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## FOURTH EVALUATION ROUND

Corruption prevention in respect of members of  
parliament, judges and prosecutors

### EVALUATION REPORT

**LATVIA**

Adopted by GRECO at its 58<sup>th</sup> Plenary Meeting  
(Strasbourg, 3-7 December 2012)

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## EXECUTIVE SUMMARY

1. Latvia has taken notable steps to set in place an overarching anticorruption strategy. The Corruption Prevention and Combating Bureau (KNAB) plays a central role in the system and in its ten years of existence has acquired broad recognition both at domestic and international levels. It is said to be one of the most trusted pillars of the State apparatus. However, in recent years, misgivings have been expressed concerning political interference in the KNAB's decision-making structures. More particularly, GRECO issued a recommendation in its Third Evaluation Round aimed at strengthening the independence of the KNAB. This is still a pending recommendation which needs to be addressed.

2. The Law on Prevention of Conflict of Interest in Activities of Public Officials (Conflict of Interest Law) is the key piece of corruption prevention legislation in Latvia. It lays out a comprehensive financial disclosure system which is monitored by both the KNAB and the State Revenue Service (SRS). It applies to all public officials, including members of Parliament (*Saeima*), judges and prosecutors. While the law is considered to be fully operational and serves its original purpose well (i.e. to create a clear declaration system for all public officials in Latvia) there are now calls for the law to respond more precisely to those officials within distinct areas of public service. Steps are currently being taken by the KNAB to ensure that public officials better understand not just the applicable rules but, importantly, the rationale behind those rules in order to promote greater self-governance and compliance. Notably, the KNAB is working to ensure that more responsibility for the law rests with the relevant senior management structures.

3. As it happens in many other countries, parliamentarians in Latvia suffer from a very low level of trust amongst the public. They will need to take more decisive action to prove their commitment to addressing this mistrust; this calls for increasing proactivity in-house and developing expertise to address accountability, ethical and conflict of interest-related issues. A culture of prevention and avoidance of possible conflicts of interest is not fully rooted in the *Saeima*; self-control and responsibility must come first from within the house. Guidance on ethical standards needs to be significantly stepped up in the *Saeima*; it should include establishing effective channels for discussing and resolving issues that raise ethical concerns, both on an individual basis (advice on a confidential basis) and on an institutional level (training, institutional discussions of integrity and ethical issues related to parliamentary conduct, etc.). Likewise, more can be done to improve access to information in the legislative process, in particular, with respect to third parties' involvement (lobbying) in decision-making.

4. Work has been done to modernise the court system in recent years and positive steps taken to strengthen the institutional independence of the judiciary in Latvia; however, this does not yet seem to have filtered through into the public consciousness and more can and should be done to fill this gap in awareness. A number of areas of weakness or potential weakness were identified that could undermine the capacity of the judiciary to prevent corruption and/or to be seen to be addressing it decisively when it occurs. The areas of potential risk, detailed later in the report, are both internal and external to the judiciary and include: budget setting and control, funding and resources for the courts (including pay levels for court staff, and a sufficient number of judges), political influence in judicial appointments, judicial control over career progression, effective disciplinary processes for judges, judicial immunity for administrative offences, internal ethos of self-governance, ethical norms and control. It should also be noted here that none of the judicial bodies described in this report – the Judicial Qualification Board, the Judicial Disciplinary Board, the Judicial Ethics Commission, or the Judicial Council – has permanent staff and the judges who do this work, do so in addition to their regular court duties. Further, the judiciary should ensure that court judgements are publicly available, with the appropriate privacy safeguards, to increase transparency, public awareness and trust in the system.

5. The prosecution service (PPO) appears confident about its capacity to address corruption prevention. No concerns were raised on site or were otherwise identified to indicate that political or other undue influence in the decision-making of specific cases is a problem in Latvia. However, as a key institution in Latvia's justice system – working closely with the courts and with other law enforcement and investigation bodies, some of whom which do not enjoy as much public confidence – it is vital that the PPO continues to promote the fight against corruption and lead by example. The main challenges ahead for the service relate primarily to matters concerning the appointment (and reappointment) process of the Prosecutor General, internal transparency and the need for more targeted training, particularly in the area of ethics and integrity.

## **I. INTRODUCTION AND METHODOLOGY**

6. Latvia joined GRECO in 2000. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in May 2002), Second (in July 2004) and Third (in October 2008) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage ([www.coe.int/greco](http://www.coe.int/greco)).

7. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the executive branch of public administration, and the Third Evaluation Round, which focused on the incriminations of corruption (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political financing.

8. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

9. As regards parliamentary assemblies, the evaluation focuses on members of national Parliaments, including all chambers of Parliament and regardless of whether the Members of Parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, if they are subject to national laws and regulations.

10. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (document Greco Eval IV (2012) 7E REPQUEST) by Latvia, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Latvia from 4 to 8 June 2012. The GET was composed of Mr Manuel ALBA NAVARRO, Clerk of Congress of Deputies, Congress of Deputies (Spain), Mr Benjamin FLANDER, Senior Lecturer, Faculty of Criminal Justice and Security, University of Maribor (Slovenia), Ms Elena MASNEVAITĖ, Lawyer, Vilnius University, Faculty of Law, Department of Public Law (Lithuania), and Ms Anna PAGOTTO, Appellate Judge, Ministry of Justice (Italy). The GET was supported by Ms Anna MYERS and Ms Laura SANZ-LEVIA from GRECO's Secretariat.

11. The GET interviewed representatives in the Corruption Prevention and Combating Bureau (KNAB); the State Revenue Service (SRS); the Mandate, Ethics and Submissions Committee of the *Saeima* as well as parliamentarians and representatives of political parties not represented in Parliament (*Saeima*); the Ministry of Justice, the Judicial Council, the Judicial Disciplinary Board and the Judicial Ethics Committee, judges in the district, regional and administrative courts as well as the Supreme Court and the Constitutional Court; the Latvian Judicial Training Centre; the Court Administration; the Attestation Commission and the Qualification Commission at the Prosecutor's General Office. The GET also met with non-governmental representatives from Transparency International/Providus and media. It further discussed with representatives of the Association of Judges and the Association of Prosecutors in Latvia, and other professional

organisations, i.e. the Employer's Confederation (LDDK), the Latvian Chamber of Commerce and Industry (LRTK) and the Council of Lawyers.

12. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Latvia in order to prevent corruption in respect of Members of Parliament, Judges and Prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Latvia, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Latvia shall report back on the action taken in response to the recommendations contained herein.

## **II. CONTEXT**

13. Latvia has made laudable efforts in the anticorruption arena, in particular by establishing the Corruption Prevention and Combating Bureau (KNAB) in 2003, developing an overarching anticorruption strategy – which has been recently updated for the period 2009-2013 – and by issuing specific anticorruption legislative instruments. While these efforts have served Latvia well as a strong basis for fighting corruption, recent international opinion polls provide a more nuanced, and somewhat less positive picture, of the phenomenon of corruption. Thus, Latvia needs to ensure it consolidates its successes and continues to develop its anti-corruption mechanisms and measures to respond effectively to the evolving situation in the country.

14. According to the latest Eurobarometer on “Corruption in the European Union” (2012), eight out of 10 Latvian citizens surveyed think that corruption is a major problem in the country and 85% of the respondents believe that the Government efforts in this area are not effective. In particular, in terms of the focus of the Fourth Evaluation Round of GRECO, parliamentarians and political parties top the list of least trusted public institutions in Latvia, but confidence in the judiciary is also not as strong as is desirable. In the latest Eurobarometers on “Trust in Institutions”, 87% of the respondents in 2010 did not trust Parliament (*Saeima*) and, in 2011, about 54% expressed mistrust of the judiciary.

15. Many are of the view that links between politics and business are too close and that, despite a general commitment to democracy and respect for democratic institutions, there is a strong tendency towards informal back-room dealing and lack of trust in political parties in the first place, particularly in how they are funded. GRECO reflected on the general low level of public trust in politics in its Third Evaluation Round Report on Latvia<sup>1</sup>. Likewise, the National Integrity System Assessment of Latvia, prepared by Transparency International in 2011, signals that in spite of the strong perception of high levels of political corruption, no national politicians have yet been held to account in a criminal court of law<sup>2</sup>.

## **III. CORRUPTION PREVENTION IN RESPECT OF ALL CATEGORIES UNDER REVIEW: THE CONFLICT OF INTEREST LAW AND THE CORRUPTION PREVENTION AND COMBATING BUREAU**

16. The establishment of the Corruption Prevention and Combating Bureau (KNAB) marked a milestone in the anticorruption policy of Latvia; it continues to be one of the most trusted pillars of the State apparatus. The KNAB has advisory, executive, preventive and educational functions in relation to the struggle against corruption in public institutions. It has broad powers to investigate corruption cases (access to bank and tax databases, powers to compel third parties to cooperate) and also to control party financing. It has successfully investigated corrupt police officers, civil servants and local politicians.

17. With respect to the specific issues under evaluation in the present report, the KNAB plays a leading role in controlling implementation of what is considered to be a central piece of legislation in preventing corruption in Latvia, i.e. the Law on Prevention of Conflict of Interest in Activities of Public Officials (hereinafter Conflict of Interest Law). This law applies to all categories of public officials, including members of Parliament (MPs), judges and prosecutors; it lays out a very comprehensive asset disclosure system, as will be evidenced later in this report. The State Revenue Service is also entrusted with pivotal investigative and sanctioning attributions in respect of the Conflict of Interest Law.

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<sup>1</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)1\\_Latvia\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)1_Latvia_Two_EN.pdf)

<sup>2</sup> <http://delna.lv/wp-content/uploads/2012/03/Transparency-International-Latvia-National-Integrity-System-Evaluation-2012.pdf>

18. The Conflict of Interest Law has nevertheless been criticised by practitioners, NGOs and independent experts alike as too rigid and formalistic in its approach. In effect, it emerged from the interviews carried out on-site by the GET that the categories of officials covered by the present report (in particular, judges and MPs) felt that the law was not always suited to the needs and particularities of their profession. This results in little proactivity with regard to corruption risks and conflicts of interest among institutions on the one hand, and, on the other, in a lack of sense of ownership of the law within the mentioned categories of officials. In the GET's view, this is the weakest aspect of the conflict of interest regime; for it to work, it needs to be, firstly, understood and secondly, regarded as legitimate and "internalised" by those who have to abide by the rules. The KNAB indicated that the current system of conflicts of interest is highly centralised and that, with a view to making the rules operate more effectively, it intended to give greater responsibility to the senior management of the public bodies/institutions to which the law applies. This would respond to the different professions' own desire to have it work better for them and allow the present KNAB's focus on conflict of interest to shift from repression (KNAB and State Revenue Office inspecting and sanctioning) to prevention (KNAB playing an advisory role). As the system is clearly maturing in Latvia, the GET welcomes this approach to better involve officials themselves in understanding the obligations of the Conflict of Interest Law and ensuring self-responsibility in compliance.

19. The Corruption Prevention and Combating Programme 2009-2013 includes as one of its specific actions the further development of the Conflict of Interest Law. This is a positive sign and the GET can only encourage the on-going reflection process to continue fine-tuning the Conflict of Interest Law in order to ensure its effective implementation in the entire public sector. As implementation with the law evolves, it will be crucial that any future changes or adjustments introduced in the system are worked in close cooperation and with full involvement of the different categories of public servants covered by the law.

20. The professionalism and commitment of the KNAB to conflicts of interest enforcement appears to be beyond any doubt. However, the GET is concerned about certain aspects which could undermine the necessary independence and autonomy of the KNAB. Misgivings have been cast in recent years concerning political interference (by Government and Parliament) in KNAB's decision-making structures. As described in GRECO's Third Round Evaluation Report, there are several institutional flaws in the system: (i) the KNAB sits under the direct supervision of the Prime Minister; (ii) the appointment and dismissal procedure for the Director of the KNAB is made by the Parliament upon the recommendation of the Cabinet of Ministers; (iii) the budget of the KNAB is proposed and decided by the Parliament, the same people that the KNAB might potentially investigate. To date, no KNAB Director has concluded his full term of office.

21. The GET was informed of two different proposals tabled to strengthen the independence of the KNAB. According to the first, the KNAB would remain subordinate to the Cabinet of Ministers, but the Prime Minister would no longer be able to take over functions which are under the competence of the Director of the KNAB. According to the second proposal, the KNAB would become fully independent and the Cabinet of Ministers would no longer have any role in its supervision. The GET notes that these proposals were submitted to the Cabinet of Ministers in January 2012; no concrete decision has so far been taken. Some positive developments have occurred to minimise the risks of political interference in the appointment of the Director of the KNAB. Rules are now in place providing for open competition to the post of Director of the KNAB, stipulating the conditions and the procedure for application, selection and evaluation of candidates for the post of Director, as well as setting out the composition of the appointment commission (bringing together high ranking officials from the judiciary and the executive

power, as well as enabling participation of other specialists and experts, including NGOs, as per decision of the head of the appointment commission)<sup>3</sup>.

22. The GET recalls that the Third Evaluation Round Report on Latvia included a specific recommendation aimed at strengthening the independence of the KNAB<sup>4</sup>; its full implementation is still pending<sup>5</sup>. The GET deems this to be an outstanding issue in Latvia impinging on the effectiveness of the entire system under review in the Fourth Evaluation Round and can only reiterate the concerns, and the recommendation, already raised by GRECO in its previous evaluation. Consequently, **GRECO recommends that measures be taken to strengthen the independence of the KNAB, thus ensuring that it can exercise its functions in an independent and impartial manner.**

23. Moreover, as mentioned before, the KNAB and the State Revenue Service (SRS) share important control and enforcement responsibilities in this area. In particular, the SRS files asset declarations and is fairly proactive in verifying, on a random basis and if a complaint is received on a particular individual, the completeness and veracity of the forms submitted. It may apply fines for late or false reporting. The SRS coordinates closely with the financial police if there are suspicions of criminal activity, tax evasion or illicit enrichment. That said, it would appear that there is room for improvement with respect to greater cooperation/coordination between the SRS and the KNAB on the prevention side of their work. The Conflict of Interest Law which set up the system of financial interest declarations has been in place for nearly 10 years now (since 2003) and both agencies will have knowledge and experience about the most serious conflicts of interest or where particular vulnerabilities lay. Thus, the SRS could enhance its control function by thinking in corruption prevention terms (which is clearly a key purpose of the Conflict of Interest Law). For example, a specific methodology could be developed, in close cooperation between the SRS and the KNAB, to better identify corruption risks when checking asset declarations, or to regularly review their systems of random checks to focus on particular interests or functions vulnerable to corruption, and as such mutually reinforce their roles and effectiveness.

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<sup>3</sup> Cabinet of Ministers Order No. 387, adopted on 17 August 2011, dealing with the Commission which would assess the candidates to the post of the Director of the KNAB. Regulation on the Procedure of Selection of Candidates to the Post of the Director of Corruption Prevention and Combatting Bureau, which entered into force on 6 October 2012.

<sup>4</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)1\\_Latvia\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)1_Latvia_Two_EN.pdf)

<sup>5</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)13\\_Second%20Latvia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)13_Second%20Latvia_EN.pdf)

#### **IV. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT**

##### Overview of the parliamentary system

24. Latvia is a republic with a parliamentary multi-party system. The unicameral Parliament (*Saeima*) is composed of 100 members who are elected for four-year terms through direct elections by secret ballot under an open-list proportional representation system with a 5% nationwide threshold. As in previous elections, women were a minority of those elected to office: only 19 women (out of 100 members) were elected. The Speaker of the *Saeima* is currently a woman.

25. Elections to the *Saeima* are held in 5 electoral districts: Riga, Vidzeme, Latgale, Kurzeme and Zemgale. From each electoral district a specific number of members of the *Saeima* are elected in proportion to the number of voters in the district. Candidates for the *Saeima* can be nominated by registered political parties or registered coalitions of political parties. The threshold for entering parliament is 5% of the total number of votes cast in Latvia.

26. The mandate of a member of the *Saeima* (MP) is terminated when (i) a newly elected *Saeima* convenes; (ii) an MP gives notice of his/her resignation and a replacement takes place – this applies if an MP becomes Prime Minister, Deputy Prime Minister or State Minister, as well as in cases of maternity/adoption/childcare leave; (iii) an MP is expelled from the *Saeima*; or (iv) on the death of the MP.

27. MPs may be expelled from the *Saeima* if (i) elected in violation of the provisions of the *Saeima* Election Law; (ii) they lack command of the official language at the required professional level; (iii) incompatibility occurs; (iv) unjustifiably absent from more than half of the *Saeima* sittings; (v) convicted of a criminal offence (expulsion is effective as of the date of enforcement of the sentence); (vi) legally incapacitated or if convicted of a crime in a state of diminished responsibility or subsequently declared mentally ill.

##### Transparency of the legislative process

28. Meetings of the *Saeima* are open to the public, broadcast on national radio and available on the website of the *Saeima* ([www.saeima.lv](http://www.saeima.lv)). Plenary meetings are audio and video recorded (video recordings are available on the internet); written transcripts are prepared thereafter and published in the official bulletin. Information about how individual MPs vote is available on the website of the *Saeima*. It is possible for the public to follow a plenary meeting in the *Saeima* continuously in person.

29. Draft policy planning documents or legislative proposals of the Government are also available for consultation on the website of the Government before they are submitted to the *Saeima*, as are the agendas and documents under discussion at meetings of the Committee of the Cabinet of Ministers or State Secretaries' meetings. The website of the Cabinet of Ministers provides a database on legislation drafted by the Government ([www.mk.gov.lv/lv/mk/tap/](http://www.mk.gov.lv/lv/mk/tap/)).

