal investigation.

In addition, a draft law is being prepared by the Ministry of Justice which will review the rules on conflicts of interest. This draft law will apply to a broader range of officials than those mentioned above.

47. GRECO takes note of the information provided. It welcomes the initiatives taken in order to amend the current system of declarations of “economic interests”, in particular as regards the checking of the accuracy of the declarations. It notes, that the new draft law will apply to a limited number of high-ranking public officials and those officials whom have been designated by the head of their agency to submit a declaration of economic interests. Although the original recommendation addressed the need to review the system of assets declarations (in particular with regard to the checking of data) with respect to a wider category of public officials (i.e. the category of officials to whom the law which is currently in force applies), GRECO recognises that by limiting the number of officials the system of declaring economic interests can be made more effective. GRECO encourages the Estonian authorities to pursue their efforts to have the new law

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<sup>9</sup> The draft has been sent to the Cabinet of Ministers in September 2006.

<sup>10</sup> The database should be administrated by the Centre of Registers and Infosystems: [http://www.eer.ee/index\\_eng.phtml](http://www.eer.ee/index_eng.phtml).

implemented as soon as possible. GRECO also notes that the system of conflicts of interests with regard to a wider category of officials is currently being reviewed.

48. GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

**Recommendation x.**

49. *GRECO recommended to extend the duty to report corruption beyond bribery, and to establish institutionalised protection for those who report in good faith.*
50. The authorities of Estonia state that, in October 2004, an amendment was made to Article 23 of the Anti-Corruption Act. According to this provision, an official has to report on "corrupt action" of a person either to his/her director, or to the security police, the prosecutor and/or the police.<sup>11</sup> His/her identity will not be revealed unless the report is made in bad faith.
51. GRECO takes note of the information provided. GRECO recalls that, at the time of the visit, there was a general duty of public officials to report bribery but this approach appeared to be too narrow. It welcomes that Article 23 of the Anti-Corruption Act was amended in October 2004. Now it is mandatory for public officials to report not only cases of bribery but all corrupt acts. With regard to the second part of the recommendation, GRECO considers that the protection of the identity of whistleblowers and/or the possibility for making anonymous reports can be important elements of a whistleblower regime. Nevertheless, these measures are not sufficient to fully protect whistleblowers from retaliatory acts.
52. GRECO concludes that recommendation x has been partly implemented.

**Recommendation xi.**

53. *GRECO recommended to prepare general assessments on the implementation and impact of preventive measures against corruption.*
54. The authorities of Estonia state that in spring 2005, the Ministry of Justice launched a sociological study on corruption. The objective of the survey "Corruption in Estonia: a survey of three target groups" was to develop an indicator by which an impact of the preventive measures against corruption could be measured. The survey was carried out in December 2004 in three parts: interviews with the general population (1002 respondents, one-to-one interviews), entrepreneurs (503 respondents, telephone interviews) and employees of the public sector (901 respondents, internet interviews). A summary of the results can be found on the Internet (see <http://www.korruptsioon.ee/9371>). As outlined in the anti-corruption strategy, such studies will be carried out periodically. Their results will be published to increase public awareness.
55. GRECO takes note of the information provided by the authorities of Estonia. Although a proper assessment of the measures adopted by the authorities has not yet been carried out, by conducting the survey, which has the objective of developing an indicator by which the impact of the preventive measures against corruption can be measured, the preparation of such an assessment appears to be well on the way. GRECO recalls that GRECO's Second Round Evaluation Report in this context also indicated that there is no information on disciplinary

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<sup>11</sup> Section 5 of the Anti-Corruption Act states that an "act of corruption" is the use of an official position for self-serving purposes by an official who makes undue or unlawful decisions or performs such acts, or fails to make lawful decisions or perform such acts.

proceedings and sanctions applied for corruption cases and other related breaches of duties. As information on these disciplinary measures may provide further valuable indications of the impact of the government's anti-corruption policy specifically within the public administration, GRECO encourages the Estonian authorities to make further efforts to collect such information.

56. GRECO concludes that recommendation xi has been dealt with in a satisfactory manner.

**Recommendation xii.**

57. *GRECO recommended 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.*
58. The authorities of Estonia indicate that on 28.12.2005, for the first time, a legal person was prosecuted for bribery.<sup>12</sup> The Criminal Policy Department of the Ministry of Justice is planning to further examine, in 2007, Article 14 of the Penal Code in the light of Article 18, section 2, of the Criminal Law Convention on Corruption, namely on lack of supervision or control by a natural person. At present, it is not entirely clear that a legal person can be held responsible for the crime committed by a natural person under its authority, where the lack of supervision or control by a leading official or a body has made the commission of the offence possible (Article 18, paragraph 2, of the Convention).
59. GRECO welcomes that the authorities of Estonia share the view that Article 14 of the Penal Code, in its present wording, does not establish – in an unequivocal manner - criminal liability of a legal person where a corruption offence has occurred due to the lack of supervision by a leading official or a body of that legal person. It notes the authorities' intention to further examine this issue in 2007. GRECO very much hopes that this will lead to a clarification of the relevant legislation in order to provide for liability of legal persons - criminal, civil or other - fully in line with Article 18, paragraph 2, of the Criminal Law Convention on Corruption.

