



**UNODC**

United Nations Office on Drugs and Crime

# **Country Review Report of Latvia**

Review by Ireland and Georgia of the implementation by Latvia of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

## **I. Introduction**

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

The following review of the implementation by Latvia of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Latvia, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Ireland and Georgia by means of telephone conferences, e-mail exchanges or any further means of direct dialogue in accordance with the terms of reference and involving the following experts:

### Georgia

- Mr. Irakli Chilingarashvili, Head of Legal Department, Chief Prosecutor's Office; and
- Mr. Zurab Sanikidze, Legal Adviser, Analytical Department – Secretariat of the Anti-Corruption Council, Ministry of Justice.

### Ireland

- Mr. Eamon Keogh, Detective Superintendent, Garda Bureau of Fraud Investigation; and
- Mr. Michael Dreelan, Advisory Counsel III, Office of the Attorney General.

A country visit, agreed to by Latvia, was conducted from 19 to 21 June 2013. During the country visit, the representatives from the reviewing States parties and the Secretariat had meetings with officials from national institutions and agencies in Latvia involved in the implementation at the domestic level of anti-corruption measures and policies, including: the Corruption Prevention and Combating Bureau (KNAB); the Service for Prevention of Laundering of Illegally Acquired Assets; the State Police; the State Revenue Service; the State Audit Office; the Supreme Court; the Prosecutor's General Office; and the Ministry of Justice. The members of the review team also met with a representative (Council Chairperson) of the Latvian chapter of Transparency International.

## **III. Executive summary**

**1. Introduction: Overview of the legal and institutional framework of Latvia in the context of implementation of the United Nations Convention against Corruption**

*The United Nations Convention against Corruption was signed on 19 May 2005 and ratified on 4 January 2006. Latvia deposited its instrument of ratification with the Secretary-General of the United Nations on 5 June 2009.*

*Latvia's legal framework against corruption includes provisions from the Constitution, the Criminal Law (CL) and the Criminal Procedure Law (CPL). It further contains specific legislation such as the Law on the Prevention of Money Laundering and Terrorism Financing, the Law on Special Protection of Persons, the Law on Punishment Records, the Law on Credit Institutions, the Law on Compensation of Damages, the State Civil Service Law, the Law on Disciplinary Liability of Civil Servants and the Investigatory Operations Law.*

*Latvia has also put in place a well-structured institutional framework to address corruption with emphasis on the independent function of the Corruption Prevention and Combating Bureau (KNAB).*

**2. Chapter III: Criminalization and law enforcement**

**2.1. Observations on the implementation of the articles under review**

*Bribery and trading in influence (arts. 15, 16, 18 and 21)*

*Active and passive bribery of national public officials are criminalized through sections 323 and 320 CL respectively, both as amended on 1 April 2013.*

*Through the amendment on the wording of section 323 CL, the phrase "if the offer is accepted", contained in the previous version of the section, was deleted, thus enabling the criminalization of promise or offer of a bribe as a completed offence.*

*Section 316 CL provides for a definition of a "public official" to include "representatives of State authority, as well as every person who permanently or temporarily performs his or her duties in the State or local government service and who has the right to make decisions binding on other persons, or who has the right to perform any functions regarding supervision, control, inquiry, or punishment or to deal with the property or financial resources of the State or local government, shall be considered to be State officials". The expression "representatives of state authority" refers to persons exercising some form of public power, whether this is legislative, executive or judicial.*

*Both sections 320 and 323 CL make reference to the performance of acts or failure to perform an act by a public official "using his or her official position", in compliance with the term "in the exercise of duties" used in article 15 of the Convention against Corruption.*

*The said provisions also refer to "bribes" which are defined as "material values, properties or benefits of other nature". "Benefits of another nature" also cover immaterial advantages.*

*Both sections 320 and 323 CL refer explicitly to situations in which the offence is committed directly or through an intermediary, as does section 326.2 CL.*

*Section 322 CL criminalizes the acting as an intermediary, in bad faith, between the bribe-giver and the bribe-taker. Third-party beneficiaries are covered in both sections 323 and 320 CL.*

*Paragraph 3 of section 316 CL stipulates that “as State officials shall also be considered foreign public officials, members of foreign public assemblies, officials of international organizations, members of international parliamentary assemblies, as well as international court judges and officials”. Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of national public officials also apply to bribery of foreign public officials.*

*Active bribery in the private sector is criminalized in section 199 CL on “commercial bribery”, whereas passive bribery in the private sector is criminalized in section 198 on “unauthorized receipt of benefits”.*

*Trading in influence, both in its active and passive forms, is criminalized by section 326.1 CL. This provision does not require that the influence was actually exerted or that the desired results were achieved. The review team highlighted as a good practice that the said provision has a broader scope than article 18 of the Convention against Corruption, as it refers not only to the unlawful use of influence, but also the use of official, professional or social position of the influence peddler.*

*Money-laundering, concealment (arts. 23 and 24)*

*The laundering of proceeds of crime is defined in section 5 of the Law on the Prevention of Money Laundering and Terrorism Financing. The scope of the domestic definition of money-laundering was found by the reviewers to be in compliance with article 23 of the Convention against Corruption.*

*Furthermore, the conduct of laundering of proceeds of crime is criminalized in sections 195 and 314 (acquisition and sale of property obtained by way of crime) CL, the latter being amended in April 2013. The participation in any form in the commission of money-laundering is criminalized through the general provisions of the CL on participation (sections 19 and 20). Latvia has adopted an “all crimes” approach to defining predicate offences for money-laundering purposes, including offences committed outside the Latvian territory under the condition of double criminality. Self-laundering is also criminalized.*

*Concealment without the participation in the predicate offence is covered by article 313 CL (concealing without prior promise), which is in compliance with article 24 of the Convention against Corruption.*

*Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)*

*The criminalization of embezzlement in the public sector is accomplished through the combined application of the provision on misappropriation of property in the private sector (section 179 CL) and sections 318, paragraph 2, CL on “using official position in bad faith”, as amended in April 2013, and section 319 CL on “failure to act by a state official”. Section 180 CL can also be applied where the misappropriation takes place on a small scale.*

*The reviewers argued in favour of putting in place ad hoc criminalization provisions to cover acts of embezzlement, misappropriation or diversion of property by a public official. This is*

also because the analogous application of provisions on the abuse of functions may lead to the establishment of criminal responsibility for diversion of property by a public official only when the acts have caused major damage (see below), while the Convention does not foresee this requirement. The reviewing experts called on the Latvian authorities to introduce, for purposes of legal certainty, ad hoc provisions criminalizing the embezzlement, misappropriation or other diversion of property made by a public official.

The abuse of functions is criminalized through sections 318, as amended in April 2013, and 319 CL. Both sections 318 and 319 refer, as a condition for criminalization, to the causing of “substantial harm to state authority, administrative order or interests of a person protected by law”

The review team, bearing in mind the optional wording of article 19 of the Convention against Corruption, noted that the notion of “damage” was not a constituent element of the offence, as described in article 19. This additional restriction of the domestic legislation may result in non-criminalization of acts of abuse of office by which no damage was caused. Therefore the review team recommended that the national authorities explore the possibility of construing legislation in a way that allows for the criminalization of abuse of functions regardless of the damage caused and in line with the requirements foreseen in article 19 of the Convention against Corruption.

The Latvian authorities reported on domestic provisions containing elements which are of some relevance for the domestication of article 20 of the Convention against Corruption (although no ad hoc provision on the criminalization of illicit enrichment per se exists). These provisions include section 219 (avoiding submission of declaration of income, property or transactions or other declaration of a financial nature); section 326 (unlawful participation in property transactions); and (specifically for public officials) section 325 (violation of restrictions imposed on a state official) CL, as amended in April 2013. It was clarified during the country visit that the State Revenue Service has an automated system that analyses the discrepancies between income and expenses. Any discrepancies have to be justified by the person concerned who has to provide proof on the licit origin of his or her income.

#### *Obstruction of justice (art. 25)*

Section 301 CL domesticates article 25 (a) of the Convention against Corruption adequately. This provision criminalizes the conduct of a person who commits bribing or “otherwise illegally influencing” a participant in criminal proceedings for the purpose of, inter alia, compelling him or her to give false testimony or to refrain from giving testimony to a court. The phrase “otherwise illegally influencing” seems to cover the coercive means mentioned in article 25 (a) of the Convention against Corruption as well, which, in any case, constitute aggravating circumstances foreseen in paragraphs 2 and 3 of section 301 CL.

Article 25 (b) of the Convention against Corruption is fully implemented through sections 295 and 294 CL, as both amended in April 2013, dealing with illegal interference in a trial and the pre-trial criminal proceedings respectively.

*Liability of legal persons (art. 26)*

*Latvia's legislation provides for the criminal liability of legal persons by enabling the application of coercive measures against them. Through amendments of sections 70.1-70.8 CL, which entered into force on 1 April 2013, Latvia introduced more detailed provisions on the criminal liability of legal persons, including State or local government capital companies or partnerships. The coercive measures that can be imposed to legal persons include liquidation, restriction of rights, confiscation of property and monetary levy.*

*Participation and attempt (art. 27)*

*Participation in the commission of corruption-related offences, as well as attempts to commit them, are covered by the general provisions of the CL on participation (sections 19 and 20) and completed and uncompleted criminal offences (section 15).*

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)*

*In general, the sanctions for corruption-related offences appear to be sufficiently dissuasive. The reviewers noted, however, that the amendments of the CL of April 2013 brought about a couple of changes in relation to the sanctioning of some of these offences, which seem to create some inconsistencies in the overall sanctioning system and the inter-relationship between basic and aggravated forms of corruption-related offences. The review team invited the Latvian authorities to ensure that legislative anti-corruption action does not affect the consistency and coherence of the existing sanctioning system of the criminal law provisions which are applicable in the fight against corruption.*

*In relation to the extent and scope of immunities from prosecution, section 120 CPL stipulates that the State President and members of the Parliament (Saeima) enjoy immunity from criminal proceedings, as specified in the Constitution. The President may be subject to criminal liability if the Saeima consents thereto by a majority of not less than two thirds (section 54 of the Constitution). Members of the Saeima cannot be arrested, nor can their premises be searched, nor can their personal liberty be restricted in any way without the consent of the Saeima. However, its members may be arrested if apprehended in the act of committing a crime. Without the consent of the Saeima, criminal prosecution may not be commenced and administrative fines may not be levied against its members (section 30 of the Constitution).*

*Judges enjoy immunity during the time they fulfil their duties. A criminal procedure against a judge may only be initiated by the Prosecutor General. A decision concerning the detention of, forcible conveyance, arrest or subjection to a search of a judge is taken by a Supreme Court justice specially authorized for that purpose.*

*The reviewing experts noted the decisive role of the Saeima in lifting the immunities of its members. In order to avoid the potential risk that during the time it takes to lift the immunity evidence could disappear or be tampered with, legislative measures were recommended to ensure that investigative action aimed at securing evidence is allowed before the lifting of immunity and that procedural immunity is narrowed to only*

*criminal prosecution and would not be applicable to pre-trial investigation stage.*

*The prosecutorial and investigating authorities have to initiate criminal investigations whenever the features of criminal offence are detected. Nevertheless, the CPL provides the prosecutors with discretionary powers by enabling them to enter into agreements (form of plea-bargaining agreements), on the basis of own initiative or on the initiative of an accused or his or her defence counsel, regarding the admission of guilt and punishment (chapter 38, sections 433-438 CPL).*

*KNAB has powers to impose administrative sanctions for violations of provisions on conflicts of interest and funding of political parties. In a more specific context, section 39 of the State Civil Service Law provides for the suspension from the performance of duties where detention has been applied as a security measure or criminal prosecution has been initiated against the public official. The procedure for exercising disciplinary powers is stipulated by the Law on Disciplinary Liability of Civil Servants.*

*Protection of witnesses and reporting persons (arts. 32 and 33)*

*Latvia has put in place a comprehensive legal framework for the protection of witnesses, based on provisions of the CPL and the specific Law on Special Protection of Persons. Among the persons protected are the victims, witnesses or other persons who testify or have testified regarding a serious or especially serious crime (section 4, paragraph 1, of the Law).*

*The basis for special procedural protection is the existence of a real threat to life, health or property of a person, expressed real threats, or information that provides a person directing the proceedings with a sufficient basis for believing that a threat may be real in connection with the testimony provided by such person (section 300, paragraph 1 CPL). Sections 308 and 309 CPL deal with the evidentiary rules allowing witnesses and experts to give testimony before the court in a manner that ensures their safety.*

*Despite the existence of provisions of labour law on the protection of employees who report suspicions with regard to the commission of criminal offences, there is still no ad hoc legislation in Latvia ensuring their protection, as set forth in article 33 of the Convention against Corruption. Taking into account the non-binding nature of this provision of the Convention, the reviewers encouraged the Latvian authorities to explore the possibility of putting in place a comprehensive and focused legal framework on the protection of reporting persons.*

*Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

*The Latvian legal system has provisions in place to enable the identification, tracing, freezing or seizure of property associated with criminal activity for the purpose of eventual confiscation (section 361 CPL on the "imposition of an attachment on property"). All realizable property can be frozen, including property transferred to other parties. In emergency situations, an investigator can attach the property and inform the Prosecutor about the action taken.*

*Article 42 CL provides for the confiscation of property, both movable and immovable, as a penalty imposed upon conviction which is applied to property that belongs to the sentenced person or has been transferred*

to another natural or legal person. Article 240 CPL deals with the confiscation of instrumentalities of crime.

Under section 365 CPL, property upon which an attachment is imposed may be left in storage with the owner or user thereof, his or her family members, or another person. If such property cannot be left in storage with the aforementioned persons, it is handed over for storage to the institutions specified by the Cabinet of Ministers.

According to 355 CPL, the burden of proof in confiscation proceedings rests with the prosecution. At the time of the country visit, Latvia was working on amendments to existing legislation to reverse the burden of proof. In future, the person will have the burden of proof that the origin of the property is legally acquired. Amendments will enter into force approximately mid-2014.

In accordance with section 121, paragraph 5 CPL, bank accounts can be monitored, and information contained therein can be disclosed only with the decision of an investigating judge. Bank documents are subject to disclosure to a number of different state agencies, including the Prosecutor, if approved by the investigating judge under section 63 of the Law on Credit Institutions.

*Statute of limitations; criminal record (arts. 29 and 41)*

Pursuant to section 56 CL, the statute of limitations period for corruption offences ranges from five years to ten and fifteen years. The limitation period runs from the day of the commission of the offence and refers only to the investigation time. Once the prosecution phase starts, then the statute of limitations stops. This was viewed by the reviewers as having a much more effective impact on the proper administration of justice than the suspension of the statute of limitations period, which is not foreseen in Latvian legislation.

Latvia reported compliance with article 41 of the Convention against Corruption and specifically the establishment in April 2012 of the computerized system ECRIS to achieve efficient exchange of information on criminal convictions among the member States of the European Union. Since 2005, the Law on Punishment Records is in force and regulates that information about criminal offences and administrative violations is stored at the Information Centre of the Ministry of Interior.

*Jurisdiction (art. 42)*

Jurisdiction principles, including rules of territoriality and active and passive personality, are established in sections 2-4 CL. Jurisdiction is also established over offences committed against the State. It should be noted that dual criminality is not required for the establishment of jurisdiction in respect of acts committed abroad. Section 4, paragraph 4 CL provides for extraterritorial jurisdiction over an offence committed outside the national territory, in the cases provided for in international agreements by which Latvia is bound "irrespective of the laws of the State in which the offence has been committed".

Latvian legislation has no separate provisions stipulating that criminal proceedings have to be opened if the extradition is denied. However, the opening of investigation is mandatory if there is information indicating that an offence has been committed. This a general rule, stipulated in sections 6 and 371 CPL, and as such is applicable.

*Consequences of acts of corruption; compensation for damage (arts. 34 and 35)*

*The Procurement Monitoring Bureau (an institution under the supervision of the Ministry of Finance) has the right to suspend the further implementation of a contract if violations of procurement procedure have been detected.*

*Section 22 CPL guarantees the rights of a victim to compensation for the damage and financial loss derived from a criminal offence. Section 350 CPL provides for the procedure that should be in place to materialize this right. Moreover, the Law on Compensation of Damages caused by the institutions of public administration was adopted in 2005.*

*Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)*

*KNAB was established in October 2002 and has been fully operational since February 2003. As the only law enforcement body of an independent status, it mandates in the area of prevention of corruption and further carries out anti-corruption investigations and operative work within its authority. It also monitors the observance of regulations on the financing of political parties and their associations and has the right to draft and propose amendments to existing legislation, as well as to make draft laws. The Director of the Bureau is appointed by the Parliament for a term of five years. The review team welcomed the existence and work of this specialized body and considered its function as a good practice in the anti-corruption field.*

*Although there are no relevant records, the sharing of information was reported to take place on a regular basis at both the informal and formal levels. Section 395 CPL enables the conduct of "investigation in a group". In practice, the KNAB and the Organized Crime Enforcement Department of the State police have jointly investigated corruption cases.*

*The Law on Credit Institutions provides for the obligation of credit institutions to disclose information at their disposal to State institutions and officials. However, in practice, it was observed that there is often caution to disclose information due to the fear that an intervention of the State police may lead to audits.*

## **2.2. Successes and good practices**

*Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:*

- The fact that the domestic provision on the criminalization of trading in influence has a broader scope than article 18 of the Convention against Corruption, as it refers not only to the unlawful use of influence, but also the use of official, professional or social position of the influence peddler;*
- The comprehensive legal framework for the protection of witnesses;*
- The competences and function of KNAB as a specialized anti-corruption authority.*

## **2.3. Challenges in implementation**

*While noting the efforts of Latvia to harmonize the national legal system*

with the provisions of the Convention against Corruption on criminalization and law enforcement, the reviewers identified some challenges in implementation and/or grounds for further improvement and made the following remarks, to be taken into account for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant Convention requirements):

- Introduce, for purposes of legal certainty, ad hoc provisions criminalizing the embezzlement, misappropriation or other diversion of property made by a public official;
- Explore the possibility of construing legislation in a way that allows for the criminalization of abuse of functions regardless of the damage caused and in line with the requirements foreseen in article 19 of the Convention;
- Taking into account the non-binding nature of article 33 of the Convention, explore the possibility of putting in place a comprehensive and focused legal framework on the protection of reporting persons;
- Ensure that legislative anti-corruption action does not affect the consistency and coherence of the existing sanctioning system of the criminal law provisions which are applicable in the fight against corruption;
- Take legislative measures to ensure that investigative action against members of the Saeima aimed at securing evidence of committing a criminal offence is allowed before the lifting of immunity takes place and that procedural immunity is narrowed to only criminal prosecution and would not be applicable to pre-trial investigation stage.

### **3. Chapter IV: International cooperation**

#### **3.1. Observations on the implementation of the articles under review**

*Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)*

*A two-tier system on extradition has been put in place in Latvia. With regard to other member States of the European Union, the surrender of fugitives is carried out in line with the requirements of the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between member States of the European Union.*

*The Convention against Corruption can be used as a legal basis for extradition if other regional instruments are not applicable. Extradition can also be granted on the basis of reciprocity (see section 675 CPL).*

*The threshold for determining the extraditable offences is one year of imprisonment if extradition is requested for prosecution or trial purposes and four months of a sentence (or remainder thereof) if extradition is requested for purposes of enforcement of a sentence, unless an international agreement provides otherwise (see section 697 CPL).*

*Chapters 65 and 66 of the CPL regulate the domestic extradition proceedings and the execution of European arrest warrants. The consideration of an extradition request involves both the competent judicial chamber of the Supreme Court and the responsible*

*administrative authority (Cabinet of Ministers, on the basis of a proposal of the Minister of Justice).*

*The double criminality requirement, as a precondition for granting extradition, is provided for in section 696, paragraph 1 CPL. In interpreting whether double criminality is fulfilled, consideration is given to the conduct underlying the offence in question. In the European Arrest Warrant context, double criminality is not required for bribery and money-laundering offences punishable by deprivation of liberty of at least three years.*

*Pursuant to section 98 of the Constitution, “a citizen of Latvia may not be extradited to a foreign country, except in the cases provided for in international agreements ratified by the Saeima if by the extradition the basic human rights specified in the Constitution are not violated”.*

*Other grounds for refusal of extradition requests are set forth in section 697 CPL or in applicable international agreements. The fiscal nature of the offence is not a ground for refusal.*

*Typical extradition proceedings may take up to one year to be completed. The maximum detention for purposes of extradition is one year and cannot be prolonged. If the person sought agrees to extradition (simplified extradition — section 713 CPL), she or he can be extradited within three weeks. The simplified process is not applicable for Latvian citizens. In the case of European arrest warrants, the process is completed at the same day if the person is surrendered to Estonia and Lithuania and within 10-14 days to other EU member States. If the decision is appealed, the Supreme Court looks at the matter within 20 days. The maximum period of the surrender process should not exceed 90 days.*

*The conditional surrender of a Latvian citizen to the requesting State upon the condition of return to serve the sentence in Latvia is provided for in section 715, paragraph 3 CPL, and only in relation to the European arrest warrant procedure. If the extradition of a Latvian citizen is requested for purposes of enforcing a sentence, the domestic legal framework enables the execution of the sentence in Latvia (see chapters 70 and 71 of the CPL).*

*Latvia has ratified the European Convention on Extradition and its three Additional Protocols and has further concluded bilateral extradition treaties with Australia, Canada, the Russian Federation and the United States of America.*

*Despite the availability of piecemeal statistics for the years 2010-2012, the Latvian authorities acknowledged that there was no database to systematically compile statistical data on extradition cases. However, it was reported that an information system for a database on legal assistance requests was in the planning process. The reviewing experts urged the national authorities to continue efforts to put in place such an information system and make it fully operational.*

*The transfer of sentenced persons is based on the domestic legal framework regulating the execution of a foreign criminal judgement in Latvia (mentioned above). Latvia is a State party to the European Convention on the Transfer of Sentenced Persons and its Additional Protocol, as well as the European Convention on the International Validity of Criminal Judgments and the Convention between the member States of the European Communities on the Enforcement of Foreign Criminal Sentences.*

*Chapter 67 of the CPL regulates issues pertaining to the transfer of criminal proceedings. Latvia is a State party to the European Convention on the Transfer of Proceedings in Criminal Matters.*

*Mutual legal assistance (art. 46)*

*Mutual legal assistance can be afforded for a wide range of measures in relation to investigations, prosecutions and judicial proceedings. In terms of the applicable domestic legal framework, chapter 54 of the CPL regulates issues pertaining to “international cooperation in the criminal legal field”, whereas chapter 82 focuses on the assistance to a foreign State in the “performance of procedural actions”. Latvia can use the Convention against Corruption on the understanding that no regional instrument applies in a given case.*

*The execution of MLA requests involving coercive measures is subject to the double criminality requirement (section 818 CPL).*

*In executing MLA requests, the criminal procedure of the requesting State may be applied if such necessity has been justified in the request and if such application is not in contradiction to the basic principles of the domestic criminal procedure (section 674, paragraph 2 CPL).*

*Section 816 CPL provides for the grounds for refusal of executing a request for assistance. Bank secrecy is not included among the grounds for refusal; neither the fiscal nature of the offence constitutes a reason to deny such assistance (see also article 1 of the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters).*

*The Ministry of Justice is the competent authority when the MLA request is based on the Convention against Corruption. The Secretary-General of the United Nations has been notified accordingly. The Prosecutor General's Office is responsible for requests submitted under the Council of Europe instruments. It is also exclusively responsible for the extradition requests.*

*Similarly to extradition, the reviewing experts indicated the lack of a systematic approach to gather statistics in the field of MLA and took note of the reported efforts to put in place an information system on legal assistance.*

*Latvia has ratified the European Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols, as well as the 2000 EU Convention on Mutual Assistance in Criminal Matters. Bilateral MLA agreements have been concluded with Belarus, Kyrgyzstan, the Republic of Moldova, the Russian Federation, Ukraine, the United States of America and Uzbekistan.*

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)*

*Law enforcement cooperation, including exchange of information, is facilitated through the Schengen Information System and INTERPOL. The Financial Intelligence Unit is entrusted with the provision of secure information about suspicious transactions to foreign counterparts.*

*Latvia has implemented the Council Decision 2007/845/JHA on the establishment by member States of the European Union of Asset Recovery Offices for the exchange of information concerning assets owned by persons under investigation. Latvia is also member of the Camden Assets Recovery Interagency Network.*

*Latvia has signed bilateral (with Estonia, Lithuania and Poland) and*

*multilateral agreements on direct cooperation with foreign law enforcement agencies. The Convention against Corruption is considered as a legal basis for law enforcement cooperation in respect of the offences covered by the Convention.*

*Chapter 84 of the CPL sets forth the rules for establishing joint investigation teams for the performance of concrete investigative action.*

*The CPL (chapter 11) and the Investigatory Operations Law provide for the possibility of making use of special investigative techniques. Latvia is a party to the Schengen agreement which provides for cross-border surveillance activities, use of controlled deliveries and covert investigations. The EU Convention on Mutual Assistance in Criminal Matters also provides for the use of controlled deliveries and covert investigations.*

### **3.2. Successes and good practices**

*The implementation of a comprehensive and coherent domestic legislation on international cooperation in criminal matters was regarded by the reviewers as a good practice.*

### **3.3. Challenges in implementation**

*The following points are brought to the attention of the Latvian authorities for their action or consideration (depending on the mandatory or optional nature of the relevant requirements of the Convention) with a view to enhancing international cooperation to combat offences covered by the Convention:*

- *Continue to explore opportunities to actively engage in bilateral treaties or agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of different forms of international cooperation;*
- *Continue efforts to put in place — and make fully operational — an information system that would compile in a systematic manner information on extradition and MLA cases, with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements*

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

The Convention was signed on 19 May 2005 ratified by the Parliament on 4 January 2006. Latvia deposited its instrument of ratification with the Secretary-General of the United Nations on 5 June 2009.