30. The composition of parliamentary committees, as well as their working agendas, is published on the *Saeima's* website. Meetings of committees should be, as a general rule, open to the public (Article 159, Rules of Procedure of the *Saeima*); however, a closed meeting may be held upon the decision of the *Saeima* or the relevant committee. The *Saeima* may appoint parliamentary investigatory committees for certain matters upon request by no less than one-third of MPs. For example, in 2008 a committee was set up to investigate judicial corruption dating back to the 1990s, and another in 2011 investigated the collapse of "Krajbanka" which raised issues of corruption. The former did not lead to any prosecutions and KNAB is conducting investigations as a result of the latter. In practice, however, the use of investigatory committees occurs rarely since

requests to establish them do not attain the necessary votes (typically from the ruling majority). Similarly, opposition MPs' questions and requests to the members of Government, although possible in law and frequently initiated, have rarely been approved by a majority of the *Saeima*.

31. Public consultations can be organised by the *Saeima*. A declaration of cooperation with NGOs has been adopted to facilitate the involvement of civil society in the legislative process. Pursuant to this declaration, representatives of NGOs can take part in committee meetings, give opinions on draft laws and legislative proposals, etc. The Rules of Procedure of the *Saeima* (Article 85) establish that the responsible committee is to issue an explanatory note stating *inter alia* the persons/groups that were consulted in the preparation of the draft law; however, it would appear that without a control mechanism, this requirement is not systematically fulfilled.

32. While there is no statutory requirement to publish draft legislation prepared by the *Saeima*; in practice, draft laws and annotations are generally published on the website. There is a database which provides the information, including details of the drafting process and current versions of the draft itself.

33. It is clear that a number of good disclosure practices exist to enable public access to proposed and then adopted legislation, and to allow for follow-up to plenary sessions of the *Saeima*. The GET was also informed of steps taken to remove public concern in relation to secret voting when appointing officials, a practice which was abolished by legal amendments introduced on 19 January 2012 changing the process to open voting<sup>6</sup>.

34. The authorities added that in order to improve transparency in decision-making processes in the *Saeima*, a draft law on lobbying was under way, which would establish *inter alia* a register of lobbyists and set in place rules concerning MPs' relations with lobbyists. In this context, the GET notes that, at present, MPs are not subject to any obligation to disclose details on meetings and consultations held with third parties in connection with on-going legislative proposals outside the meetings of commissions. The lack of transparency in this area constitutes an important loophole in the system given the allegations of increasing influence of private interests in the legislative process. The Corruption Prevention and Combating Programme for 2009-2013 already fixes as one of its objectives timely publication of draft laws, including a justification for the relevant law and information regarding consultation with private individuals and lobbyists which have taken place. The GET encourages the authorities to pursue their work in this regard. **GRECO recommends the introduction of rules on how Members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process.**

#### Remuneration and economic benefits

35. An MP's gross monthly salary amounts to 2,016 EUR. The average gross monthly salary in Latvia is 655 EUR. MPs are also entitled to compensation for transportation and housing at levels fixed by law. In particular, the total amount of this benefit cannot exceed the average salary of a public sector employee together with a ratio which is related to the distance between Riga and the domicile of the MP. MPs lose this benefit following termination of office. The budget for MPs' offices is provided for solely out of public resources and information on this spending is available on the website of the *Saeima*.

36. During the on-site visit, the KNAB referred to certain misunderstandings by MPs in the use of allowances and the reimbursement of expenditures. The KNAB also indicated that while rules are now in place to prevent MPs from hiring members of family as their

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<sup>6</sup> Secret vote remains in place for the appointment of the President of the Republic and judges of the Constitutional Court.

staff and thereby better avoid any perception of favouritism or nepotism occurring in Parliament, a new practice has emerged to get around the rules, notably, by MPs employing each other's relatives instead. In the interest of ameliorating public confidence in the system, these matters certainly deserve follow-up. In the GET's view, rather than a question of rules, it is critical that the ethical system which governs conduct in-house is stepped up; the recommendations made later in this report are geared towards providing a more solid basis for a culture of integrity among *Saeima* members, and thereby, building public confidence.

#### Ethical principles and rules of conduct

37. A Code of Ethics which sets in place standards of behaviour for MPs was issued in 2006. It was drafted by the Mandate, Ethics and Submissions Committee in close cooperation with NGO representatives. It forms an integral part of the Rules of Procedures of the *Saeima*. The Mandate, Ethics and Submissions Committee is responsible for overseeing the implementation of the Code, specifically if individual complaints are raised. Information about the role of the Mandate, Ethics and Submissions Committee in this area is published on the website of the official bulletin.

38. Since its adoption in 2006, the Code appears not to have played a decisive role on the conduct of the members of the *Saeima*. In this connection, the GET notes that the Code is too abstract, it has not been updated since it was adopted and the Mandate, Ethics and Submissions Committee is not very proactive in its supervision of the Code. In order to ensure the Code is better embedded into the working culture of the *Saeima*, the Code itself needs to be updated, the role of the Committee in addressing ethical issues needs to be enhanced, investigation of breaches of ethical rules (currently only when triggered by a complaint) must become more proactive and training carried out. It is also important that when developing guidance on ethical standards, it includes establishing effective channels for discussing and resolving issues that raise ethical concerns, both on an individual basis (e.g. advice on a confidential basis) and on an institutional level (e.g. training, institutional discussions of integrity and ethical issues related to parliamentary conduct, etc.). The GET notes that providing further guidance on ethical standards and corruption prevention-related provisions would not only increase the awareness of parliamentarians and their staff about integrity issues but would also demonstrate to the public that parliamentarians are willing themselves to take determined action to instil, maintain and promote a culture of ethics in the *Saeima*. **GRECO recommends that the Code of Ethics be (i) revised and updated and (ii) complemented with practical measures in order to provide adequate guidance and counselling to members of the *Saeima* regarding ethical and corruption-prevention related provisions.**

#### Conflicts of interest

39. The Conflict of Interest Law defines conflicts of interest and provides for (i) restrictions and prohibitions on public officials; (ii) rules on the prevention of conflicts of interest and (iii) a duty on public officials to declare their financial status and interests along with a mechanism to verify such declarations. A conflict of interest is defined as a situation which arises during the course of performing the duties and activities of public office and/or in the process of decision-making or taking a decision, which affects or may affect the personal or financial interests of a public official and/or his or her relatives (Article 1, paragraph 5, Conflict of Interest Law).

40. The GET understood, from the interviews carried out on-site and the comments received from the authorities thereafter, that the applicable rules of the Conflict of Interest Law to MPs were those dealing with restrictions and prohibitions (e.g. incompatibilities, additional activities) and those concerning asset declarations. Further, the authorities explained that because of the nature of their functions, the independent status of MPs and the fact that this is not conducive to a hierarchical structure, several

key provisions relating to conflict of interest prevention are not applicable to MPs (e.g. rules on informing of conflicts of interest or incompatible activities pursuant to Articles 21 and 8, respectively; rules on recusal/refraining from participating in decision-making processes when personal or financial interests of the official or his/her relatives or counterparties are at stake according to Article 11 and exceptions provided by paragraphs 5 and 6 of Article 11<sup>7</sup>). The particular concerns of the GET in this regard are further detailed in paragraphs 63 to 65.

### Prohibition or restriction of certain activities

#### *Incompatibility and accessory activities*

41. Article 7 of the Conflicts of Interest Law sets out the only functions or roles that MPs are permitted to hold in addition to their public office. These are:

- offices they may hold in accordance with the law, or any international agreement ratified by the *Saeima* (e.g. counsellors to UNESCO);
- offices in a trade union, an association or foundation, a political party, a political party union or a religious organisation;
- work as a teacher, scientist, doctor, professional sportsperson or creative work;
- other offices or work in the *Saeima* or the Cabinet, if such is specified in a decision of the *Saeima* and its institutions, or by regulation or order of the Cabinet; or
- offices held in international organisations and institutions if such has been determined by a decision of the *Saeima*, or by Cabinet regulations or orders.

42. Like public officials, MPs who are sole entrepreneurs registered on the commercial register and whose business is related to agriculture, forestry, fishery, rural tourism, or as general practitioner (e.g. medicine) are allowed to combine their public office with these economic activities (Article 7, paragraph 10, Conflict of Interest Law). They do not need specific authorisation to do so. The GET notes that with respect to this particular provision, some changes were recently introduced. Previously, public officials were allowed to perform these types of activity in so far as they did not exceed a total annual turnover of 42,000 EUR (current equivalent of 30,000 LAT). This threshold has now been abolished. The GET heard concerns from non-governmental actors as to potential conflicts of interest which might emerge in this area for MPs as they legislate in the sector where they own a lucrative business. The GET notes that the amendments are quite recent and more experience is necessary to test their particular effect; it, nevertheless, advises the authorities to keep these matters under close review.

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<sup>7</sup> Article 11, Conflict of Interest Law. Restrictions on issuing administrative acts, performance of supervision, control, inquiry or punitive functions and entering into contracts.

(5) The restrictions on the issue of administrative acts specified in this Section do not apply to members of the *Saeima* and the Cabinet in cases when the referred to public officials participate in the issue of the relevant *Saeima* or Cabinet administrative acts.

(6) The restrictions specified in Paragraphs one and two of this Section shall not apply to:

1) the President, members of the *Saeima*, members of the Cabinet or self-government council councillors in cases where the referred to public officials participate in the adoption of external regulatory enactments or political decisions; and

2) members of the *Saeima*, members of the Cabinet or self-government council councillors in cases where the referred to public officials participate in the adoption decisions of the *Saeima*, Cabinet or self-government council respectively regarding the specification of their own remuneration or the appointment, election or approval of themselves to office.

## *Gifts*

43. Article 13<sup>1</sup> of the Conflict of Interest Law (special restrictions on accepting gifts in fulfilling the duties of a public official) defines a gift as any financial or other benefit including: services; granting, transfer or waiver of a right(s); release from an obligation(s); or any other activity which, as a result, creates a benefit in favour of the public official whether directly or indirectly. Where a gift is received in the course of official duties, i.e. diplomatic functions or receiving of foreign delegations, they must be listed in an official register pending a decision of the Minister of Foreign Affairs on their use. Such gifts are the property of the State.

44. The following are deemed exempt from the definition of a gift under Article 13 and are therefore allowed:

- flowers;
- souvenirs, books or representation articles if the total value of all such items received from a single donor within one year does not exceed the amount of one minimal monthly wage<sup>8</sup>;
- awards, prizes or honours, as set out in external regulation;
- any benefit or guarantee, which the public official in fulfilling his or her duties of office, is entitled to receive as set out in the State or local authority regulations in which the official fulfils their official duties: and
- services or various types of rebates offered by commercial companies, individual merchants, as well as by farms or fishery enterprises and which are accessible to all members of the public.

45. Article 14 of the Conflict of Interest Law lays out restrictions on the acceptance of donations by institutions. A donation is defined as the allocation (transfer) of financial resources, goods or services without compensation for specified purposes. In particular, donations are not allowed except for specific professional needs (i.e. staff training or technical support) and with permission from a higher authority. Article 13<sup>2</sup> (special restrictions on accepting gifts external to the fulfilment of the duties of a public official) prohibits a public official from accepting a gift(s)/donation(s) if, in relation to the donor, the public official has in the previous two years prepared or issued an administrative act or performed supervisory, control, inquiry or punitive function(s), or entered into any contract or performed any other activity associated with fulfilling their official duties.

## *Financial interests*

46. Cabinet regulations restrict the capital shares and stock income of MPs, and prohibit income from any kind of securities in commercial companies that are registered in tax-free or low-tax countries and territories.

## *Contracts with State authorities*

47. The Conflict of Interest Law (Article 10, paragraph 1) specifically states that MPs shall not hold stocks or shares or be a partner in a commercial company or own a business (as a sole entrepreneur) which is in receipt of Government contracts (i.e. public procurement contracts and other purchases made by the *Saeima*) to provide services or goods to the State or local authority, or is in receipt of State or local government financial resources, credits or privatised fund resources, except where these are granted as a result of open competition.

48. The GET has misgivings as to the exception provided in the Conflict of Interest Law concerning Government contracts when these are granted as a result of open competition. All the more so, since no safeguards are provided to, for example, ensure

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<sup>8</sup> As of October 2012, the minimal monthly wage in Latvia amounts to 200 LAT (285 EUR).

the MP has no involvement in, nor initiated any aspect of the decision-making process to do with or leading to the award of the contract. In the GET's opinion, this exception opens up possibilities for abuse. Further, the GET makes reference to Article 32 of the Latvian Constitution which stipulates that Members of the *Saeima* may not, either personally or in the name of another person, receive Government contracts or concessions. **GRECO, therefore, recommends abolishing the exception provided in the Conflict of Interest Law to the general prohibition for MPs to enter into contracts with State authorities.**

#### *Post-employment restrictions*

49. The restrictions set out above (interest in companies in receipt of government contracts) continue to apply for two years post-employment. Further, the Conflict of Interest Law states that for two years post-employment a former public official is prohibited from owning or acquiring any of the interests in any company or business, as set out above, about which, or in relation to which, he or she took any decisions on public procurement, allocation of state or local authority resources, privatisation funds, or performed any supervisory, control or punitive functions (Article 10, paragraph 7).

#### *Third party contacts*

50. All public officials must include information about business associates in their declarations. The Criminal Law, Article 326 on trading in influence, makes it a criminal offence to unlawfully influence the activities of a public official or to encourage anyone else to do so in the interests of anyone. In addition, the Government has decided that provisions on lobbying are to be drafted by the KNAB by the end of 2012 (for details see paragraph 34).

#### *Misuse of confidential information*

51. Article 19 of the Conflict of Interest Law prohibits the unlawful disclosure of information accessible to public officials by virtue of their role and duties or use of such information for anything unrelated to the performance of their duties. Similar provisions are also included in the Code of Ethics of the *Saeima*. Procedures for the retention, use and protection of classified information is set out in the Official Secrets Act. This law also sets out the different categories of information to be treated and protected in accordance with specific procedures. In addition, the Freedom of Information Law applies to generally accessible and restricted information and sets out provisions as to its protection. Criminal liability shall be imposed for abuse of official position (Article 318, Criminal Law), disclosure of confidential information (Article 329, Criminal Law) and disclosure of confidential information after leaving office (Article 330, Criminal Law).

#### *Misuse of public resources*

52. The Conflict of Interest Law authorises public officials to act with regard to State or local government property and finances in accordance with the law, Cabinet regulations and local government councils. This includes preparing or taking a decision regarding the acquisition of such property, its transfer, use or alienation for other persons, as well as for the re-allocation of the financial resources.

53. The Law on the Prevention of Squandering Financial Resources and Property of the State and Local Governments has been in force since 1997 to regulate the lawful use of public resources and property in the public interest and to prevent the squander, waste and/or maladministration of such resources and corruption in public administration. The rational use of state property and resources is also a duty on MPs provided for in the Code of Ethics for the *Saeima*.

## Declaration of assets, income, liabilities and interests

54. Members of the *Saeima* (MPs) have to submit annual declarations (as well as a declaration upon entering and ending public service and once their duties are terminated). The table below provides an overview of the interests MPs must declare and their thresholds (see also Annex to compare these across the three groups: MPs, Judges and Prosecutors).

**Table of Registrable Interests and Thresholds for Members of the *Saeima***

<b>Category</b>	<b>Must Declare</b>	<b>Thresholds</b>
<b>Additional posts (paid, unpaid, + those allowed by law)</b>	✓	All declarable (Information on all additional posts, work-performance contracts, authorisations, etc.)
<b>Commercial interests (shares, stocks, partnership, sole entrepreneur)</b>	✓	All declarable
<b>Gifts</b>	✓	All monetary gifts of any value and other gifts if exceeding 20 x the minimum monthly wage
<b>Diplomatic gifts (on Official Register)</b>	✓	State property must be registered on Official Register.
<b>Land and Property (including vehicles)</b>	✓	Immovable property in ownership, possession, usage; vehicles in ownership, possession, usage, or rented
<b>Income (including savings)</b>	✓	Including cash or non-cash savings if it exceeds 20 x the minimum monthly wage
<b>Debts, loans and financial transactions</b>	✓	Any and all which exceed 20 x the minimum monthly wage
<b>Other Elected/Public Offices</b>	✓	
<b>Non-Financial interests</b>		

55. All types of income earned must be individually identified by gross amount, currency, place and name of source (identifying and naming legal and natural persons). As seen in the table above, MPs must declare any other position they hold, even when they are allowed by law (posts in associations, foundations, and religious organisations and trade unions). The declaration must detail work-performance contracts or authorisations and any liabilities related to the position they hold. All those submitting a declaration can include any further information about his or her financial position or interests or any relevant changes to their position in the period in question which have not been indicated elsewhere in the declaration.

56. Declarations are publicly accessible but with some restrictions. The non-public part of the declaration includes the residence and personal code details of the public official, his or her relatives and any other persons mentioned in the declaration, as well as information on counterparties (party with whom there is contract), including debtors and creditors. Such non-public information is available to public officials and authorities which examine declarations in accordance with the law as well as in cases determined by law – prosecutors, investigative institutions and State securities services<sup>9</sup>.

57. Regular declarations are stored and maintained by the SRS and the non-confidential part of the declaration is publicly available on the SRS website which is searchable by name. Family members of MPs are not obliged to submit declarations unless they are public officials. From March 2012, however, all natural persons (in addition to public officials) have to declare their assets according to established criteria and thresholds.

<sup>9</sup> Conflict of Interest Law, Article 26.

58. Similar information (as set out above) has to be submitted to the Central Election Commission (CEC) by parliamentary candidates once a political party (organisation) has registered its list of candidates at the CEC. This information is available on the CEC website.

