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**Review of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

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II. Executive summary

Estonia

1. Legal system: overview of the anti-corruption legal and institutional framework

Estonia acceded to the United Nations Convention against Corruption on 20 January 2010, and deposited its instrument of accession with the Secretary-General on 12 April 2010. According to article 123 of the Constitution, the Convention has become an integral part of domestic law, with overriding legal effect over any other contrary provision of domestic law.

The Estonian legal system is based on the German legal tradition. The anti-corruption legal framework encompasses the Constitution, the Penal Code, the Criminal Procedure Code, the Anti-Corruption Act (1999), and the Money Laundering and Terrorist Financing Act (2007). At the time of the review, a draft anti-corruption law was being considered. This draft law was adopted on 6 June 2012 and will enter into force in 2013.

There is no specialized anti-corruption agency in Estonia. The Ministry of Justice coordinates anti-corruption policy. Law enforcement authorities include the judiciary, the Public Prosecutor's Office, the Police and Border Guard, the Security Police Force and the FIU (Financial Intelligence Unit of the Police and Border Guard).

2. Implementation of chapters III and IV

2.1. Criminalization and law enforcement (chapter III)

2.1.1. Main findings and observations

The active and passive bribery of public officials are criminalized through the Penal Code. There is a distinction drawn between a "gratuity" (expediting an otherwise lawful administrative procedure) and a "bribe" (an unlawful act or omission by an official resulting in a breach of laws applicable to his or her official powers). The acceptance of a gratuity is punishable with a fine or up to 3 years' imprisonment, while the acceptance of a bribe is punishable with 1 to 5 years' imprisonment. In case of aggravating circumstances (repeated crime, on a large-scale, by a group, demanding a gratuity or a bribe), these behaviours are punishable with a maximum of 5 and 10 years' imprisonment respectively. The same level of penalty is applicable regarding the offence of giving or promising directly or indirectly a bribe or gratuity.

Estonia reported that the law does not refer to the concept of "undue advantage", but that this does not cause problems in practice. Nevertheless, the reviewers invited Estonia to consider using this concept in the definition of bribery offences in order to ensure clarity, legal certainty, and consistency with the Convention.

The Penal Code provides for a broad definition of "officials", which covers persons "who hold office in a state or local government agency, or in a legal entity of public law, and to whom administrative, supervisory or managerial functions, or functions relating to the organization of movement of assets, or functions of a representative of state authority have been assigned". It was noted that parliamentarians could be

included in this definition, but no specific case-law was cited to support this interpretation.

Following an amendment in 2008, the definition of public officials now extends to foreign public officials and employees of public international organizations. However, there have been no cases of prosecution of neither such officials nor persons accused of having bribed them.

Trading in influence is criminalized only in its passive form but not fully in accordance with article 18 of the Convention. The act prohibited under Estonian law is the acceptance of “property” or “other benefits” in exchange for an “illegal use by the person of his or her actual or presumed influence”. An amendment is in preparation in order to fully criminalize trading in influence in its passive and active forms.

Bribery in the private sector is criminalized. However, the definition of the concerned persons (those who manage a legal entity of private law, act on behalf of such person, or act on behalf of another natural person who performs administrative, supervisory or managerial functions) is relatively narrow. An amendment is being prepared to address this issue.

Laundering of proceeds of crime is criminalized in the Penal Code, with reference to the Money Laundering and Terrorist Financing Prevention Act, with an applicable penalty of a fine or up to 5 years’ imprisonment. The acquisition, storage or marketing of the proceeds of crime is punishable with a fine or up to one year’s imprisonment.

Although attempt to commit and complicity in money-laundering are criminalized, conspiracy to carry out money-laundering is not covered. An amendment is being prepared to address this matter.

The reviewers were satisfied that all offences under the Convention, including those committed outside of Estonia, are considered predicate offences for money-laundering.