The Convention entered into force for Latvia on 3 February 2006 in accordance with its article 68 (2) which reads as follows: "For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later."

## **B. Legal system of Latvia**

According to the Constitution (*Satversme*), Latvia is a parliamentary republic in which the sovereign power belongs to the people, who are represented by a unicameral parliament (*Saeima*), with 100 members elected in general, equal, direct, secret and proportional elections for a four-year period.

The *Saeima*, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by the Constitution.

Draft laws may be submitted to the *Saeima* by the President, the Cabinet or committees of the *Saeima*, by not less than five members of the *Saeima*, or, in accordance with the procedures and in the cases provided for in the Constitution, by one-tenth of the electorate.

The *Saeima* elects President for a term of four years. The same person must not hold office as President for more than eight consecutive years.

The Cabinet of Ministers is the highest executive body of the country. The role and functions of the executive power are stipulated in the *Satversme* (the Constitution) of the Republic of Latvia and in the Law on the Structure of Cabinet Law. The Cabinet of Ministers is formed by a person invited by the State President.

Public institutions are subject to the authority of the Cabinet of Ministers. The Cabinet of Ministers may issue legislative enactments - regulations only in the following cases:

- when such a right specially stipulated or delegated to the Cabinet by the respective law; or
- if the particular matter has not been regulated by law.

The Cabinet of Ministers shall adopt its decision by a majority vote of members present at the Cabinet meeting. More than half of all Cabinet members present at the meeting shall constitute a quorum of the Cabinet of Ministers.

Ministries are top-level direct administration institutions that develop state policies and that are directly subordinated to a respective Member of the Cabinet of Ministers. There are the State Chancellery and 13 ministries in Latvia. The Corruption Prevention and Combating Bureau also has the status of a top-level institution; it is supervised by the Prime Minister and in charge of development and implementation of state policies for prevention and combating of corruption. 98 institutions are subordinated and 84 institutions - supervised by members of the Government, incl. 30 state agencies. Information about direct administration institutions is publicly available. Database of direct administration institutions is available in the Internet homepage of the Cabinet of Ministers.

## **C. Implementation of selected articles**

### **Chapter III. Criminalization and law enforcement**

#### **Article 15 Bribery of national public officials**

##### **Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

(a) *The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia adopted and implemented the measures described in the paragraph.

Amendments to the Section 323 of the Criminal Law have been adopted and took effect on 1 April 2013. In order to emphasize different nature of bribes, to distinct bribes as money or ownership rights of a property and to be able to apply criminal liability for acceptance of any kind of advantage (services, individual discounts, individually increased interest rates for deposit, employment contract for a family member or a friend). Section 323 provides for *benefits of other nature*

**Section 323 of the Criminal Law** after the adopted amendments is worded as follows:

(1) For a person who commits giving of bribes, that is, the handing over or offering of material values, properties or benefits of other nature in person or through intermediaries to a State official in order that he or she, using his or her official position, performs or fails to perform some act in the interests of the giver or person offering the bribe, or in the interests of other persons, irrespective of whether the bribe offered is for this State official or for any other person, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service or a fine.

(2) For a person who commits the same acts, if commission thereof is on a large scale or if they have been committed by a State official, or also if they have been committed in a group of persons pursuant to prior agreement,

the applicable punishment is deprivation of liberty for a term not exceeding eight years, with or without confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years.

(3) For the acts provided for in Paragraph one of this Section, if committed in an organised group, the applicable punishment is deprivation of liberty for a term of not less than two and not exceeding ten years, with or without confiscation of property, with deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years and with probationary supervision for a term not exceeding three years.

An agreement was reached within the Permanent Working Group on Criminal Law at the Ministry of Justice to delete the words “if the offer is accepted” from the Section 320 of the Criminal Law (see below under article 15(b) of the UNCAC). This amendment, which would enable the criminalization of the promise or offer of an undue advantage as a completed offence, without taking into consideration the acceptance or refusal of the advantage, was adopted by Parliament in second reading. The amendment is in force since 1 April 2013. As a result, authorities already have initiated cases starting from moment of offering a bribe. Before, the provision was covered by the provision of attempt. The condition of acceptance has been deleted (in article 323). In addition, ‘benefits of other nature’ include any kind of benefits a person may get.

**Chapter XXIV**

**Criminal Offences Committed in State Authority Service**

**Section 316. Concept of a State Official**

(1) Representatives of State authority, as well as every person who permanently or temporarily performs his or her duties in the State or local government service and who has the right to make decisions binding on other persons, or who has the right to perform any functions

regarding supervision, control, inquiry, or punishment or to deal with the property or financial resources of the State or local government, shall be considered to be State officials.

(2) The President, members of the *Saeima*, the Prime Minister and members of the Cabinet as well as officials of State institutions who are elected, appointed or confirmed by the *Saeima* or the Cabinet, heads of local government, their deputies and executive directors shall be considered to be State officials holding a responsible position.

(3) As State officials shall also be considered foreign public officials, members of foreign public assemblies (institutions with legislative or executive functions), officials of international organisations, members of international parliamentary assemblies, as well as international court judges and officials.

[25 April 2002]

Elected or appointed official is covered by paragraph 2 of 316. However, according to UNCAC, an official is referring to any person who performs a public function. Latvia is narrowing down the definition of a state official to decision competence. According to Latvia, a state official is a person who takes binding decisions and also a person who deals with public property or financial resources and hence is participating in functions with public financial resources or public property such as procurement commission. The Latvian definition refers to a person who is participating in decision making processes (including influencing decisions through preparatory work). A State official who is not able to influence the decision-making process cannot be regarded as a receiver of a bribe according to article 320. In Latvia, there are other articles criminalizing the behaviour of state officials. In accordance with criminal law, article 326, section 2, 3 and 4, relate to persons which are not state officials and do not fall under article 320 but work in public institutions. Each record-keeping person who is working in a state institution is covered by article 326. Article 326, section 2, covers lower level state officials who are not covered by 316 of the criminal law. Therefore, articles 326 (2) and 323 need to be taken into account.

**Please provide examples of cases and attach case law if available.**

This information is collected on annual and semi-annual basis from the Division of Investigation of the Corruption Prevention and Combating Bureau (KNAB).

In September 2012 KNAB has sent to the Prosecutor's General Office for criminal prosecution materials of criminal proceedings regarding illegal activities of the "Latvenergo" AS officials alleging misuse of official position for purposes of acquiring property, passive bribery and laundering of criminally acquired assets on a large scale in organised group of persons during the period of time from 2006 until June 2010. Criminal proceedings were initiated on 14 June 2010.

KNAB investigator asks to start criminal prosecution against 17 persons in relation to bribery of „Latvenergo” AS officials in Pļaviņas HES and TEC-2 reconstruction projects implemented by the „Latvenergo”:

- for taking bribes - against four former „Latvenergo” AS public officials, two of them -for legalisation of illegally acquired assets;
- for giving bribes- against four official representatives of foreign companies;
- for legalisation of illegally acquired assets- against eight persons, among them against one person - also for repeated intermediary in bribery;
- for the support of intermediation in bribery- one person.

Evidence collected during pre-trial investigation show that „Latvenergo” AS officials and employees by using official position with the purpose of acquiring property in a group of persons pursuant to prior agreement accepted bribes in large amounts in order to ensure that decisions concerning public procurements and reconstruction works for „Latvenergo” AS are taken in the interests of companies registered in Spain, Turkey and Sweden.

Evidence gathered within the investigation give sufficient grounds to believe that bribes to „Latvenergo” AS officials were transferred by using consultancy agreements signed by the suspect’s in bribery intermediary companies and foreign companies submitting bids. Purpose of paying bribes was to ensure awarding of public procurement contracts, execution of these contracts and disclosure of related confidential information. Collected evidences are sufficient to conclude that bribery intermediary together with other persons was actually a manager of financial assets forwarded to „Latvenergo” AS officials.

Information at the KNAB disposal indicates that „Latvenergo” AS officials and the consultancy company owner in organised group in order to conceal illegal origin of acquired assets laundered proceeds of crime through different money transfers, real estate transactions and investments in companies owned by them.

In relation to the contract of TEC-2 for its first stage reconstruction works (178 million Euros) the KNAB has noted that a bribe for a total of not less than 6 million was made in a number of payments through intermediate companies registered in many different countries from 2006 to June 2009. In regard to the Pļaviņas HES reconstruction works (32 million Euros) the KNAB established that a bribe no less than 1 million was made from 2007 to May 2010. While in the case of a contract for the TEC-2 second stage reconstruction works (57 million U.S. dollars and 289 million Euros) a bribe in amount of 1.1 million Euros was transferred in May 2010. Due to arrests of several persons involved in bribery made by KNAB in June 2010 most of the planned around 11 million bribe was not transferred. In the course of pre-trial investigation 34 mutual legal assistance requests were sent to 14 countries. Further, in the framework of the criminal proceedings interrogation of persons and search of premises was carried out in several countries. In order to perform investigative activities assistance of experts from the European Anti-Fraud Office (OLAF) was provided and with the support of Eurojust cooperation was established with law enforcement representatives from EU countries and beyond. As reported previously, part of the arrested funds in amount of 448 000 lats were already recognised as illegally acquired assets by the court decision based on the information provided by the KNAB and are to be confiscated. During the investigation led by the KNAB sufficient evidence was gathered proving that funds have a criminal origin and relation to the offense.

**If available, please provide related statistical data on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures, as available. Please describe how such information is collected and analysed.**

By the December 31 2011, 105 court decisions entered into force regarding 180 persons. This applies to the period of time from 2003 until 2011. In 2011, 10 court decisions regarding 27 persons entered into force. Overall statistics of the cases investigated by the Corruption Prevention and Combating Bureau during 10 years is 88 % of persons have been convicted, 2 % of persons have been acquitted. Statistics: In accordance with the Court Information System data basis during the first six months of 2013, 22 persons were convicted of giving of bribes. During the first six months of 2013 no persons were acquitted for crimes provided in the Article 323 of the Criminal Law.

In 2012, in total 37 persons were convicted of giving bribes and 1 person acquitted for the crime provided for in the Article 323.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that active bribery of national public officials is criminalized through section 323 CL, as amended on 1 April 2013.

The Latvian authorities specified that, through the amendment on the wording of section 323 CL, the phrase “if the offer is accepted”, contained in the previous version of the section, was deleted, thus enabling the criminalization of promise or offer of a bribe as a completed offence.

The review team also noted that section 316 CL provides for a definition of a “public official”, as used in, *inter alia*, the provisions on bribery in the public sector. According to paragraph 1 of section 316 CL, “representatives of State authority, as well as every person who permanently or temporarily performs his or her duties in the State or local government service and who has the right to make decisions binding on other persons, or who has the right to perform any functions regarding supervision, control, inquiry, or punishment or to deal with the property or financial resources of the State or local government, shall be considered to be State officials”. Paragraph 2 further stipulates that “the President, members of the *Saeima*, the Prime Minister and members of the Cabinet as well as officials of State institutions who are elected, appointed or confirmed by the *Saeima* or the Cabinet, heads of local government, their deputies and executive directors shall be considered to be State officials holding a responsible position”.

The review team was informed that the expression “representatives of state authority”, as used in the first paragraph of section 316 CL, refers to persons exercising some form of public power, whether this is legislative, executive or judicial. Both prosecutors and judges are considered “representatives of state authority”, as well as being persons with “the right to make decisions binding on other persons” and “the right to perform functions regarding supervision, control, inquiry or punishment”. Furthermore, the Latvian authorities reported that judges are also “officials of state institutions (...) appointed by the *Saeima* [Parliament]” and therefore considered “public officials holding a responsible position” mentioned in paragraph 2 of section 316, as is the Prosecutor General (but not ordinary prosecutors).

If someone is not a public official within the meaning of the CL, in that s/he does not have the right to make decisions binding on other persons or does not carry out any of the other functions mentioned in paragraph 1 of section 316 CL, section 326.2 CC on “illegally requesting and receiving of benefits” may nevertheless cover the passive side of the offence (see below under article 15(b) of the UNCAC). Section 326.2 is explicitly applicable to employees of state or local government institutions who are not public officials as well as persons in similar positions authorized by a state institution.

Section 323 CL makes reference to the performance of acts or failure to perform an act by a public official “using his or her official position”. This is in compliance with the term “in the exercise of duties” used in article 15 of UNCAC.

The said provision also refer to “bribes” which are defined as “material values, properties or benefits of other nature”. During the country visit, it was confirmed that the expression “benefits of another nature” would also cover immaterial advantages, such as honorary positions, titles, certain privileges, services, individual discounts, individually increased interest rates for deposit, or employment contracts. An example of pertinent jurisprudence (case of offering a position) was also mentioned.

Section 323 CL refers explicitly to situations in which the offence is committed directly or through an intermediary. It should be noted that, as confirmed during the country visit, the CL provides for a separate offence called “intermediation in bribery” in section 322 CL, which criminalizes the acting as an intermediary, in bad faith, between the bribe-giver and the bribe-taker.

The Latvian authorities confirmed that third-party beneficiaries are covered in section 323 CL by the words “in the interests of the person giving or offering the bribe or the interest of other persons”. An interpretation issue is whether this particular wording seems to refer to third party beneficiaries of the act performed by the public official and not necessarily to third-party beneficiaries of the bribe itself. During the country visit, the national authorities confirmed that situations in which the beneficiary of the bribe is not the public official him/herself would also be covered by section 323 CL.

The reviewing experts concluded that the provision has been adequately implemented.

## Article 15 Bribery of national public officials

### Subparagraph (b)

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Latvia adopted and implemented the measures described by the Convention.

#### **Criminal Law Section 320. Accepting Bribes (as amended)**

(1) For accepting a bribe, that is, material values, properties or benefits of other nature, committed by a State official personally or through an intermediary, for an already performed lawful or illegal act or permitted omission in the interests of the giver of the bribe, the person offering the bribe or other persons by using his or her official position, irrespective of whether the accepted or offered bribe was meant for this State official or any other person, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service, or a fine, with deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding two years.

(2) For accepting a bribe or the offer of a bribe, committed by a State official personally or through an intermediary, prior to the committing or non-committing of a lawful or illegal act in the interests of the giver of the bribe, the person offering the bribe or other persons by using his or her official position, irrespective of whether the accepted or offered bribe was meant for this State official or any other person, the applicable punishment is deprivation of liberty for a term not exceeding eight years, with or without the confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years.

(3) For a person who commits the acts provided for in Paragraphs one and two of this Section, if they are committed on a large scale or if it has been committed by a group of persons pursuant to prior agreement, or if a bribe has been demanded, the applicable punishment is deprivation of liberty for a term of not less than two and not exceeding ten years, with or without confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years.

(4) For a person who commits the acts provided for in Paragraphs one and two of this Section, if they are committed by an organised group or a State official holding a responsible position, or if a bribe has been extorted, the applicable punishment is deprivation of liberty for a term of not less than three and not exceeding eleven years, with or without confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years and with probationary supervision for a term not exceeding three years.

#### **Section 326.<sup>2</sup> Unlawful Requesting and Receiving of Benefits (as amended)**

(1) For a person who knowingly commits unlawful receiving of material values, properties or benefits of other nature, where committed by an employee of a State or self-government institution, who is not a State official, or a similar person who is authorised by the State institution, himself or herself or through an intermediary, for performing or failing to perform

some act, in the interests of the giver of the benefit or any other person, using his or her authority, irrespective of whether the material values, properties or benefits of other nature received are intended for this or any other person, the applicable punishment is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding one hundred times the minimum monthly wage, with or without deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding two years.

(2) For the same acts, if commission thereof is repeated or on a large scale, or by a group of persons according to prior agreement, or if they are related to requesting or extortion of material values, properties or benefits of other nature, the applicable punishment is deprivation of liberty for a term not exceeding five years, or custodial arrest, or community service, or a fine not exceeding two hundred times the minimum monthly wage, with or without deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years.

The review team raised the question why solicitation is not reflected in the basic provision in paragraph 1 of section 320 CL, and inquired whether the issue of solicitation has been considered by Latvia in the basic offence in paragraph 1. Latvia explained the structure of the paragraphs as follows. Section 1 of 320 refers to an already performed act (in the past). Paragraph 2 refers to a received offer of benefit, but the benefit has not yet been given. In paragraph 1, the person takes a decision, however, is not counting on benefit but receives it eventually. Paragraph (3) and (4) of section 320 establish elements of solicitation by wording “if a bribe has been demanded” and “if a bribe has been extorted”(Paragraph (3) and (4) accordingly) as one of aggravating factors along with repeatedly committed crime or accepting bribes on large scale (the list is not complete) whereas each of the factors are individual.

Latvia pointed out that if there is only solicitation then a conviction is only possible through attempting of bribery but not according to section 320 (3). In Latvia, solicitation is seen as a qualifying element/feature and hence there was no separate criminalization. Section 320 is only referring to solicitation in the case of uncompleted crimes.

However, now section 326 (2) has a special provision on solicitation. Section 326 (2) has been recently amended to be aligned with UNCAC. Despite the criminal law having a general chapter stating what is preparation and attempt of a criminal offence, solicitation was specified in a special section in 326 (2). In practice, there are not many cases, as the provision is new.

In Latvia, any undue advantage in public sector is covered and any kind of material benefit is included.

## **Chapter XXIV**

### **Criminal Offences Committed in State Authority Service**

#### **Section 316. Concept of a State Official**

(1) Representatives of State authority, as well as every person who permanently or temporarily performs his or her duties in the State or local government service and who has the right to make decisions binding on other persons, or who has the right to perform any functions regarding supervision, control, inquiry, or punishment or to deal with the property or financial resources of the State or local government, shall be considered to be State officials.

(2) The President, members of the *Saeima*, the Prime Minister and members of the Cabinet as well as officials of State institutions who are elected, appointed or confirmed by the *Saeima* or the Cabinet, heads of local government, their deputies and executive directors shall be considered to be State officials holding a responsible position.

(3) As State officials shall also be considered foreign public officials, members of foreign public assemblies (institutions with legislative or executive functions), officials of

international organisations, members of international parliamentary assemblies, as well as international court judges and officials.

*[25 April 2002]*

Elected or appointed official is covered by paragraph 2 of 316. However, according to UNCAC, an official is referring to any person who performs a public function. Latvia is narrowing down the definition of a state official to decision competence. According to Latvia, a state official is a person who takes binding decisions and also a person who deals with public property or financial resources and hence is participating in functions with public financial resources or public property such as procurement commission. The Latvian definition refers to a person who is participating in decision making processes (including influencing decisions through preparatory work). A State official who is not able to influence the decision-making process cannot be regarded as a receiver of a bribe according to article 320. In Latvia, there are other articles criminalizing the behaviour of state officials. In accordance with criminal law, article 326, section 2, 3 and 4, relate to persons which are not state officials and do not fall under article 320 but work in public institutions. Each record-keeping person who is working in a state institution is covered by article 326. Article 326, section 2, covers lower level state officials who are not covered by 316 of the criminal law. Therefore, articles 326 (2) and 323 need to be taken into account.

**Please provide examples of cases and attach case law if available.**

Proceedings initiated about bribery in the Riga City Council, suggesting holding criminally liable three officials of the Riga City Development Department and four private persons.

In 2008 KNAB asked the Prosecutor's General Office to start criminal prosecution against three officials of the Riga City Council Development department and four private persons. Two Riga City Council Officials used a third official of the Riga City Council as an intermediary to request bribes from several realty developers in exchange of approval of planned construction projects in Riga. In one of the incidents the officials requested a bribe of one million Euros to change the status of a piece of land.

The Supreme Court ruled that public officials are guilty for accepting bribes and were sentenced to 5 and 6 years of deprivation of liberty and confiscation of assets (applies to real estate and other assets owned by the person). Public official who had the role of intermediary cooperated with the investigation was released at the Court room, however the person spent in prison 1 year and 9 months following the Second instance court decision. Private person was found guilty for giving bribes and sentenced to two years of deprivation of liberty.

**If available, please provide related statistical data on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures, as available. Please describe how such information is collected and analysed.**

In 2010, 15 criminal cases involving 46 individuals were forwarded to the Prosecutor's General Office for criminal prosecution from the Corruption Prevention and Combating Bureau.

In 2011, 21 criminal case involving 55 individuals were forwarded to the Prosecutor's General Office for criminal prosecution from the Corruption Prevention and Combating Bureau.

Out of all the cases investigated by the Corruption Prevention and Combating Bureau (during 10 years period) only 10 % have been acquitted. Annual statistics for this position are not gathered taking into account that adjudication of a corruption related case takes rather long period of time.

In 2012, in total 7 persons were convicted of acceptance of bribes. During the first six months of 2013, in total 8 persons were convicted of acceptance of bribes.