## Supervision and enforcement

### *Supervision*

59. Main supervision over compliance with the rules on assets declarations rests with the KNAB and the SRS as explained before. The elements of this supervision regime have already been described in this report under paragraphs 17 and 23.

60. Breaches of the conflict of interest rules can result in either administrative or criminal sanctions. Administrative sanctions range from a fine (up to a maximum €355 EUR) to, in some instances, a suspension or prohibition from holding office. Failure to submit a declaration on time is liable to an administrative fine and failure to submit after receiving a warning is a criminal offence with the possibility of a fine up to 60 times the minimum monthly wage or imprisonment for a term not exceeding two years. Enforcement in both these instances is carried out by the SRS. If, as a result of a conflict of interest a personal financial gain is made, civil proceedings for recovery may be commenced and additional fines ultimately imposed. If a false declaration is made with respect to very high value property or income, the public official may be held liable under criminal law and the sanctions range from a fine not exceeding 100 times the minimum monthly wage, a community sentence or up to four years' imprisonment. Failure to indicate the origin of high value income or property and/or a failure to respond truthfully when such information is requested is a criminal offence and can lead to a fine not exceeding 150 times the minimum monthly wage or up to 6 years in jail, and the confiscation of the property or income in question.

61. Criminal sanctions for violating the restrictions of public office range from: a fine (not exceeding 150 times the minimum monthly wage) with or without a custodial sentence and/or employment restrictions (e.g. on the role or holding a particular office) for a term not exceeding three years; custodial arrest; community service; or imprisonment for up to three years. For public officials holding a position of responsibility, the appropriate range is: a fine not exceeding 200 times the minimum monthly wage, with or without the confiscation of property, and/or employment restrictions (as above); or imprisonment for a term not exceeding five years (Article 325, Criminal Code). Anyone found guilty under criminal law of using their official position to unlawfully facilitate or participate in a property transaction in order to acquire the property or for some other personal interest/benefit, is liable to a custodial sentence not exceeding two years or a fine not exceeding 100 times the minimum monthly wage. If the public official holds a responsible position the applicable punishment is imprisonment for a term not exceeding five years, with or without confiscation of property (Article 326, Criminal Code).

62. The GET is of the view that the disclosure regime laid out in the Conflict of Interest Law is very comprehensive. The GET did not come across any major criticism as to the capability (resources<sup>10</sup> and specialisation) of the KNAB and the SRS to check declarations or to gather information from third parties when needed during the course of investigations. The GET was informed that MPs' declarations are checked annually, on a random basis and if a complaint is received about a particular individual, and that special attention is paid to newly elected members of the *Saeima* or those members who have previously violated related rules. Similarly, concerning the range of possible sanctions for

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<sup>10</sup> The KNAB has eight senior specialists including the Head of Division and the Deputy Head. The SRS has 25 staff members charged with checking asset declarations.

breaches of the Conflict of Interest Law, these appear to be adequate on paper. The GET was told that while no MP has ever been held to account in a court of law, administrative sanctions, in the form of fines, have been imposed whenever breaches of the law were detected by the KNAB or the SRS (see also paragraph 67).

63. Having said that, the GET was rather puzzled as to the passiveness of the *Saeima* in addressing integrity and corruption prevention matters in-house and found self-control mechanisms still at an incipient stage. As explained before (paragraph 40), the GET found that MPs were exempted from a number of corruption prevention provisions in the Conflict of Interest Law. For example, the GET notes that while the Conflict of Interest Law details in its provisions the possible channels and procedures to report on conflict of interests, such procedures have not developed in practice in the *Saeima*. The authorities argued that this is due to the fact that such procedures require reporting to a superior authority and that MPs are independent and not subject to any hierarchy. In particular, the Conflict of Interest Law clearly states that the Presidium of the *Saeima* or the Speaker of the *Saeima* cannot be considered as the "head of the authority", a higher public official, or an institution or collegial authority in the meaning of the obligations of the law. Reporting to the KNAB is possible with respect to other MPs and suspicions of irregularities, but not with respect to oneself. In this context, when questioning the current process to decide on the course of action to be taken in the event of a potential conflict of interest, the GET was told that these matters were resolved by the common sense of the MP himself/herself. Such a position reflects a poor level of understanding of the rationale behind the Conflict of Interest Law, the prevention mechanisms it sets, the notion of conflict of interest itself and the way it needs to inform the choices and decisions of MPs in carrying out their parliamentary functions. It also sends a wrong signal to the public. The GET further notes that, at present, there is no system in Latvia requiring ad-hoc oral declarations at the outset of parliamentary proceedings which can then be put on public record. This is a good practice now used in many countries and it could be valuable in Latvia as a way to ensure potential conflicts of interest which might arise in the handling of a specific matter by the *Saeima* are duly noted and reported.

64. A culture of prevention and the avoidance of possible conflicts of interest has not yet taken root in the *Saeima*; the GET is of the firm view that determined steps must be taken to prove that MPs themselves are taking responsibility and adopting a proactive approach in this area. Discipline and responsibility must come first from within the *Saeima*. The GET further notes that there is no mechanism in place in the *Saeima* to inquire into misconduct *ex-officio*, which effectively means that the *Saeima* has outsourced its control duties.

65. The effectiveness of the standards laid out in both the Code of Ethics of the *Saeima* and the Conflict of Interest Law depends not only on the awareness of individual members and their willingness to comply with its provisions, but also on appropriate tools to secure its implementation. In addition, as already noted, the Mandate, Ethics and Submissions Committee is not proactive with regard to breaches of the Code of Ethics of the *Saeima*. To date, three MPs had been sanctioned in relation to breaches of the Code, and in these cases, the misconduct concerned relatively marginal violations (one of them used an offensive expression in addressing an opposing MP; another showed an offensive gesture to people protesting outside the *Saeima* building; another in his private life discredited the prestige of the *Saeima*). They were sanctioned with a warning. The GET was told that, in any event, losing votes is a *de facto* sanction for an MP who has broken the law. The GET does not fully concur with such a statement which forgets that the rectification and sanctioning of misconduct cannot be put on citizens' shoulders, or, at least, not exclusively. The GET believes that a system for regulating ethics which is fair, robust and effective can significantly boost the prestige of politics. In light of the aforementioned considerations, **GRECO recommends that the mechanisms internal to the *Saeima* for assuring application of the Code of Ethics, as well as for preventing conflicts of interest, be further developed and articulated with a view to ensuring their proactivity and effectiveness.**

## *Immunity*

66. The Constitution of Latvia sets out the protections and immunities afforded to Members of the *Saeima*. MPs may not be called to account by any judicial, administrative or disciplinary process in connection with how they vote or express their views in the performance of their duties. Court proceedings may be brought against MPs if they disseminate defamatory statements which they know to be false, or which are defamatory about private or family life albeit in the course of performing parliamentary duties. Moreover, members of the *Saeima* cannot be arrested, nor their premises searched, nor their personal liberty restricted in any way without the consent of the *Saeima* (except when in *flagrante delicto*). Without the consent of the *Saeima*, criminal prosecution may not be commenced and administrative fines may not be levied against its members. MPs also have the right to refuse to give evidence in certain circumstances in order to protect those who have entrusted them with facts or information (e.g. citizens and whistleblowers).

67. In the case of an MP, when a violation of the rules on declarations is detected, investigated (i.e. all available data requested, checked and evaluated) and a decision is taken to impose an administrative sanction, a request for lifting immunity must be submitted to the *Saeima* first. During the 2006-2010 and 2010-2011 parliamentary periods, the *Saeima* consented to the administrative punishment of 26 MPs (some of them more than once) on the request of the KNAB. So far the *Saeima* has satisfied all requests to punish MPs administratively. None of these cases involved any major corruption but more often related to conflicts of interest, for example: MPs employing their relatives as assistants or renting residential premises from relatives so as to be able to collect compensation for rent expenses; violating incompatibility provisions, i.e. MPs holding prohibited posts external to, and alongside their parliamentary seats; participating in decision making which affected the MPs' own interests, e.g. regarding monetary compensations of certain expenses.

68. A general concern expressed by several interlocutors interviewed on-site related to MPs' immunities, an issue which was first regulated in Latvia in 1922 and which has not been amended since. In addition to non-liability (freedom of speech), Latvian MPs also benefit from procedural immunity as explained above. The continued usefulness of the immunity against administrative punishment and search has also been put into question as it gives the impression to the public that MPs are above the law. In the GET's view it also has little justification: immunities are generally provided to protect specific categories of officials from abuse or undue interference in their duties and it is difficult for the GET to see how administrative immunity could be linked or legitimately grounded in those terms. While the GET would refrain from issuing a formal recommendation on procedural immunity in criminal cases (an issue which was settled in the First Evaluation Round and assessed as generally acceptable), it considers that the current immunity from administrative liability of MPs is too broad and makes little sense today. In the same vein, the Secretary General of the Council of Europe, in his official visit to Latvia on 3-5 June 2012, repeatedly voiced his concern regarding the far-reaching system of immunities in Latvia and asked the Government to take steps to amend the legislation. There appears to be some consensus by MPs themselves to review the current system and some efforts have been made recently to change this state of affairs (i.e. to amend the legislation regarding immunities). However the relevant proposal failed since it was not possible to garner the 2/3 majority required to amend the Constitution and the issue has yet to be addressed. Thus, **GRECO recommends that the system of administrative immunities for members of the *Saeima* is abolished.**

### Advice, training and awareness

69. Information about corruption prevention issues and descriptions of the different provisions in relation to conflicts of interest are available on the website of the KNAB. Information and guidelines about filing declarations are available on the website of the SRS. The KNAB runs workshops and provides training to explain the provisions relating to ethics, conflicts of interest and the restrictions applicable to different public officials. The SRS also provides consultations about completing declarations.

70. Despite the support provided by the KNAB, and to a certain extent the SRS, to improve awareness of the existing rules on conflicts of interest amongst the different categories of officials covered by the Conflict of Interest Law, it was obvious during the on-site visit that MPs' understanding of such rules was largely theoretical and mainly confined to the process of filing asset declarations. When the GET tried to test practical examples, it received no clear answer as to the course of action to take if a conflict of interest question arose. From the interviews carried out, the GET has reasons to doubt whether MPs realise when focusing in concrete cases in their daily parliamentary activity that a potential conflict of interest might be at stake. The GET encourages the KNAB to continue its efforts to inform, explain and raise awareness of members of the *Saeima*, and of the relevant supervisory bodies, on conflicts of interests. Moreover, the GET is again convinced that self-responsibility must be a priority in this area; the *Saeima* itself needs to find better ways to increase awareness and to promote a culture of ethics among its members. At present, the Mandate, Ethics and Submissions Committee plays no role in providing advice and guidance on how to interpret and implement the applicable rules. The GET stresses once more how crucial it is that if the ethics and conduct regime is to work properly, MPs must themselves develop fair and realistic rules, and channels and mechanisms to instil and uphold strong ethical values. MPs must themselves take a stake in the success of that regime. All this calls for targeted measures of a practical nature, which may include – but not be limited to – induction and regular training, issuing frequently-asked questions, hands-on publications and guidance, establishing an official and permanent source of advice for MPs (e.g. through a specialised committee, or a dedicated counsellor), etc. The GET refers back to the last part of recommendation iii (paragraph 38) which specifically calls for the development of such guidance and counselling system.

## V. CORRUPTION PREVENTION IN RESPECT OF JUDGES

### Overview of the judicial system

71. Latvia has a three tiered court system comprised of district (city) courts (hereinafter, district court), regional courts and the Supreme Court. In a state of emergency or during war, judicial power can be vested in the military courts.

72. There are 34 district courts which are the first instance courts for civil and criminal cases and there is one administrative court at district court level. Five regional courts act as the appeal courts for all district court cases and cases decided by a single judge, and as courts of first instance in certain circumstances, notably for cases of greater complexity and scope<sup>11</sup>. There is also one administrative court at regional level. As of 1 January 2012, land registry courts were incorporated into the structure of district courts<sup>12</sup>.

73. The Supreme Court of Latvia consists of (1) the Senate, and (2) two chambers: the Chamber of Civil Cases and the Chamber of Criminal Cases. The Chambers serve as courts of appeal for cases heard at first instance in the regional courts. The Supreme Court Senate is the court of cassation for all cases heard in district and regional courts and is the court of first instance for cases relating to decisions adopted by the State Audit Office under Article 55 of the State Audit Office Act. The Senate is made up of three departments: Civil Cases, Criminal Cases and Administrative Cases. The Supreme Court is administratively separate from the district and regional courts.

74. There are 472 professional judges in Latvia, 115 men and 357 women<sup>13</sup>. The system of lay judges was abolished in 2009. There are currently more women than men at every court level in Latvia: a much higher ratio in the district courts (233 female judges, 65 male judges) than at the Supreme Court (26 female judges, 23 male judges). There are also more women chairs at all court levels although the ratio at district court level is lower than the proportion of female to male judges at that level (i.e. 27 female court chairs and 15 male court chairs)<sup>14</sup>.

75. Latvia also has a Constitutional Court – an independent judicial authority – which examines the constitutional compatibility of *inter alia* legislation, legal provisions, international agreements, or the conduct (except administrative acts) of the *Saeima*, the Cabinet, the President, the Speaker of the *Saeima* and the Prime Minister, etc. It has seven members, three proposed by the *Saeima*, two by the Cabinet and two by the Supreme Court (plenary session). All Constitutional Court judges must be 40 years or over, hold high academic qualifications and have at least 10 years' experience specialising in law or in a judicial capacity.

76. The Constitutional Court cannot bring actions on its own initiative and those who have the right to submit an application regarding the initiation of a matter are: the President, the *Saeima* as an institution, members of the *Saeima* (not less than twenty of them), the Cabinet of Ministers, the Prosecutor General, the Council of the State Control, the Ombudsman, the Dome (Council) of a Municipality, also courts of general jurisdiction

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<sup>11</sup> The authorities indicated after the on-site visit that, with the amendments of the Law on Judicial Power, it is planned that all cases will gradually (in a timespan lasting until 31 December 2015 for criminal cases and 31 December 2019 for civil cases, respectively) be submitted to district courts in first instance. Thus, regional courts would only hear cases on appeal. The proposed amendments to the Law on Judicial Power have been submitted to the *Saeima*.

<sup>12</sup> Amendment to the Law on Judicial Power adopted by Parliament on 21 July 2011 and which came into force on 1 January 2012.

<sup>13</sup> According to subsequent data, submitted in October 2012, there are 580 professional judges in Latvia. This figure comprises Supreme Court and Land Registry office judges and excludes judges from the Constitutional Court.

<sup>14</sup> Fourth Evaluation Report on European Judicial Systems, European Commission for the Efficiency of Justice (CEPEJ), 20 September 2012.

when reviewing a civil, criminal or administrative case, a judge of the Land Registry office when entering real estate – or thus confirming property rights on it – in the Land Registry, as well as any natural or legal person, whose fundamental rights, set out in the Constitution, have been violated. The Court has heard a number of applications in recent years on the issue of judicial salaries and has analysed the relationship and possible risks between such reforms and the principle of judicial independence. As of 2011, the Judicial Council – on behalf of judges – has the right to submit an application regarding the initiation of a matter to the Constitutional Court.

### The principles of independence and impartiality

77. The principle of judicial independence is enshrined in Article 83 of the Constitution of Latvia, which states that judges shall be independent and subject only to the law. The Law on Judicial Power (Articles 10 and 11, Law on Judicial Power) and the Law on Constitutional Court (Article 2) also set out the guarantee of independence of the judiciary and prohibits any interference with its work. Judicial independence and the impartiality of judges are fundamental principles in a State governed by the rule of law; they benefit the citizens and society at large as they protect judicial decision-making from improper influence and are ultimately a guarantee of fair court trials.

78. The GET noted, however, that the formal independence and the due impartiality of the judiciary are undermined by the fact that there is a widespread public perception of corruption within the judiciary and that public trust in the institution is low. This perception is likely fuelled by a major scandal in 2007 and a parliamentary investigation in 2008 into alleged corruption among prominent judges and politicians – both with regard to events taking place in the 1990s. The 2007 scandal was precipitated by the publication of transcripts revealing inappropriate and unethical pre-trial discussions between a well-known lawyer and several judges illegally taped between 1998 and 2000. An investigation by the Prosecutor General authenticated part of the transcripts and a special parliamentary commission issued an inconclusive report in September 2008; although three judges resigned, none was charged with a crime<sup>15</sup>. Separately, in February 2008, two district court judges were sentenced to eight years in prison for accepting bribes<sup>16</sup>; the sentence was then reduced to three years on appeal.

### Recruitment, career and conditions of service

#### *Recruitment*

79. The *Saeima* decides on the appointment, reappointment and promotion of judges in Latvia. Until recently, the *Saeima* also voted on judicial transfers between courts at the same level. As of 2010, decisions to rotate or transfer a judge have been made by the Judicial Council taking into account the views of the Judicial Qualification Board. That said, rules are in place to ensure that the removal/transfer of a judge only takes place in very specific circumstances as provided for by law (with consent, election/appointment to another office, health reasons, retirement, criminal conviction<sup>17</sup>).

80. The Judicial Council (Chapter 13 of the Law on Judicial Power) is a collegial institution, which was established in 2010, to participate in the elaboration of judicial policies and strategies, as well as to provide support to improve work organisation in the judiciary (Article 89<sup>1</sup>, Law on Judicial Power). It consists of the Chairs of the Supreme Court, Constitutional Court, and the Legal Committee of the *Saeima*, the Minister of Justice, the Prosecutor General, the Chairs of the Lawyers Council, the Notarial Council, the Council of Sworn Bailiffs, and seven elected members – one from the Supreme Court and six elected in the Conference of Judges. The latter are representatives of other court

<sup>15</sup> National Integrity System Assessment on Latvia. Transparency International (2011).