Estonia has not yet furnished a copy of its money-laundering legislation to the Secretary-General. The reviewers invited Estonia to fulfil this reporting obligation.

The Penal Code criminalizes embezzlement of property by a public official but also the “temporary unauthorized use of things” with an applicable penalty of a fine or up to 5 years’ imprisonment. The penalty of a fine or up to 1 year’s imprisonment applies to the offence of embezzlement of property in the private sector.

Abuse of functions is partially covered by the Anti-Corruption Act. The new anti-corruption law specifies the categories of abuse which are criminalized.

Estonia reported that its Constitution prevents it from criminalizing illicit enrichment. However, in practice, a range of tools are used to address this issue. Every year, a substantial number of high officials must make a declaration of assets and interests that is made available online to the public. Furthermore, following a conviction, the unlawful or unexplained assets that were acquired or obtained through the commission of the offence by the perpetrator may be confiscated.

The Penal Code prohibits any act of violence on a member of the judiciary or law enforcement authorities, or their close family, and also prohibits the destruction of

their property. Obstruction, including through use of violence, in the giving of testimony of witnesses, victims, experts, translators or interpreters, is also prohibited. Such behaviour is punishable with 5 years' imprisonment.

A legal person shall be held criminally responsible for an act committed in the interest of the legal person by a body, member, senior official or competent representative thereof. The prosecution of a legal person does not preclude prosecution of the alleged perpetrator. The maximum fine applicable to legal persons is 16,000,000 EUR. Legal persons convicted for corruption and related offences are banned from participating in public tenders. It was noted that the penalties for legal persons have not yet been applied widely.

Those who aid and abet corruption offences shall be punished with the same penalty applicable to the perpetrator. The court will take into account their level of involvement when assessing the level of penalty imposed.

Attempt to commit any crime is subject to the same penalty provided for the actual completion of the crime.

Preparation for an offence is not specifically criminalized under Estonian criminal law. The Penal Code covers some forms of conspiracy to commit a criminal offence, such as attempts to instigate, consent to a proposal, or agreement to commit a joint offence.

In assessing the sanctions applicable to corruption offences, the reviewers observed that most of the offences established in accordance with the Convention have a maximum penalty of 5 years' imprisonment. If aggravating circumstances (repeated offences, by a group, or on a large-scale) are applicable, these offences will be punishable with up to 10 years' imprisonment. The reviewers were satisfied with this approach.

The Constitution provides immunity from prosecution to the President of the Republic, parliamentarians, members of the Government, the Auditor-General, and members of the judiciary. There is however a possibility to lift the immunity. Criminal charges against the first four categories of persons may be brought only on a proposal of the Chancellor of Justice and with the consent of the majority of the *Riigikogu* (Parliament). In addition, criminal charges against the Chancellor of Justice may be brought only on a proposal of the President of the Republic and with the consent of the majority of the *Riigikogu*. Criminal charges against an ordinary judge may only be brought on the basis of a proposal of the Supreme Court and with the consent of the President of the Republic. Supreme Court judges can only be prosecuted on the basis of a proposal of the Supreme Court itself and following a vote of the majority of the *Riigikogu*.

Although this system appears to be complex, Estonia reported that its authorities have not faced any difficulty regarding the lifting of immunity. An amendment to the Criminal Procedure Code may bring changes to the current system. The experts emphasized that any amendments need to ensure an appropriate balance between any immunities and the possibility of effectively investigating, prosecuting and adjudicating corruption offences.

The independence of prosecutors is ensured by the law and by the recruitment and appointment system. In application of the principle of mandatory prosecution, in Estonia, all crimes must be prosecuted. If an offender cooperates with law

enforcement authorities, it is possible to terminate the case under strict conditions (art. 205, Criminal Procedure Code), or the prosecutor and the defence attorney may agree on the penalty and present it to the judge for approval.