In 2011, 3 persons were convicted of illegal request and receiving of benefits under section 326<sup>2</sup>

**(b) Observations on the implementation of the article**

The reviewing experts noted that passive bribery of national public officials is criminalized through section 320 CL, as amended.

The review team inquired whether the element of solicitation was covered in the basic offence of passive bribery in the public sector, as foreseen in paragraph 1 of section 320 CL. During the country visit, the Latvian authorities argued that paragraphs 3 and 4 of section 320 CL established elements of solicitation through the insertion of the wording “if a bribe has been demanded” and “if a bribe has been extorted” respectively. This language is used as requirement for qualifying offences along with that of “accepting bribes on large”. Moreover, it was also argued that section 326.2 CL criminalizes specifically the conducts of requesting and receiving benefits.

Section 316 CL provides for a definition of a “public official”, as used in, *inter alia*, the provisions on bribery in the public sector. According to paragraph 1 of section 316 CL, “representatives of State authority, as well as every person who permanently or temporarily performs his or her duties in the State or local government service and who has the right to make decisions binding on other persons, or who has the right to perform any functions regarding supervision, control, inquiry, or punishment or to deal with the property or financial resources of the State or local government, shall be considered to be State officials”. Paragraph 2 further stipulates that “the President, members of the *Saeima*, the Prime Minister and members of the Cabinet as well as officials of State institutions who are elected, appointed or confirmed by the *Saeima* or the Cabinet, heads of local government, their deputies and executive directors shall be considered to be State officials holding a responsible position”.

The review team was informed that the expression “representatives of state authority”, as used in the first paragraph of section 316 CL, refers to persons exercising some form of public power, whether this is legislative, executive or judicial. Both prosecutors and judges are considered “representatives of state authority”, as well as being persons with “the right to make decisions binding on other persons” and “the right to perform functions regarding supervision, control, inquiry or punishment”. Furthermore, the Latvian authorities reported that judges are also “officials of state institutions (...) appointed by the *Saeima* [Parliament]” and therefore considered “public officials holding a responsible position” mentioned in paragraph 2 of section 316, as is the Prosecutor General (but not ordinary prosecutors).

If someone is not a public official within the meaning of the CL, in that s/he does not have the right to make decisions binding on other persons or does not carry out any of the other functions mentioned in paragraph 1 of section 316 CL, section 326.2 CC on “illegally requesting and receiving of benefits” may nevertheless cover the passive side of the offence. Section 326.2 is explicitly applicable to employees of state or local government institutions who are not public officials as well as persons in similar positions authorized by a state institution.

Section 320 CL makes reference to the performance of acts or failure to perform an act by a public official “using his or her official position”. Section 326.2 uses similar terms. This is in compliance with the term “in the exercise of duties” used in article 15 of UNCAC.

The said provision also refers to “bribes” which are defined as “material values, properties or benefits of other nature”. During the country visit, it was confirmed that the expression “benefits of another nature” would also cover immaterial advantages, such as honorary positions, titles, certain privileges, services, individual discounts, individually increased interest rates for deposit, or employment contracts. An example of pertinent jurisprudence (case of offering a position) was also mentioned.

Section 320 CL refers explicitly to situations in which the offence is committed directly or through an intermediary, as does section 326.2 CL. It should be noted that, as confirmed during the country visit, the CL provides for a separate offence called “intermediation in bribery” in section 322 CL, which criminalizes the acting as an intermediary, in bad faith, between the bribe-giver and the bribe-taker.

The Latvian authorities confirmed during the country visit that third-party beneficiaries are covered in section 320 CL by the words “in the interests of the person giving or offering the bribe or the interest of other persons”. An interpretation issue is whether this particular wording seems to refer to third party beneficiaries of the act performed by the public official and not necessarily to third-party beneficiaries of the bribe itself. During the country visit, the national authorities confirmed that situations in which the beneficiary of the bribe is not the public official him/herself would also be covered by section 320 CL, as well as section 326.2 CL.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 16 Bribery of foreign public officials and officials of public international organizations**

### **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia adopted and implemented the measures described in the paragraph above.

**Third paragraph of Section 316 on “Concept of a State Official” of the Criminal Law** stipulates that "(3) As State officials shall also be considered foreign public officials, members of foreign public assemblies (institutions with legislative or executive functions), officials of international organisations, members of international parliamentary assemblies, as well as international court judges and officials."

The expression ‘representatives of state authority’, as used in the first paragraph of section 316 CL, refers to persons exercising some form of public power, whether this is legislative, executive or judicial.

According to section 316, the recipient of a bribe or person who can be considered as a perpetrator can be a foreign official. Latvia has no practical examples regarding 316 (3). There have been cases of foreign companies bribing Latvian officials but not the other way round (Latvian companies bribing foreign officials). In Latvia, paragraph 1 of section 316 is applied if the other country categorises the person as a public official. If it is unclear, then paragraph 3 of section 316 is applied. In terms of dual criminality, if a Latvian company is investigated that is located in another country, Latvia will negotiate with the foreign authorities which country investigates which aspects. If according to Latvian law the person is a public official then there is no problem to apply Latvian provisions and start the investigation.

For prosecuting bribery of foreign public officials, it would first need to be established if the bribe-taker would be considered a public official in his/her own country. However, even if this was not the case, the bribery offence could under certain circumstances still be prosecuted as bribery of a foreign public official if the nature of his/her functions was evidently the same as that of a domestic public official under Latvian law. Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign public officials

under section 323 CL on “Giving of Bribes”.

**(b) Observations on the implementation of the article**

The reviewing experts noted that paragraph 3 of section 316 CL stipulates that “as State officials shall also be considered foreign public officials, members of foreign public assemblies (institutions with legislative or executive functions), officials of international organizations, members of international parliamentary assemblies, as well as international court judges and officials”. Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of national public officials also apply to bribery of foreign public officials.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 16 Bribery of foreign public officials and officials of public international organizations**

**Paragraph 2**

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed that it has adopted and implemented the measures described in the paragraph above.

**Third paragraph of Section 316 on “Concept of a State Official” of the Criminal Law** stipulates that “(3) As State officials shall also be considered foreign public officials, members of foreign public assemblies (institutions with legislative or executive functions), officials of international organisations, members of international parliamentary assemblies, as well as international court judges and officials.”

The expression ‘representatives of state authority’, as used in the first paragraph of section 316 CL, refers to persons exercising some form of public power, whether this is legislative, executive or judicial.

Paragraph (3) and (4) of section 320 of the Criminal Law establishes elements of solicitation by wording “if a bribe has been demanded” and “if a bribe has been extorted” (Paragraph (3) and (4) accordingly) as one of aggravating factors along with repeatedly committed crime or accepting bribes on large scale (the list is not complete) whereas each of the factors are individual.

For prosecuting bribery of foreign public officials, it would first need to be established if the bribe-taker would be considered a public official in his/her own country. However, even if this was not the case, the bribery offence could under certain circumstances still be prosecuted as bribery of a foreign public official if the nature of his/her functions was evidently the same as that of a domestic public official under Latvian law. Accordingly, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign public officials under section 320 on “Accepting Bribes” of the Criminal Law.

In two cases investigated by the Corruption Prevention and Combating Bureau, foreign officials and foreign legal entities have been involved in giving bribes to Latvian nationals. One of foreign nationals was released from criminal liability as the person reported. In the second case, discussion of reaching agreement with foreign legal entities is currently in process.

**(b) Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

**Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed that it has adopted and implemented into the national legislation the measures described by the Convention.

Implementation of the Article 17 of UNCAC can be ensured by **paragraph 2 of Section 318 on “Using Official Position in Bad Faith” of the Criminal Law:**

(2) For a person who commits the same acts, if serious consequences are caused thereby, or they are committed for purposes of acquiring property, the applicable punishment is deprivation of liberty for a term not exceeding eight years or community service, or a fine not exceeding one hundred and fifty times the minimum monthly wage, with or without deprivation of the right occupy specified positions for a term of not less than one and not exceeding five years.

Further, **paragraph 2 of Section 319 on “Failure to Act by a State Official” of the Criminal Law** stipulates:

(2) For a person who commits the same offence, if serious consequences are caused thereby, or the acts of the State official are for purposes of acquiring property, the applicable punishment is deprivation of liberty for a term not exceeding six years or community service, or a fine not exceeding one hundred times the minimum monthly wage, with or without deprivation of the right occupy specified positions for a term of not less than one and not exceeding five years.

Finally, the **Section 317 on “Exceeding Official Authority” of the Criminal Law** can be applied:

(1) For a person who, being a State official, commits intentional acts which manifestly exceed the limits of rights and authority granted to the State official by law or pursuant to his or her assigned duties, if substantial harm is caused thereby to State authority, administrative order or rights and interests protected by law of a person, the applicable punishment is deprivation of liberty for a term not exceeding three years or community service, or a fine not exceeding one hundred times the minimum monthly wage, with or without deprivation of the right occupy specified positions for a term of not less than one and not exceeding three years.

According to the CL of Latvia, it is important to have intentional guilt for the establishment of criminal liability. Sections 317, 318 and 319 CL relate to how officials perform their duties. These

provisions require material breach or breach of property interest. The criminal law is structured depending on the object of the offence. Offences threaten the normal functioning of a state institution. If a breach against property occurs without interfering with the functioning of a public office then other articles are applied. If a public official steals something then this constitutes a crime against property.

If a person uses his/her official position to gain a benefit then this is an offence against public office. If the person does not use his/her official power then it is an offence against public property. If a person in his official authority signs official documents and transfers money in bad faith then this constitutes the use of an official position in bad faith. However, if the person, for example, just steals the printer then the person is not using his/her official position.

In Latvia, the Finance Police investigates cases related to section 318 CL, which is related to section 319 (using official position in bad faith). Frequently, these go together with other criminal offences according to section 320 (accepting bribes) or section 390 (smuggling).

In Latvia, sections 178 and 179 (private sector) and articles 318 and 319 are jointly applied to cover the public sector. In case a public official misappropriates property then articles 178 and 179 are applied. Section 180 can also be applied if it is misappropriation on a small scale. As there are not many cases of misappropriation, the Latvian authorities expressed the view that a special article in the criminal law addressed to public officials is not necessary.

**Statistics:** During the first six months of 2013, 2 persons were sentenced under section 318 on “Using Official Position in Bad Faith” to suspended sentence and a fine accordingly, 4 persons convicted for exceeding official authority. One person sentenced under section 319 on “Failure to Act by a State Official” to a fine.

In 2012, in total 21 persons were sentenced for offences provided for in section 318 on “Using Official Position in Bad Faith”, 3 persons sentenced for offences provided for in section 319 on „Failure to Act by a State Official”. One person was acquitted for the crime provided for in section 318.

## **(b) Observations on the implementation of the article**

The criminalization of embezzlement in the public sector is accomplished through the combined application of the provision on misappropriation of property in the private sector (section 179 CL) and sections 318, paragraph 2, CL on “using official position in bad faith”, as amended in April 2013, and section 319 CL on “failure to act by a state official”. The latter provisions (sections 318 and 319 CL) are used for the criminalization of abuse of office. Section 180 CL can also be applied where the misappropriation took place on a small scale.

The reviewers argued in favour of putting in place an ad hoc criminalization provisions to cover acts of embezzlement, misappropriation or diversion of property by a public official. This is also because the analogous application of the provisions on the abuse of functions may lead to the establishment of criminal responsibility for diversion of property by a public official only when the acts have caused major damage (see below), while the Convention does not foresee this requirement. In conclusion, the reviewing experts called the Latvian authorities to introduce, for purposes of legal certainty, an ad hoc provision criminalizing the embezzlement, misappropriation or other diversion of property made by a public official.

## **Article 18 Trading in influence**

### **Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed that adopted and implemented at national level the measures described in the above paragraph.

#### **Section 326.<sup>1</sup> Trading with Influence**

(1) For a person who commits offering or giving of material values, properties or benefits of other nature to any person in person or through an intermediary, in order that he or she, using his or her official position, professional or social position, might unlawfully influence the activities of a State official, or encourage another person to unlawfully influence the activities of a State official in the interests of any person, irrespective of whether the material values, properties or benefits of other nature are intended for this person or any other person, if the elements of the crime provided for by section 323 are not present, the applicable punishment is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding one hundred and fifty times the minimum monthly wage, with or without deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding two years.

The Parliament has adopted in the 2nd reading amendments in section 326.<sup>1</sup> CL, establishing criminal liability for requesting material values, properties or benefits of another nature with the purpose unlawfully influence the activities of a state (public) official.

### **(b) Observations on the implementation of the article**

The reviewing experts noted that the active trading in influence is criminalized by section 326.1, paragraph 1 CL. This provision does not require that the influence was actually exerted or that the desired results were achieved. During the country visit, it was explained that if a person who is not in a position to exert influence over the activities of, or the taking of decisions by, a public official, nevertheless asserts that s/he could do so in order to obtain an undue advantage to do so, s/he would be prosecuted for fraud instead.

The reviewing experts concluded that the provision has been adequately implemented.

### **(c) Successes and good practices**

The review team highlighted as a good practice the fact that the domestic provision on the criminalization of trading in influence has a broader scope than article 18 of UNCAC, as it refers not only to the unlawful use of influence, but also the use of official, professional or social position of the influence peddler.

## Article 18 Trading in influence

### Subparagraph (b)

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Latvia adopted and implemented into the national legislation the measures described by the Convention.

**Paragraph 2 of the Section 326.<sup>1</sup> Trading with Influence of the Criminal Law** stipulates:

(2) For a person who commits accepting an offer of material values, properties or benefits of other nature for him or herself or any other person, in order that he or she, using his or her official position, professional or social position, might unlawfully influence the activities of a State official, or to encourage any other person to influence the activities or taking of decisions of a State official in the interests of any person, if the elements of the crime provided for by sections 198 and 320 of this Law are not present, the applicable punishment is deprivation of liberty for a term not exceeding five years, or custodial arrest, or community service, or a fine not exceeding two hundred times the minimum monthly wage, with or without deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years.

**Statistics:** In 2013, a foreign legal person and representative of this legal person were fined for active trading into influence in accordance with the injunction of the prosecutor.

#### (b) Observations on the implementation of the article

The reviewing experts noted that the passive trading in influence is criminalized by section 326.1, paragraph 2 CL. This provision does not require that the influence was actually exerted or that the desired results were achieved. During the country visit, it was explained that if a person who is not in a position to exert influence over the activities of, or the taking of decisions by, a public official, nevertheless asserts that s/he could do so in order to obtain an undue advantage to do so, s/he would be prosecuted for fraud instead.

The reviewing experts concluded that the provision has been adequately implemented.

#### (c) Successes and good practices

The review team highlighted as a good practice the fact that the domestic provision on the criminalization of trading in influence has a broader scope than article 18 of UNCAC, as it refers not only to the unlawful use of influence, but also the use of official, professional or social position of the influence peddler.

## Article 19 Abuse of Functions

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

### (a) Summary of information relevant to reviewing the implementation of the article

Latvia has adopted and implemented the measures described in the article.

**Section 319 on “Failure to Act by a State Official” of the Criminal Law** stipulates:

(1) For a person who, being a State official, commits failing to perform his or her duties, that is, if a State official intentionally or through negligence fails to perform acts which, according to law or his or her assigned duties, he or she must perform to prevent harm to State authority, administrative order or rights and interests protected by law of a person, and if substantial harm is caused thereby to State authority, administrative order or rights and interests protected by law of a person, the applicable punishment is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding fifty times the minimum monthly wage, with or without deprivation of the right occupy specified positions for a term of not less than one and not exceeding three years.

(2) For a person who commits the same offence, if serious consequences are caused thereby, or the acts of the State official are for purposes of acquiring property, the applicable punishment is deprivation of liberty for a term not exceeding six years or community service, or a fine not exceeding one hundred times the minimum monthly wage, with or without deprivation of the right occupy specified positions for a term of not less than one and not exceeding five years.

**Section 318 on “Using Official Position in Bad Faith”, as amended (April 2013):**

(1) For a person who, being a State official, commits intentional acts using his or her official position in bad faith, if such acts cause substantial harm to State authority, administrative order or interests protected by law of a person, the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine.

(2) For a person who commits the criminal offence provided for in Paragraph one of this Section, if it has been committed for purposes of acquiring property, the applicable punishment is deprivation of liberty for a term not exceeding four years or temporary deprivation of liberty, or community service, or a fine, with deprivation of the right to take up a specific office for a term not exceeding five years.

(3) For a person who, being a State official, commits intentional acts using his or her official position in bad faith, if such acts have caused serious consequences, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service, or a fine, with deprivation of the right to take up a specific office for a term not exceeding five years.

### (b) Observations on the implementation of the article

The reviewing experts noted that the abuse of functions is criminalized through sections 318, as amended in April 2013, and 319 CL. Both sections 318 and 319 refer, as a condition for criminalization, to the causing of “substantial harm to state authority, administrative order or interests of a person protected by law”.

The review team, bearing in mind the optional wording of article 19 of UNCAC, noted, that the notion of “damage” was not a constituent element of the offence, as described in article 19. This additional restriction of the domestic legislation may result in non-criminalization of acts of abuse of office by which no damage was caused. Therefore the review team recommended that the national authorities explore the possibility of construing legislation in a way that allows for the criminalization of abuse of functions regardless of the damage caused and in line with the requirements foreseen in article 19 of UNCAC.

## **Article 20 Illicit Enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The country has adopted and implemented at national level the measures described by the Convention.

**Section 219 on “Avoiding Submission of Declaration” of the Criminal Law** stipulates:

- (1) For a person who commits non-submission of a declaration of income, property or transactions, or other declaration of a financial nature on the basis of a warning by those State institutions, which are entitled to request the submission of such declarations, the applicable punishment is deprivation of liberty for a term not exceeding two years, or a fine not exceeding sixty times the minimum monthly wage.
- (2) For a person who commits intentionally setting out false information in a declaration of income, property or transactions, or other declaration of a financial nature prescribed by law, if false information is indicated regarding property or other income on a large scale, the applicable punishment is deprivation of liberty for a term not exceeding four years, or community service, or a fine not exceeding one hundred times the minimum monthly wage.
- (3) For a person who commits not indicating the source of origin of the property or other income to be declared as specified by law, or providing false information regarding the source of origin of the property or other income, if such information has been requested by the relevant authorised State institution according to procedures specified by law, and if false information is indicated regarding property or other income on a large scale, the applicable punishment is deprivation of liberty for a term not exceeding six years, or a fine not exceeding one hundred and fifty times the minimum monthly wage, with confiscation of the property the source of origin of which was not indicated in the declaration.

The first paragraph of section 219 was excluded after the amendments of April 2013.

Further, **Section 325 on “Violation of Restrictions Imposed on a State Official” of the Criminal Law, as amended (April 2013)**, can be applied:

- (1) For a person who commits intentional violation of the restrictions or prohibitions imposed on State officials specified by law, if substantial harm has been caused thereby to the interests of the State or of the public, or to interests protected by law of a person, the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine.
- (2) For a person who commits the criminal offence provided for by Paragraph one of this Section, if it has been committed by a State official who holds a responsible position,

the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years.

**Section 326 on “Unlawful Participation in Property Transactions” of the Criminal Law, as amended (April 2013):**

(1) For a person who commits facilitating property transactions or participating in such transactions, if commission thereof is for purposes of acquiring property or due to other personal interest by a State official who, in connection with his or her official position, is prohibited from such transactions by law, the applicable punishment is deprivation of liberty for a term not exceeding one year or temporary deprivation of liberty, or community service, or a fine.

(2) For a person who commits the same acts, if it has been committed by a State official who holds a responsible position, the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years.

In accordance with paragraph 1 of section 22 of the Law on Personal Income, the Tax State Revenue Service verifies the income acquired by the payer (natural person) in a taxation year on the basis of the data indicated in the submitted annual income declaration, the notices of employers (payers of income) regarding the amounts paid out, information provided by foreign tax authorities, results of surveys and verifications, as well as other information in the possession of the State Revenue Service including declarations of public officials regarding the income of the taxpayer, and changes and expenditure in the status of property. Declaration of public official represents additional tool to verify whether income and spending comply with declared income. In case of detected discrepancies, the State Revenue Service can initiate personal income audit.

In Latvia, the State Revenue Service has an automated system that analyses the discrepancies between income and expenses. Criteria draw special attention to people who are well off (not less than 30000 lats, more than assets amounting to 50000 lats).

Latvia monitors and records the following types of expenditures: expenses of purchase of property, vehicles, capital shares in companies, personal expenditures (travelling etc.), loans.

Any discrepancies have to be justified by the tax payer and he/she has to provide proof that income is legal if he/she is not in agreement with the calculation of the sanction or fine by the State Revenue Service.

In 2010, the State Revenue Service carried out 10 tax audits for public officials and additional payments to the state budget in total amount of 65,3 thousand lats , in 2011 six tax audits were performed which resulted in 82,3 thousand lats.

During the first six months of 2013, 5 persons were convicted for avoidance to submit declaration. In 2012, 9 persons were convicted for the same offence.

**(b) Observations on the implementation of the article**

The reviewing experts noted the reported domestic provisions containing elements which are of some relevance for the domestication of article 20 of UNCAC (although no ad hoc provision on the criminalization of illicit enrichment per se exists). These provisions cover all natural persons and include section 219 (avoiding submission of declaration of income, property or transactions or other declaration of a financial nature); section 326 (unlawful participation in property transactions); and (specifically for public officials) section 325 (violation of restrictions imposed on a state official) CL,

as amended in April 2013. It was clarified during the country visit that the State Revenue Service has an automated system which analyzes the discrepancies between income and expenses. Types of expenditures which are monitored and recorded include expenses and purchase of property, capital shares in companies, personal expenditures (travelling etc.) and loans. Any discrepancies have to be justified by the person concerned who has to provide proof on the licit origin of his/her income.

Bearing in mind the optional nature of article 20 of the UNCAC regarding the establishment of an ad hoc offence of illicit enrichment, the reviewing experts concluded that the provision has been adequately implemented.

## **Article 21 Bribery in the private sector**

### **Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described in the paragraph.

#### **Section 199 on “Commercial Bribery” of the Criminal Law:**

(1) For a person who commits the offering or giving of material values, property or benefits of other nature, if the offer is accepted, in person or through intermediaries to an employee of an undertaking (company) or organisation, or a person who, on the basis of the law or a lawful transaction, is authorised to conduct affairs of another person, or a responsible employee of an undertaking (company) or organisation, or a person similarly authorised by an undertaking (company) or organisation, or a person who, on the basis of the law or lawful transaction, is authorised to settle disputes so that he or she, using his or her authority, performs or fails to perform some act in the interests of the giver of the benefit or the offerer, or any other person regardless of whether the material values, property or benefits of other nature are intended for this person or any other person, the applicable punishment is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding fifty times the minimum monthly wage.

(2) For a person who commits the same acts, if commission thereof is repeated or on a large scale, the applicable punishment is deprivation of liberty for a term not exceeding five years, or community service, or a fine not exceeding one hundred times the minimum monthly wage.

The Parliament in the 2nd reading has adopted amendments in section 199 deleting the words "if the offer is accepted" providing that an offence is complete without the condition if the offer is accepted.