<sup>16</sup> Human Rights Report (2009), Latvia. Bureau of Democracy, Human Rights & Labour, US State Department.

<sup>17</sup> Law on Judicial Power, Article 82.

instances and judicial institutions. Members of the Judicial Council are elected for a four-year term renewable once. The Chief Justice of the Supreme Court is the Chair of the Judicial Council. Decisions of the Judicial Council are taken by majority vote, and in the case of tied vote the Chair has the casting vote.

81. The Judicial Qualification Board oversees the qualification process for new judges, assesses their suitability and professional preparedness. It also provides opinions on candidates nominated for appointment, certifies them on appointment and oversees the process of granting qualification levels (which are linked to salary, see paragraph 90). The Board is composed of nine members elected by the Conference of Judges for a four-year term: three judges from the Supreme and regional courts (from the areas of civil, criminal and administrative law), two district judges and one land register judge. Opinions of the Judicial Qualification Board can be appealed to the Disciplinary Court (Article 93, Law on Judicial Power).

82. The Conference of Judges is a self-governing judicial body in which Supreme Court judges, regional court judges, district court judges and judges of land registry offices participate with a right to vote. The Conference elects the members of the Judicial Council, the members of the Judicial Qualification Board, the members of the Commission of Judicial Ethics and those of the Judicial Disciplinary Board (see paragraphs 111 and 138, respectively). The Conference also has advisory tasks with respect to current issues of court practice, addresses submissions to the Chief Justice of the Supreme Court concerning the interpretation of legal provisions, discusses practical matters related to court work (e.g. financial, social security matters) and approves ethical standards for the profession.

83. Candidates for judicial office are selected in open competition in a two-stage process. The first is a structured interview to evaluate suitability, and the second is an exam and essay designed to test professional skills. In addition to the general requirements (e.g. citizenship, law degree, political impartiality – i.e. not being a member of a political party) for being a judge, and traineeship requirements, the Judicial Qualification Board reviews the professional skills of judicial candidates when making their recommendations for appointment. There is no separate integrity check for judicial candidates.

84. The Judicial Qualification Board provides its opinion/recommendations to the Minister of Justice for the district and regional courts, and to the Chair of the Supreme Court for the Supreme Court, who presents these to the *Saeima* (Articles 57 and 59, Law on Judicial Power).

85. All district court judges are appointed for an initial three years; Supreme Court and regional court judges are appointed on a permanent basis. Once the three year period is completed, district judges are evaluated on their performance by the Judicial Qualification Board and their opinion is forwarded to the *Saeima* by the Minister of Justice. If their performance is deemed unsatisfactory, the Minister of Justice does not nominate the candidate. Otherwise the candidate is nominated permanently or for a further fixed two-year period which must be confirmed by the *Saeima*. Further, judges in office can only be dismissed by the *Saeima* and only on the basis of a decision of the Judicial Disciplinary Board or if the judge has been convicted and the judgement has come into force<sup>18</sup>.

86. While many of the interlocutors did not see a particular problem with the initial three year appointment for judges at district level, characterising it as a useful probationary period to assess the suitability of the judge for permanent appointment, they expressed concern that the *Saeima's* role in both appointing and then reappointing

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<sup>18</sup> Constitution, Article 84. Law on Judicial Power, Article 83.

judges after three years, and potentially for another two year fixed term, made the risk of undue influence too great. The majority of interlocutors welcomed the recent change from secret to open voting for official appointments in the *Saeima*, following legislative amendments introduced on 19 January 2012. This was deemed to be a positive step towards increasing the public accountability of the conduct of *Saeima* Members, which was hoped to prevent the *Saeima* from acting as arbitrarily in the future. As this is a recent development, the GET was unable to determine how far it will go towards reducing the risk of political interference by the legislature in the appointment of judges and thus increase the independence of the judiciary.

87. While the GET acknowledges that a role for parliaments to confirm judicial appointments may not, in itself, be problematic, if properly safeguarded; in Latvia, the GET does consider the role of the *Saeima* in the appointment (which goes beyond the mere confirmation), reappointment and promotion of judges, an unnecessary intrusion into the independence of the judiciary. In the GET's view, failing to ensure that the responsibility of career progression of judges rests only with the judiciary itself fails to recognise the importance of building judicial capacity in Latvia which is independent in practice and not just in law.

88. The GET recalls the Venice Commission remarks in the specific case of Latvia warning on the scope of powers held by the *Saeima* over judges; more particularly, that "judicial appointments may over time be more likely than otherwise to become a subject of party politics"<sup>19</sup>. In this connection, the GET heard that the *Saeima's* role in appointing judges to the Supreme Court has already caused some problems. While it was made fairly clear to the GET during the on-site visit that the risk of direct political influence in judicial decision-making is low, political interference has occurred at the stage of judicial appointment. In particular, the GET was told that in October 2009 and again in December 2010 the *Saeima* failed to confirm the appointment of two separate candidates to the Supreme Court. In the first instance some observers claimed that it was because the judge in question had issued the arrest warrant for the mayor of the port-city of Ventspils, a man allegedly very influential in Latvian politics. In the latter case, the candidate was a well-known criminal law expert from a non-governmental think tank<sup>20</sup>.

89. In light of the problems already encountered regarding judicial appointments to the Supreme Court, and the vulnerability to undue interference at other court levels, the GET considers the need to ensure responsibility over the appointment and career (including reappointment and promotion) of judges rests with the judiciary as essential to building and protecting judicial independence in Latvia. The GET notes that Latvia has already moved the power over judicial transfers from the *Saeima* to the Judicial Council and, as explained above, recently moved to open voting for appointment processes; these are positive steps and the GET can only encourage the authorities to go further along that road to strengthen the independence of the judiciary. In such a context, the scope of powers of the *Saeima* merits further review. **GRECO recommends (i) strengthening the decisive influence of the relevant self-governing judicial bodies (e.g. the Judicial Council and Judicial Qualification Board) in the appointment, reappointment and career progression of the judiciary; and (ii) reconsidering the scope of powers held by the *Saeima* in this area, notably, by restricting it to the confirmation of judicial appointments as recommended by the relevant judicial bodies, with a view to better dispelling the risks of political influence.**

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<sup>19</sup> Opinion on the Draft Law on Judicial Power and Corresponding Constitutional Amendments of Latvia, CDL AD (2002) 26.

<sup>20</sup> National Integrity System Assessment on Latvia. Transparency International (2011).

## *Career and conditions of service*

90. The salary of a judge depends on the court instance, the role held and the judge's qualification level (class) which is based on years of experience and periodic evaluation (attestation). The annual gross salary of a newly appointed judge is 19,752 EUR. In 2011, the annual gross salary of a Supreme Court judge was 31,849 EUR. Judges receive no other benefits during or after their term in office, other than a judicial service pension. Information about judges' salaries is published monthly on the website of the Court Administration.

91. According to the current system (to be replaced in 2013) a judge progresses through a system of five qualification classes or levels. After the first three years in post and a positive evaluation, a judge is placed into the fifth and lowest level and this is accompanied by a 7% salary increase. Once a judge has reached the highest qualification level, s/he is granted a 35% salary increase. Judges must work at a particular qualification level for at least 2/3 of the minimum time specified in law as required for that level before they can move to the next level. The Judicial Qualification Board conducts the evaluations and confers the qualifications. The decisions of the Judicial Qualification Board can be appealed to the Disciplinary Court.

92. Annual court budget requests for the district and regional courts are prepared by the Court Administration. The Judicial Council is not involved in preparing the request but once completed, the Ministry of Justice solicits the opinion of the Judicial Council and then forwards it, along with the budget request, to the Ministry of Finance. The Supreme Court is funded through a separate item in the State budget. The Chair of the Supreme Court (and the Constitutional Court) prepare their respective budget requests within the amount set for them by the Ministry of Finance and present them to the Council of Ministers. They also seek the opinion of the Judicial Council but it is not binding. A decision of the Constitutional Court, in November 2010, ruled that several provisions of the laws on budgets and financial management were not compatible with the Constitution; as independent bodies, the Supreme Court and the Constitutional Court were not guaranteed a chance to defend their budget requests in the Council of Ministers. The laws were amended in 2011 and no specific concerns were raised on this subject during the evaluation visit.

93. The GET did hear during the on-site visit, however, that the lack of human resources is a persistent problem in Latvian courts. Recent research which surveyed officials operating within the court system (i.e. judges, prosecutors, notaries, bailiffs, Ministry of Justice and Court Administration staff) found the insufficient number of judges was identified as the most significant burden affecting the whole system. However, several on-site interlocutors also expressed concern about the large pay gap between judges and their staff which needs to be addressed, particularly with respect to court clerks. The role of court clerk is clearly essential to the smooth running of cases and the administration of the court system. It is also an important route to becoming a judge in Latvia, and there is a risk that without adequate pay for clerks, the profession does not attract some of the most able people to the judiciary. The GET also heard that the judicial profession, and more specifically the current level of pay, is not attractive enough for young lawyers, many of whom leave the judiciary after the three-year probationary period primarily to work in private law firms.

94. Salary reform and budgetary control is clearly a live issue for the judiciary in Latvia, not least because of the economic crisis which hit Latvia hard in 2008. Proposals to reform judicial salaries (some of which went so far as a 60% cut) have been challenged by the Latvian judges in the Constitutional Court. In two separate judgements in 2010<sup>21</sup>, the Court indicated that while the principle of separation of powers means that

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<sup>21</sup> Judgement of 18 January 2010 of the Constitutional Court in the case No. 2009-11-01 and Judgement of 22 June 2010 of the Constitutional Court in the case No. 2009-111-01.

salary reform properly falls within the ambit of the legislature (and not the executive branch), constitutional principles – judicial independence in particular – restrict legislators’ discretion to reform salaries arbitrarily. The Court found *inter alia* that: the judiciary must be properly consulted; judges must have financial security – i.e. a steady income which is not disproportionately restricted; the State must provide adequate remuneration which is commensurate with the status of a judge and which takes into account the restrictions on judges from seeking other income. Further, the Court held that while reductions can be made in exceptional circumstances, remuneration arrangements should not normally allow for a reduction “in fair value”. The most recent challenge by judges and prosecutors in 2011 to reforms to the system was terminated by the Court<sup>22</sup> in March 2012 on the basis that the contested norms did not infringe a constitutional right (i.e. Article 107 of the Constitution concerning the right to receive appropriate pay). The GET heard on-site that motivation to progress within the judiciary, to become a court chair for example, is low and that this may be due, in part, to the lack of responsibility and power that comes with such a role (including taking decisions as to court budgets, etc.). It is clear to the GET that the judiciary needs to be in a position to participate fully in the process of setting court budgets, which would include salaries for judges and for other court staff, as this can significantly impact on the independence of the judiciary in the short term, as in times of economic contraction, and in the longer term<sup>23</sup>. Moreover, the GET recalls that, even at times of economic crisis, it should be kept in mind that “a serious reduction of judges’ salaries is a threat to judges’ independence and to the proper administration of justice, and may jeopardise objectively and subjectively the judges’ work”.<sup>24</sup>

95. On the same note, while significant steps have been taken in recent years to establish judicial bodies (i.e. Judicial Council, Judicial Qualification Board, Judicial Disciplinary Board, Commission of Judicial Ethics), these have not been coupled with the provision of the necessary resources. The aforementioned bodies lack full staff and their members have to struggle with carrying-out their ordinary daily functions and the particular tasks emanating from membership in judicial bodies. In the GET’s view, the establishment of the aforementioned judicial councils/boards/committees in Latvia has represented a crucial step in strengthening and safeguarding the independence of the judiciary, to enable collective problem-solving and to encourage initiative among judicial office holders. That said, in order to effectively accomplish their mission, they must be adequately resourced and appropriately staffed according to their needs.

96. The system of progressing through levels of “qualification” is being abolished in favour of a regular performance review process under the auspices of a new Qualification Board. While the details are not finalised, the GET was told that the idea is to evaluate the performance of judges every five years and that a judge who is negatively assessed twice will be subject to dismissal. Several interlocutors expressed concerns about some aspects of the new proposed system – notably as to whether dismissal would be automatic or go through a disciplinary process with the necessary assurances, and whether those tasked with performing the assessments would be properly resourced to do the job well. If the responsibility for assessment is on a higher court judge, a concern was raised about whether this would inhibit the independent decision-making of lower court judges.

97. The reasons for reforming the system of judicial performance, as a matter separate to the question of salary reform, were not made clear to the GET. The GET agrees with several of the interlocutors that without further assurances of due process, clear assessment criteria, and proper resourcing of the Qualification Board and those charged with assessment, there are potential risks to judicial independence, particularly with respect to the security of tenure of judges. The GET also acknowledges, however,

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<sup>22</sup> Judgement of 23 March 2012 of the Constitutional Court in the case No. 2011-10-01.

<sup>23</sup> Principle 7, Magna Carta of Judges.

<sup>24</sup> Consultative Council of European Judges, CCJE(2011)6, paragraph 18.

that it is not in a position to evaluate the potential impact of the proposed system as the details are not yet finalised. Whichever solution is taken in the future to increase accountability and efficiency of the judiciary, it will be essential to ensure that any new system is only implemented if it contains clear safeguards to protect judicial independence.

### Case management and procedure

#### *Case assignment*

98. The Court Administration service, an institution directly subordinate to the Minister of Justice, organises and manages the administrative work of the district (city) courts, regional courts, and Land Registry Offices. Cases in the district and regional courts are distributed electronically and on the basis of a yearly plan. This plan can be and is adjusted over the course of the year to respond to judicial workloads, insufficient distribution of cases, changes in the judiciary and individual judges being unable to perform their duties.

99. The administration of the Supreme Court, as stated earlier, is separate from that of the district and regional courts. Cases are assigned in the Supreme Court by “raffle” or alphabetically. However, each department and board (civil, criminal and administrative) has its own method for assigning cases, setting the court composition and appointing a chair for court sittings. In the Constitutional Court a special board is called to review applications to the Court and to decide whether to grant an application – i.e. whether to open or refuse to open the file. The chair of the respective court assigns the cases to the judges.

100. Overall, case management appears to be adequate and the Court Administration has been working to improve court systems, particularly within the context of a Latvian-Swiss joint cooperation project “Court modernisation in Latvia” which started in 2009 and will run to the end of 2013.

#### *Undue delay*

101. The Law on Judicial Power (Article 28) states that a judge shall adjudicate a matter as expeditiously as possible and the Administrative Procedure Law (Article 103) provides that in administrative proceedings, a court shall itself *ex officio* objectively determine and legally assess the evidence and adjudicate the matter within a reasonable time. The Criminal Procedure Law (Article 14) stipulates the right to a criminal trial within a reasonable period, that is, without unjustified delay and this provision is applicable to both judges and prosecutors. The person directing the proceedings shall choose the simplest form that corresponds to the facts and shall not allow for unjustified intervention in the life of a person or at unjustified expense. Criminal proceedings against a minor (under 16 years of age) shall take precedence over similar proceedings against an adult to ensure the matter is completed within a reasonable time. However, in practice, delays – both in hearing cases and in delivering decisions – are causes for concern in Latvia. The European Court of Human Rights (ECHR) held on several occasions that Latvia was in breach of the right to a fair trial due to excessively long judicial procedures<sup>25</sup>. Some interlocutors mentioned the need to encourage more pre-trial settlements as well as to ensure that only those cases meriting appeal are heard at the higher courts.

#### *Transparency*

102. In terms of transparency, all criminal, administrative and civil law cases are adjudicated in open court with some exceptions set by law. In criminal cases, these

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<sup>25</sup> See for example, *Lavents v. Latvia* No. 58442/00; *Estrikh v. Latvia* 73819/01; *Mitkus v Latvia* No. 7259/03.

exceptions include cases involving minors, sexual offences, protecting state, professional, and commercial secrets and sensitive personal information, and to protect the physical well-being of parties or witnesses. The introduction and the operative part of the court decision is still announced publicly and the description and reasons delivered later in a closed session. In cases where an individual has been granted special procedural protection, he or she is examined in a closed court session in the presence of the complainant and his or her defence counsel or representative in criminal cases.

103. Similarly, civil matters involving children, mental capacity, or the annulment or dissolution of a marriage are heard *in camera* as are adoption cases in administrative matters. Applications can be made seeking leave of the court to hear all or parts of the case *in camera* in order to protect, for example, State or commercial secrets, the privacy of individuals including children, etc. As is the case for criminal law (above) the operative part of the court decision is publicly pronounced; however, in cases of adoption the decision is pronounced in a closed court sitting.

104. Since the end of 2008, the public has been able to track court proceedings through an electronic service called "Track Court Proceedings." This is part of the Latvian-Swiss joint project mentioned earlier. The service is free and accessible on-line<sup>26</sup> and details the current status of all court proceedings in Latvia. The information is redacted to exclude personal details and provides: name and contact details of the court, the judge assigned to the case, schedule of hearings, details of the claims, decisions made within proceedings (summary, not full-text) and case proceedings in other courts instances. The GET welcomes the introduction of this system as a means to improve access to justice, to prevent corruption and to increase efficiency.

105. However, in the GET's view, it is important to ensure greater transparency and publicity of court decisions in Latvia. Currently, only the decisions of the Supreme Court are available to the public (as selected and published by the Supreme Court) in an easily accessible format. The Administrative Court also publishes all its decisions in date order but, the GET was told, this is not a searchable database. All courts in Latvia are now computerised and all decisions are on a database available to the courts. While interlocutors on site expressed concerns with regard to the need to balance publication requirements and data protection interests, others said this was not and should not be a bar to publication. It was pointed out to the GET on-site that a lack of uniformity and consistency in decision-making has also undermined public trust in the judiciary. The GET notes that even in a system which is not based on the principle of precedent, the publication and dissemination of judgements plays a key role in assuring certainty in the law as well as uniformity and predictability in its application. While a judgement is primarily rendered to solve a conflict *inter partes*, its impact is not usually confined to the individual case. The publication of well-reasoned, consistent and comprehensible decisions can work as a means of self-control for the judge and can also improve the quality of judgments. In this connection, different systems could be used to give as much publicity as possible to judgements, e.g. in full or abridged versions, omitting the name of the parties (and possibly other personal details), etc.