The Witness Protection Act (2005) regulates the protection of victims, witnesses and experts (in their capacity of witnesses), regardless of their nationality. The protection may be extended to their family members. Remote hearings may be used to protect witnesses and victims, or anyone under protection who has been declared “anonymous” by the prosecutor. Estonia has in place several agreements on relocation of witnesses with neighbouring countries.

Citizens can call a Police hotline to report corruption allegations. A reporting person in the public or private sectors who believes being retaliated may file a complaint although this is a lengthy process. Once in force, the new anti-corruption law will streamline and amplify the current regime by shifting the burden of proof to the employer after the reporting person has shown that his or her action was a contributing factor to the retaliation.

The Penal Code allows for the confiscation of assets acquired in full or in part through an offence. Furthermore, if a court convicts a person of a criminal offence and imposes a sentence of more than three years, the court shall extend such confiscation to unexplained assets belonging to the perpetrator, unless the perpetrator can prove that the assets were acquired by legally obtained funds.

Objects or substances used for the commission of a crime are subject to confiscation.

At the request of a prosecutor, and on the basis of an order of a preliminary investigation judge or a court ruling, any property may be seized to secure a civil action, confiscation, substitution of confiscation, or fines. In cases of urgency, property may be seized without the permission of the judge, but the judge shall be notified within twenty-four hours to grant permission. If the judge refuses to grant permission, the property shall be released immediately.

Currently, local authorities manage seized and confiscated assets. Estonia is considering establishing a central agency to administer such assets. The reviewers took note of this development, and encouraged Estonia to expedite the establishment of such an authority.

Under the anti-money laundering law, the FIU can freeze assets for up to 30 days. If the owner or possessor of a property fails to submit evidence of the legal origin of the property, property may be frozen for up to 60 days.

The Criminal Procedure Code also contains measures enabling relevant authorities to identify, track, or freeze for eventual confiscation, by using interrogation or surveillance measures.

Bank secrecy does not constitute an obstacle in Estonia. Financial institutions have the duty to give information required from them by the FIU. The Police also easily obtain information from financial institutions through an order from the Public Prosecutor’s Office.

The Penal Code contains two levels of limitations: 10 years in the case of an offence of the first degree (crime punishable with a penalty of more than 5 years’ imprisonment, life imprisonment, or compulsory liquidation), and 5 years in the

case of an offence of the second degree (crime of which the maximum penalty provided is less than 5 years). Most of the offences set forth in accordance with the Convention have a limitation period of 5 years, starting from the day of the commission of the offence. If committed in aggravating circumstances, these offences become subject to the limitation period of 10 years. The statute of limitations is suspended when the alleged perpetrator has evaded the administration of justice.

Estonia's courts have jurisdiction over acts committed within the territory, acts committed against one of its nationals, and acts committed against the State. The jurisdiction of Estonia also encompasses money-laundering acts committed outside of the national territory, but does not extend to conspiracy to carry out money-laundering for this is not yet criminalized.

The Administrative Procedure Act foresees a procedure for appealing an administrative decision. Under the current regime, a contract obtained by corruption is presumed null and void. Once in force, the new anti-corruption law will eliminate the presumption of nullity, and the contract will be annulled by an administrative or court decision. There are specific rules and procedures to guarantee the integrity in public tenders.

The State Liability Act regulates that an individual or legal person, whose rights are violated by the unlawful activities of a public authority, may claim compensation for damage suffered. However, relevant provisions have not yet been applied in practice.

Estonia does not have a specialized anti-corruption agency. Anti-corruption policy is coordinated by the Ministry of Justice according to its statute. The enforcement of anti-corruption measures is entrusted to the Public Prosecutor's Office, which has prosecutors specialized in corruption offences. Criminal investigations of offences involving high level officials and large municipalities are led by the Security Police Board, while the Police and the Border Guard investigates other corruption matters. Both entities have specialized investigators.

A public servant has the duty to notify the head of the agency or relevant law enforcement authorities of an alleged act of corruption. There is a general duty for all citizens to report to relevant authorities about suspicions of crimes of the first degree. Non-disclosure of such crimes constitutes a crime punishable with up to 5 years' imprisonment.