Section 199 CL after the adopted amendments is worded as follows:

(1) For a person who commits the offering or giving of material values, property or benefits of other nature in person or through intermediaries to an employee of an undertaking (company) or organisation, or a person who, on the basis of the law or a lawful transaction, is authorised to conduct affairs of another person, or a responsible employee of an undertaking (company)

or organisation, or a person similarly authorised by an undertaking (company) or organisation, or a person who, on the basis of the law or lawful transaction, is authorised to settle disputes so that he or she, using his or her authority, performs or fails to perform some act in the interests of the giver of the benefit or the offerer, or any other person regardless of whether the material values, property or benefits of other nature are intended for this person or any other person, the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine.

(2) For a person who commits the same acts, if commission thereof is on a large scale, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service, or a fine, with deprivation of the right to take up a specific office for a term not exceeding three years.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the active bribery in the private sector is criminalized in section 199 CL on “commercial bribery”. With regard to the scope of perpetrators, section 199, paragraph 1, CL refers to “an employee of an undertaking (company) or organization, or a person who, on the basis of the law or a lawful transaction, is authorized to conduct affairs of another person, or a responsible employee of an undertaking (company) or organization, or a person similarly authorized by an undertaking (company) or organization, or a person who, on the basis of the law or lawful transaction, is authorized to settle disputes”.

Again, the phrase “if the offer is accepted”, contained in the previous version of section 199 CL, was deleted through the amendment of 1 April 2013, thus enabling the criminalization of promise or offer of a bribe as a completed offence.

Section 199 CL refers to the commission of the relevant offence either personally or through an intermediary, thus covering both direct and indirect bribery. Moreover, section 199 covers third-party beneficiaries (“regardless of whether the material values, property or benefits of other nature accepted are intended for this person or any other person”). In addition, it does not limit its applicability to business activities, although this is to a certain extent implied by the heading of section 199, which refers to “commercial bribery”.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 21 Bribery in the private sector**

### **Subparagraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at domestic level the measures described in the paragraph above.

**Section 198 on “Unauthorised Receipt of Benefits” of the Criminal Law, as amended (April 2013):**

(1) For a person who unlawfully accepts material values, property or benefits of other nature, or offers thereof, where accepted by an employee of an undertaking (company) or organisation, or a person who, on the basis of the law or a lawful transaction, is authorised to conduct the matters of another person, him or herself or through an intermediary, for performing or failing to perform some act, in the interests of the giver of the benefit or any other person, using his or her authority, regardless of whether the material values, property or benefits of other nature accepted are intended for this person or any other person, the applicable punishment is deprivation of liberty for a term not exceeding two years or temporary deprivation of liberty, or community service, or a fine.

(2) For a person who commits the acts provided for in Paragraph one of this Section, if commission thereof is on a large scale, or they have been committed by a group of persons pursuant to prior agreement, or where material values, property or benefits of other nature have been requested, the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.

(3) For a person who unlawfully accepts material values, property or benefits of other nature, or offers thereof, where accepted by a responsible employee of an undertaking (company) or organisation himself or herself or through an intermediary, or a person similarly authorised by an undertaking (company) or organisation, or a person who, on the basis of the law or a lawful transaction, is authorised to resolve disputes or take binding decisions but who is not a State official, for performing or failing to perform some act, in the interests of the giver of the benefit or the offerer, or any other person, using his or her authority, regardless of whether the accepted material values, property or benefits of other nature are intended for this person or any other person, the applicable punishment is deprivation of liberty for a term not exceeding four years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property and with deprivation of the right to take up a specific office for a term not exceeding three years.

(4) For a person who commits the acts provided for in Paragraph three of this Section, if commission thereof is on a large scale, or they have been committed by a group of persons pursuant to prior agreement, or they are associated with a demand for material values, property or benefits of other nature, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property and with deprivation of the right to take up a specific office for a term of not less than two years and not exceeding five years.

In principle, Latvia covers with article 199 any person working in a private sector entity. Latvia reported no problems concerning the coverage of persons.

In Latvian language, there is no direct translation of the word of solicitation. Latvian legislation uses the term demand (solicitation) and acceptance. Paragraph 2 of section 198 CL covers the act of a person requesting or demanding a bribe. If there is a request and no acceptance, then paragraph 2 does not apply.

**Statistics:** During the first 6 months of 2013, 1 person is convicted for unauthorised acceptance of benefits.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the passive bribery in the private sector is criminalized in section 198 CL, which deals with unauthorized receipt of benefits. With regard to the scope of perpetrators, section 198, paragraph 1, CL refers to “an employee of an undertaking (company) or organization, or a

person who, on the basis of the law or a lawful transaction, is authorized to conduct the matters of another person or organization”.

Section 198 CL on unauthorized receipt of benefits refers to a “person who accepts material values, property or benefits”. Moreover, the element of “requesting the bribe” is present in paragraphs 2 and 4 of section 198 CL.

Sections 198 CL refers to the commission of the relevant offence either personally or through an intermediary, thus covering both direct and indirect bribery. Moreover, it covers third-party beneficiaries (“regardless of whether the material values, property or benefits of other nature accepted are intended for this person or any other person”). In addition, it does not limit its applicability to business activities.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 22 Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at domestic level the measures described in the paragraph under issue.

#### **Section 196 on “Use of and Exceeding Authority in Bad Faith” of the Criminal Law, as amended (April 2013):**

(1) For a person who being a responsible employee of an undertaking (company) or organisation, that is, a person who, in an undertaking (company) or organisation, has the right to make decisions binding on other persons or the right to deal with the property or financial resources of the undertaking (company) or organisation, or a person similarly authorised by an undertaking (company) or organisation, commits carrying out intentional acts, in bad faith using his or her authority or exceeding such, if these acts have caused substantial harm to rights and interests of the undertaking (company) or organisation, or to interests protected by law of another person, the applicable punishment is deprivation of liberty for a term not exceeding one year or temporary deprivation of liberty, or community service, or a fine.

(2) For a person who commits the criminal offence provided for in Paragraph one of this Section, if commission thereof is for purposes of acquiring property, the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property and with deprivation of the right to take up a specific office for a term not exceeding three years.

#### **Section 179. Misappropriation (as amended in April 2013):**

(1) For a person who commits unlawful acquiring or wasting property of another, if such has been committed by a person to whom such property been entrusted or in whose charge it has been placed (misappropriation), the applicable punishment is deprivation of liberty for a term not exceeding two years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.

(2) For a person who commits misappropriation, if it has been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.

(3) For a person who commits misappropriation, if commission thereof is on a large scale, or who commits misappropriation of narcotic, psychotropic, powerfully acting, poisonous or radioactive substances or explosive substances, firearms or ammunition, the applicable punishment is deprivation of liberty for a term not exceeding ten years, with or without confiscation of property and with or without probationary supervision for a term not exceeding three years.

**Section 180. Theft, Fraud, Misappropriation on a Small Scale (as amended):**

(1) For a person who commits theft, fraud, or misappropriation on a small scale, except for the crimes provided for in the Section 175, Paragraphs three and four; Section 177, Paragraph three and Section 179, Paragraph three of this Law, the applicable punishment is deprivation of liberty for a term not exceeding one year or temporary deprivation of liberty, or community service, or a fine.

(2) deleted.

**Statistics:**

In 2010, 1118 criminal offences pursuant to the Section 179 of the Criminal Law were registered, in 2011- 904 criminal offences pursuant to the Section 179.

During the first six months of 2013, 2 persons are convicted under the Section 196, 52 persons convicted under section 179, and 1080 persons convicted under section 180. In 2012, 83 persons convicted under section 179, 1769 persons convicted under section 180 and 4 persons convicted under section 196 CL.

**(b) Observations on the implementation of the article**

The reviewing experts noted the application of section 179 CL (which was already examined in relation to the implementation of article 17 of the UNCAC – see under the respective article). In addition, section 196 CL on the “Use of and Exceeding Authority in Bad Faith” is also of relevance. With regard to the scope of perpetrators, section 196 CL refers to “a person who being a responsible employee of an undertaking (company) or organization, that is, a person who, in an undertaking (company) or organization, has the right to make decisions binding on other persons or the right to deal with the property or financial resources of the undertaking (company) or organization, or a person similarly authorized by an undertaking (company) or organization”.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 1 (a) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the*

*property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

**In accordance with the Section 5 of the Law on the Prevention of Money Laundering and Terrorism Financing:**

(1) The following actions are money laundering, if they are carried out for the purpose of concealing or disguising the illicit origin of funds or assisting any person who is involved in committing of a criminal offence in evading the legal liability:

- 1) the conversion of proceeds of crime into other valuables, transfer of their location or ownership;
- 2) the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime;
- 3) the acquisition, possession or use of proceeds of crime, if at the time of acquisition of such rights it is known that these are proceeds of crime; or
- 4) the participation in any of the activities specified in Paragraph one, Clauses 1, 2 and 3 of this Section.

(2) Money laundering is also a criminal offence provided for in the Criminal Law in the result of which such funds have been directly or indirectly acquired, and which has been committed outside the territory of the Republic of Latvia and the criminal liability is intended for such a criminal offence at the place of its commitment.

**Criminal liability for laundering of proceeds of crime is provided in the Section 195 (Laundering of the Proceeds from Crime) of the Criminal Law:**

(1) For a person who commits laundering of criminally acquired financial resources or other property, the applicable punishment is deprivation of liberty for a term not exceeding three years, or a fine not exceeding one hundred times the minimum monthly wage, with or without confiscation of property.

(2) For a person who commits the same acts, if the commission thereof is repeated or if committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term of not less than three and not exceeding eight years, with confiscation of property

(3) For a person who commits the acts provided for by Paragraph one or two of this Section, if commission thereof is on a large scale, or if commission thereof is in an organised group, the applicable punishment is deprivation of liberty for a term of not less than five and not exceeding twelve years, with confiscation of property, and with or without police supervision for a term not exceeding three years.

During the country visit, the Latvian authorities explained the relation between the Criminal Law and the specific AML law. Section 195 of the Criminal Law (sanctions) and article 5 of the AML law (definition of ML) are applied in combination.

In Latvia, the criminal procedure law uses the term property, whereas the AML law mentions the term assets. Article 4 of chapter 2 of the Latvian AML law outlines that the terms assets and property are used synonymously. The term “assets” covers any kind of assets, be it movable, immovable, tangible or intangible.

In Latvia, the cooperation with foreign supervisory authorities is not frequent because in Latvia the preference is to report to the FIU which requires secure technical means. The FIU exchanges information through the secure FIU.net. Legally, though, direct cooperation would be possible.

In 2011, 130 criminal cases were received at the prosecutor's office in accordance with the Section 195

of the Criminal Law. 27 criminal cases were forwarded to the court including in total 132 episodes of money laundering and around 377 000 EUR were arrested in the framework of these cases, 24 persons were found guilty.

Investigation institutions have opened investigation of 17 cases concerning illegally gained assets and in accordance with the court decisions in these cases approx. 2 million EUR were confiscated.

In 2010, the Unit for Prevention of Laundering Illegally Acquired Assets issued 48 freezing's orders for 1,97 million EUR. In 2011, 109 freezing orders were issued for 5 million EUR.

In 2012, 10 persons convicted under the Section 195 and 6 persons convicted for the same offence during the first six months of 2013.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the laundering of proceeds of crime is defined in section 5 of the Law on the Prevention of Money Laundering and Terrorism Financing to cover the following acts: the conversion of proceeds of crime into other valuables, transfer of their location or ownership; the concealment or disguise of the true nature, origin, location, disposition, movement and ownership of proceeds of crime; the acquisition, possession or use of proceeds of crime knowing at the time of acquisition that these are proceeds of crime; and the participation in any of the abovementioned activities. The scope of the domestic definition of money-laundering was found by the reviewers to be in compliance with article 23 of UNCAC.

Furthermore, the conduct of laundering of proceeds of crime is criminalized in sections 195 and 314 (acquisition and sale of property obtained by way of crime) CL, the latter being amended in April 2013. During the country visit, the relationship between the aforementioned provisions was explained. Section 314 is used when the purpose is not to legalize proceeds derived from criminal offences, but to receive some benefit. Section 195 covers activities related to money-laundering typologies such as tax evasion in which a certain degree of intention of legalization exists.

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 23 Laundering of proceeds of crime**

#### **Subparagraph 1 (a) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

Criminal liability shall be applicable in accordance with the **Section 314 (Acquisition and Sale of Property Obtained by Way of Crime) of the Criminal Law, as amended:**

(1) For a person who commits acquiring or selling property, being aware that it is obtained by way of crime, the applicable punishment is deprivation of liberty for a term not exceeding one year or temporary deprivation of liberty, or community service, or a fine.

- (2) For a person who commits the same acts, if commission thereof is on a large scale, the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine.
- (3) For a person who commits the same acts, if committed in an organised group, the applicable punishment is deprivation of liberty for a term not exceeding six years, with or without confiscation of property.

In accordance with the **Section 5 of the Law on the Prevention of Money Laundering and Terrorism Financing** the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime is considered money laundering and criminal liability for laundering proceeds of crime shall be applied in accordance with Section 195 (Laundering of the Proceeds from Crime) of the Criminal Law.

**Statistics:** During the first six months of 2013 44 persons convicted under the Section 314, in 2012 90 persons convicted for the same offence.

**(b) Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 1 (b) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

In accordance with **Section 5 of the Law on the Prevention of Money Laundering and Terrorism Financing** the acquisition, possession or use of proceeds of crime, if at the time of acquisition of such rights it is known that these are proceeds of crime as well as participation in such activities are considered money laundering and criminal liability shall be applied in accordance with Section 195 (Laundering of the Proceeds from Crime) of the Criminal Law.

**(b) Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 1 (b) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

In accordance with **Section 5 of the Law on the Prevention of Money Laundering and Terrorism Financing** the participation in:

- 1) the conversion of proceeds of crime into other valuables, transfer of their location or ownership,
- 2) the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime,
- 3) the acquisition, possession or use of proceeds of crime, if at the time of acquisition of such rights it is known that these are proceeds of crime is all considered money laundering and criminal liability shall be applied in accordance with the Section 195 Laundering of the Proceeds from Crime of the Criminal Law.

Criminal liability shall be also applicable in accordance with **Section 19 (Participation) and Section 20 (Joint Participation) of the Criminal Law**:

**Section 19. Participation**

Criminal acts committed knowingly by which two or more persons (that is, a group) jointly, knowing such, have directly committed an intentional criminal offence shall be considered to be participation (joint commission). Each of such persons is a participant (joint perpetrator) in the criminal offence.

**Section 20. Joint Participation**

(1) An act or failure to act committed knowingly, by which a person (joint participant) has jointly with another person (perpetrator), participated in the commission of an intentional criminal offence, but he himself or she herself has not been the direct perpetrator of it, shall be considered to be joint participation. Organisers, instigators and abettors are joint participants in a criminal offence.

(2) A person who has organised or directed the commission of a criminal offence shall be considered to be an organiser.

(3) A person who has induced another person to commit a criminal offence shall be considered to be an instigator.

(4) A person who knowingly has promoted the commission of a criminal offence, providing advice, direction, or means, or removing impediments for the commission of such, as well as a person who has previously promised to conceal the perpetrator or joint participant, the instrumentalities or means for committing the criminal offence, trail of the criminal offence or the objects acquired by criminal means or has previously promised to acquire or to sell these objects shall be considered to be an abettor.

(5) A joint participant shall be held liable in accordance with the same Section of this Law which provides for the liability of the perpetrator.

(6) Individual constituent elements of a criminal offence which refer to a perpetrator or joint participant do not affect the liability of other participants or joint participants.

(7) If a joint participant has not had knowledge of a criminal offence committed by a perpetrator or other joint participants, he or she shall not be held criminally liable for such.

(8) If the perpetrator has not completed the offence for reasons independent of his or her will, the joint participants are liable for joint participation in the relevant attempted offence. If the perpetrator has not commenced commission of the offence, the joint participants are liable for preparation for the relevant offence.

(9) Voluntary withdrawal, by an organiser or instigator from the completing of commission of a criminal offence shall be considered as such only in cases when he or she, in due time, has done everything possible to prevent the commission with his or her joint participation of the contemplated criminal offence and this offence has not been committed. An abettor shall not be held criminally liable if he or she has voluntarily refused to provide promised assistance before the commencement of the criminal offence.

## **(b) Observations on the implementation of the article**

See above. The reviewing experts noted that the participation in any form in the commission of money-laundering is criminalized through the general provisions of the CL on participation (sections 19 and 20).

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (a)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

#### **Section 4 Proceeds of Crime of the Law On the Prevention of Money Laundering and Terrorism Financing stipulates:**

(1) Funds are considered proceeds of crime:

- 1) if they are owned or possessed by a person in the result of a direct or indirect criminal offence; or
- 2) in other cases prescribed by the Criminal Procedure Law.

(2) The term “proceeds of crime” shall be used in the meaning of the term “criminally acquired property and financial resources” used in the Criminal Procedure Law.

(3) In addition to the proceeds of crime specified in the Criminal Procedure Law, also such funds are considered proceeds of crime, which belong to a person or are directly or indirectly controlled by a person:

- 1) on any list of persons suspected of being involved in terrorist activity compiled by the states or international organisations recognized by the Cabinet; or
- 2) of whom bodies performing investigatory operations, pre-trial investigative institutions, the Prosecutor’s Office or a court have information which forms the sufficient basis for suspecting such person of committing a criminal offence related to terrorism or participation therein.

(4) The Office for Prevention of Laundering of Proceeds Derived from Criminal Activity (hereinafter - the Control Service) shall inform the subjects of the Law and their supervisory and control authorities regarding the persons referred to in Paragraph three of this Section.

(5) Funds shall be declared to be proceeds of crime in accordance with the procedure specified in the Criminal Procedure Law.

In accordance with the **Paragraph 1 of the Section 355 Criminally Acquired Property of the Criminal Procedure Law** Property shall be recognized as criminally acquired, if such property directly or indirectly has come into the property or possession of a person as a result of a criminal offence.

For the determination of predicate offences for money-laundering purposes, Latvia has adopted an “an all crimes approach” without any kind of thresholds.

**Please provide examples of cases and attach case law if available.**

The Corruption Prevention and Combating Bureau (KNAB) has sent to the Prosecutor’s General Office for criminal prosecution materials of criminal proceedings regarding illegal activities of the "Latvenergo" as officials alleging misuse of official position for purposes of acquiring property, passive bribery and laundering of criminally acquired assets on a large scale in organised group of persons during the period of time from 2006 until June 2010. Criminal proceedings were initiated on 14 June 2010.

**Statistics:** In 2012, in 9 cases provisions of the Section 355 of the Criminal Procedure Law were enforced.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Latvia has adopted an “all crimes” approach to defining predicate offences for money-laundering purposes.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (b)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

**Section 4 (Proceeds of Crime) of the Law on the Prevention of Money Laundering and Terrorism Financing stipulates:**

(1) Funds are considered proceeds of crime:

1) if they are owned or possessed by a person in the result of a direct or indirect criminal offence; or

2) in other cases prescribed by the Criminal Procedure Law.

(2) The term “proceeds of crime” shall be used in the meaning of the term “criminally acquired property and financial resources” used in the Criminal Procedure Law.

(3) In addition to the proceeds of crime specified in the Criminal Procedure Law, also such funds are considered proceeds of crime, which belong to a person or are directly or indirectly

controlled by a person:

- 1) on any list of persons suspected of being involved in terrorist activity compiled by the states or international organisations recognized by the Cabinet; or
- 2) of whom bodies performing investigatory operations, pre-trial investigative institutions, the Prosecutor's Office or a court have information which forms the sufficient basis for suspecting such person of committing a criminal offence related to terrorism or participation therein.

(4) The Office for Prevention of Laundering of Proceeds Derived from Criminal Activity (hereinafter - the Control Service) shall inform the subjects of the Law and their supervisory and control authorities regarding the persons referred to in Paragraph three of this Section.

(5) Funds shall be declared to be proceeds of crime in accordance with the procedure specified in the Criminal Procedure Law.

In accordance with the **Paragraph 1 of Section 355 (Criminally Acquired Property) of the Criminal Procedure Law** shall be recognized as criminally acquired, if such property directly or indirectly has come into the property or possession of a person as a result of a criminal offence.

**Please provide examples of cases and attach case law if available.**

The Corruption Prevention and Combating Bureau (KNAB) has sent to the Prosecutor's General Office for criminal prosecution materials of criminal proceedings regarding illegal activities of the "Latvenergo" AS officials alleging misuse of official position for purposes of acquiring property, passive bribery and laundering of criminally acquired assets on a large scale in organised group of persons during the period of time from 2006 until June 2010. Criminal proceedings were initiated on 14 June 2010.

**(b) Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (c)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

In accordance with **Paragraph 2 of Section 5 of the Law on the Prevention of Money Laundering and Terrorism Financing:**

(2) Money laundering is also a criminal offence provided for in the Criminal Law in the result of which such funds have been directly or indirectly acquired, and which has been committed outside the territory of the Republic of Latvia and the criminal liability is intended for such a criminal offence at the place of its commitment.

Further, **Section 4 (Applicability of The Criminal Law Outside the Territory of Latvia) of the Criminal Law** stipulates:

(1) Latvian citizens, non-citizens and foreigners who have a permanent residence permit for the Republic of Latvia, shall be held liable, in accordance with this Law, in the territory of Latvia for an offence committed in the territory of another state or outside the territory of any state regardless of whether it has been recognised as criminal and punishable in the territory of commitment.

(2) Soldiers of the Republic of Latvia who are located outside the territory of Latvia shall be held liable for criminal offences in accordance with this Law, unless it is provided otherwise in international agreements binding upon the Republic of Latvia.

(3) Foreigners who do not have permanent residence permits for the Republic of Latvia and who have committed serious or especially serious crimes in the territory of another state which have been directed against the Republic of Latvia or against the interests of its inhabitants, shall be held criminally liable in accordance with this Law irrespective of the laws of the state in which the crime has been committed, if they have not been held criminally liable or committed to stand trial in accordance with the laws of the state where the crime was committed.

(4) Foreigners who do not have a permanent residence permit for the Republic of Latvia and who have committed a criminal offence in the territory of another state, in the cases provided for in international agreements binding upon the Republic of Latvia, irrespective of the laws of the state in which the offence has been committed, shall be held liable in accordance with this Law if they have not been held criminally liable for such offence or committed to stand trial in the territory of another state.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Latvia has adopted an “all crimes” approach to defining predicate offences for money-laundering purposes, including offences committed outside the Latvian territory under the condition of double criminality.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue. The Law on the Prevention of Money Laundering and Terrorism Financing was attached to the national response to the self-assessment checklist.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

In Latvia, all the offences which have resulted in gaining financial advantage are predicative offences.

Self-laundering is punishable according to the Latvian legislation (section 195 CL) and the commission of a predicate offence outside Latvia is also covered. In this regard, it does not matter if the money is obtained inside or outside of Latvia but the act must be criminalized in Latvia or abroad. There is a need to prove that a predicate offence has been committed.

During the country visit, the review team was informed that cases and statistics could be taken from the annual report of the Latvian FIU or the Moneyval report.

#### **(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 24 Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

In Latvia, the act of concealment of property without participation in predicate offense is covered by article 313 of the criminal law. Article 315 covers non-reporting of a crime (a person who is not involved but is a witness and is not reporting the crime).

#### **Section 313 (Concealing without Prior Promise) of the Criminal Law:**

(1) For a person who commits concealing, without prior promise, a criminal, or instrumentalities or means for committing a crime, or trail of a crime or objects obtained by way of crime, if the concealment is in regard to a serious crime, the applicable punishment is temporary deprivation of liberty or community service, or a fine.