106. The GET was told that there are plans to make court judgments publicly available on the internet under the auspices of the Latvian-Swiss project referred above. The authorities further explained that as of 13 June 2012, an electronic (IT) platform for the automatic publishing of court decisions (with anonymity guarantees) has been in place. The authorities also referred to plans underway to publish, from 1 July 2013, all final decisions and judgements on the court portal; to develop templates for judgments to facilitate judicial work; to issue a lawyer's calendar which will avoid risks of postponement of hearings; to introduce a system to process documents (including claim submissions via the internet) electronically, etc. The GET welcomes all these

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<sup>26</sup> See Tracking Service at [www.tiesas.lv](http://www.tiesas.lv).

developments. It is important that steps are taken to raise public awareness on the key role of the judiciary and to increase trust in the judicial system in Latvia. Ensuring that court judgments are publicly available is an important step in this direction and valuable to the judiciary in assuring consistency in their decisions. Therefore, **GRECO recommends that the authorities continue in their endeavours to ensure court judgments are easily accessible and searchable to the public, taking into account the appropriate privacy safeguards.**

#### Ethical principles and rules of conduct

107. While the Constitution guarantees the independence of the judiciary and states that judges are subject only to the law, it is the Law on Judicial Power that sets out most of the main principles and rules that apply to judicial proceedings (i.e. Articles 18 and 19: to apply the law and adjudicate openly; Articles 23 and 24: the presumption of innocence and equal rights of the parties), how judges must conduct themselves (i.e. Article 17: ascertain the objective truth; Articles 13 to 15: recusal and certain prohibitions), as well as the structure and operation of the court system in Latvia (Part II on Judicial System).

108. The Latvian Judicial Code of Ethics was adopted by the Conference of Judges in 1995 and has not been updated since. While the Conflict of Interest Law formally recognises the importance of the Code by stating that public officials (including judges) must act in conformity with the behavioural (ethical) codes approved in their relevant profession, field or sector, many of the law's provisions supersede those of the Code thus rendering parts of it obsolete. Notwithstanding this, a gross violation of the principles of the Latvian Judicial Code of Ethics is a disciplinary offence.

109. Judicial conflicts of interest are governed, as detailed below, primarily by the Conflict of Interest Law, but also by the Judicial Code of Ethics and the Law on Judicial Power, as well as by specific provisions of the Criminal and Administrative Procedures Codes. While these integrity principles are strong on paper, it is less clear how active or confident the judiciary is in developing these principles further and ensuring they are part of daily practice.

110. That said, a Commission of Judicial Ethics was set up four years ago and was praised on-site for the role it is playing. The Commission can issue explanations of ethical standards and can examine non-serious violations which are sent to it by the chairs of the courts. The GET was told that the Commission is playing a particularly valuable advisory role by interpreting ethics-related provisions and that most of the opinions it has released to date have stemmed from individual queries from judges concerning recusal. As this is an area already identified as a source of concern for judges, such a service is clearly helpful.

111. However, the Commission is under-resourced and those involved, as in all other self-governing bodies in the judiciary, do the work in addition to their normal judicial duties. The Commission indicated that it would like to update the Code of Ethics and to develop guidance on its provisions but it is unable to prioritise these at the moment. The GET recognises the proactive role that the Commission has taken and that its work is increasing the confidence and knowledge-base from which to further develop the integrity and independence of the judiciary. The GET believes this is important work for the judiciary in Latvia to be doing and therefore **GRECO recommends that the role and resources of the Commission of Judicial Ethics be strengthened in order to further develop its work, and in particular, to ensure that the Judicial Code of Ethics is updated and that regular guidance on its provisions is dispensed.** In implementing this recommendation, the considerations made in paragraphs 147 and 148 should be taken on board.

## Conflicts of interest

112. The rules on conflicts of interest for judges are set out in the Conflict of Interest Law (applies to all public officials) and in the Latvian Judicial Code of Ethics. Likewise, Article 14 of the Law on Judicial Power states that a judge may not participate in the adjudication of a matter if personally, directly or indirectly, interested in the outcome of the matter, or if there are other circumstances which cause doubt as to his/her impartiality.

113. According to the Conflict of Interest Law (Article 12) public officials are prohibited from influencing any other public official to use their official position in any way for their personal or financial interests or those of their relatives or counterparties (party with whom there is a contract). Public officials must inform a superior or collegial authority – in the case of judges this would be the chair of their court – in writing and without delay about financial or commercial interests they or their relatives hold as they arise. More particularly, they must inform on: (i) any interests that they or any of their relatives have (financial or personal) regarding the performance of any action within their official duties; (ii) any commercial interests they or any of their relatives have in a company which is in receipt of public (state or local government) contracts, financial resources, guaranteed credits, privatization funds, etc. except where they are allocated as a result of an open competition. Such interests include owning a company, holding shares or stocks, being a partner, or member of a supervisory, control or executive board. Upon receiving the information, the superior or collegial authority assigns the duties and functions of the relevant public official to another public official<sup>27</sup>.

114. The five canons of the Judicial Code of Ethics all deal in one way or another with regulating potential conflicts of interest: upholding the role, independence and integrity of the courts; avoiding impropriety and the appearance of impropriety; performing judicial duties impartially and diligently; regulating extra-judicial activities in such a manner as to avoid any conflict with judicial duties; and refraining from political activity.

115. The Criminal Procedure Law also sets out the circumstances which could give rise to a conflict and from which judges must recuse themselves:

- 1) if they are related in the third degree, they are related by marriage in the second degree, or they are married to the person who is acting in defence, or with the victim or their representative;
- 2) if they, or their spouse, children, or parents thereof, receive income from the person who performs, is acting in defence, or from the victim or their representative;
- 3) they are related to a common household with the person who is acting in defence, or with the victim or their representative;
- 4) they have an explicit conflict of interest with the person who is acting in defence, or with the victim or their representative;
- 5) they are a witness, victim or representative thereof in such proceedings, or the person in such proceedings who is acting in defence, or has acted for the defence or otherwise represented the victim<sup>28</sup>.

116. In case of doubt or questions, advice can be sought from the KNAB and the GET was told that judges can speak with the chair of the respective court and with colleagues. However, a study in 2010 found that discussions of ethics and ethic-related issues are seen as somewhat alien, and that judges lack a clear understanding of standards and whether or how to deal with them<sup>29</sup>. The GET was told that a lack of confidence and

<sup>27</sup> See generally the Conflict of Interest Law and in particular, Articles 20 and 21.

<sup>28</sup> Criminal Procedure Law, Articles 51 and 52.

<sup>29</sup> Corruption Risk Assessment in the Regional Court of Riga (June 2009- March 2010), research carried out by Providus and the Soros Foundation in Latvia. The risk assessment is structured in three parts, focusing on judges, court organisation and court procedures. Interviews with ten judges of the Regional Court of Riga, one former judge of the same court, six public prosecutors and ten sworn advocates constituted the main source of information for the assessment.

knowledge means that judges are over-cautious and likely to recuse themselves quickly and possibly unnecessarily.

117. Several interlocutors commented, however, that judges are different from other public officials and that the blanket provisions of the Conflict of Interest Law do not always serve the judiciary well. KNAB has forwarded four cases to the courts about judges adjudicating in cases in which they have "business associates" on the grounds that the judges had loans or mortgages with a financial institution which was a party to the matter. Several interlocutors explained to the GET that, in their view, this is a too narrow and restrictive interpretation of the law and that this definition of business associates – i.e. a regular customer relationship – made little sense in the judicial sphere. In particular, it was pointed out how difficult case allocation had become in light of the number of insolvency cases in which financial institutions are a party. This is a clear example of how a Conflict of Interest Law which applies to all public officials may not be tailored enough in certain circumstances for judges.

#### Recusal or routine withdrawal

118. As stated above, there are rules on conflicts of interest which require the recusal or withdrawal of judges from participating in the adjudication of cases. Further, the Administrative Procedure Law, Civil Procedure Law and Criminal Procedure Law all provide the grounds and the procedure governing on the recusal of a judge. For example, both the Administrative Procedure Law (Articles 117-119) and the Civil Procedure Law (Articles 19-21) provide that a judge is not entitled to participate in the adjudicating of a matter if he or she: participated in any way in a previous adjudication of the matter; is related within certain degrees to any participant or to any judge who is in the panel adjudicating the matter; or has any direct or indirect interest in the outcome, or there were any other circumstances which would give rise to a reasonable doubt as to his or her impartiality.

119. If the abovementioned circumstances are present, the judge shall stand down prior to the commencement of the case. If a judge discovers these circumstances in the course of adjudicating the case, the judge shall stand down, stating the reasons for so doing. In such cases, the court shall adjourn the case. The Criminal Procedure Law states that when such a conflict arises, a judge must submit a report recusing him or herself, depending on their role and the proceedings in question, to the composition of the court, to chair of the court, or to the chief judge (Article 54, Criminal Procedure Law).

120. If a judge has not recused himself/herself, persons participating in the case may apply for the recusal of a judge if they believe him or her to be personally, directly or indirectly, interested in the outcome of the matter, or if there are other circumstances which cause doubt regarding his or her impartiality. The GET was informed on-site that the issue of a judge having some form of customer/financial relationship with one of the parties (likely a bank), as identified by KNAB as a prohibited "business associate", was the basis for a number of such applications in recent years.

## Prohibition or restriction of certain activities

### *Incompatibilities and accessory activities*

121. Judges in courts of general jurisdiction are prohibited from membership in any political party or movement and cannot hold political office and this is one of the grounds for dismissing a judge<sup>30</sup>. However, outside of their judicial work, judges are allowed to participate in pedagogic, academic or creative work. Judges can also work as an expert or as a representative (mission) to another state or international organisation or hold a position in a labour union<sup>31</sup> so long as such work or position does not lead to any conflicts of interest and they seek written permission first from the Chair of the Court<sup>32</sup>.

122. According to the authorities there is an issue about judges teaching in non-licensed pedagogic institutions and this has caused some tension within the judiciary. While the GET was informed that the Latvian Judicial Training Centre (LJTC) is a registered pedagogic institution such that judges are allowed to teach there, the GET was told that issues have been raised about: i) judges teaching in other institutions, including commercial operations and ii) judges teaching non-judges.

123. While updating the Judicial Code of Ethics would be helpful in this regard, it would also be helpful if some specific guidance on conflicts of interest issues for judges were drawn up involving (or potentially led by) the Commission of Judicial Ethics, with input from the Judicial Council, and the KNAB in particular. In this way, any gaps or contradictions in the law could be properly identified and addressed (either through tailored guidance, memorandums of understanding, or legal amendments). Again, such a proactive step would demonstrate to the public, as well as to members of the judiciary itself and to the other branches of power in Latvia, the value of self-regulation not just as a matter of reinforcing judicial independence but also as enforcing important limits on judicial activity.

### *Gifts*

124. Judges, as other public officials, are permitted to accept diplomatic gifts as per Article 13 of the Conflict of Interest Law and the same rules and restrictions on gifts and donations which apply to all public officials apply generally to judges as well (see also paragraphs 43 to 45 for more detail). This means that judges cannot accept gifts from anyone with whom he or she has had any official dealings in the two years prior to the exchange of the gift or for two years after its receipt. Donations are not allowed except for specific professional needs, i.e. staff training or technical support, and with permission from a higher authority<sup>33</sup>.

### *Financial interests*

125. Judges, like all other public officials in Latvia, can hold financial interests but must declare these interests annually. There are, however, some restrictions. Article 9, paragraph 3 of the Conflict of Interest Law prohibits public officials from receiving income from interests or shares in companies registered in a low tax country or in countries where taxes are not levied at all.

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<sup>30</sup> Article 8<sup>1</sup>, Paragraph 11 of the Conflict of Interest Law.

<sup>31</sup> The Chairs of Courts are not allowed to hold a position in a labour union or a professional association; holding a position in another type of association (for example, a housing association or an association of parents in the school attended by own children) is not banned for Chairs.

<sup>32</sup> See Article 7, para. 3, Conflict of Interest Law.

<sup>33</sup> The Latvian-Swiss project on supporting efforts to modernise the courts in Latvia, for example, is allowed under the law.

### *Post-employment restrictions*

126. The rules regarding the prohibition against owning or having any commercial interests in any entity over which a judge has taken any decisions or performed any supervisory, control or punitive functions (Article 10 (7), Conflict of Interest Law) applies for two years post-employment.

### *Third party contacts, confidential information*

127. The Latvian Judicial Code of Ethics stipulates that a judge may not permit *ex parte* conversations about any initiated case or proceedings without the presence of those involved in the proceedings (i.e. the parties). The GET notes that the scandal in 2007 raised the issue of possible judicial corruption, but it also highlighted more generally the importance of professional and ethical conduct in the courts between the professions. Judges, prosecutors and lawyers have worked together on this issue and put together a programme of training through the Latvian Judicial Training Centre. The GET welcomes this development as it shows a willingness to tackle issues that are relevant to the profession and to the integrity of the judicial system, and was clearly done in a way that was both practical and useful to judges and prosecutors alike.

128. Article 19 of the Conflict of Interest Law prohibits the unlawful disclosure of information accessible to the public official by virtue of their role and duties or to use such information for anything unrelated to the performance of their duties. Criminal liability shall be imposed for abuse of official position (Article 318, Criminal Law), disclosure of confidential information (Article 329, Criminal Law) and disclosure of confidential information after leaving office (Article 330, Criminal Law).

### Declaration of assets, income, liabilities and interests

129. Judges have to submit annual declarations (as well as a declaration upon entering and ending public service, and once their duties are terminated). The table below provides an overview of the interests judges must declare and their thresholds (see also Annex to compare these across the three groups: MPs, judges and prosecutors).

**Table of Registrable Interests and Thresholds for Judges**

<b>Category</b>	<b>Must declare</b>	<b>Thresholds</b>
<b>Additional posts (paid, unpaid, + those allowed by law)</b>	✓ (see clarification in section on prohibitions)	All declarable (Information on all additional posts, work-performance contracts, authorisations, etc.)
<b>Commercial interests (shares, stocks, partnership, sole entrepreneur)</b>	✓	All declarable
<b>Gifts</b>	✓	All monetary gifts of any value and other gifts if exceeding 20 x the minimum monthly wage
<b>Diplomatic gifts (on Official Register)</b>	✓	State property must be registered on Official Register.
<b>Land and Property (including vehicles)</b>	✓	Immovable property in ownership, possession, usage; vehicles in ownership, possession, usage, or rented
<b>Income (including savings)</b>	✓	Including cash or non-cash savings if it exceeds 20 x the minimum monthly wage
<b>Debts, loans and financial transactions</b>	✓	Any and all which exceed 20 x the minimum monthly wage

130. All types of income earned must be individually identified by gross amount, currency, place, and name of source (identifying and naming legal and natural persons).

Declarations are publicly accessible but with some restrictions. The non-public part of the declaration includes the residence and personal code details of the public official, his or her relatives and any other persons mentioned in the declaration, as well as information on counterparties (party with whom there is a contract), including debtors and creditors. Such non-public information is available to public officials and authorities which examine declarations in accordance with law as well as in cases determined in law – to prosecutors, investigative institutions and State securities services<sup>34</sup>.

131. Regular declarations are stored and maintained by the SRS and the non-confidential part of the declaration is publicly available on the SRS website which is searchable by name. Judges can also submit any additional information not indicated in other sections of the declaration. Family members of judges are not obliged to submit declarations unless they are public officials. From March 2012, however, all natural persons (in addition to public officials) have to declare their assets according to established criteria and thresholds.

132. As seen in the table above, judges must declare any other position they hold, even when they are allowed by law (posts in associations, foundations, and religious organisations and trade unions).

### Supervision and enforcement

#### *Supervision*

133. Although judges are, and ought to be, independent in their judicial decision-making, court chairs clearly play a supervisory role over the judges in their courts; it is to them, for instance, that a judge would report on his or her recusal from a case. The Judicial Qualification Board seeks references from the court and appraises the work of a judge when granting qualification classes or making recommendations for promotion etc. Disciplinary action can be initiated against a judge by the Chair of the Supreme Court, the Minister of Justice, the chairs of all district and regional courts, and land registry offices and the Commission of Judicial Ethics.

134. As reported earlier, a new performance appraisal system which is meant to appraise all judges every five years is due to be implemented in 2013 and will certainly impact on the supervision of judges. For the particular concerns expressed by the GET in this regard, see paragraph 97.

135. Main supervision over compliance with the rules on assets declarations rests with the KNAB. The State Revenue Service (SRS) also plays a key role in this area as it is the institution responsible for filing asset declarations and for performing random checks on them. The elements of this supervision regime have already been described in this report under paragraphs 17 and 23. It was clear to the GET that more could be done to within the judiciary to supervise from the perspective of the prevention of corruption and integrity. As highlighted before, for the existing rules on conflicts of interest to be fully implemented in practice, the functions of the KNAB need to be complemented by the governing/management bodies of the categories of officials the law applies to. In this context, the GET welcomes the reported intention of the KNAB to give greater responsibility to senior officials in implementation of the law. The GET also trusts that some of the recommendations included in this report will better assist in promoting ownership of the Conflict of Interest Law by the judiciary and to increasing awareness and practicability of its provisions.