2.1.2. Successes and good practices

Overall, Estonia was found to comply with chapter III of the Convention. The following good practices were identified:

- Financial institutions have to apply due diligence measures to a wide range of suspicious transactions. Due diligence measures also apply to business relationships established by politically exposed persons or their family members or close associates,
- A judge can extend confiscation to all assets owned by an offender condemned to more than 3 years' imprisonment, unless the offender proves the legal origin of the property,

- Dissuasive penalties are foreseen in relation to legal persons.

2.1.3. Challenges in implementation, where applicable

The review identified a number of concrete steps that Estonia could take in order to achieve full implementation of chapter III. In particular:

- Proceed with amendments currently under consideration which address several criminalization issues such as conspiracy to launder money, bribery in the private sector, and trading in influence.
- Consider replacing the distinction between gratuity and bribe, which might lead to legal uncertainty, through the introduction of the notion of “undue advantage”.
- Ensure that parliamentarians are included in the definition of public officials.
- Further develop and apply widely penalties for legal persons.

2.2. International cooperation (chapter IV)

2.2.1. Main findings and observations

The extradition framework is regulated by both domestic legislation (the Criminal Procedure Code) and relevant international treaties. Estonia is party to the Council of Europe Convention on Extradition (1957), the European Convention on Extradition (1957) and its two Additional Protocols. Moreover, Estonia has concluded bilateral extradition agreements with several countries, including the Russian Federation, Ukraine and the United States of America.

Estonia can use the Convention as the legal basis for extradition in the absence of extradition agreements, and has notified the Secretary-General accordingly.

Dual criminality is a prerequisite for extradition to and from Estonia. Extraditable offences are those punishable with at least one year’s imprisonment. Extradition for the purposes of enforcement of a foreign sentence is permitted if at least four months of the sentence remains to be served. If a person whose extradition is sought has committed several criminal offences and extradition is permitted for some of the criminal offences, extradition may be granted also for the other offences.

The domestic law does not contain a definition of political offences. Estonia stated that it will use the definition of the Additional Protocol to the European Convention on Extradition. In any event, corruption and related offences cannot be defined as political offences.

The reviewers noted that a draft amendment to the Penal Code is being prepared to criminalize conspiracy to carry out money-laundering and to make it an extraditable offence.

A request shall be refused if it may endanger the security, public order or other essential interests of Estonia, or if it is in conflict with the general principles of Estonian law. Estonia does not refuse extradition on the ground that the offence involves fiscal matters.

Incoming requests must be addressed to the Ministry of Justice for an admissibility check. Then requests will be forwarded to the Public Prosecutor's Office for execution. The courts will decide whether a person can be extradited. The court decision is binding and subject to appeal. The process may take from one month to one year if an appeal is made.

The law also provides for a simplified procedure in relation to non-nationals. Therefore, if an alien consents to be extradited, his or her extradition will take place immediately.

An extradition request shall contain information on the commission of the offence, an extract of applicable provisions, the original or authenticated copy of the arrest warrant or judgment of conviction, a description of the person sought, as well as any other relevant information. If necessary, the Ministry of Justice may grant extra time to the requesting State for submission of additional information.

Nationals of Estonia may be extradited. Estonia reported that it has always extradited its nationals upon request. Hypothetically, were a request to be denied on this ground, Estonia would initiate domestic proceedings to prosecute the person. The "*aut dedere aut judicare*" principle was found to be incorporated into the domestic legal system.

The law does not provide for conditional extradition — meaning the situation in which a State accepts to extradite a national upon the condition that he or she will be returned to that State to serve the sentence imposed by the foreign court. However, in practice, Estonia does apply conditional extradition in its cooperation with neighbouring countries.

The reviewers were satisfied that fair treatment and human rights considerations are applied to all stages of the extradition process, both in law and in practice.