(2) For a person who commits the same acts, if the concealment is in regard to an especially serious crime, the applicable punishment is deprivation of liberty for a term not exceeding two years or temporary deprivation of liberty, or community service, or a fine.

**Statistics:** During the first six months of 2013, 6 persons were convicted for the offence provided for in Section 313 CL. In 2012, 8 persons were convicted under Section 313 CL.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Concealment without the participation in the predicate offence is covered by article 313 CL (concealing without prior promise), which is in compliance with article 24 of UNCAC.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 25 Obstruction of Justice**

**Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

**Section 301 (Compelling the Giving of False Testimony, Explanations, Opinions and Translations) of the Criminal Law (as amended) stipulates:**

(1) For a person who commits bribing, or otherwise illegally influencing, a witness, victim, person against whom the criminal proceedings have been commenced, detained, suspect, accused, applicant, expert or translator, for the purpose of compelling him or her to give false testimony or to certify on oath a false explanation to a court in an administrative matter, or a false opinion, or to provide a false translation, or to refrain from giving testimony or an opinion, or providing a translation, the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine.

(2) For a person who commits the same acts, if they are related to violence or threats of violence, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service, or a fine.

(3) For the activities provided for in Paragraph one of this Section, if they are related to torture, the applicable punishment is deprivation of liberty for a term not exceeding ten years.

**Section 295 (Interference in a Trial of a Matter) of the Criminal Law (as amended):**

(1) For a person who commits influencing, in any way, a judge or a lay judge, for purposes of impeding a legal trial of a matter, or of attaining adoption or proclamation of an illegal

judgment or decision, the applicable punishment is temporary deprivation of liberty or community service, or a fine.

(2) For a person who commits the same acts, if committed by a State official, the applicable punishment is deprivation of liberty for a term not exceeding one year or temporary deprivation of liberty, or community service, or a fine, with deprivation of the right to take up a specific office for a term not exceeding five years.

Under the legislation of Latvia, judges are public officials thus criminal liability shall be applied for giving of bribes or offering of material values, properties or benefits of other nature or for accepting bribe, material values, properties or benefits of other nature.

In 2012, the Corruption Prevention and Combating Bureau (KNAB) started investigation for witness assault and attempt to force to make false statements in front of the court in the framework of hearing of serious crime pursuant to the Paragraph 2 of the Criminal Law Section 301, Paragraph 2 of the Criminal Law Section 300 and the Criminal Law Section 15.

Evidences gathered are sufficient to presume that an assault was committed against a person to ensure that this person further exerts influence on witness who would have to withdraw earlier statements as a result of assault and bribe offer of 3,2 million Euros. The witness under the influence of assault and offered bribe was expected to withdraw earlier statements and make statements in the interests of a person indicted for serious crime. Information gathered in the criminal case indicated that there has been an attempt to involve also other persons to make false statements.

**Statistics:** In 2012, 4 persons were sentenced for the offence provided for in the Section 301.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that section 301 CL domesticates article 25(a) of UNCAC adequately. This provision criminalizes the conduct of a person who commits bribing or “otherwise illegally influencing” a participant in criminal proceedings for the purpose of, *inter alia*, compelling him or her to give false testimony or to refrain from giving testimony to a court. The phrase “otherwise illegally influencing” seems to cover the coercive means mentioned in article 25(a) of UNCAC as well, which, in any case, constitute aggravating circumstances foreseen in paragraphs 2 and 3 of section 301 CL.

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 25 Obstruction of Justice**

#### **Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

**Section 295 (Interference in a Trial of a Matter) of the Criminal Law (as amended):**

(1) For a person who commits influencing, in any way, a judge or a lay judge, for purposes of impeding a legal trial of a matter, or of attaining adoption or proclamation of an illegal judgment or decision, the applicable punishment is temporary deprivation of liberty or community service, or a fine.

(2) For a person who commits the same acts, if committed by a State official, the applicable punishment is deprivation of liberty for a term not exceeding one year or temporary deprivation of liberty, or community service, or a fine, with deprivation of the right to take up a specific office for a term not exceeding five years.

**Section 294<sup>1</sup> (Interference in the Pre-trial Criminal Proceedings) of the Criminal Law (as amended)**

(1) For a person who commits influencing, in any way, an official performing a pre-trial criminal proceedings for purposes of impeding commencement or performance of pre-trial criminal proceedings, or of attaining the taking of an illegal decision, the applicable punishment is temporary deprivation of liberty or community service, or a fine.

(2) For a person who commits the same acts, if committed by a State official, the applicable punishment is deprivation of liberty for a term not exceeding one year or temporary deprivation of liberty, or community service, or a fine, with deprivation of the right to take up a specific office for a term not exceeding five years.

**(b) Observations on the implementation of the article**

The reviewing experts noted that article 25(b) of UNCAC is fully implemented through sections 295 and 294 CL, as both amended in April 2013, dealing with illegal interference in a trial and the pre-trial criminal proceedings respectively.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 26 Liability of legal persons**

**Paragraph 1**

*1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Provisions concerning the liability of legal persons after adoption of amendments in the Criminal Law:

**Section 70.<sup>1</sup> Basis for the Application of a Coercive Measure to a Legal Person**

For the criminal offences provided for in the Special Part of this Law, a court or in the cases provided for by the Law – a public prosecutor may apply a coercive measure to a legal person governed by private law, including State or local government capital company, as well as partnership, if a natural person has committed the offence in the interests of the legal person, for the sake of the person or as a result of insufficient supervision or control, acting individually or as a member of the collegial authority of the relevant legal person:

- 1) on the basis of the right to represent the legal person or act on the behalf thereof;
- 2) on the basis of the right to take a decision on behalf of the legal person;
- 3) in implementing control within the scope of the legal person.

## **Section 70.<sup>2</sup> Types of Coercive Measures Applicable to a Legal Person**

(1) For a legal person one of the following coercive measures may be specified:

- 1) liquidation;
- 2) restriction of rights;
- 3) confiscation of property; or
- 4) monetary levy.

(2) For a legal person one or several of the coercive measures provided for in Paragraph one of this Section may be applied. In applying liquidation, other coercive measures shall not be specified.

(3) The procedures for execution of coercive measures shall be determined in accordance with the law.

(4) For a criminal violation provided for in the Special Part of this Law and a less serious crime a public prosecutor, in drawing up an injunction regarding coercive measure, may determine monetary levy or restriction of rights as a coercive measure to a legal person.

## **Section 70.<sup>3</sup> Liquidation**

(1) Liquidation is the compulsory termination of the activities of a legal person.

(2) A legal person shall be liquidated only in such cases, if the legal person, a branch, representation or structural unit thereof has been especially established for the committing of a criminal offence or if a serious or especially serious crime has been committed.

(3) In liquidating a legal person, all of the existing property thereof shall be alienated without compensation to the ownership of the State.

## **Section 70.<sup>4</sup> Restriction of Rights**

(1) Restriction of rights is the deprivation of specific rights or permits or the determination of such prohibition, which prevents a legal person from exercising certain rights, receive State support or assistance, participate in a State or local government procurement procedure, to perform a specific type of activity for a term of not less than one year and not exceeding ten years.

(2) A public prosecutor may, in an injunction regarding a coercive measure, apply not more than half of the maximum time for restriction of rights provided for in Paragraph one of this Section.

## **Section 70.<sup>5</sup> Confiscation of Property**

(1) Confiscation of property is the compulsory alienation to State ownership without compensation of the property owned by a legal person.

(2) A court, in determining confiscation of property, shall specifically indicate which property is to be confiscated.

(3) [14 March 2013]

(4) Property owned by a legal person, which has been transferred to another person, may also be confiscated.

## **Section 70.<sup>6</sup> Monetary Levy**

(1) A monetary levy is a sum of money, which is imposed by a court or public prosecutor to be paid for the benefit of the State within 30 days. Monetary levy, in conformity with the seriousness of the criminal offence and the financial circumstances of a legal person, shall be determined in the amount of not less than ten thousand and not exceeding hundred thousand times the minimum monthly wage specified in the Republic of Latvia at the time of the rendering of the adjudication, indicating in the adjudication the amount of the monetary levy

in the monetary units of the Republic of Latvia. A public prosecutor may, in an injunction regarding a coercive measure, apply not more than half of the maximum amount of monetary levy provided for in this Section, complying to the amount of the minimum wage specified in the Republic of Latvia at the time of drawing up the referred to injunction and indicating therein the sum of such monetary levy in the monetary units of the Republic of Latvia.

(2) A monetary levy, which has been imposed upon a legal person, shall be paid from the funds of the legal person.

(3) A court or public prosecutor accordingly may divide the payment of the monetary levy into periods or postpone for a time period not exceeding one year from the day when an adjudication or injunction regarding coercive measure has entered into effect.

(4) If the monetary levy has not been paid, the coercive measure shall be implemented by compulsory procedures.

#### **Section 70.7 Compensation for Harm Caused**

(1) Compensation for harm caused is the compensation of the material losses caused as a result of a criminal offence, as well as the rectification of other interests protected by law and rights jeopardised.

(2) Harm shall be compensated or rectified from the funds of a legal person.

(3) If a legal person avoids the compensation for harm caused, such coercive measure shall be implemented by compulsory procedures.

#### **Section 70.8 Conditions for the Application of Coercive Measures to Legal Persons**

(1) In determining coercive measures, a court shall take into account the nature of the criminal offence and the harm caused.

(2) A court in applying coercive measures to a legal person shall observe the following conditions:

1) the actual actions of the legal person;

2) the status of the natural person in the institutions of the legal person;

3) the nature and consequences of the acts of the legal person;

4) measures, which the legal person has performed in order to prevent the committing of a new criminal offence; and

5) the size, type of activities and financial circumstances of the legal person.

(3) The coercive measures provided for in this Law may be applied by a court to a legal person on the basis of a proposal from the Office of the Public prosecutor.

#### **Section 439 (Procedures for Criminal Proceedings) of the Criminal Procedure Law (as amended):**

(1) If it has been ascertained during the course of criminal proceedings that a natural person, acting individually or as a member of a collegial authority of the relevant legal person, has committed a criminal offence in the interests of such legal person based on the right to represent the legal person, operate under the assignment thereof, or take decisions on behalf of the legal person, or in actualising control within the framework of the legal person or while in the service of the legal person, a person directing the proceedings may take a reasoned decision on fact that proceedings are being initiated for the application of coercive measures to the legal person.

(2) Proceedings for the application of coercive measures to a legal person shall take place within the framework of the criminal proceedings in which the natural person referred to in Paragraph two of this Section has been recognised as a suspect or is being held criminally liable.

(3) In initiating proceedings for the application of coercive measures, a person directing the proceedings shall notify the relevant legal person regarding such initiation by sending a copy of a decision, and shall inform regarding the rights and duties of a representative of such person.

**Section 440 (Circumstances to be Ascertained in Pre-trial Criminal Proceedings) of the Criminal Procedure Law:**

The following shall be ascertained in pre-trial proceedings for the application of coercive measures to a legal person:

- 1) the circumstances of the committing of the criminal offence;
- 2) the status of the natural person in the authorities of the legal person;
- 3) the actual actions of the legal person;
- 4) the nature of the operations performed by the legal person, and the consequences caused by such operations;
- 5) the measures performed by the legal person in order to prevent the committing of the criminal offence;
- 6) the size, type of occupation, and financial situation of the legal person.

**Section 441 (Completion of Pre-trial Criminal Proceedings) of the Criminal Procedure Law:**

In completing pre-trial proceedings and taking a decision on transferring of a criminal case to a court, a public prosecutor shall indicate, in addition to general requirements, the circumstances referred to in Section 440 of this Law that have been ascertained in the pre-trial proceedings, and the grounds for the application of coercive measures to a legal person.

As regards the nature of liability of legal persons in Latvia, the relevant legislation was amended recently. In Latvia, legal liability is equivalent to criminal liability. All coercive measures are included in the criminal law.

Section 71 was supplemented by section 72. This was adopted by Parliament on 4 March 2013 and is in force since 1 April 2013. In Latvia, to punish a legal person does not depend on a conviction of a natural person and hence the punishment of a legal person is possible without a natural person. Latvia recently amended 439 (3) of its Criminal Procedural Law which shows under which circumstances cases can be separated and parallel investigations are possible.

In Latvia, criminal liability is based on guilt. Legal persons may also commit a criminal offense. The guilt, however, depends on the action of a natural person. Guilt has to be established even if there is no guilty person. Based on the guilt of a natural person coercive measures can be applied to a legal person. Identify the guilt but person may not be identified.

One case against two legal persons has been forwarded to the court. Proceedings against two foreign legal persons are in the process of negotiations.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Latvia's legislation provides for the criminal liability of legal persons by enabling the application of coercive measures against them. Through amendments of sections 70.1-70.8 CL which entered into force on 1 April 2013, Latvia introduced more detailed provisions on the criminal liability of legal persons, including State or local government capital companies or partnerships. The coercive measures that can be imposed to legal persons include liquidation, restriction of rights, confiscation of property and monetary levy. The following factors are taken into account when applying coercive measures to legal persons: the circumstances of commission of the criminal offence; the status of the natural person in the authorities of the legal person; the actual actions of the legal person; the nature of the operations performed by the legal person and the consequences caused by such operations; the measures performed by the legal person in order to prevent the commission of the criminal offence; and the size, type of occupation and financial

situation of the legal person (see section 440 CPL). Section 439, paragraph 1, of the CPL was also amended to illustrate the circumstances under which cases against the legal person and the natural person involved can be separated, thus enabling parallel investigations.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 26 Liability of legal persons**

### **Paragraph 2**

*2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

**Section 70.<sup>1</sup> (Basis for the Application of Coercive Measures to Legal Persons) of the Criminal Law** stipulates that:

- (1) For the criminal offences provided for in the Special Part of this Law, coercive measures may be applied to a legal person, if the criminal offence has been committed in the interests of the legal person by a natural person in conformity with the provisions of Section 12, Paragraph one of this Law.
- (2) Coercive measures applicable to legal persons shall not apply to State, local government and other public law legal persons.

In accordance with **Section 70.<sup>8</sup> Conditions for the Application of Coercive Measures to Legal Persons of the Criminal Law**:

- (1) In determining coercive measures, a court shall take into account the nature of the criminal offence and the harm caused.
- (2) A court in applying coercive measures to a legal person shall observe the following conditions:
  - 1) the actual actions of the legal person;
  - 2) the status of the natural person in the institutions of the legal person;
  - 3) the nature and consequences of the acts of the legal person;
  - 4) measures, which the legal person has performed in order to prevent the committing of a new criminal offence; and
  - 5) the size, type of activities and financial circumstances of the legal person.
- (3) The coercive measures provided for in this Law may be applied by a court to a legal person on the basis of a proposal from the Office of the Public prosecutor.

One case against two legal persons has been forwarded to the court. Proceedings against two foreign legal persons are in the process of negotiations.

#### **(b) Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

## **Article 26 Liability of legal persons**

### **Paragraph 3**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

In accordance with **Section 439 (Procedures for Criminal Proceedings) of the Criminal Procedure Law:**

(1) If it has been ascertained during the course of criminal proceedings that a natural person, acting individually or as a member of a collegial authority of the relevant legal person, has committed a criminal offence in the interests of such legal person based on the right to represent the legal person, operate under the assignment thereof, or take decisions on behalf of the legal person, or in actualising control within the framework of the legal person or while in the service of the legal person, a person directing the proceedings may take a reasoned decision on the fact that proceedings are being initiated for the application of coercive measures to the legal person.

(2) Proceedings for the application of coercive measures to a legal person shall take place within the framework of the criminal proceedings in which the natural person referred to in Paragraph two of this Section has been recognised as a suspect or is being held criminally liable.

(3) In initiating proceedings for the application of coercive measures, a person directing the proceedings shall notify the relevant legal person regarding such initiation by sending a copy of a decision, and shall inform regarding the rights and duties of a representative of such person.

#### **(b) Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

## **Article 26 Liability of legal persons**

### **Paragraph 4**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

**Section 70.<sup>2</sup> (Types of Coercive Measures Applicable to Legal Persons) of the Criminal Law (as amended):**

(1) For a legal person one of the following coercive measures may be specified:

- 1) liquidation;
- 2) restriction of rights;
- 3) confiscation of property; or

- 4) monetary levy.
- (2) For a legal person one or several of the coercive measures provided for in Paragraph one of this Section may be applied. In applying liquidation, other coercive measures shall not be specified.
- (3) The procedures for execution of coercive measures shall be determined in accordance with the law.
- (4) For a criminal violation provided for in the Special Part of this Law and a less serious crime a public prosecutor, in drawing up an injunction regarding coercive measure, may determine monetary levy or restriction of rights as a coercive measure to a legal person.

Latvia has administrative law system in place according to which administrative sanctions shall be applied for minor violations (provisions of conflict of interests, for example). Administrative sanctions are usually applied by certain institutions and can be challenged at the court. The Corruption Prevention and Combating Bureau has powers to impose administrative sanctions for violations of conflict of interest provisions and political parties' funding.

In 2011, a monetary levy of 350 EUR was enacted against a legal person.

**(b) Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

**Article 27 Participation and attempt**

**Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

**Section 19. (Participation) of the Criminal Law:**

Criminal acts committed knowingly by which two or more persons (that is, a group) jointly, knowing such, have directly committed an intentional criminal offence shall be considered to be participation (joint commission). Each of such persons is a participant (joint perpetrator) in the criminal offence.

**Section 20 (Joint Participation) of the Criminal Law:**

(1) An act or failure to act committed knowingly, by which a person (joint participant) has jointly with another person (perpetrator), participated in the commission of an intentional criminal offence, but he himself or she herself has not been the direct perpetrator of it, shall be considered to be joint participation. Organisers, instigators and abettors are joint participants in a criminal offence.

(2) A person who has organised or directed the commission of a criminal offence shall be considered to be an organiser.

(3) A person who has induced another person to commit a criminal offence shall be considered to be an instigator.

(4) A person who knowingly has promoted the commission of a criminal offence, providing advice, direction, or means, or removing impediments for the commission of such, as well as a person who has previously promised to conceal the perpetrator or joint participant, the instrumentalities or means for committing the criminal offence, trail of the criminal offence or the objects acquired by criminal means or has previously promised to acquire or to sell these objects shall be considered to be an abettor.

(5) A joint participant shall be held liable in accordance with the same Section of this Law which provides for the liability of the perpetrator.

(6) Individual constituent elements of a criminal offence which refer to a perpetrator or joint participant do not affect the liability of other participants or joint participants.

(7) If a joint participant has not had knowledge of a criminal offence committed by a perpetrator or other joint participants, he or she shall not be held criminally liable for such.

(8) If the perpetrator has not completed the offence for reasons independent of his or her will, the joint participants are liable for joint participation in the relevant attempted offence. If the perpetrator has not commenced commission of the offence, the joint participants are liable for preparation for the relevant offence.

(9) Voluntary withdrawal, by an organiser or instigator from the completing of commission of a criminal offence shall be considered as such only in cases when he or she, in due time, has done everything possible to prevent the commission with his or her joint participation of the contemplated criminal offence and this offence has not been committed. An abettor shall not be held criminally liable if he or she has voluntarily refused to provide promised assistance before the commencement of the criminal offence.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the participation in the commission of corruption-related offences is covered by the general provisions of the CL on participation (sections 19 and 20).

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 27 Participation and attempt**

#### **Paragraph 2**

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

#### **Section 15. (Completed and Uncompleted Criminal Offences) of the Criminal Law:**

(1) A criminal offence shall be considered completed if it has all the constituent elements of a criminal offence set out in this Law.

(2) Preparation for a crime and an attempted crime are uncompleted criminal offences.

(3) The locating of, or adaptation of, means or instrumentalities, or the intentional creation of circumstances conducive for the commission of an intentional offence, shall be considered to be preparation for a crime if, in addition, it has not been continued for reasons independent of the will of the guilty party. Criminal liability shall result only for preparation for serious or

especially serious crimes.

(4) A conscious act (failure to act), which is directly dedicated to intentional commission of a crime, shall be considered to be an attempted crime if the crime has not been completed for reasons independent of the will of the guilty party.

(5) Liability for preparation for a crime or an attempted crime shall apply in accordance with the same Section of this Law as sets out liability for a specific offence.

(6) A person shall not be held criminally liable for an attempt to commit a criminal violation.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the attempt to commit corruption-related offences is regulated by the general provision of the CL on completed and uncompleted criminal offences (section 15).

The reviewing experts concluded that the provision has been adequately implemented.

**Article 27 Participation and attempt**

**Paragraph 3**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the paragraph at issue.

**Section 15. (Completed and Uncompleted Criminal Offences) of the Criminal Law:**

(1) A criminal offence shall be considered completed if it has all the constituent elements of a criminal offence set out in this Law.

(2) Preparation for a crime and an attempted crime are uncompleted criminal offences.

(3) The locating of, or adaptation of, means or instrumentalities, or the intentional creation of circumstances conducive for the commission of an intentional offence, shall be considered to be preparation for a crime if, in addition, it has not been continued for reasons independent of the will of the guilty party. Criminal liability shall result only for preparation for serious or especially serious crimes.

(4) A conscious act (failure to act), which is directly dedicated to intentional commission of a crime, shall be considered to be an attempted crime if the crime has not been completed for reasons independent of the will of the guilty party.

(5) Liability for preparation for a crime or an attempted crime shall apply in accordance with the same Section of this Law as sets out liability for a specific offence.

(6) A person shall not be held criminally liable for an attempt to commit a criminal violation.

No cases have been adjudicated for attempt or participation for the offences provided in the convention.

**(b) Observations on the implementation of the article**

See above under paragraph 2 of article 27 of the UNCAC. The preparation of a crime, together with an attempted crime, is considered as uncompleted criminal offences.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 29 Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at national level the measures described in the article at issue.

#### **Section 7 (Classification of Criminal Offences) of the Criminal Law, as amended:**

(1) Criminal offences shall be divided into criminal violations and crimes according to the nature and harm of the threat to the interests of a person or the society. Crimes are sub-divided as follows: less serious crimes, serious crimes and especially serious crimes.

(2) A criminal violation is an offence for which this Law provides for deprivation of liberty for a term exceeding fifteen days, but not exceeding three months (temporary deprivation of liberty), or a type of lesser punishment.

(3) A less serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding three months but not exceeding three years, as well as an offence, which has been committed through negligence and for which this Law provides for deprivation of liberty for a term not exceeding eight years.

(4) A serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding three years but not exceeding eight years, as well as an offence, which has been committed through negligence and for which this Law provides for deprivation of liberty for a term exceeding eight years.

(5) An especially serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding eight years or life imprisonment.

(6) If this Law provides for deprivation of liberty for a term not exceeding five years for an offence, also a type of lesser punishment may be provided for therein for the relevant offence.

#### **Section 56 (Criminal Liability Limitation Period) of the Criminal Law**

(1) A person may not be held criminally liable if from the day when he or she committed the criminal offence, the following time period has elapsed:

- 1) [21 October 2010];
- 2) two years after the day of commission of a criminal violation;
- 3) five years after the day of commission of a less serious crime;
- 4) ten years after the day of commission of a serious crime;
- 5) fifteen years after the day of commission of an especially serious crime, except for a crime for which, in accordance with law, life imprisonment may be adjudged;
- 6) twenty years after the day of commission of a serious crime or especially serious crime if the crime was against morality and sexual inviolability of a minor, except a crime for which life imprisonment may be adjudged according to the law.