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<sup>34</sup> Conflict of Interest Law, Article 26.

## *Enforcement and immunities*

136. Judges enjoy immunity against administrative liability. All administrative violations are submitted to and are reviewed by the Judicial Disciplinary Board which is the only body which can sanction a judge. Administrative offences (where no elements of a criminal offence are detected) include: a failure to submit an asset declaration, making false statements in a declaration, or violating the restrictions on certain activities, failure to report a conflict of interest, violating the provisions on accepting gifts or donations. The sanctions which can be applied are: remarks, a reprimand and a reduction of salary for a period up to one year, withholding up to 20% of the salary.

137. The Judicial Disciplinary Board (JDB) consists of 11 members and is not subordinate to any person or other entity. Members are elected by the Conference of Judges by secret ballot for a term of four years. The JDB has access to various databases and sources of information, reviews all the documentation and seeks explanations from any person who is subject to investigation. The JDB evaluates the nature and impact of the alleged violation. Decisions are made by open vote and are published on the website of the Supreme Court. The information on the website includes the name and position of the judge, the nature of the violation, who initiated the case and the decision. Judges can appeal a decision made against them to the Disciplinary Court which is composed of six senators of the Supreme Court.

138. A majority of interlocutors expressed frustration with the system of administrative immunity and the disciplining of judges. Many believe the sanctioning regime is weak and that few disciplinary actions are ever brought against judges on the grounds that these are “minor” violations (a defence an ordinary citizen could not put forward) or, for example, because the JDB finds some but not all of the facts as presented by the KNAB. Others said, however, that the disciplinary process can have a much graver, career-limiting impact on judges and that in many ways it would be much better for judges if they were dealt with through the normal court process which might only involve paying a fine and would not likely attract as much public attention<sup>35</sup>. The example used in both arguments was a traffic offence. What was clear to the GET is that the system of administrative immunities is no longer serving the purpose for which it was intended – to protect judges from undue interference – and that with so little support for it, the time is right to abolish it. Therefore, **GRECO recommends that the system of administrative immunities for judges is abolished.**

139. Another issue that was raised on-site had to do with time-limits for disciplining a judge. While the limit is two years from the day the violation was committed, the GET heard that a disciplinary sanction may be imposed no later than three months after the day of *detection* of the violation and that this has caused some problems<sup>36</sup>. In particular, where the matter is detected but the information is not forwarded within the three months, by the time the JDB receives it the disciplinary action is already time-barred or there is not enough time to deal with it before it expires. In either case the judge is not disciplined. While the GET was informed that a Ministry of Justice working party on improving disciplinary systems is looking to remove from the time limits any periods that a judge is justifiably absent or unavailable, this does not appear to sufficiently respond to this specific issue. Nevertheless, the impression that judges escape discipline on the basis of technicalities can only contribute to the public perception that judges are somehow above the law. **GRECO recommends that measures be taken to ensure that disciplinary cases concerning improper conduct by judges are decided before the expiry of the statute of limitations, such as extending the time period for imposing sanctions from the date of detection, reassessing the adequacy of**

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<sup>35</sup> It was pointed out that this is because general details of all disciplinary cases against judges are published on the Supreme Court website.

<sup>36</sup> Judicial Disciplinary Liability Law, Article 4.

**the limitation period as a whole, and providing for the interruption or suspension of the period of limitation under specified circumstances.**

140. In terms of criminal liability, only the Prosecutor General can initiate criminal proceedings against a judge (Article 13 of the Law on Judicial Power). A judge may be held criminally liable or arrested only with the consent of the *Saeima*. The decision to arrest, remove by force, detain or search a judge can only be taken by a specially authorised Supreme Court judge. A judge can be arrested if apprehended while committing a serious or especially serious crime, and in such a case, the specially authorised Supreme Court judge and the Prosecutor General must be informed within 24 hours. The GET was told that the *Saeima* regularly and without hesitation lifts the criminal immunity for judges and no particular issues were raised in this regard.

141. Finally, the GET was informed that along with the plans for introducing a system of performance appraisal for judges, there is a proposal for a unified disciplinary appeals procedure. Both issues are within the remit of the Ministry of Justice working party mentioned in paragraph 139. Currently prosecutors and other legal professionals can appeal a disciplinary decision to the administrative court. A unified procedure would allow them to appeal to the Disciplinary Court, a route at present only available to judges. The GET was also made aware of plans to change the composition of the JDB in order to integrate members, other than judges, to help avoid the impression of judges judging themselves. Concerns were raised as to the possible involvement of members of Government/legislature in the JDB. The GET lacks sufficient information to evaluate the reported plans. That said, the GET stresses that any new system must ensure that disciplinary proceedings against judges should only be determined by an independent authority operating procedures which guarantee full rights of defence, in accordance with Article 6 (1) of the European Convention on Human Rights. As underscored in Opinion No. 3 of the Consultative Council of European Judges (CCJE) that in no way excludes the inclusion in the membership of a disciplinary tribunal of persons other than judges (thus averting the risk of corporatism), always provided that such other persons are not members of the legislature, Government or administration.

*Statistics*

142. During the last three years (2009-2011) no disciplinary cases were initiated against judges regarding conflicts of interest, declarations of assets, income, liabilities and interests. During the same period no criminal cases were initiated against judges for failing to submit a declaration or for providing false statements in declarations regarding large scale income or assets/property or for violation of restrictions imposed on a public official. However, the KNAB has forwarded information to the courts concerning four judges who have taken decisions with regards to their "business associations" – i.e. cases involving banks with whom these judges have loans. The KNAB also detected and alerted the courts to a case where a judge and his or her spouse worked together in a case.

143. The JDB deals with approximately 10-12 cases each year and according to data provided to the European Commission for the Efficiency of Justice (CEPEJ), a total of five judges had disciplinary proceedings initiated against them in 2010: four for professional inadequacy, and one for an administrative offence. Of these, three cases were dismissed, two judges were reprimanded, and there was one remark<sup>37</sup>. Details of all disciplinary proceedings against judges are published on the Supreme Court website (including date, name and post of the judge, type of violation and disciplinary decision taken). However, as disciplinary sanctions are considered extinguished within one year of the date imposed (if no new sanction imposed), only the last 12 months' data is available.

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<sup>37</sup> Fourth Evaluation Report on European Judicial Systems, European Commission for the Efficiency of Justice (CEPEJ), 20 September 2012.

## Advice, training and awareness

144. Judicial training generally, and on ethics and anti-corruption-related matters specifically, is provided primarily by the Latvian Judicial Training Centre (LTJC), a non-governmental body established 15 years ago. The LTJC trains all court judges and all court staff - nearly 1700 staff in total. The KNAB also provides regular optional training on ethics, prevention of corruption and conflicts of interest for all public officials and up to the end of 2011 had provided training for 40 district court judges. The Commission of Judicial Ethics is also to provide advice and information concerning issues of ethics, conduct, prevention of conflicts of interest and related matters. The GET heard, however, as regards the Commission, that its resources are very limited and that it has had to prioritise its work, responding to individual queries in the form of opinions that are accessible to all judges (see also paragraph 110).

145. The overall aim of the LTJC is to increase the professional training, qualification levels, integrity and prestige of the judiciary in Latvia. There is an annual programme which is developed in separate and joint working groups focused on four key legal areas: civil, criminal, human rights and international, and administrative. This joint planning includes the basic annual programme, project planning, developing fee-paying programmes, and identifying potential grants and funding sources. The training is primarily organised in-service and is optional except for newly appointed judges of whom there are approximately 15 each year. Training varies from a single lecture lasting 1.5 hours up to a full one-day workshop (i.e. four lectures).

146. The budget of the LTJC was cut by 62% without a corresponding decrease in the numbers of staff requiring training. This has meant merging and targeting judicial training, linking qualification requirements with a programme of continuous judicial education, and trying to identify the specific training needs of judges. It also means greater reliance on external project funding. For example, the LTJC was able to run a large scale judicial training project on criminal law (which included corruption) with funding from the European Commission. There is also now a greater focus on funding for research. In 2010-2011 the LTJC did some work investigating the quality of litigation (user surveys as well as judicial self-assessments of decisions), and conducted wider public surveys and at various courts to gauge public trust in the judiciary. The authorities reported after the visit that in 2013 the budget of the LTJC will be increased by 16.5%<sup>38</sup>

147. The fact that there is no regular rolling training on ethics, conflicts of interest, integrity and anti-corruption issues is not compulsory and that what is offered is increasingly dependent on finding new sources of funding, undermines the ability of the judiciary to develop a sense of ownership for professional development in these areas. While the GET heard that courses are available at university and that these are important, they are often more general than in-service training which supports the continuing professional education of judges and deals with issues that come up in daily practice. This work is particularly important in further strengthening and protecting judicial independence in Latvia.

148. It is clear that judges are making greater use of the Commission of Judicial Ethics to seek answers to questions on recusals etc. and that the Commission is sending glossaries on its opinions to judges; furthermore, the GET acknowledges the role of the KNAB in organising training sessions to better familiarise public officials, including judges, with anti-corruption matters. However, the judges are not as confident as they could be

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<sup>38</sup> More particularly, the authorities indicated after the on-site visit that in 2012 State funding was allocated to the LTJC in the amount of 96,000 LAV (137,514 EUR), in 2013 it is planned to increase State funding up to 115,000 LAV (164,730 EUR). Additionally, the LTJC also applies for EU funding in order to provide training and education and, therefore, in practice the total budget of the Centre is larger than the estimates provided above. It has to be also mentioned that prosecutors and judges participate in training seminars organised by the Ministry of Justice or workshops and conferences organised in other countries.

about potential conflicts or ethical dilemmas and where they should turn for advice. Encouraging judges to be able to speak openly with colleagues is important, but it is also important to build up the knowledge base within the judiciary to handle specific issues that arise and respond appropriately as they change over time. This will also assist the KNAB to better disseminate knowledge and compliance with the provisions on the Conflict of Interest Law and will enhance "ownership" of this law by the judicial profession. To this end, and in light of the particular importance of strengthening the role of the judiciary in Latvia, **GRECO recommends (i) that professional training on corruption prevention, ethics and integrity is given higher priority within the judiciary, that it is properly funded, and that it forms part of a regular rolling programme for all judges; and (ii) that specific on-going training is developed for court chairs, to better equip them to provide a lead on matters of ethics, conflicts of interest and other integrity and anti-corruption matters within their courts.**

## **VI. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS**

### Overview of the prosecution service

149. The Latvian prosecution service (Public Prosecutor's Office or "PPO") is a unitary, centralised three-tiered system (corresponding to the three tiers of the judicial system) under the management of the Prosecutor General. It consists of the central Prosecutor General's Office, six offices of the judicial regions (including one specialised regional office), and 37 district (city) offices (including four specialised district offices). The Prosecutor General has the authority to establish specialised offices to deal with specific areas of which there are currently five: the Specialised Prosecutor's Office on Organised Crime and Other Sectors (at regional level); and the Finance and Economic Crime Investigations, Riga Road Transport, Specialised Several Sectors, and the Investigation of Unlawful Trafficking of Drugs (all at district level). Corruption offences are prosecuted mainly in the division handling especially important cases of the Criminal Law Department of the Prosecutors General's Office.

150. While the Constitution is silent as to the PPO, the Law on Judicial Power confirms that prosecutors belong to the court system<sup>39</sup>. The Law on Prosecution Office is the governing instrument for Latvia's prosecution service and Article 1 makes it clear that the PPO is an institution of judicial power and thus, part of the judicial branch. Articles 2 and 6 provide that prosecutors are independent of all other institutions and officials (including *inter alia* the *Saeima*, the Cabinet, state and local government institutions, and civil servants) in the exercise of their duties, and that prosecutors must observe only the law. More specifically the law states that each prosecutor is to take decisions independently and individually on the basis of their own convictions and the law, observe the equality of individuals before law and the courts, the presumption of innocence, truth, and lawfulness.

151. The functions of the PPO<sup>40</sup> and its prosecutors are to: supervise the work of investigative institutions and the investigative operations of other investigative institutions (for example, the State Police and the KNAB<sup>41</sup>); conduct pre-trial investigations; initiate, organise, manage and conduct criminal prosecutions; maintain State charges; supervise the execution of sentences; submit court complaints or submissions as provided for by law; and take part in the adjudication of matters before a court as provided for by law and can act to protect the rights and lawful interests of individuals and the State<sup>42</sup>. Thus, although the PPO is part of the judiciary and is institutionally separate from the executive branch, it performs a number of functions of an executive body (*inter alia* examining submissions and complaints, issuing warnings and protests, and applying to a court in the event of non-compliance, etc.) that are set out *inter alia* in the Law on Prosecution Office, the Administrative Violations Code, the Criminal Procedure Code, the Civil Procedure Law and the Constitutional Court Law.

152. Further, a prosecutor has a duty to submit a protest on an unlawful or unjustified court judgment in a criminal case<sup>43</sup> and can do so in hearings regarding the execution of a sentence, or in a civil or administrative case. As such protests "freeze" the judgement

<sup>39</sup> Law on Judicial Power, Article 106.

<sup>40</sup> Law on Prosecution Office, Article 2.

<sup>41</sup> Section 386 of the Criminal Procedure Law lists the following as investigative institutions: State Police, Security Police, Financial Police, Military Police, Prison Administration, KNAB, Customs office, and the Border Office. These institutions have the right to initiate and carry out investigations and prosecutors supervise this aspect of their work. Only exceptionally (on a decision at a senior level in the PPO) will a prosecutor be designated to an investigation in one of these institutions.

<sup>42</sup> This includes information indicating a) a criminal offence; b) a violation of the rights of acting disabled persons, invalids, minors, prisoners or any other similar persons; c) violation of the rights of the state or a local authority, or where d) the Prosecutor General or Chief Prosecutor find it necessary; e) there is evidence about a violation of the law by the president of the State, *Saeima* or the Cabinet of Minister (see Article 16, Law on Prosecution Office and Article 36 (1), Criminal Procedure Law).

<sup>43</sup> Law on Prosecution Office, Article 14.

until the matter is reviewed by a higher court, the judgment must not yet have come into force and in the latter cases (i.e. a civil or administrative case) the prosecutor must have participated as a party to it.

153. The Prosecutor General is at the head of the prosecution office hierarchy, manages and controls the operation of the PPO, determines its internal structure and staffing according to its budget, and directly manages the prosecutors at the central office. The Prosecutor General's Office is divided into three national departments: criminal, civil and operations management. The Heads of these departments are also Deputy General Prosecutors who can stand in for Prosecutor General in his or her absence. The Prosecutor General's Office oversees the work of the regional prosecutors' offices, although each office (i.e. regional, district and specialised) is headed by a Chief Prosecutor. The regional Chief Prosecutors controls the operation of the district (city) offices within his or her region. The PPO is financed from the national budget and has separate expenditure estimates.

154. There are a total of 459 prosecutors in Latvia, 183 men and 276 women<sup>44</sup>. There are more female prosecutors at every level of the PPO although the ratio is higher at the district office level (196 women and 106 men) than at the Prosecutor General's Office (38 women and 35 men). Despite the greater number of female prosecutors, there are more male heads of prosecution offices at every level of the service in Latvia (23 men, 15 women – heads of district prosecution offices; 7 men, 2 women – heads of regional prosecution offices; 6 men, 4 women – heads at Prosecutor General's Office)<sup>45</sup>.

155. The PPO has worked closely with the KNAB on corruption cases since the Bureau was established in 2003. An independent anti-corruption analysis of stakeholder views published in 2010 described the prosecution office as a strong institution, undaunted by government and collaborating closely with KNAB<sup>46</sup> and from 2003 to the end of 2009, the Prosecutor's Annual Report included a separate section on the fight against corruption<sup>47</sup>.

156. The PPO has also been hit hard by the economic crisis in Latvia – as has all public services in the country – although commentators have said that the police service has been hit harder. While concerns have been raised about police taking on additional work outside their police duties, prosecutors are restricted in their activities and this has not been an issue for the service. The prosecutors joined with the judges in Latvia in successfully challenging the government's plans to reform salaries in the Constitutional Court (see paragraph 94 for details). So while the cuts have not hit prosecutor's salaries as severely, they have been frozen and the current Prosecutor General said in 2010 that the loss of capacity to offer financial incentives to staff to work in specialised areas has meant that detecting and investigating more complex cases of economic crime, for instance, have been significantly curtailed<sup>48</sup>. However, despite this, the GET was told on site that the PPO received a record number of applicants this year (2012) indicating that the PPO is attractive to new recruits.

157. The GET found those from the prosecution service confident about the service's capacity to address corruption prevention. This may be due, in part, to the nature of their function (i.e. to act and make decisions on behalf of society on the proper application of the law, particularly criminal law) and/or to the high level of responsibility and control of the Prosecutor General over the budget and internal structure of the service. Further, the GET

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<sup>44</sup> As at the 1<sup>st</sup> January 2012.

<sup>45</sup> Moreover, according to a study in 2010, women and ethnic minorities have equal access to higher education, public services and employment opportunities in Latvia and the country ranked 18th in the 2010 Global Gender Gap Index (although the country ranked 10th in 2008). Bertelsmann Stiftung, *BTI 2010 – Latvia Country Report*. Gütersloh: Bertelsmann Stiftung, 2009, p. 6.

<sup>46</sup> Rusu, Alexandro. *Latvia: Civil Society Against Corruption*, Hertie School of Governance, Sep. 2010, p. 13.

<sup>47</sup> There is no specific mention of corruption in either the 2010 or 2011 Annual Reports.

<sup>48</sup> National Integrity System Assessment on Latvia. Transparency International (2011), p. 89.

did not hear of any concerns about political or other undue-influence in decision-making with respect to specific cases.