60. GRECO concludes that recommendation xii has not been implemented.

**Recommendation xiii.**

61. *GRECO recommended 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.*
62. The authorities of Estonia state that prosecutors and police officers have not received special training yet on the scope and implementation of criminal liability of legal persons. Equally, there have not been any training programmes for Tax and Customs officials or for state auditors. Nevertheless the Tax and Custom Board held courses on the "Prevention of Corruption in the Tax and Customs Board".
63. The State Audit Office (SAO) does not investigate criminal cases. Therefore, some questioned whether the SAO needed these specific skills at all. Nevertheless, training has been provided on

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<sup>12</sup> When breaking the rules on excavation, a company bribed an inspector with 1785 EUR in order to avoid the imposition of a penalty. The offender was put on probation while the company got a monetary sanction of 3205 EUR.

auditing the public tendering procedures, where corruption may occur. In complex cases, the SAO can employ short term experts or consultants. If a suspicion of corruption arises, they can inform the prosecutor, the police or the Security Police – according to the § 51 (3) of the SAO Act.

64. GRECO takes note of the information provided by the authorities of Estonia. It notes that prosecutors and police officers as well as other relevant authorities have not taken any measures yet to raise awareness with regard to criminal liability of legal persons and problems of corruption linked to legal persons. GRECO points out that the contribution of these other authorities is crucial, also for implementing, in practice, the legislation giving effect to the Criminal Law Convention on Corruption, specifically, Articles 14 (accounting offences) and 18 (liability of legal persons).
65. GRECO concludes that recommendation xiii has not been implemented.

**Recommendation xiv.**

66. *GRECO recommended 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.*
67. The authorities of Estonia indicate that there are cases where mutual task forces (involving police as well as tax and customs officers) have been set up in order to examine legal proceedings against legal persons, in particular following initiatives of the Ministry of Justice.
68. Two data sharing systems have been established: 1) Between the Registration Department of the courts and the Tax and Customs Board. The Tax and Customs Board informs the administrator of the register of any false information submitted. The latter can start the supervision procedure either in order to supplement the data or delete the legal person from the register. From 2006, auditors, notaries and bailiffs also have a duty to inform the administrator of the register of any false information they become aware of; 2) Between the Registration Department of the courts and the Auditing Board in order to better control auditors. In case of suspected misbehaviour of an auditor, the Registration Department informs the Auditing Board so that the latter can start disciplinary proceedings.
69. On 18 October 2005 the Tax and Customs Board and the Security Police signed an agreement where mutual information sharing and co-operation are included. Contact persons were also established. As a result of co-operation, several bribery cases have been revealed. A similar agreement is under preparation between the Tax and Customs Board and the Police Board, the aim of which is to better uncover professional crimes.
70. However, enhanced co-operation with auditors has not yet been achieved. The Ministry of Justice is planning to analyse the situation in 2006 or 2007 and to issue recommendations on this matter.
71. GRECO takes note of the information provided. It welcomes the measures taken to implement the recommendation and encourages the auditors to step up their efforts in the fight against corruption, in particular, by improving their co-operation with other judicial actors and tax inspectors.
72. GRECO concludes that recommendation xiv has been implemented satisfactorily.

### **Recommendation xv.**

73. *GRECO recommended to establish/enhance cooperation between the private bodies/persons obliged to report suspicious transactions and the public bodies concerned.*
74. The authorities of Estonia report that, following the implementation of the Money Laundering and Terrorist Financing Prevention Act on 1 January 2004, the co-operation between reporting entities and public bodies has been enhanced. Since the entry into force of the new act, a number of training seminars have been organised for the new reporting entities<sup>13</sup>. In addition, employees of the FIU have held lectures on preventing money laundering at various seminars and conferences as well as in bilateral meetings with private entities. The number of STRs from private entities has accordingly risen steadily since the entry into force of the new Act: In 2003, before the entry into force of the new Act, the FIU received 1 STR; in 2004, it received 14 STRs and, in 2005, it received 12 STRs from private entities. In the first 4 months of 2006 it had already received 24 STRs. Finally, specifically to further improve co-operation, a governmental commission was set up (Order of the Government no. 285) on 11 May 2006 to settle issues arising in relation to money laundering and terrorist financing. The commission consists of representatives from different agencies and reporting entities, such as exchange offices, the Estonian Banking Association, the Estonian Association of Gambling Operators, the Tallinn Stock Market, the Estonian Leasing Association and the Estonian Insurance Association etc.
75. GRECO takes note of the information provided by the authorities of Estonia. It welcomes the setting up of a governmental commission to settle issues arising in relation to money laundering and terrorist financing and is confident that, once operational, this commission will further enhance co-operation between those specific institutions/professions obliged to report suspicious transaction reports (STRs) and the law enforcement authorities as well as other public bodies in corruption cases.
76. GRECO concludes that recommendation xv has dealt with in a satisfactory manner.

### **III. CONCLUSIONS**

77. **In view of the above, GRECO concludes that Estonia has implemented satisfactorily or dealt with in a satisfactory manner two thirds of the recommendations contained in the Second Round Evaluation Report.** Recommendation xiv has been implemented satisfactorily. Recommendations ii, iv, v, vi, vii, viii, ix, xi and xv have been dealt with in a satisfactory manner. Recommendations i, iii and x have been partly implemented and recommendations xii and xiii have not been implemented.
78. GRECO invites the Head of the Estonian delegation to submit additional information regarding the implementation of recommendations i, iii, x, xii, and xiii by 31 May 2008.

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<sup>13</sup> For example, in 2005, there were training sessions for casino employees; in 2006, for notaries, lawyers, auditors, employees of exchange offices, money transfers and dealers in valuable goods.