(2) The limitation period shall be calculated from the day when the criminal offence has been committed until when charges are brought or the accused has been issued an official extradition request if the accused resides in another state and a search warrant has been issued for him or her.

(3) The running of the limitation period is interrupted if, before the date of termination of the period prescribed in Paragraph one of this Section, the person who has committed the criminal offence commits a new criminal offence. In such case, the limitation period provided for the more serious of the committed criminal offences shall be calculated from the time of the commission of the new criminal offence.

(4) The issue of the applicability of a limitation period, in respect of a person who has committed a crime for which life imprisonment may be imposed, shall be decided by a court if thirty years have passed since the day of commission of the crime.

### **Section 62 (Limitation Period on the Execution of a Judgment of Conviction) of the Criminal Law**

(1) A judgment of conviction and an injunction of a public prosecutor regarding punishment may not be executed, if from the day when it comes into legal effect, it has not been executed within the following time periods:

1) within two years, if temporary deprivation of liberty, community service or a fine has been adjudged;

1<sup>1</sup>) within two years after serving of the punishment of deprivation of liberty, if the punishment – community service – is to be executed independently in the cases provided for in Section 52, Paragraph 2.<sup>1</sup> of this Law;

2) within three years, if deprivation of liberty has been adjudged for a term not exceeding two years;

3) within five years, if deprivation of liberty has been adjudged for a term not exceeding five years;

4) within ten years, if deprivation of liberty has been adjudged for a term not exceeding ten years; and

5) within fifteen years, if a more severe punishment has been adjudged than deprivation of liberty for ten years.

(2) A limitation period is interrupted if a convicted person evades serving the punishment or before the time of expiration of the limitation period commits a new criminal offence for which a court has adjudged deprivation of liberty for a term of not less than one year. If a new criminal offence has been committed, the limitation period shall be calculated from the time of its commission, but if the convicted person has avoided serving the punishment, from the time he or she arrives to serve the punishment or from the time when a convicted person who has been in hiding, is detained. However, the judgment of conviction shall not be carried out if from the time it is rendered fifteen years have elapsed and a new criminal offence has not interrupted the limitation period.

(3) The issue of a limitation period in respect of a person for whom life imprisonment has been imposed shall be decided by a court.

All the offences with very few exceptions established in accordance with the Convention are serious or very serious crimes which have a 15 years long statute of limitations period.

In Latvia, the criminal liability and the statute of limitations depend on the classification of the crime. In Latvia, ten years is the minimum statute of limitation period. Section 56 of the criminal law states the period of statute of limitations for criminal liability and section 7 covers the classifications. In Latvia, the calculation starts with the moment of completion of the (last) criminal offense. In Latvia, the periods for completed and uncompleted offenses are equal.

In Latvia, offenses are now considered serious or especially serious crimes (according to amendments of 1 April 2013 of section 7 of the Criminal Law: 3 to 8 (serious crimes) and above 8 (especially serious crimes)).

Latvia cannot suspend statute of limitation. With every new crime (starts with commission of crime) it is extended but it cannot be suspended. The statute of limitations refers only to investigation time. Once the prosecution phase starts, then the statute of limitations stops.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the statute of limitations period varies according to the classification of criminal offences, as it is specified in section 7 CL. The corruption-related offences are treated either as “less serious crimes” (deprivation of liberty not exceeding three years) or “serious crimes” (deprivation of liberty from three to eight years) or, in aggravating circumstances, “especially serious crimes” (deprivation of liberty exceeding eight years). Accordingly, pursuant to section 56 CL, the statute of limitations period ranges from five years to ten and fifteen years. The limitation period runs from the day of the commission of the offence and refers only to the investigation time. Once the prosecution phase starts, then the statute of limitations stops. This was viewed by the reviewers as having a much more effective impact on the proper administration of justice than the suspension of the statute of limitations period, which is not foreseen in the Latvian legislation (the limitation period after the interruption starts from scratch).

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 1**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia does comply with the provision described at paragraph 1.

**Section 7 (Classification of Criminal Offences) of the Criminal Law** stipulates:

- (1) Criminal offences are criminal violations and crimes. Crimes are sub-divided as follows: less serious crimes, serious crimes and especially serious crimes.
- (2) A criminal violation is an offence for which this Law provides for deprivation of liberty for a term not exceeding two years, or a lesser punishment.
- (3) A less serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding two years but not exceeding five years, or an offence, which has been committed through negligence and for which this Law provides for deprivation of liberty for a term exceeding two years, but not exceeding ten years.
- (4) A serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding five years but not exceeding ten years, or an offence, which has been committed through negligence and for which this Law provides for deprivation of liberty for a term exceeding ten years.
- (5) An especially serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding ten years or life imprisonment.

All the offences established in accordance with the Convention are less serious crimes, serious crimes and especially serious crimes.

In 2012, the Supreme Court ruled that public officials are guilty for accepting bribes and were

sentenced to 5 and 6 years of deprivation of liberty and confiscation of assets (applies to real estate and other assets owned by the person). The public official who had the role of intermediary cooperated with the investigation was released at the Court room, however the person spent in prison 1 year and 9 months following the Second instance court decision. The private person was found guilty for giving bribes and sentenced to two years of deprivation of liberty.

## **(b) Observations on the implementation of the article**

In general, the sanctions applicable to persons who have committed corruption-related offences appear to be sufficiently dissuasive. The reviewers noted, however, that the amendments of the CL of April 2013 brought about a couple of changes in relation to the sanctioning of some of these offences, which seem to create some inconsistencies in the overall sanctioning system and the inter-relationship between basic and aggravated forms of corruption-related offences. The review team followed a “vertical” approach by focusing on the “internal architecture” of certain provisions. For example, it was highlighted by the reviewing experts that the sanction foreseen in paragraph 3 of section 323 CL (involvement of an organized group in the commission of giving a bribe) used to be deprivation of liberty of 5-10 years and after the amendments is 2-10 years; or the sanction foreseen in paragraph 4 of section 198 CL (unauthorized receipt of benefits on a large scale) used to be deprivation of liberty of 8 years and after the amendments is 5 years.

On the other hand, the Latvian authorities responded that in 2012 there was a general reform of the criminal sanctions: what was mainly done was to reduce the period of deprivation of liberty in cases where offender could not cause harm to the society and, instead, to provide for the possibility to apply community service and substantially increased fines (of an amount of up to four hundred minimal wages). As an outcome of the reform, a regular and structured system of sanctions was put in place, with sanctions for every offence which are escalated in aggravated circumstances. The Latvian authorities argued that sections 198 and 323 CL are typical examples of this “regularity” of the sanctions system. They acknowledged that, with regard to section 323 CL, in particular, a wide range of discretion is given to the judge to decide on the applicable term of the deprivation of liberty in a given case (and that was also a remark made by the reviewing experts). However, the Latvian authorities were of the view that one of the objectives of the reform was exactly to give certain discretion to the judge to evaluate the evidence and decide on the appropriate sanction.

Both the Latvian authorities and the review team agreed that potential problems of inconsistencies may arise when following a horizontal approach: For example, in the active and passive forms of bribery in the private sector (sections 198(1) and 199(1) CL), the punishment for the active form is stricter (maximum punishment of up to three years of imprisonment), compared to the passive form which is punished by imprisonment of up to 2 years. On the other hand, for employees of state or local government institutions who are not public officials as well as persons in similar positions authorized by a state institution (for example, teachers), there is only punishment foreseen for the passive form (section 326.2(1) CL - maximum punishment of up to three years). Such inconsistencies may create problems in relation to the public perception level of the gravity of the applicable sanctions and the effectiveness of the investigative actions.

In view of the above, the review team, while welcoming the pertinent clarifications of the national authorities, observed that ongoing efforts to fully remove inconsistencies in this field could be strengthened. The objective in such an endeavour will be to part with any incompatibilities or discrepancies at the sanctioning level so that both basic and aggravated offences are to be considered in a congruent manner throughout the anti-corruption spectrum. Thus the review team invited the Latvian authorities to ensure that legislative action in the field of anti-corruption does not affect the consistency and coherence of the existing sanctioning system of the criminal law provisions which are applicable in the fight against corruption. This may entail initiatives to address ex officio (by the national authorities themselves) identified inconsistencies with a view to ensuring the highest level of effectiveness of anti-corruption sanctions, as well as their broadest and consistent application.

## Article 30 Prosecution, adjudication and sanctions

### Paragraph 2

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Latvia has adopted and implemented the measures described above.

#### **Section 10 Criminal Procedure Law. Immunity from Criminal Proceedings**

Immunity from criminal proceedings completely or partially frees a person from participation in criminal proceedings, as well as from the provision of evidence and the issuance of documents and objects, and prohibits or restricts the right to perform the criminal prosecution of such person and to apply compulsory measures against such person, as well as the right to enter and perform investigative activities on the premises in the possession of such person.

#### **Section 120 Criminal Procedure Law. Immunity from Criminal Proceedings of State Officials Guaranteed by law**

(1) The State President and a member of the *Saeima* shall have the immunity from criminal proceedings specified in the Constitution.

(2) Only the Prosecutor General shall initiate criminal proceedings against a judge or ombudsman. A judge or ombudsman may be held criminally liable or arrested only with the consent of the *Saeima*. A decision on the placing under arrest of a judge or an ombudsman, conveyance by force, detention, or subjection to a search shall be taken by a specially authorised Supreme Court judge. If a judge or ombudsman has been apprehended in the committing of a serious or especially serious crime, a decision on conveyance by force, detention, or subjection to a search shall not be necessary, but the specially authorised Supreme Court judge and the Prosecutor General shall be informed within 24 hours.

(3) [16 June 2009]

(4) A public prosecutor may be detained, conveyed by force, subject to a search, arrested, or held criminally liable in accordance with the procedures specified by law, notifying the Prosecutor General regarding such actions without delay.

(5) An official of a State security institution or the Corruption Prevention and Combating Bureau may be detained, conveyed by force, or subjected to a search, or a search or inspection may be conducted of the residential or service premises thereof, or of the personal or service vehicle thereof, and he or she may be held criminally liable, only with the consent of the Prosecutor General. If an official has been apprehended in the committing of a criminal offence, such consent shall not be necessary, but the Prosecutor General and the head of the relevant state security institution or office shall be informed within 24 hours.

(6) In order to hold a person who has immunity from criminal proceedings criminally liable, a public prosecutor shall submit a proposal to a competent authority for the receipt of consent.

(7) A proposal shall indicate the circumstances of the committing of a criminal offence, insofar as such circumstances have been ascertained in criminal proceedings.

#### **Section 404 Criminal Procedure Law. Revocation of Procedural Immunity for the Commencement of Criminal Prosecution**

If this Law does not specify otherwise, a public prosecutor, having discerned the grounds for holding a person criminally liable for whom the law has specified immunity from criminal proceedings, shall turn to the competent authority with a proposal to permit the criminal prosecution of such person. A reference regarding evidence that justifies the guilt of a person

the immunity of which is asked to be revoked, shall be attached to the proposal.

**Rules of Procedure of the Saeima Article 179. (1) The Mandate, Ethics and Submissions Committee shall:**

- 1) draw up the Saeima report on confirming or terminating a Member's mandate;
- 2) prepare a draft resolution of the Saeima in connection with a request by the Prosecutor General's Office to grant permission to start criminal prosecution of a Saeima Member, to arrest, detain, or search him/her, or to otherwise restrict his/her personal freedom, as well as draw up proposals concerning requests to impose an administrative sanction on a Saeima Member.

At the national level, there were no concrete instances where the issue of immunities and/or jurisdictional or other privileges accorded to public officials has arisen and addressed in official documents. However, this issue has been analysed and addressed in the framework of GRECO IV Evaluation Round.

**(b) Observations on the implementation of the article**

The reviewing experts noted that, in relation to the extent and scope of immunities from prosecution, section 120 CPL stipulates that the State President and members of the Parliament (Saeima) enjoy immunity from criminal proceedings, as specified in the Constitution. The President may be subject to criminal liability if the Saeima consents thereto by a majority of not less than two thirds (section 54 of the Constitution). Members of the Saeima cannot be arrested, nor can their premises be searched, nor can their personal liberty be restricted in any way without the consent of the Saeima. However, its members may be arrested if apprehended in the act of committing a crime. Without the consent of the Saeima, criminal prosecution may not be commenced and administrative fines may not be levied against its members (section 30 of the Constitution).

Judges enjoy immunity during the time they fulfil their duties. A criminal procedure against a judge may only be initiated by the Prosecutor General. A decision concerning the detention of, forcible conveyance, arrest or subjection to a search of a judge is taken by a Supreme Court justice specially authorized for that purpose.

The reviewing experts noted the decisive role of the Saeima in lifting the immunities of its members. Moreover, they were of the view that, in order to avoid the potential risk that during the time it takes to lift the immunity evidence could disappear or be tampered with, it would be prudent for the Latvian authorities to take legislative measures to ensure that investigative action aimed at securing evidence is allowed before the lifting of immunity and that procedural immunity is narrowed to only criminal prosecution and would not be applicable to pre-trial investigation stage.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 3**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the measures above described.

**Section 433 Criminal Procedure Law. Grounds for the Application of an Agreement**

(1) A public prosecutor may enter into an agreement, on the basis of his or her own initiative or the initiative of an accused or his or her defence counsel, regarding an admission of guilt and a punishment, if circumstances have been ascertained that apply to an object of evidence, and the accused agrees to the amount and qualification of his or her incriminating offence, an assessment of the harm caused by such offence, and the application of agreement proceedings.

(2) Agreement proceedings may not be applied, if there are several accused persons in one criminal proceedings and if an agreement regarding an admission of guilt and a punishment may not be applied to all the accused persons.

**Section 434 Criminal Procedure Law. Negotiations regarding the Entering into of an Agreement**

(1) If, in pursuing a prosecution or continuing criminal prosecution, a public prosecutor considers as possible the entering into an agreement, he or she shall perform the following operations:

1) explain to an accused, or the representative of an accused who is a minor, the possibility to regulate criminal-legal relations by entering into an agreement, and the rights of the accused in entering into an agreement, and the consequences of such entering into of an agreement;

2) inform a victim regarding his or her rights to express his or her views regarding the possible application of agreement proceedings.

(2) Having received the consent of an accused, or of the representative of an accused who is a minor, to enter into an agreement, a public prosecutor shall prepare a draft of the agreement and commence negotiations with the accused, his or her defence counsel, or the representative of the accused who is a minor regarding the elements of the agreement.

(3) If an accused, or the representative of an accused who is a minor, agrees to a prosecution that has been pursued and issued, the qualification of the criminal offence, and the assessment of the harm caused by such offence, negotiations shall be commenced regarding the type and amount of a punishment, which a public prosecutor will request for a court to apply.

**Section 435 Criminal Procedure Law. Rights of an Accused in Agreement Proceedings**

(1) An accused has the following rights in agreement proceedings:

1) to agree or not agree to the entering into an agreement;

2) to submit a recusal;

3) to express his or her proposal regarding the type and amount of a punishment;

4) to receive copies of the materials of the criminal case after the entering into an agreement;

5) to be informed of the criminal offence regarding the committing of which he or she will be prosecuted in court, and the type and amount of punishment that the prosecutor will request for the court to apply;

6) to participate in the adjudication of the agreement in court;

7) to provide explanation regarding the course of the agreement;

8) to refuse the entered into agreement up to the moment where the court retires to the deliberation room in order to make an adjudication;

9) to appeal the adjudication;

10) to familiarize him or herself with the minutes of the court session;

11) to receive the legal assistance of a defence counsel.

**Section 436 Criminal Procedure Law. Rights of a Victim in Agreement Proceedings**

(1) If criminal proceedings are continued as agreement proceedings, a person directing the proceedings – public prosecutor shall issue to a victim a copy of the minutes of the agreement.

(2) A victim has the following rights:

1) to submit a recusal;

2) to receive information in a timely manner regarding where and when a court will examine an agreement;

- 3) to participate in the adjudication of the agreement in court;
- 4) to express his or her objections to the approval of the agreement;
- 5) to submit a cassation complaint regarding violations of the procedures of agreement proceedings or violation of the norms of the Criminal Law;
- 6) to participate in the adjudication of a case in a court of cassation in accordance with the procedures specified in Section 101 of this Law.

**Section 437 Criminal Procedure Law. Minutes of an Agreement**

- (1) The minutes of an agreement shall indicate the following:
  - 1) the place and date of the occurrence of the operation;
  - 2) the position, given name, and surname of the performer of the procedural action;
  - 3) the given name, surname, and personal identity number (or, if such personal identity number does not exist, the year and date of birth) of an accused or the representative of an accused – minor person, and the given name, surname, and place of practice of a defence counsel;
  - 4) the time and place of the committing of the criminal offence, and a short description of such offence;
  - 5) the qualification of the criminal offence;
  - 6) the amount of harm caused by the criminal offence, and an agreement regarding the compensation of such harm;
  - 7) the aggravating and mitigating circumstances of the liability of the accused;
  - 8) information regarding the accused person;
  - 9) the punishment that a public prosecutor will request for the court to apply.
- (2) If an accused has committed several criminal offences, a public prosecutor shall indicate the punishment that he or she will request to be applied regarding each of the criminal offence, and the final punishment. Such provision shall also be complied with in cases where a punishment is determined for an accused based on several judgments.
- (3) An agreement shall be signed by an accused, a defence counsel, the representative of an accused – minor person, and a public prosecutor, and a copy of such agreement shall be issued to the accused or his or her representative.

**Section 438 Criminal Procedure Law. Sending of a Criminal Case to a Court**

- (1) After the entering into an agreement, a public prosecutor shall send the materials of a criminal case together with the minutes of the agreement to a court, proposing for such court to approve the entered into agreement.
- (2) In a proposal to a court, a public prosecutor shall:
  - 1) inform regarding an entered into agreement;
  - 2) inform regarding a security measure applied to an accused;
  - 3) refer to evidence that confirms the committing of a criminal offence and the guilt of the accused;
  - 4) indicate the amount of harm caused by the criminal offence, and an agreement regarding the compensation of such harm;
  - 5) inform regarding the expenditures of pre-trial proceedings;
  - 6) refer to material evidence, the location thereof, and resources that have been used for the ensuring of compensation and of a possible confiscation of property;
  - 7) request for the court to approve the entered into agreement and impose the punishment provided for in such agreement.
- (3) A public prosecutor shall inform an accused, his or her defence counsel, a victim, and the representatives thereof in writing regarding the court to which a case has been sent.
- (4) After the sending of a case to a court, all requests and complaints shall be sent directly to the court.

## **(b) Observations on the implementation of the article**

The prosecutorial and investigating authorities have to initiate criminal investigations whenever the features of criminal offence are detected. Nevertheless, the CPL provides the prosecutors with discretionary powers by enabling them to enter into agreements (form of plea-bargaining agreements), on the basis of own initiative or on the initiative of an accused or his/her defence counsel, regarding the admission of guilt and punishment (chapter 38, sections 433-438 CPL). In the same chapter, other provisions set forth guarantees to prevent the abuse of the discretion to enter into those agreements (framework for the negotiations; rights of the accused and the victim; minutes of an agreement). A court shall outline the essence of an agreement and evaluate its validity (section 543 CPL).

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 4**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described in the paragraph at issue.

The procedure to ensure the attendance of proceedings of an accused or a suspect is governed by the

### **Criminal Procedure Law Section 250 Conveyance by Force**

(1) If a person does not arrive without a justifying reason at a procedural action on the basis of a summons of a person directing the proceedings, conveyance by force may be applied to such person in order to ensure the participation thereof in the procedural action.

(2) Conveyance by force may also be applied to a person, against whom the criminal proceedings have been commenced, a suspect or accused without a previous summons, if his or her place of residence is unknown or if he or she is hiding from a pre-trial criminal proceedings and court.

(3) Conveyance by force may be applied to pregnant women or acutely ill persons, if the fact of such pregnancy or acute illness has been certified by a physician, only if the performance of a procedural action is not possible at the location of the person, and only with a decision of an investigating judge or court.

### **Criminal Procedure Law Section 251 Procedures for Conveyance by Force**

(1) Conveyance by force is applied with a decision of a person directing the proceedings that indicates who shall be conveyed, the official to whom such person shall be conveyed, and when and for what purpose such person shall be conveyed, as well as the police institution to which the conveyance by force has been assigned.

(2) Having found the person to whom conveyance by force must be applied, a police employee shall familiarise such person, in return for a signature, with a decision, deliver the relevant person to the official referred to in the decision, and record in the decision the time when such delivery was performed.

(3) If conveyance by force may not be applied, or if the person to be conveyed has not been found, a police employee shall record such fact in a decision, which shall be given to a person directing the proceedings.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the measures described in paragraph 5.

**Criminal Law Section 61. Conditional Release Prior to Completion of Punishment**

(1) A person who has been punished with deprivation of liberty, except temporary deprivation of liberty, may be conditionally released prior to completion of his or her basic punishment, if there is a reason to believe that he or she is able to adapt in the society after release without committing a criminal offence.

(2) Taking into account the personality and behaviour of the convicted person, conditional release prior to completion of punishment may be ordered, if:

- 1) the convicted person has reached a certain result of resocialisation;
- 2) the convicted person to the extent possible has voluntarily made compensation for losses caused by his or her crime;
- 3) the convicted person has possibilities to acquire means of subsistence in legal way after his or her release;
- 4) the term specified in a law regulating the execution of criminal punishments after imposition of the punishment for the violation of the punishment serving regime has lapsed and there are no effective punishments for administrative violations committed during execution of the punishment of deprivation of liberty;
- 5) the convicted person is solving and is ready to continue to solve his or her psychological problems which have caused or may cause commitment of criminal offence;
- 6) [8 July 2011].

(3) Conditional release prior to completion of punishment may be proposed if the convicted person has actually served:

- 1) not less than half of the punishment imposed for a less serious crime committed;
- 2) not less than two-thirds of the punishment imposed, if it has been imposed for a serious crime, or if the convicted person is a person who previously has been punished with deprivation of liberty for an intentional crime and the criminal record for this crime has not been set aside or extinguished;
- 3) not less than three-quarters of the punishment imposed, if it has been adjudged for an especially serious crime or if the convicted person is a person who previously had been conditionally released prior to completion of punishment and has newly committed an intentional crime during the period of the unserved punishment; or

4) twenty-five years of a punishment of deprivation of liberty, if the convicted person is a person for whom life imprisonment has been imposed.

(4) A court, in conditionally releasing a convicted person prior to completion of a punishment, may, for the period of the unserved punishment, impose on him or her the obligations set out in Section 55 of this Law, if it is necessary for achieving of goals. A duty to participate in probation programmes in accordance with the instructions of the State Probation Service shall be imposed mandatory for a person of legal age, who is punished for commitment of serious or especially serious crime, if a crime is connected with violence or turned against sexual inviolability or morals. If the person conditionally released prior to completion of punishment does not, without justifiable reason, fulfil the obligations imposed by the court or those specified in the regulating laws regarding the execution of criminal punishments, or repeatedly commits administrative violations, for which administrative punishments are imposed on him or her, the court, on the basis of a submission from the institution to which the supervision of the behaviour of the convicted person has been assigned, may take a decision that the portion of the punishment unserved should be served.