### Recruitment, career and conditions of service

#### *Recruitment*

158. The Prosecutor General is appointed for a 5 year term and can be selected from the ranks of the service or the judiciary. The process by which a Prosecutor General is appointed and then reappointed is the same; namely the candidate is proposed by the Chair of the Supreme Court and confirmed through an open vote in the *Saeima* (see paragraph 86 on open voting). A weakness in the Latvian system for appointing the Prosecutor General was revealed when the *Saeima* failed to reappoint the incumbent nominee in 2010. Misgivings about the possible motivations were expressed by the press at the time. In this connection, the GET recalls that the Venice Commission stated in its report on European Standards as regards the Independence of the Judicial System<sup>49</sup> that a Prosecutor General should not be eligible for re-appointment, at least not by either the legislature or the executive, since there is a potential risk that a prosecutor who is seeking re-appointment by a political body will behave in such a manner to obtain the favour of that body or at least to be perceived as doing so. The GET was told that there have been efforts to amend the law to limit the number of possible reappointments of the same candidate for Prosecutor General to two, but this would not, in the GET's opinion, sufficiently reduce the risks mentioned above. The GET encourages the authorities to further reflect on this matter.

159. All other prosecutors are appointed by the Prosecutor General who also decides on their promotion, rotation and transfers. When making such decisions the Prosecutor General must take account of the recommendation of the Attestation Commission and the Qualification Commission. All prosecutors are permanent (i.e. indefinite) appointments although those appointed as heads or chief prosecutors serve five year terms.

160. The Attestation and the Qualification Commissions are both internal commissions set up by the Council of Prosecutors which is itself a collegial authority established by law within the PPO. The Council advises on the organisation and operations of the PPO, approves the by-laws of the aforementioned Commissions and public institutions under the supervision of the PPO<sup>50</sup>. It consists of the chief prosecutors of departments and regions, the administrative director of the Prosecutor General's Office, and others including heads of institutions supervised by the PPO may also be included (i.e. Money Laundering Prevention Service).

161. The Qualification Commission oversees the initial recruitment, apprenticeship, qualification exam, etc. in the process to appoint new prosecutors and recommends candidates for evaluation to the Attestation Commission. The Attestation Commission evaluates the results of exams, the professional qualifications and personality of the candidates, oversees the process of career progression, appraisal and ranking of prosecutors, making recommendations on appointment and promotion to the Prosecutor General. The Attestation Committee also reviews all disciplinary matters and makes recommendations on the dismissal of prosecutors.

162. The general requirements for becoming a public prosecutor in Latvia are: holding Latvian citizenship and a clean criminal record; an advanced level of knowledge of the official language and a higher education in law; completing an apprenticeship in the PPO

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<sup>49</sup> Report on European Standards as regards the Independence of the Judicial System, Part II – the Prosecution Service, European Commission for Democracy Through Law (Venice Commission), CDL-AD (2010)040.

<sup>50</sup> Law on Prosecution Office, Article 29.

and passing a qualification exam<sup>51</sup>. Those appointed as chief prosecutors are also evaluated according to their professional skills and personal qualities by the Attestation Committee and must have no less than three years' experience as a prosecutor or a judge. There are no separate integrity checks for prosecutors.

#### *Career and conditions of service*

163. As of the 1 January 2011, the gross annual salary of the Prosecutor General was 32,991 EUR (equivalent). A prosecutor receives 1,291 EUR per month which is 80% of the monthly salary of a prosecutor at a specialised or regional office. Prosecutors also receive payments for rank starting from 7 % up to 35 % of the monthly salary. Ranks are granted by the Prosecutor General based on the recommendation of the Attestation Commission. The salaries of prosecutors vary according to the level of prosecution office and actual function but are tied to those of judges. Details of the salaries actually paid to prosecutors are available on the website of the Prosecutors General Office.

164. From 2012, prosecutors with up to 10 years uninterrupted service will get a vacation allowance of 8 % of the monthly salary, for those with more than 10 years uninterrupted service the vacation allowance will be 10%. Prosecutors are entitled to receive gratuities or bonuses for outstanding results and those performing additional duties are entitled to additional payments from 4.4 % up to 8.3 % of the monthly salary (depending on their functional position). Prosecutors are entitled to receive a service pension on retirement.

#### Case management and procedure

165. According to the law, the public prosecutor who initiates a criminal prosecution and transfers the case to the court, continues to represent the State in the appeal court. For some crime categories cases are prosecuted by a special prosecution office (e.g. for drug enforcement, financial crime) or a specialised department at the Office of the Prosecutor General (e.g. for organised crime, for offences committed by public officials). However, to keep track of workloads and to track performance, the PPO has developed criteria for assessing and comparing data from all the prosecution offices.

166. A higher-ranking prosecutor can instruct a subordinate as to tactics for examining and for submitting additional sources of evidence and must decide whether to accept a subordinate's decision to discontinue a prosecution in court or not, or whether to assign another prosecutor or undertake the prosecution him or herself. A higher-ranking prosecutor may also:

- a) revoke the decisions of an investigator, a member of an investigative group, or a less senior prosecutor;
- b) appoint or replace the supervising prosecutor, prosecutor/director of the proceedings if the tasks of supervision or prosecution are not being properly performed, or take personal responsibility for such tasks;
- c) establish an investigative group if the extent of the workload jeopardises the completion of the criminal proceedings within a reasonable time; and
- d) request the appointment of another direct supervisor as investigator or assign the criminal investigation to another investigative authority;
- e) decide whether a withdrawal of prosecution is justified and lawful.

167. Further, a prosecutor may be included in an investigative team if ordered to do so by a senior prosecutor, or may be instructed by the director of the proceedings to carry out one or more procedural tasks (Criminal Procedure Law, Article 46 (1)).

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<sup>51</sup> Law on Prosecution Office, Article 33.

168. In addition, a higher ranking prosecutor has the right to familiarise him or herself with all materials in criminal proceedings; to give instructions to an investigator, a supervising public prosecutor or a public prosecutor regarding the selection of the type of proceedings, the direction of pre-trial proceedings, and the performance of investigative actions; give instructions to a maintainer of state prosecution regarding tactics for examining evidence and for submitting additional sources of evidence (Criminal Procedure Law, Article 46 (2)). A higher-ranking prosecutor cannot instruct another prosecutor to do anything which in the view of the more junior prosecutor, runs counter to his/her duties or beliefs (Law on Prosecution Office, Article 6 paragraphs 4 and 7); likewise a superior prosecutor cannot give instructions on how to qualify an offence. Although the Criminal Procedure Law does not require that instructions from a superior prosecutor be in writing, this has become a regular working practice.

169. A decision by an investigator or a public prosecutor not to launch criminal proceedings, for example, can be appealed to the prosecutor or to a superior prosecutor, respectively, whose decision is final<sup>52</sup>. A decision to discontinue prosecution can be appealed to a superior prosecutor. There is no distinct complaint mechanism accessible to the public to complain about a prosecutor, for misconduct for example. Instead there is a general complaint procedure for all public bodies although no information about this is found on the PPO website. The GET considers that the system can certainly be improved and encourages the authorities to take additional steps to facilitate the relevant complaints procedure, notably, by better informing the public (e.g. via institutional websites) on the available channels to lodge complaints.

170. As is the case for judges, the Criminal Procedure Law (Article 14) stipulates that prosecutors ensure that the right to a criminal trial (proceedings) within a reasonable period (i.e. without unjustified delay) is respected and must choose the simplest form of proceeding etc. with respect to the matter.

#### Ethical principles and rules of conduct

171. The Conflict of Interests Law makes it obligatory for prosecutors, like all public officials, to follow the ethical codes of their profession. The Code of Ethics of Prosecutors was drafted by prosecutors and adopted by the Council of the Prosecutor General in 1998. Any violation of the Code is a disciplinary offence as set out in law<sup>53</sup> and may be sanctioned through a warning, a reprimand, or the sending of a communique to all prosecution offices. A serious violation of the Code of Ethics can be grounds for dismissal. Violations of the Code are taken into account during the professional evaluation of prosecutors. A prosecutor can also have his/her salary reduced upon decision of the Attorney General. The GET has noted that little information about the types of violations that prosecutors are being disciplined for is publicly accessible and has dealt with this point later (see paragraph 199).

172. As is the case for all public officials, a prosecutor shall refuse to execute any duties of office, act in such a way, or hold additional (permitted) posts in all cases where there may be any reason to doubt the impartiality or neutrality of his or her actions.

173. The GET heard on-site that while the PPO was positive about the approach of the Judicial Ethics Commission in making its opinions on ethics matters widely available as a tool for spreading good practice, the PPO itself had no interest in setting up a similar commission.

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<sup>52</sup> Criminal Procedure Law, Article 373.

<sup>53</sup> Law on Prosecution Office.

## Conflicts of interest

174. All prosecutors must inform a superior or their collegial authority in writing regarding financial or commercial interests they or their relatives hold like all public officials (as detailed in paragraph 113) and as a preventative measure they must inform a higher ranking prosecutor or the Prosecutor General, without delay, whenever a conflict of interest arises (*ad hoc* declarations).

175. As a public official, a prosecutor also has to report any conflict of interests he or she observes involving colleagues (Article 21<sup>1</sup>, Conflicts of Interest Law). GRECO already underscored the importance of protecting all public officials for reporting such conflicts and any suspicions of corruption (i.e. whistleblowing). This was a specific recommendation in the Second Evaluation Report<sup>54</sup> and in 2006 Latvia introduced provisions into its general Labour Law which prohibit employers from sanctioning or directly or indirectly causing adverse consequences for employees who inform competent authorities or officials of suspected wrongdoing in the workplace<sup>55</sup>. The GET welcomes this and points out that in light of the important role prosecutors play in the fight against corruption as well as in the context of their work in a hierarchical structure, the prosecution service needs to ensure that, in practice, prosecutors clearly understand the appropriate channels through which they can report such suspicions and the reassurances they can expect.

## Recusal or routine withdrawal

176. Article 8 of the Law on the Prosecution Office stipulates that a prosecutor may not take part in the examination or adjudication of a matter, if a judge or a defence counsel or a person whose activities are being investigated, is the spouse or direct relative of the prosecutor, or is related by specified degrees to either the prosecutor or his or her spouse. In such cases the prosecutor shall recuse himself or herself.

177. The Criminal Procedure Law states that in a conflict of interest situation, a request to be recused must be submitted by:

- i. a supervising public prosecutor, a person directing the proceedings in criminal proceedings, or a maintainer of state prosecution, to a higher-ranking public prosecutor;
- ii. a more public senior prosecutor to the next superior public prosecutor;
- iii. an investigating judge to the chairman of the court;
- iv. a judge until the initiation of a trial or after transfer of adjudication for execution to the chief judge;
- v. a judge adjudicating a criminal case to the composition of the court;
- vi. the chairman of the court to a chairman of the court one level higher.

178. If a prosecutor has not recused himself or herself, anyone whose rights or lawful interests may be affected may submit an application for their recusal to a higher-ranking prosecutor or to a court. Such a recusal will be decided according to procedures prescribed by law and a prosecutor can be removed from a case by a superior prosecutor on receipt of such an application.

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<sup>54</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2\(2004\)4\\_Latvia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2(2004)4_Latvia_EN.pdf)

<sup>55</sup> Labour Law, Article 9.

## Prohibition or restriction of certain activities

### *Incompatibilities and accessory activities*

179. The Law on the Prosecution Office (Article 10) provides for the political neutrality of the office. Thus, prosecutors are not allowed to have any affiliation with any political party or organisation. The only additional activities prosecutors are allowed to engage in outside of their work must be pedagogic (i.e. teaching), scientific or creative work, and can hold a position in a labour union<sup>56</sup>. Prosecutors, like judges, can take on additional expert (consultant) work if it is to help implement or contribute to national or international programmes – i.e. in cooperation with international or other law enforcement agencies – and they can hold a position in a professional association. In these latter instances, however, prosecutors must ensure such work or position does not lead to a conflict of interests and they must first seek written permission from the Prosecutor General.

### *Gifts*

180. Prosecutors, as other public officials, are permitted to accept diplomatic gifts as per Article 13 of the Conflict of Interest Law and the rules and restrictions on gifts and donations for all public officials apply to prosecutors (see paragraphs 43 to 45). Prosecutors cannot accept gifts from anyone whom they have had any official dealings in the two years prior to the exchange of the gift or for two years after its receipt. Donations are not allowed except for specific professional needs, for example, for staff training or technical support, and with permission from the Prosecutor General.

### *Financial Interests*

181. While prosecutors, like judges and all other public officials, can hold financial interests there are some restrictions on them and all such interests must be declared annually. Article 9, paragraph 3 of the Conflict of Interest Law states that a public official is prohibited from gaining income from interests or shares if the company is registered in a low tax country or in countries where taxes are not levied at all.

### *Post-employment restrictions*

182. The rules regarding the prohibition against owning or having any commercial interests in any entity in relation to which a prosecutor has taken any decisions or performed any supervisory, control or punitive functions (Article 10, paragraph 7 of the Conflict of Interest Law) applies for two years after the post has ended. Further, restrictions on commercial activities on public officials and their relatives extend for two years post-employment (i.e. they must not having interest in companies in receipt of state contracts, funds, concessions, etc.)<sup>57</sup>.

### *Third party contacts, confidential information*

183. Article 18 of the Conflicts of Interest Law restricts the use of official information by prohibiting the unlawful disclosure of any information accessible to a public official by virtue of their role and duties or to use such information for anything unrelated to the performance of their duties and in fulfilling their role, in this case as a prosecutor. Further, criminal liability shall be imposed for abuse of official position (Article 318,

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<sup>56</sup> With the exception of the heads of the prosecution offices and the Prosecutor General. In particular, they cannot hold offices in professional associations and labour unions, but they can hold a position in non-professional associations (for example, a housing association or an association of parents in the school attended by own children).

<sup>57</sup> Conflict of Interest Law, Article 10, paragraph 2.

Criminal Law), disclosure of confidential information (Article 329, Criminal Law) and disclosure of confidential information after leaving office (Article 330, Criminal Law).

184. Confidentiality is one of the key principles in the Code of Ethics for Prosecutors, which stipulates that prosecutors shall keep confidential the information they acquire during the performance of their professional duties, except in circumstances or cases when the law prescribes the right or duty to disclose such information. Confidentiality is not solely concerned with the non-disclosure of information, it also means that prosecutors must not use the information they acquire in the course of performing their professional duties for their private interests nor allow the use of said information in the interests of other persons. That said, observers have commented that there have been problems as confidential information has found its way into the public domain and has threatened the prosecution of individuals in corruption cases. This is all the more reason to ensure that such issues are addressed in corruption prevention training of prosecutors, which is discussed later.

Declaration of assets, income, liabilities and interests

185. Prosecutors have to submit annual declarations (as well as a declaration upon entering and ending public service, and once their duties are terminated). All types of income earned must be set out, and information regarding debts or loans or transactions made, provided the amounts exceed 20 minimum monthly wages, must also be declared. Prosecutors can also submit any additional information not indicated in other sections of the declaration. While family members are not obliged to submit declarations unless they are public officials, as detailed earlier, from March 2012 all natural persons (in addition to public officials) will have to declare their assets.

186. The table below provides an overview of the interests prosecutors must declare and their thresholds (see also Annex to compare these across the three groups: MPs, Judges and Prosecutors).

**Table of Registrable Interests and Thresholds for Prosecutors**

Category	Must declare	Thresholds
<b>Additional posts (paid, unpaid, + those allowed by law)</b>	✓ (see clarification in section on prohibitions)	All declarable (Information on all additional posts, work-performance contracts, authorisations, etc.)
<b>Commercial interests (shares, stocks, partnership, sole entrepreneur)</b>	✓	All declarable
<b>Gifts</b>	✓	All monetary gifts of any value and other gifts if exceeding 20 x the minimum monthly wage
<b>Diplomatic gifts (on Official Register)</b>	✓	State property must be registered on Official Register.
<b>Land and Property (including vehicles)</b>	✓	Immovable property in ownership, possession, usage; vehicles in ownership, possession, usage, or rented
<b>Income (including savings)</b>	✓	Including cash or non-cash savings if it exceeds 20 x the minimum monthly wage
<b>Debts, loans and financial transactions</b>	✓	Any and all which exceed 20 x the minimum monthly wage

Supervision and enforcement

187. As detailed earlier, the PPO is a hierarchical system in which higher ranking prosecutors supervise the work of more junior prosecutors and according to the structure of the service (i.e. central office over regional offices, regional offices over district

offices). Every year the PPO defines its priorities and work plan and is then in a position to evaluate its results. It has developed specific methodology to evaluate the results of individual prosecutors and regularly analyses how prosecutors have applied the law and procedural norms. Further, the Attestation Commission evaluates individual performance when determining whether a prosecutor should move up a grade.

188. It is a duty of a Chief Prosecutor to review the quality and effectiveness of the work of subordinate prosecutors at least once every three years. If any significant problems are detected targeted quality improvement work is done. Once a year the Prosecutor General meets with Chief Prosecutors in the presence of deputies from various parliamentary commissions, the heads of other law enforcement and public institutions, as well as media representatives to assess performance indicators and identify priority target areas for the year ahead. The last meeting took place on 22 February 2012.

189. Main supervision over compliance with the rules on assets declarations rests with the KNAB. The SRS also plays a key role in this area as it receives the annual declarations of all public officials, including prosecutors, verifies they are correctly submitted and monitors deadlines. The elements of this supervision regime have already been described in this report under paragraphs 17 and 23. The Prosecutor General's Office organises regular annual meetings with representatives from the SRS and the KNAB to address issues regarding declarations as well as other matters geared to improving internal control/monitoring channels.