With regard to article 45 of the Convention, Estonia is party to the Convention on the Transfer of Sentenced Persons of the Council of Europe (1983). In this context, Estonia has handled several transfers from and to Estonia.

With regard to article 47 of the Convention, Estonia is party to the European Convention on the Transfer of Criminal Proceedings in Criminal Matters (1972). Estonia has also concluded agreements with neighbouring countries. In these contexts, criminal proceedings have been transferred by and to Estonia.

Estonia is party to the European Convention on Mutual Legal Assistance in Criminal Matters (1959) and its Additional Protocols. Estonia has also concluded several bilateral agreements with Finland, Latvia, Lithuania, Poland, the Russian Federation, Ukraine and the United States of America.

The central authority for mutual legal assistance is the Ministry of Justice, and the acceptable languages of requests are English and Estonian. Estonia has notified the Secretary-General accordingly.

Incoming requests accepted by the Ministry of Justice are handled by the Public Prosecutor's Office which determines the appropriate authority for execution of requests.

Dual criminality is not required for mutual legal assistance, including in cases where the request involves coercive actions.

Assistance may be granted through a wide range of methods, including the hearing of persons by phone or videoconference, handing over of property to foreign States, execution of searches and seizures, etc. Requests shall not be refused on the grounds of bank secrecy.

A request shall be refused if it is in conflict with general principles of Estonian law, or it may endanger the security, public order or other essential interests of Estonia, or there is reason to believe that human rights considerations will not be ensured or respected by the requesting State.

A request shall indicate the requesting authority, the assistance sought, the name and other relevant information of the person with regard to whom the request was submitted, the description of the facts, as well as other relevant information. Noteworthy, Estonia has granted assistance on several occasions where a small but sufficient amount of information was submitted. If necessary, Estonia may ask the requesting State to provide additional information.

Estonia has handled numerous incoming and outgoing mutual legal assistance requests, including those relating to money-laundering and freezing of assets.

Upon request, witnesses and experts may be summoned to appear at the foreign court if the requesting State ensures that immunity and safe conduct are respected.

In practice, Estonia bears ordinary costs of execution of mutual legal assistance requests.

Information received through a mutual legal assistance request shall not be used for investigations, prosecutions and proceedings other than those specified in the request.

Public information is provided to a requesting State. Non-public information is divided into four groups: classified information, secret information, confidential information and absolutely secret information. Classified information can be provided to a requesting State. Secret and confidential information may be provided on a case-by-case basis and through the competent authority. Absolutely secret information shall not be shared with other States.

Estonian laws allow spontaneous information exchange between its police entities (Security Police Board, Police and Border Guard) and foreign police forces through various platforms or networks. Liaison police officers are placed in other countries in the context of Europol and INTERPOL. Moreover, the FIU cooperates with its foreign counterparts via the Egmont Group. Law enforcement cooperation between Estonia and other countries takes place in relation to the movement of proceeds of crime and property, as well as asset tracing and recovery.

Estonia has established joint investigation teams with neighbouring countries in many cases relating to organized crimes, drugs and Internet-based offences.

Upon an order of the judge, both the Security Police Board and the Police and Border Guard can use special investigative techniques, such as surveillance, cross-border surveillance and wiretapping. In a limited number of cases, special investigative techniques may be used if decided by a prosecutor.

2.2.2. Successes and good practices

Overall, Estonia was found to comply with chapter IV of the Convention and the following good practices were identified:

- The use of the Convention as the legal basis for extradition in the absence of bilateral or multilateral extradition agreements,
- The close and effective cooperation of law enforcement authorities with foreign counterparts, in particular regarding issues of tracing and freezing property and assets.

2.2.3. Challenges and recommendations

As a concrete step to achieve full implementation of chapter IV, Estonia is encouraged to continue to explore opportunities to engage in bilateral and multilateral agreements with foreign countries, in order to enhance the effectiveness of different forms of international cooperation.