(5) If a person who has been conditionally released prior to completion of punishment commits a new criminal offence during the period of the punishment unserved, the court shall determine punishment for him or her in accordance with the provisions provided for in Sections 51 and 52 of this Law.

### **Section 39 Criminal Procedure Law**

#### **Duties and Rights of a Public Prosecutor – Person Directing the Proceedings**

(1) A public prosecutor has the following duties as a person directing the proceedings:

- 1) to not permit unjustified delay and to initiate criminal prosecution in the term specified in the Law;
- 2) withdraw from criminal prosecution and termination criminal proceedings if the prerequisites provided for such withdrawal or termination exist in the Law;
- 3) determine the criminal cases to be transferred to a court, and the aggregate of materials of an archive file;
- 4) issue to a person who has the right to the assistance of a defence counsel copies or true copies of the materials of the criminal case to be transferred to a court (hereinafter – copies) or to acquaint such person according to the procedures specified by law with the materials of the criminal case to be transferred to a court;
- 5) issue to a victim copies of materials provided for in the Law;
- 6) decide on submitted applications;
- 7) submit to a court an agreement that was entered into with the accused regarding the admission of guilt and a punishment;
- 8) take a decision on transferring of a criminal case to a court, and submit the criminal case to the court;
- 9) terminate criminal proceedings if grounds specified in the Law have been determined;
- 10) submit a criminal case for trial in accordance with the special procedures of proceedings.

(2) A public prosecutor has the following rights in criminal prosecution:

- 1) to terminate criminal prosecution and to determine additional investigation;
- 2) to take any procedural decision in accordance with the procedures specified by law and to perform any procedural action or assign the performing thereof to a member of an investigative group or an executor of procedural tasks;
- 3) to terminate criminal proceedings, applying the injunction of a public prosecutor regarding a punishment;
- 4) to prepare an draft agreement;
- 5) to submit proposals for the recognition of specified facts as proven without an examination of evidence in a court;

6) if necessary, to request an evaluation report of a person from the State Probation Service.

(3) If a preliminary adjudication of the Court of Justice of the European Union regarding the interpretation or validity of the legal norms of the European Union is necessary for the acceptance of a procedural decision, a public prosecutor may propose that the Prosecutor General sends the uncertain matter to the Court of Justice of the European Union.

Chapter 38 of the Criminal Procedure Law “Application of an Agreement in Pre-trial Criminal Proceedings” governs the rules and procedures with regards to agreement in pre-trial proceedings applicable also to corruption offences. Further, Chapter 48 of the Criminal Procedure Law stipulates special features of court proceedings in the case of a settlement between a victim and an accused.

### **Section 543 Criminal Procedure Law. Court Judgment in Agreement Proceedings**

(1) If a court does not have any doubts regarding the guilt of an accused, such court shall render a judgment of conviction.

(2) A court shall outline the essence of an entered into agreement, which a public prosecutor, accused, and his or her defence counsel have confirmed in a court session, in the reasoned part of a judgment, and shall evaluate the validity of the entered into agreement.

(3) The operative part of a judgment shall indicate a court decision on:

1) the fact that an accused (referring to his or her given name and surname) has been found guilty of a criminal offence (referring to the section, paragraph, and clause of The Criminal Law in which the relevant criminal offence has been provided for);

2) the fact that the court approves the entered into agreement and imposed the type and amount of punishment provided for in such agreement;

3) the releasing of an accused from arrest, house arrest, or a social correctional educational institution in a courtroom, if a punishment not related to deprivation of liberty has been specified for him or her.

4) the deduction of the term of a security measure related to deprivation of liberty imposed on an accused in the term of a punishment;

5) the term of an examination in the case of a suspended sentence;

6) the security measure;

7) compensation for harm, including the amount of compensation disbursed by the State;

8) ensuring of compensation for harm or a confiscation of property, if such ensuring has not been previously performed;

9) actions with material evidence and documents;

10) consideration for procedural expenditures;

11) recovery of the work remuneration of an advocate from an accused or regarding the releasing of him or her from payment;

12) [12 March 2009];

13) the opportunity to appeal the judgment in accordance with cassation procedures, and the term thereof.

(4) A court, rendering a judgment, may determine the punishment provided for in the agreement protocol, if a mistake has been made in determining the final punishment, or if it is connected with time onflow from the day of entering into agreement until the day of the trial. The correction may not deteriorate the state of the accused.

#### **(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## Article 30 Prosecution, adjudication and sanctions

### Paragraph 6

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Latvia has established the procedures described in paragraph 6.

##### **Labour Law Section 58 Suspension from Work**

(1) Suspension from work is a temporary prohibition, imposed by a written order of an employer, for an employee to be present at the workplace and to perform work, without paying work remuneration to the employee during the period of suspension.

(2) An employer has a duty to suspend an employee from work if, in cases specified by regulatory enactments, such is accordingly requested by an authorised State institution.

(3) An employer has the right to suspend an employee from work if the employee, when performing work or being present at the workplace, is under the influence of alcohol, narcotic or toxic substances, as well as in other cases when failure to suspend an employee from work may be detrimental to his or her safety or the health or safety of third parties, as well as to the substantiated interests of the employer or third parties.

(4) If the suspension of an employee from work has been unfounded due to the fault of the employer, the employer has a duty to pay the employee the average earnings for the whole period of forced absence from work, as well as to compensate for losses caused as a result of the suspension.

(5) It is prohibited to suspend an employee from more than three months, except in the cases specified in Paragraph two of this Section.

In addition to the provided measures, the Criminal Procedure Law Section 254 stipulates applying a security measure which entails a ban for certain employment:

(1) A prohibition on specific employment is a restriction upon a suspect or accused, specified with a decision of a person directing the proceedings, from performing a specific type of employment (activities) for a time, or from execution of the duties of a concrete position (job).

(2) A decision on a prohibition on specific employment shall be sent for execution to the employer of a person, or to another relevant authority.

(3) The decision referred to in Paragraph one of this Section is mandatory for any official, and shall be fulfilled within three working days after the day of the receipt thereof. An official shall notify a person directing the proceedings regarding the commencement of the execution of a decision.

If a public official is also a civil servant then in accordance with The Civil Service Law Section 39 a civil servant shall be suspended if a criminal prosecution is initiated or security measure related to deprivation of liberty is applied.

Specialised civil servants (diplomatic and consular missions, State Revenue Service officials, etc.) have separate statutes.

In most cases, procedure for acting in situations when a public official is involved in investigation is stipulated by internal legal framework.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 30 Prosecution, adjudication and sanctions**

**Subparagraph 7 (a)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office; and*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has established the procedures described at paragraph 7(a).

**The Criminal Law Section 44. Limitation of Rights:**

(1) Limitation of rights is the deprivation of rights as to specific or all forms of entrepreneurial activity, to specific professional or other type of employment, to the holding of specific positions or the acquisition of permits or rights provided for in a special law.

(2) Limitation of rights is an additional punishment which the court may adjudge to prohibit, for a term of not less than one year and not exceeding five years or is determined by a public prosecutor in drawing up an injunction regarding punishment and prohibiting for a time period, which is not longer than half of the time period for the maximum limitation of rights provided for in the relevant Section in the Special Part of this Law, engaging in a specific form or all forms of entrepreneurial activity or specific professional or other type of employment, the holding of specific positions in State, local government, private or public organisations, undertakings (companies) or institutions or the acquiring of permits or rights provided for in a special law, which pursuant to procedures specified by law are either issued or conferred by the State, local governments, or other agencies authorised therefor.

(3) The court may also adjudge limitation of rights in cases when such punishment has not been provided for in the Sections of the Special Part of this Law, if the criminal offence has been directly related to the entrepreneurial activity or employment of the offender, or has been committed using, in bad faith, a special permit issued to him or her or rights conferred upon him or her.

(4) If a person has been punished with deprivation of liberty or custodial arrest and with limitation of rights, then the prohibition mentioned in this Section shall apply not only when the person is serving the term of deprivation of liberty or custodial arrest, but also to the term to be served for the additional punishment adjudged in the judgment, calculated from the time when he or she completes serving the basic punishment. In the adjudging of such additional punishments jointly with other forms of basic punishments, the term for serving the additional punishment shall be calculated from the time when this person starts serving the basic punishment.

**The Criminal Law Section 44.<sup>1</sup> Prohibition to Become a Candidate in Saeima, European Parliament, City Council, County Council and Parish Council Elections**

(1) A prohibition to become a candidate in *Saeima*, European Parliament, republic city council and county council elections is a prohibition to nominate a person as a candidate in *Saeima*, European Parliament, republic city council and county council elections.

(2) A prohibition to become a candidate in *Saeima*, European Parliament, republic city council and county council elections is an additional punishment, which a court may adjudge for a

term of not less than two years and not exceeding four years, for a person who has committed a criminal offence against the State (Sections 80-95 of this Law).

(3) If a person has been punished with deprivation of liberty or custodial arrest and with a prohibition to become a candidate in *Saeima*, European Parliament, republic city council and county council elections, the prohibition referred to in this Section shall apply not only when the person is serving the term of deprivation of liberty or custodial arrest, but also to the term to be served for the additional punishment adjudged in the judgment, calculated from the time when he or she completes serving the basic punishment. In the adjudging of such additional punishments jointly with other forms of basic punishments, the term for serving the additional punishment shall be calculated from the time when this person starts serving the basic punishment.

It should be noted that if offences established by this Convention are committed by public officials, then applicable sanction to be decided by the court is deprivation of the right occupy specified positions for certain period of time.

#### **(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 30 Prosecution, adjudication and sanctions**

#### **Subparagraph 7 (b)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(b) Holding office in an enterprise owned in whole or in part by the State.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has established the procedures described at paragraph 7(b).

#### **The Labour Law Section 58. Suspension from Work**

(1) Suspension from work is a temporary prohibition, imposed by a written order of an employer, for an employee to be present at the workplace and to perform work, without paying work remuneration to the employee during the period of suspension.

(2) An employer has a duty to suspend an employee from work if, in cases specified by regulatory enactments, such is accordingly requested by an authorised State institution.

(3) An employer has the right to suspend an employee from work if the employee, when performing work or being present at the workplace, is under the influence of alcohol, narcotic or toxic substances, as well as in other cases when failure to suspend an employee from work may be detrimental to his or her safety or the health or safety of third parties, as well as to the substantiated interests of the employer or third parties.

(4) If the suspension of an employee from work has been unfounded due to the fault of the employer, the employer has a duty to pay the employee the average earnings for the whole period of forced absence from work, as well as to compensate for losses caused as a result of the suspension.

(5) It is prohibited to suspend an employee from more than three months, except in the cases specified in Paragraph two of this Section.

**The Criminal Law Section 44. Limitation of Rights:**

(1) Limitation of rights is the deprivation of rights as to specific or all forms of entrepreneurial activity, to specific professional or other type of employment, to the holding of specific positions or the acquisition of permits or rights provided for in a special law.

(2) Limitation of rights is an additional punishment which the court may adjudge to prohibit, for a term of not less than one year and not exceeding five years or is determined by a public prosecutor in drawing up an injunction regarding punishment and prohibiting for a time period, which is not longer than half of the time period for the maximum limitation of rights provided for in the relevant Section in the Special Part of this Law, engaging in a specific form or all forms of entrepreneurial activity or specific professional or other type of employment, the holding of specific positions in State, local government, private or public organisations, undertakings (companies) or institutions or the acquiring of permits or rights provided for in a special law, which pursuant to procedures specified by law are either issued or conferred by the State, local governments, or other agencies authorised therefore.

(3) The court may also adjudge limitation of rights in cases when such punishment has not been provided for in the Sections of the Special Part of this Law, if the criminal offence has been directly related to the entrepreneurial activity or employment of the offender, or has been committed using, in bad faith, a special permit issued to him or her or rights conferred upon him or her.

(4) If a person has been punished with deprivation of liberty or custodial arrest and with limitation of rights, then the prohibition mentioned in this Section shall apply not only when the person is serving the term of deprivation of liberty or custodial arrest, but also to the term to be served for the additional punishment adjudged in the judgment, calculated from the time when he or she completes serving the basic punishment. In the adjudging of such additional punishments jointly with other forms of basic punishments, the term for serving the additional punishment shall be calculated from the time when this person starts serving the basic punishment.

In the course of pre-trial investigation of so called “Latvenergo” case (cited above), board members including the chairperson was released from their positions in the company in whole owned by the state. Provisions of the relevant Criminal Law Sections stipulate that a deprivation of rights to hold certain positions can be enacted as a penalty (for example, CL Sections 198 and 199, Sections 317, 318, 319, 320 and 323).

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 8**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision described at paragraph 8.

**The State Civil Service Law Section 39 Suspension from the Performance of Duties of a Position:**

(1) The head of an institution may suspend a civil servant from performance of the duties of a position, suspending the payment of work remuneration for the period subsequent to the date

of suspension, if detention has been applied as a security measure or criminal prosecution has been initiated against the civil servant.

(2) If a court finds a civil servant suspended in such way guilty of committing a criminal offence, the remuneration for the period of suspension shall not be paid and he or she shall be regarded as dismissed from and after the day of suspension. In case of acquittal, the civil servant suspended shall be paid the work remuneration for the period of suspension unless there is another basis for dismissal determined by this Law.

(3) The head of an institution shall suspend a civil servant from the performance of duties of a position where this is required, in cases prescribed by law, by a State institution authorised accordingly.

(4) The relevant head of an institution, a minister, the Administration and the Prime Minister may suspend a civil servant from the performance of the duties of a position not longer than for the whole of the period of investigation of a disciplinary matter, retaining the previous monthly salary, social guarantees, the permanent supplements specified in regulatory enactments, which are associated with service, as well as the service ranks specified in the specialised civil service.

(5) The head of an institution may be suspended by a minister, but the Director of the State Chancellery - by the Prime Minister.

Procedure for exercising disciplinary powers is stipulated by the Law on Disciplinary Liability of Civil Servants. The law stipulates mandatory disclosure of alleged disciplinary violation to the institution or the official mandated to initiate disciplinary case.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 10**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision described at paragraph 10.

The Ministry of Justice implemented project "Development of complex programme for re-socialisation of former convicted persons in 2008-2010" by the Norwegian Grant.

In 2004, the State Probation Service was established and operates all over the country.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 31 Freezing, seizure and confiscation**

### **Subparagraph 1 (a)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at domestic level the measures described above.

#### **Criminal Law Section 42. Confiscation of Property**

(1) Confiscation of property is the compulsory alienation to State ownership without compensation of the property owned by a convicted person or parts of such. Confiscation of property may be specified as a basic punishment or as an additional punishment. Property owned by a convicted person, which he or she has transferred to another natural or legal person, may also be confiscated.

(2) Confiscation of property may be specified only in the cases provided for in the Special Part of this Law.

(3) A court, in determining partial confiscation of property, shall specifically indicate which property is to be confiscated. The court, in determining confiscation of property for a criminal offence against traffic provisions, shall apply partial confiscation of property and relate it to the vehicle. A court, in determining confiscation of property for a cruel treatment of animals, shall apply partial confiscation of property and relate it to the animals.

(4) The indispensable property of the convicted person or of his or her dependants, which may not be confiscated, is that specified by law.

#### **Criminal Procedure Law Section 355. Criminally Acquired Property**

(1) Property shall be recognized as criminally acquired, if such property directly or indirectly has come into the property or possession of a person as a result of a criminal offence.

(2) If the opposite has not been proven, property, including financial resources, shall be recognized as criminally acquired if such property or resources belong to a person who:

- 1) is a member of an organized criminal group, or supports such group;
- 2) has him or herself engaged in terrorist activities, or maintains permanent relations with a person who is involved in terrorist activities;
- 3) has him or herself engaged in the trafficking of human beings, or maintains permanent relations with a person who is engaged in the trafficking of human beings;
- 4) has him or herself engaged in criminal activities with narcotic or psychotropic substances, or maintains permanent relations with a person who is engaged in such activities;
- 5) has him or herself engaged in criminal activities with counterfeit currency, State financial instruments or maintains constant relations with a person who is involved in such activities;
- 6) has him or herself engaged in criminal activities in order to cross the State boundary or to promote relocation of another person across the State boundary, or to ensure a possibility to other persons to reside illegally in the Republic of Latvia, or maintains constant relations with a person who is involved in such activities;

- 7) has him or herself engaged in criminal activities in relation to child pornography or sexual abuse of children, or maintains constant relations with a person who is involved in such activities.
- (3) Within the meaning of this Section, the maintenance of permanent relations with another person who is engaged in specific criminal activities means that the person lives together with a second person or controls, determines, or influences the behaviour thereof.

**Criminal Procedure Law Section 356. Recognition of Property as Criminally Acquired**

(1) Property may be recognized as criminally acquired by a court adjudication that has entered into effect, or by a decision of a public prosecutor regarding the termination of criminal proceedings.

(2) During pre-trial criminal proceedings, property may also be recognized as criminally acquired by:

- 1) a decision of a district (city) court in accordance with the procedures specified in Chapter 59 of this Law, if a person directing the proceedings has sufficient evidence that does not cause any doubt regarding the criminal origins of the property or the relation of the property to a criminal offence;
- 2) a decision of a person directing the proceedings, if, during a pre-trial criminal proceedings, property was found with and seized from a suspect, accused, or third person in relation to which property the owner or lawful possessor thereof had previously submitted a loss of property, and, after the finding thereof, has proven his or her rights to such property, eliminating any reasonable doubt.

**Criminal Procedure Law Section 357. Returning of Criminally Acquired Property**

(1) Property shall be returned, on the basis of ownership, to the owner or lawful possessor thereof by a decision of a person directing the proceedings, after the storage of such property is not longer necessary for the achievement of the purpose of criminal proceedings.

(2) Property, the circulation of which is prohibited by law and which, as a result of such prohibition, is located in the possession of a person illegally, shall not be returned to such possessor, but rather transferred to the relevant State authority, with a decision of a person directing the proceedings, or to a legal person that is entitled to obtain and use such property.

(3) Property, also financial resources the origin of which is the State resources used for disclosure of a criminal offence, shall be returned to the legal possessor or recovered for the benefit of him or her. If such property is alienated, destroyed or concealed and it is not possible to return it, other property, also financial resources, may be subjected for such recovering in the value of the property to be returned.

**Criminal Procedure Law Section 358. Confiscation of Criminally Acquired Property:**

(1) Criminally acquired property shall be confiscated with a court decision, if the further storage of such property is not necessary for the achievement of the purpose of criminal proceedings and if such property does not need to be returned to the owner or lawful possessor, and acquired financial resources shall be included in the State budget.

(2) If criminally acquired property has been alienated, destroyed, concealed or disguised, and the confiscation of such property is not possible, other property, and financial resources, at the value of the property being confiscated may be subjected to confiscation or recovery.

(3) If an accused does not have property that may be subjected to the confiscation referred to in Paragraph two of this Section, the following may be confiscated:

- 1) property that the accused person after the committing of the criminal offence has alienated to a third person without corresponding consideration;
- 2) the property of the spouse of the accused person, if separate ownership of the

property of the spouses was not specified at least one year before the commencement of the criminal offence;

3) the property of another person, if the accused has a common (undivided) household with such person.

(4) The following shall be included in the State budget:

1) resources that have been acquired in realising confiscated property or property, in accordance with the procedures specified in regulatory enactments, the ownership of which has not been ascertained or the owner of which does not have lawful right to such property, or the owner or lawful possessor of which has refused such property;

2) resources that a person has acquired from the realisation of property, knowing the criminal origins of such property;

3) yield acquired as a result of the use of criminally acquired property;

4) confiscated financial resources;

5) financial benefits, or material benefits of another nature, that a State official has accepted as a bribe.

### **Criminal Procedure Law Section 359. Use of the Resources from the Realisation of Criminally Acquired Property**

If a victim has requested compensation for harm, and the resources referred to in Section 358, Paragraph four of this Law have been acquired in concrete criminal proceedings, such resources shall be used first for the ensuring and payment of the requested compensation.

### **Criminal Procedure Law Section 360. Rights of Third Persons**

(1) If criminally acquired property has been found on a third person, such property shall be returned, on the basis of ownership, to the owner or lawful possessor thereof.

(2) If criminally acquired property has been returned to the owner or lawful possessor thereof, the third person who acquired such property, or pledge, in good faith has the right to submit a claim, in accordance with civil procedures, regarding compensation for the loss, including against an accused or convicted person.

Article 42 of LCL provides for confiscation of property which is a penalty and is applied to property which belongs to the sentenced person. Chapter 27 of LCPL (Articles 355-360) deals with criminally acquired property. Article 240 of LCPL deals with confiscation of “instrumentalities”. Section 42 of the LCL defines the confiscation of property as a penalty imposed upon conviction as a compulsory alienation to State ownership without compensation of the property owned by a convicted person or parts of such. The confiscation of property may be determined only in cases provided for in the Special Part of the LCL and this includes TF, ML and other predicate offences. Property owned by a convicted person, whom he or she has transferred to another natural or legal person, may also be confiscated.

The confiscation procedure in respect of direct and indirect proceeds of crime is provided by Chapter 27 (Sections 355–360) of the CPL.

The cited provisions are applied in criminal cases before the actual conviction of persons. The condition for applying these provisions is on-going investigation, however issues of assets or instrumentalities of crime can be determined under the simplified procedure before the sentence. Investigator takes decision about forfeiture of assets which are allegedly illegal and submits this decision for approval to a judge. Legislation of Latvia provides for confiscation of the whole property owned by a public official if convicted for aggravated corruption, money laundering and other offences provided for in the Criminal Law. Decision about confiscation of property is part of sentence and it is ruled by the court along with the conviction of a person.

In 2011, more than 700 000 USD were confiscated in Estonia in the framework of the criminal case investigated by the Corruption Prevention and Combating Bureau. The same year 750 000 EUR were recognized proceeds of corruption related crimes and in accordance with the court decision are to be

confiscated.

**(b) Observations on the implementation of the article**

The reviewing experts noted that article 42 CL provides for the confiscation of property, both movable and immovable, as a penalty imposed upon conviction which is applied to property which belongs to the sentenced person. Chapter 27 CPL (sections 355-360) deals with criminally acquired property. Article 240 CPL deals with the confiscation of instrumentalities of crime. Property owned by a convicted person, whom he or she has transferred to another natural or legal person, may also be confiscated. Confiscation of converted proceeds of crime is also possible.

The confiscation procedure in respect of direct and indirect proceeds of crime is regulated in Chapter 27 (sections 355–360) CPL. In Latvia, there is no confiscation based on civil law procedures and there have been no cases of non-conviction based forfeiture.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 31 Freezing, seizure and confiscation**

**Subparagraph 1 (b)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described in the paragraph at issue.

**Criminal Procedure Law Section 358. Confiscation of Criminally Acquired Property:**

(1) Criminally acquired property shall be confiscated with a court decision, if the further storage of such property is not necessary for the achievement of the purpose of criminal proceedings and if such property does not need to be returned to the owner of lawful possessor, and acquired financial resources shall be included in the State budget.

(2) If criminally acquired property has been alienated, destroyed, concealed or disguised, and the confiscation of such property is not possible, other property, and financial resources, at the value of the property being confiscated may be subjected to confiscation or recovery.