190. According to the authorities, individual prosecutors can seek advice and guidance from a superior prosecutor and issues regarding corruption, conflicts of interest and ethics are discussed in internal unit meetings. However, interlocutors told the GET that targeted training on issues of ethics and integrity are needed for prosecutors. This is all the more important in a hierarchical system such as that of the PPO where there is a risk that reliance on the system can eclipse the continuing professional development and self-governance required of prosecutors.

#### *Enforcement measures and immunity*

191. Prosecutors, like judges, enjoy immunity against administrative liability. All administrative violations, including breaches of the Conflict of Interest Law to which all public officials are subject and for which a prosecutor must be dismissed if found 'guilty', are dealt with as an internal disciplinary matter. A prosecutor may also be disciplined for an intentional violation of the law while performing his or her duties, failing to fulfil employment duties, for a shameful act which is incompatible with the position of a prosecutor, or a failure to comply with the Prosecutor's Code of Ethics.

192. On submission from the Prosecutor General and the Chief Prosecutor, the Attestation Commission reviews the case and all the circumstances and if discipline is warranted the appropriate sanction is discussed publicly at a meeting of the Attestation Commission (meetings of the Commission are open to the public) – e.g. whether to reprimand the individual or to send the information to all prosecution authorities. The Attestation Committee has access to various databases and sources of information and has the right to seek explanations from the prosecutor whose activity or behaviour is examined. It takes its decisions by a simple majority vote and such decisions are considered a "recommendation" to the Prosecutor General who takes the final decision to apply the disciplinary penalty.

193. The GET heard similar concerns relating to the severity of disciplinary sanctions for an administrative offence as were raised by judges and that have caused some to question the need for administrative immunity. While it will still be a matter of interest to the PPO in terms of the integrity and reputation of the service whether its prosecutors are found guilty of an administrative offence, it is clear to the GET that the system of

administrative immunities is no longer serving the purpose for which it was intended. Similar to that for judges, **GRECO recommends the system of administrative immunity for prosecutors is abolished.**

194. The problem of time limits in disciplinary matters that applies to the judiciary – i.e. that a disciplinary action may be already time-barred or there is not enough time for it to be dealt with before the time limit expires, did not appear to have posed any particular challenges to date to effectively impose discipline when irregularities in the prosecution services occur. The GET was informed that the Ministry of Justice is looking at this issue in any event since plans are underway to establish a unified system of discipline for both judges and prosecutors. In such a context of reform, the recommendation xi made in paragraph 139 is pertinent.

195. Prosecutors are not subject to any special proceedings or immunities with regards to criminal prosecution. As provided in the Article 7, paragraph 1 of the Law on the Prosecution Office and the Criminal Law Procedure, Article 120, paragraph 4, a public prosecutor may be detained, removed by force, searched, arrested, or held criminally liable in accordance with general procedures specified by law. The Prosecutor General must be notified of any such actions without delay.

196. Information about imposed disciplinary penalties is published in the PPO's Annual Reports which are available (dating back to 2006) on the website of the Prosecutors' General Office. While the numbers of prosecutors disciplined and at what level of the service are included along with the sanctions applied, no details of the type of violation are included.

197. As explained before, any allegations as to conflicts of interest or any violations of the Conflict of Interests Law as they apply to prosecutors are also reviewed by the KNAB.

#### *Statistics*

198. The authorities confirmed that during the last three years no criminal proceedings have been initiated against prosecutors for failing to submit a declaration or providing false statements in regards to high-value income or assets/property, or for violating the restrictions imposed on a public official. During the same period no administrative proceedings have been initiated against prosecutors for violating any of the provisions governing conflicts of interest, failure to submit declarations or for making false statements.

199. According to its 2011 Annual Report, 17 prosecutors were disciplined in 2011 – this is nearly double the number disciplined in 2010 (11) – and of these: five were given warnings; seven were reprimanded; three had their salaries reduced and two were demoted. The statistics also show the distribution of those disciplined by level of prosecution office: eleven at district (city) level; four at regional level; and two at the Prosecutor General's Office. However, in order to help identify and further promote corruption prevention within the service and raise public awareness of the action that is taken, details of the types of violations are needed. In particular, the authorities may wish to publish, along with the statistics on the numbers of prosecutors disciplined and the sanction imposed, the types of offences or breaches committed; similar information on any criminal convictions can also be included.

#### Advice, training and awareness

200. While there is no specific training institution for prosecutors, in 2011 the Latvian Judicial Training Centre (LJTC) implemented a pilot project to provide training for prosecutors on ethics and legal communication. The GET also heard on site that prosecutors themselves are keen to do more training and this should be encouraged.

In 2011, the LJTC also hosted discussions with the US Supreme Court judges about ethical behaviour in the US court system.

201. Outside of the above, a prosecutor in the Department of Operational Analysis and Management is responsible for the organisation of training across the prosecution service. Most of the training takes place in Riga where the General Prosecutors Office is located, however, regional training is organised as well. In principle, as there is no specific training programme, prosecutors are free to attend other training sessions. KNAB also offers regular training on ethics, prevention of corruption and conflicts of interest for all public officials. However, the GET considers it to be of key importance the development of tailored programmes on integrity and ethical conduct within particular professions and services. While the GET acknowledges the PPO's commitment to training; however, in the GET's view the level and continuity of training in the area of corruption prevention still seems somewhat precarious and for this reason, **GRECO recommends that training on corruption prevention (including issues of confidentiality and reporting concerns about wrongdoing), ethics and integrity, tailored to prosecutors is given a greater priority and resources such that it forms part of a regular rolling programme.**

## **VII. RECOMMENDATIONS AND FOLLOW-UP**

202. In view of the findings of the present report, GRECO addresses the following recommendations to Latvia:

### *General*

- i. **that measures be taken to strengthen the independence of the KNAB, thus ensuring that it can exercise its functions in an independent and impartial manner** (paragraph 22);

### *Regarding Members of Parliament*

- ii. **the introduction of rules on how Members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process** (paragraph 34);
- iii. **that the Code of Ethics be (i) revised and updated and (ii) complemented with practical measures in order to provide adequate guidance and counselling to members of the *Saeima* regarding ethical and corruption-prevention related provisions** (paragraph 38);
- iv. **abolishing the exception provided in the Conflict of Interest Law to the general prohibition for MPs to enter into contracts with State authorities** (paragraph 48);
- v. **that the mechanisms internal to the *Saeima* for assuring application of the Code of Ethics, as well as for preventing conflicts of interest, be further developed and articulated with a view to ensuring their proactivity and effectiveness** (paragraph 65);
- vi. **that the system of administrative immunities for members of the *Saeima* is abolished** (paragraph 68);

### *Regarding Judges*

- vii. **(i) strengthening the decisive influence of the relevant self-governing judicial bodies (e.g. the Judicial Council and Judicial Qualification Board) in the appointment, reappointment and career progression of the judiciary; and (ii) reconsidering the scope of powers held by the *Saeima* in this area, notably, by restricting it to the confirmation of judicial appointments as recommended by the relevant judicial bodies, with a view to better dispelling the risks of political influence** (paragraph 89);
- viii. **that the authorities continue in their endeavours to ensure court judgments are easily accessible and searchable to the public, taking into account the appropriate privacy safeguards** (paragraph 106);
- ix. **that the role and resources of the Commission of Judicial Ethics be strengthened in order to further develop its work, and in particular, to ensure that the Judicial Code of Ethics is updated and that regular guidance on its provisions is dispensed** (paragraph 111);
- x. **that the system of administrative immunities for judges is abolished** (paragraph 138);

- xi. that measures be taken to ensure that disciplinary cases concerning improper conduct by judges are decided before the expiry of the statute of limitations, such as extending the time period for imposing sanctions from the date of detection, reassessing the adequacy of the limitation period as a whole, and providing for the interruption or suspension of the period of limitation under specified circumstances (paragraph 139);**
- xii. (i) that professional training on corruption prevention, ethics and integrity is given higher priority within the judiciary, that it is properly funded, and that it forms part of a regular rolling programme for all judges; and (ii) that specific on-going training is developed for court chairs, to better equip them to provide a lead on matters of ethics, conflicts of interest and other integrity and anti-corruption matters within their courts (paragraph 148);**

*Regarding Prosecutors*

- xiii. that the system of administrative immunity for prosecutors is abolished (paragraph 193);**
- xiv. that training on corruption prevention (including issues of confidentiality and reporting concerns about wrongdoing), ethics and integrity, tailored to prosecutors is given a greater priority and resources such that it forms part of a regular rolling programme. (paragraph 201).**

203. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Latvia to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2014. These measures will be assessed by GRECO through its specific compliance procedure.

204. GRECO invites the authorities of Latvia to authorise, at its earliest convenience, the publication of this report, to translate the report into its national language and to make the translation publicly available.

## ANNEX: SUMMARY RULES ON CONFLICTS OF INTEREST

**TABLE 1 - CATEGORIES OF REGISTRABLE INTERESTS**

Category	Members of <i>Saeima</i> (MPs) *	Judges	Prosecutors
<b>Additional posts (paid, unpaid, + those allowed by law)</b>	✓	✓  (see clarification in section on prohibitions)	✓
<b>Commercial interests (shares, stocks, partnership, sole entrepreneur)</b>	✓	✓	✓
<b>Gifts</b>	✓	✓	✓
<b>Diplomatic gifts (on Official Register)</b>	✓	✓	✓
<b>Land and Property (including vehicles)</b>	✓	✓	✓
<b>Income (including savings)</b>	✓	✓	✓
<b>Debts, loans and financial transactions</b>	✓	✓	✓
<b>Financial Transactions</b>	✓	✓	✓
<b>Miscellaneous</b>			
<b>Other Elected/Public Offices</b>	✓	✓ (associations with prior authorisation, labour unions)	✓ (associations with prior authorisation, labour unions)
<b>Non-Financial interests</b>			

\* Similar information must be declared by parliamentary candidates once a party has registered its list of candidates at the Central Election Commission (CEC). These declarations must be submitted to the CEC.

### **REGISTRABLE INTERESTS OF CLOSE RELATIVES (SPOUSE, CHILDREN, ETC.)**

**MPs, Judges, Prosecutors** – No declarations are required from close relatives (except those who are themselves public officials) but anyone mentioned in a declaration may be asked to provide further information. However, public officials must inform a higher or their collegial authority in writing regarding:

- 1) any interests that they or any of their relatives have (financial or personal) regarding the performance of any action within their official duties<sup>58</sup>;

<sup>58</sup> Conflict of Interest Law, Article 21.

- 2) any commercial interests they or any of their relatives have in a company which is in receipt of public (State or local government) contracts, financial resources, guaranteed credits, privatization funds, etc. except where they are allocated as a result of an open competition. Such interest include owning a company, holding shares or stocks, being a partner, or member of a supervisory, control or executive board. Note: restrictions on commercial activities on public officials and their relatives extend for two years post-employment (i.e. they must not having interest in companies in receipt of state contracts, funds, concessions, etc.)<sup>59</sup>.

**As of 1<sup>st</sup> March 2012 all natural persons** in Latvia must make a declaration of assets according to established criteria and thresholds. Public official must declare their name, personal code, place of residence and the names of their spouse, parents, grandparents, siblings, children and grandchildren.

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<sup>59</sup> Conflict of Interest Law, Article 10, paragraph 2.

**TABLE 2 - THRESHOLDS FOR REGISTERING INTERESTS IN CERTAIN CATEGORIES**

Category	Members of Saeima (MPs)	Judges	Prosecutors
<p><b>Gross monthly salaries*</b></p> <p>(Note: avg gross monthly in Latvia €655)</p> <p>*Salary levels as at 1<sup>st</sup> Jan 2011</p>	€2,016	<p>Gross <u>annual</u> salary of newly appointed judge €19,752 and of a Supreme Court Judges €31,849.</p> <p>Salary increase by qualification class (7% to 35%<sup>60</sup>)</p>	<p>Gross <u>monthly</u> salary €1,291 and Prosecutor General <u>annual</u> gross salary €32,991</p> <p>Salary increase by rank (7% to 35%) + vacation pay after 10+ yrs uninterrupted service (8% at 10 yrs; 10% for 10+ yrs)</p> <p>-and-</p> <p>performance/extra duties bonus (4.4% to 8.3% of salary).</p>
<b>Additional posts (paid, unpaid, + those allowed by law)</b>	Information on all additional posts, work-performance contracts, authorisations	Information on all additional posts, work-performance contracts, authorisations	Information on all additional posts, work-performance contracts and authorisations
<b>Gifts</b>	All monetary gifts of any value and other gifts if exceeding 20 x the minimum monthly wage	All monetary gifts of any value and other gifts if exceeding 20 x the minimum monthly wage	All monetary gifts of any value and other gifts if exceeding 20 x the minimum monthly wage
<b>Income</b>	Including cash or non-cash savings if it exceeds 20 x the minimum monthly wage	Including cash or non-cash savings if it exceeds 20 x the minimum monthly wage	Including cash or non-cash savings if it exceeds 20 x the minimum monthly wage
<b>Debts, loans and financial transactions</b>	Any and all which exceed 20 x the minimum monthly wage	Any and all which exceed 20 x the minimum monthly wage	Any and all which exceed 20 x the minimum monthly wage
<b>Land and Property (including vehicles)</b>	<p>Immovable property in ownership, possession, usage, rented</p> <p>Vehicles in ownership, possession, usage, rented</p>	<p>Immovable property in ownership, possession, usage, rented vehicles in ownership, possession, usage, rented</p>	<p>Immovable property in ownership, possession, usage, rented</p> <p>Vehicles in ownership, possession, usage, rented</p>
<b>Shareholdings &amp; other commercial interests</b>	Individual merchant, commercial companies the shareholder, stockholder or partner he is, own capital shares, stock and securities	Individual merchant, commercial companies the shareholder, stockholder or partner he is, own capital shares, stock and securities	Individual merchant, commercial companies the shareholder, stockholder or partner he is, own capital shares, stock and securities

<sup>60</sup> Highest salary increase (i.e. 35%) can only be granted after 5 years as judge at highest qualification.

## **PROHIBITIONS**

### **Gifts:**

**MPs, Judges, Prosecutors** – prohibited from accepting a gift from anyone outside the performance of their official duties if it is someone to whom in a period of two years prior to its receipt the public official has had official dealings (administrative act, supervisory, control, inquiry or punitive function)<sup>61</sup>. This prohibition continues for two years after the receipt of gift – *general rule to all public officials*

**Prosecutors** – *Code of Conduct for Prosecutors* prohibits prosecutors from accepting any gift, loan or service from anyone within sphere of prosecutor's influence at time of case hearing and which might in any way affect or influence duties or decision-making

### **Donations:**

**MPs, Judges, Prosecutors** – prohibited from accepting a donation (ie. transfer of goods, services, or money without compensation for specific purposes) if it affects the taking of a decision. Can only be accepted in strict compliance with the rules to provide aid for state or local government needs (i.e. training, technical support)<sup>62</sup>.

### **Commercial Income:**

**MPs, Judges, Prosecutors** - prohibited from receiving any income from securities, etc. in commercial interests registered in tax-free or low-tax jurisdictions – *general rule to all public officials*

**MPs, Judges, Prosecutors** - prohibited from holding business interests in, or being individual merchant (sole owner) of any company in receipt of government contracts, concessions, privatised fund resources except where granted as a result of open

### **Additional posts/activities:**

**Judges, Prosecutors** – are prohibited from holding any additional posts or combining their role with elected office. The only additional activities they can perform are:

- 1) Posts in accordance to law, international agreements ratified by *Saeima*, Cabinet regulations and orders;
- 2) Work of teacher(lecturing), scientific work, professional sportsmen or creative work, and
- 3) Work of an expert (consultant) in administration of another state, international organization or representation (mission) with permission.

Pursuant to the amendments of the Conflict of Interest Law of July 2012, judges and prosecutors can hold office in an association if that does not create a conflict of interest situation and provided that permission has been granted. They can also hold positions in a labour union; no prior authorisation is required in this case. Court chairs and heads of prosecution offices cannot hold offices in professional associations and labour unions.

**Judges** – *Ethics Code for Latvian Judges* prohibits a judge from being a member of any political party, giving speeches or soliciting funds to support a party or a candidate. A judge can run as a candidate and remain in office during the pre-election campaign but must suspend his judicial duties if elected. Judges cannot practice law (but can give legal advice to family members). The Law on Judicial Power (Article 86, paragraph 3) establishes that the office of judge may not be combined with membership in a party or other political organisation.

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<sup>61</sup> Conflict of Interest Law, Article 13, paragraphs 1 and 2.

<sup>62</sup> Conflict of Interest Law, Article 14.

**Prosecutors** – *Law on Prosecution Office* (Article 40). A prosecutor can be dismissed for refusing to discontinue membership in a political party or organisation. Article 10 of the law establishes that holding office of prosecutor may not be combined with membership in a party or other political organisation.

**TABLE 3 - INSTITUTIONS INVOLVED IN SUPERVISION OF MISCONDUCT, LEGAL VIOLATIONS, ASSET DECLARATIONS**

Type of Supervision	Members of <i>Saeima</i> (MPs)	Judges	Prosecutors
Misconduct & discipline	Committee of Mandate and Ethics	Judicial Disciplinary Board	Attestation Commission of the Prosecution Office
Violations of Conflicts of Interest Law and corruption offences	Corruption Prevention and Combating Bureau (KNAB) -	KNAB	KNAB
Veracity of declarations & meeting deadlines	State Revenue Service (SRS)	SRS	SRS



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### **About GRECO**

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe’s anti-corruption instruments. GRECO’s monitoring comprises an “evaluation procedure” which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment (“compliance procedure”) which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at [www.coe.int/greco](http://www.coe.int/greco).

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