(3) If an accused does not have property that may be subjected to the confiscation referred to in Paragraph two of this Section, the following may be confiscated:

1) property that the accused person after the committing of the criminal offence has alienated to a third person without corresponding consideration;

2) the property of the spouse of the accused person, if separate ownership of the property of the spouses was not specified at least one year before the commencement of the criminal offence;

3) the property of another person, if the accused has a common (undivided) household with such person.

(4) The following shall be included in the State budget:

1) resources that have been acquired in realising confiscated property or property, in accordance with the procedures specified in regulatory enactments, the ownership of which has not been ascertained or the owner of which does not have lawful right to

- such property, or the owner or lawful possessor of which has refused such property;
- 2) resources that a person has acquired from the realisation of property, knowing the criminal origins of such property;
- 3) yield acquired as a result of the use of criminally acquired property;
- 4) confiscated financial resources;
- 5) financial benefits, or material benefits of another nature, that a State official has accepted as a bribe.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described in the paragraph at issue.

**Criminal Procedure Law Section 361. Imposition of an Attachment on Property**

(1) In order to ensure the solution of financial matters in criminal proceedings, as well as the possible confiscation of property, an attachment shall be imposed in criminal proceedings on the property of a detained person, suspect, or accused, and also on property due to such person from other persons, or the property of persons who are materially liable for the actions of the suspect or accused. An attachment may be imposed as well on property in order to ensure the collection of the value of an instrumentality of criminal offence to be confiscated, if such instrumentality is owned by another person. An attachment may also be imposed on criminally acquired property, or property related to criminal proceedings, that is located with other persons.

(1<sup>1</sup>) An attachment may be imposed on property, also on financial resources, in the value of criminally acquired property, as well as on the yield acquired as a result of the use of criminally acquired property.

(2) An attachment may also be imposed on property in proceedings regarding the application of compulsory measures on legal persons, and regarding the determination of compulsory measures of a medical nature, if the ensuring of a solution to financial matters in criminal proceedings, a possible recovery of money, or a confiscation of property is necessary.

(3) In pre-trial proceedings, an attachment shall be imposed on property with a decision of a person directing the proceedings that has been approved by an investigating judge, but during a trial a court shall take a decision.

(4) In emergency cases when property may be alienated, destroyed, or hidden due to a delay, a person directing the proceedings may impose an attachment on the property with the consent of a public prosecutor. A person directing the proceedings shall notify an investigating judge regarding the imposed attachment not later than on the next working day by presenting the protocol and other materials that justify the necessity and emergency of the attachment. If the investigating judge does not approve the decision of the person directing the proceedings regarding the imposition of the attachment on property, the attachment shall be seized from the property.

(5) A decision on the imposition of an attachment on property shall indicate the purpose for

the imposition of the attachment and the person who owns the property upon which the attachment has been imposed, and, if the amount of the financial matter to be solved is known, the necessary ensuring sum shall also be indicated.

(6) A person directing the proceedings may assign the State police the execution of an attachment, and shall notify the relevant public register wherein the right to such property have been registered regarding the attachment of property, so that such register may register a prohibition on alienating such property and on burdening such property with other case or obligation rights. A certified copy of a decision shall be sent to a public register.

(7) If a mortgage pledge or other pledge, which has been specified by law and should be registered, was registered in relation to property before an attachment was imposed, actions with the pledged property may take place only after co-ordination with a person directing the proceedings. If such property has been recognised by a court decision as criminally acquired, the attachment of the property has priority in relation to the pledge.

(8) An attachment shall not be imposed on basic necessity objects used by the person upon whose property the attachment is being imposed, or by the family members of such person and the persons dependent on such person. Annex 1 to this Law shall determine the list of such objects. A prohibition specified in this Paragraph shall not apply to criminally acquired property or other property related to a criminal offence.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Latvian legal system has provisions in place to enable the identification, tracing, freezing or seizure of property associated with criminal activity for the purpose of eventual confiscation (section 361 CPL on the “imposition of an attachment on property”). Freezing order applications are available in all criminal proceedings and cover all property that the accused or suspect has an interest in. All realisable property can be frozen, including property transferred to other parties. In emergency situations, an investigator can attach the property and inform the Prosecutor about the taken action.

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 31 Freezing, seizure and confiscation**

#### **Paragraph 3**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

#### **Criminal Procedure Law Section 365. Storage of Attached Property:**

(1) Property upon which attachment is imposed may be left in storage with the owner or user thereof, his or her family members, or another natural person or legal person to whom the liability, provided for by law, regarding the storage of the referred to property shall be explained. Such persons shall sign regarding such storage.

(2) [12 March 2009]

(2<sup>1</sup>) Property upon which an attachment is imposed but which is not possible to leave in storage with the persons specified in Paragraph one of this Section shall be handed over for

storage to the institutions specified by the Cabinet with the decision of the person directing the proceedings. The Cabinet shall determine the procedures for storage of such property. Property the continued storage of which is not possible or the continued storage of which causes losses for the State shall be handed over for sale or destruction in accordance with the procedures specified by the Cabinet with the decision of the person directing the proceedings.

(3) If an attachment is imposed on objects, the circulation of which has been prohibited by law, as well as on money, currency and securities, letters of credit issued by banks, bills of exchange, stocks and other monetary documents, as well as on precious metals and precious stones, as well as on articles made from precious metals or precious stones, the place of storage and the procedures for storage thereof shall be determined by the Cabinet.

**Criminal Procedure Law Section 364.<sup>1</sup> Permission for Realisation of Attached Property:**

(1) If a person directing the proceedings after imposition of an attachment on property determines that in relation to the same property there is a registered note of a sworn bailiff regarding directed recovery, the person directing the proceedings shall inform the sworn bailiff regarding imposition of an attachment on the property.

(2) If it is necessary for a sworn bailiff in accordance with the procedures specified in the Civil Procedure Law, in executing the adjudication, to bring a collection in respect of the attached property, he or she shall submit an application to a person directing the proceedings. The person directing the proceedings shall, after assessment of the conditions of the criminal proceedings and the essence of that claim for the satisfaction of which a note is registered regarding bringing of collection, take a decision on permission or prohibition for the bailiff to bring a collection in respect of such property. An amount to be retained for the ensuring of property matters in the criminal proceedings shall be indicated in a decision on permission to bring a collection in respect of attached property. A decision taken by the person directing the procedures shall not be subject to appeal.

(3) If the conditions of criminal proceedings have significantly changed after evaluation of which a person directing the procedures has given a permission for a bailiff to bring a collection in respect of attached property, a person directing the proceedings may take a decision on the prohibition to bring a collection in respect of attached property notifying such decision to the bailiff until the day of auction of the property or until the day when property is given to a trading enterprise for selling according to commission regulations.

(4) A sworn bailiff shall, after realisation of property under attachment in accordance with the procedures specified by the Civil Procedure Law, notify thereof a person directing the procedures asking to cancel attachment for realised property, and shall transfer the amount indicated in a decision to the deposit (storage) of a credit institution provided by a person directing the proceedings. A person directing the proceedings shall decide on imposition of an attachment on these financial resources. The confirmation of an investigating judge is not necessary for such decision.

The Cabinet of Ministers Rules concerning administration of evidences and attached property No 1025 of 27 December 2011 govern procedure for possession of attached (seized) property.

**(b) Observations on the implementation of the article**

The reviewing experts noted that under section 365 CPL, property upon which an attachment is imposed may be left in storage with the owner or user thereof, his or her family members, or another person. If such property cannot be left in storage with the aforementioned persons, it is handed over for storage to the institutions specified by the Cabinet of Ministers. Depending on what sort of property it is, the specific object is given to that agency which is specialized in the storage of these items. The Cabinet determines the procedures for storage of such property. Property the continued storage of which is not possible, or the continued storage of which causes losses for the State, is handed over for sale or destruction in accordance with the procedures specified by the Cabinet.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 4**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision described at paragraph 4.

#### **Criminal Procedure Law Section 361. Imposition of an Attachment on Property:**

(1) In order to ensure the solution of financial matters in criminal proceedings, as well as the possible confiscation of property, an attachment shall be imposed in criminal proceedings on the property of a detained person, suspect, or accused, and also on property due to such person from other persons, or the property of persons who are materially liable for the actions of the suspect or accused. An attachment may be imposed as well on property in order to ensure the collection of the value of an instrumentality of criminal offence to be confiscated, if such instrumentality is owned by another person. An attachment may also be imposed on criminally acquired property, or property related to criminal proceedings, that is located with other persons.

(1<sup>1</sup>) An attachment may be imposed on property, also on financial resources, in the value of criminally acquired property, as well as on the yield acquired as a result of the use of criminally acquired property.

(2) An attachment may also be imposed on property in proceedings regarding the application of compulsory measures on legal persons, and regarding the determination of compulsory measures of a medical nature, if the ensuring of a solution to financial matters in criminal proceedings, a possible recovery of money, or a confiscation of property is necessary.

(3) In pre-trial proceedings, an attachment shall be imposed on property with a decision of a person directing the proceedings that has been approved by an investigating judge, but during a trial a court shall take a decision.

(4) In emergency cases when property may be alienated, destroyed, or hidden due to a delay, a person directing the proceedings may impose an attachment on the property with the consent of a public prosecutor. A person directing the proceedings shall notify an investigating judge regarding the imposed attachment not later than on the next working day by presenting the protocol and other materials that justify the necessity and emergency of the attachment. If the investigating judge does not approve the decision of the person directing the proceedings regarding the imposition of the attachment on property, the attachment shall be seized from the property.

(5) A decision on the imposition of an attachment on property shall indicate the purpose for the imposition of the attachment and the person who owns the property upon which the attachment has been imposed, and, if the amount of the financial matter to be solved is known, the necessary ensuring sum shall also be indicated.

(6) A person directing the proceedings may assign the State police the execution of an attachment, and shall notify the relevant public register wherein the right to such property have been registered regarding the attachment of property, so that such register may register a prohibition on alienating such property and on burdening such property with other case or obligation rights. A certified copy of a decision shall be sent to a public register.

(7) If a mortgage pledge or other pledge, which has been specified by law and should be registered, was registered in relation to property before an attachment was imposed, actions

with the pledged property may take place only after co-ordination with a person directing the proceedings. If such property has been recognised by a court decision as criminally acquired, the attachment of the property has priority in relation to the pledge.

(8) An attachment shall not be imposed on basic necessity objects used by the person upon whose property the attachment is being imposed, or by the family members of such person and the persons dependent on such person. Annex 1 to this Law shall determine the list of such objects. A prohibition specified in this Paragraph shall not apply to criminally acquired property or other property related to a criminal offence.

**Criminal Procedure Law Section 358. Confiscation of Criminally Acquired Property:**

(1) Criminally acquired property shall be confiscated with a court decision, if the further storage of such property is not necessary for the achievement of the purpose of criminal proceedings and if such property does not need to be returned to the owner of lawful possessor, and acquired financial resources shall be included in the State budget.

(2) If criminally acquired property has been alienated, destroyed, concealed or disguised, and the confiscation of such property is not possible, other property, and financial resources, at the value of the property being confiscated may be subjected to confiscation or recovery.

(3) If an accused does not have property that may be subjected to the confiscation referred to in Paragraph two of this Section, the following may be confiscated:

- 1) property that the accused person after the committing of the criminal offence has alienated to a third person without corresponding consideration;
- 2) the property of the spouse of the accused person, if separate ownership of the property of the spouses was not specified at least one year before the commencement of the criminal offence;
- 3) the property of another person, if the accused has a common (undivided) household with such person.

(4) The following shall be included in the State budget:

- 1) resources that have been acquired in realising confiscated property or property, in accordance with the procedures specified in regulatory enactments, the ownership of which has not been ascertained or the owner of which does not have lawful right to such property, or the owner or lawful possessor of which has refused such property;
- 2) resources that a person has acquired from the realisation of property, knowing the criminal origins of such property;
- 3) yield acquired as a result of the use of criminally acquired property;
- 4) confiscated financial resources;
- 5) financial benefits, or material benefits of another nature, that a State official has accepted as a bribe.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 5**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision mentioned at paragraph 5.

**Criminal Procedure Law Section 364. Determination of the Value of Property Subjected to an Attachment:**

- (1) Property upon which an attachment is being imposed shall be assessed on the basis of the actual value thereof, taking into account the level of wear of such property. If necessary, a specialist shall be invited for the determination of the value of the property.
- (2) Money and securities shall be registered on the basis of the nominal value thereof.
- (3) If an attachment must be imposed on only a portion of the property for a specific sum, the owner or user of the property has the right to indicate the property that, according to his or her view, should be subjected to attachment.

**The Criminal Procedure Law Section 361. Imposition of an Attachment on Property:**

(1) In order to ensure the solution of financial matters in criminal proceedings, as well as the possible confiscation of property, an attachment shall be imposed in criminal proceedings on the property of a detained person, suspect, or accused, and also on property due to such person from other persons, or the property of persons who are materially liable for the actions of the suspect or accused. An attachment may be imposed as well on property in order to ensure the collection of the value of an instrumentality of criminal offence to be confiscated, if such instrumentality is owned by another person. An attachment may also be imposed on criminally acquired property, or property related to criminal proceedings, that is located with other persons.

(1<sup>1</sup>) An attachment may be imposed on property, also on financial resources, in the value of criminally acquired property, as well as on the yield acquired as a result of the use of criminally acquired property.

(2) An attachment may also be imposed on property in proceedings regarding the application of compulsory measures on legal persons, and regarding the determination of compulsory measures of a medical nature, if the ensuring of a solution to financial matters in criminal proceedings, a possible recovery of money, or a confiscation of property is necessary.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 6**

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision mentioned at paragraph 6.

**Criminal Procedure Law Section 355. Criminally Acquired Property:**

(1) Property shall be recognised as criminally acquired, if such property directly or indirectly has come into the property or possession of a person as a result of a criminal offence.

**Criminal Procedure Law Section 358. Confiscation of Criminally Acquired Property:**

(1) Criminally acquired property shall be confiscated with a court decision, if the further storage of such property is not necessary for the achievement of the purpose of criminal

proceedings and if such property does not need to be returned to the owner of lawful possessor, and acquired financial resources shall be included in the State budget.

(2) If criminally acquired property has been alienated, destroyed, concealed or disguised, and the confiscation of such property is not possible, other property, and financial resources, at the value of the property being confiscated may be subjected to confiscation or recovery.

(3) If an accused does not have property that may be subjected to the confiscation referred to in Paragraph two of this Section, the following may be confiscated:

- 1) property that the accused person after the committing of the criminal offence has alienated to a third person without corresponding consideration;
- 2) the property of the spouse of the accused person, if separate ownership of the property of the spouses was not specified at least one year before the commencement of the criminal offence;
- 3) the property of another person, if the accused has a common (undivided) household with such person.

(4) The following shall be included in the State budget:

- 1) resources that have been acquired in realising confiscated property or property, in accordance with the procedures specified in regulatory enactments, the ownership of which has not been ascertained or the owner of which does not have lawful right to such property, or the owner or lawful possessor of which has refused such property;
- 2) resources that a person has acquired from the realisation of property, knowing the criminal origins of such property;
- 3) yield acquired as a result of the use of criminally acquired property;
- 4) confiscated financial resources;
- 5) financial benefits, or material benefits of another nature, that a State official has accepted as a bribe.

In Latvia, there are two types of confiscation: Article 42 of LCL provides for confiscation of property which is a penalty and is applied to property which belongs to the sentenced person. Chapter 27 of LCPL (Articles 355-360) deals with criminally acquired property. Article 240 of CPL deals with confiscation of “instrumentalities”.

Section 42 of the LCL defines the confiscation of property as a penalty imposed upon conviction as a compulsory alienation to State ownership without compensation of the property owned by a convicted person or parts of such. The confiscation of property may be determined only in cases provided for in the Special Part of the CL and this includes TF, ML and other predicate offences. Property owned by a convicted person, whom he or she has transferred to another natural or legal person, may also be confiscated.

The confiscation procedure in respect of direct and indirect proceeds of crime is provided by Chapter 27 (Sections 355–360) of the CPL.

## **(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 7**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented at domestic level the measures mentioned above.

**Paragraph 5 of Section 121 of the Criminal Procedure Law:**

(5) Undisclosable information or documents, which contain such information and are at the disposal of credit institutions or financial institutions, shall be requested in pre-trial proceedings only with the decision of an investigating judge. Transactions in the accounts of clients of credit institutions or financial institutions shall be monitored in pre-trial proceedings for a certain time period only with the permission of an investigating judge. Transaction in the account of a client of a credit institution or financial institution may be monitored for a period of time up to three months, but, if necessary, the investigating judge may extend the time period for a period of time up to three months.

**Credit Institutions Law Section 63:**

(1) Non-disclosable information at the disposal of credit institutions shall be provided to State institutions, State officials or other institutions and officials according to the procedures specified in this Law in the following cases:

- 1) the Financial and Capital Market Commission - implementation of the supervision functions specified by law;
- 2) the Office for the Prevention of the Laundering of the Proceeds Derived from Crime - according to the procedures and in the amount specified in the Law On the Prevention of the Laundering of the Proceeds Derived from Crime;
- 3) courts - within the scope of the matters in the record-keeping thereof on the basis of a court (judge) decision;
- 4) investigative institutions - in the pre-trial criminal procedure on the basis of request from the person directing the proceedings, which has been approved by investigation judge;
- 5) the Office of the Prosecutor - in the pre-trial criminal procedure on the basis of request from the Office of the Prosecutor, which has been approved by the investigation judge;
- 6) persons performing investigative field work - in investigative field-work records matters on the basis of a request from persons performing investigative field work, which has been accepted by the Chief Justice of the Supreme Court or a specially authorised Justice of the Supreme Court authorised by him or her;
- 7) the Corruption Prevention and Combating Bureau - in the cases referred to in Paragraph one, Clauses 4 and 6 of this Section, as well as on the basis of a request from the director or a person specially authorised by him or her, which has been accepted by the Chief Justice of the Supreme Court or his or her authorised Justice of the Supreme Court if the information is necessary in order to ensure the control of the restrictions specified for State officials in the Law On Prevention of Conflict of Interest in Activities of Public Officials and to ascertain the cash savings of State officials, income received, transactions performed or debt obligations, or if the information is necessary, in order to ensure the control of the norms specified in the Political Organisation (Parties) Financing Law, ascertain the annual financial operations of political organisation (parties) and the associations thereof, expenditures in the pre-election period and the veracity and lawfulness of the financial resources and donations (gifts) received indicated in the election income and expenditure declaration;
- 8) bailiffs - on the basis of request to which is appended a copy of the adjudication of such court or other institution or official, in the implementation of which are performed official activities, or only on the basis of a request - in cases when information is necessary for the compilation of an inventory list, as well as in the performance of the inventory of property for the purpose of dividing common

- property or in an inheritance matter;
- 9) the State Treasury - on the basis of a request by the head or an employee authorised by him or her regarding the accounts and transactions of budget financed institutions;
- 10) the State Audit Office - on the basis of a request, which has been accepted by the Auditor General, regarding legal persons which have the capacity to act with State or local government property, or which are financed from the State or local government resources, or which implement State or local government procurement and supply;
- 11) the State Revenue Service - on the basis of a request, which has been accepted by the director-general of the State Revenue Service, the deputy thereof or territorial office director in accordance with the regulatory enactments of the Republic of Latvia and the European Union and international agreements regarding taxpayers, which have been ratified by the *Saeima* of the Republic of Latvia, if:
- a) a taxpayer does not submit to the tax administration declarations or tax calculations provided for in the pertinent tax laws,
  - b) during an audit of a taxpayer, violations in the accounting records or regulatory enactments regarding tax have been determined, or
  - c) a taxpayer does not make tax payments in compliance with the requirements of tax laws;
- 12) the State Revenue Service if the credit institution is a savings income disburser in accordance with Section 45, Paragraph one of the Law On Taxes and Fees or it disburses or ensures the disbursement of savings income in accordance with Section 45, Paragraph three of the referred to law;
- 13) notaries who examine an inheritance matter, information that is necessary for ascertaining the entirety of property of an estate of natural persons - estate-leavers.
- (2) Except in the cases referred to in Paragraph one, Clauses 1 and 12, the information necessary for a State institution or State official shall be requested in writing, indicating in the request the precise name and amount of information, as well as the justification for the request for information - the relative regulatory enactment, international agreement or European Union regulatory enactment; and
- 14) an Orphan's court on the basis of a request from the chairperson of the Orphan's court, regarding:
- a) the entirety of property of an estate, transactions performed by and balance on accounts for a child or other person without the capacity to act, if the parents, guardian or trustee does not provide the Orphan's court with requested information regarding the management of the property of the child or other person without the capacity to act or there are justified suspicions that information provided by the parents, guardian or trustee is false, and
  - b) natural persons - estate-leavers - balance on accounts for the drawing up of a property list (estate inventory list).
- (3) A credit institutions shall without delay, but not later than within a period of 14 days, provide the requested information if the procedures specified in Paragraphs one and two of this Section have complied with. In the case referred to in Paragraph one, Clause 12 of this Section, the credit institution shall provide information according to the procedures and time periods specified in the Law On Taxes and Fees.
- (4) Non-disclosable information shall be provided by credit institutions to another Member State and foreign state court and investigatory institutions according to the procedures specified in international agreements.
- (5) Other Member States and foreign laundering of the proceeds derived from crime or financing of terrorism prevention control services or credit institution operations supervision institutions shall be provided by the relevant Latvian institutions with non-disclosable information, on the basis of a mutual co-operation agreement or other agreement. The relevant Republic of Latvia institution shall acquire the non-disclosable information according to the procedures specified in Paragraphs one and two of this Section. Such institution prior to providing information to a Member State or foreign institution shall ascertain regarding protection against disclosure of the relevant information.

(6) Existing non-disclosable information at the disposal of a credit institution shall be provided by the credit institution to another Member State or foreign registered credit institution according to the procedures specified in the Law On the Prevention of the Laundering of the Proceeds Derived from Crime.

In Latvia, according to 121, paragraph 5 CPL, information of banks can be received through a warrant by the investigative judge. This is valid for information which does not have immunity status. Latvian banks have a duty to inform the competent authorities about suspicious transactions. The Latvian FIU plans an electronic database to which all agencies should have access.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that, in accordance with section 121, paragraph 5 CPL, bank accounts can be monitored, and information contained therein can be disclosed only with the decision of an investigating judge. Bank documents are subject to disclosure to a number of different state agencies, including the Prosecutor, if approved by the investigating judge under Section 63 of the Law on Credit Institutions.

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 31 Freezing, seizure and confiscation**

#### **Paragraph 8**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

##### **Criminal Procedure Law Section 125. Legal Presumption of a Fact:**

(1) Without the additional performance of procedural actions, the following conditions shall be considered proven, if the opposite is not proven during the course of criminal proceedings:

- 1) generally known facts;
- 2) facts determined in another criminal proceedings with a court adjudication or the injunction of a public prosecutor regarding a punishment that has entered into effect;
- 3) the fact of an administrative violation recorded in accordance with the procedure specified by law, if a person has known such fact;
- 4) the fact that a person knows or should have known his or her duties provided for in regulatory enactments;
- 5) the fact that a person knows or should have known his or her professional duties and duties of office;
- 6) the correctness of research methods generally accepted in contemporary science, technology, art, or skilled trades.

(2) It shall be considered proven that a person has violated the copyrights, related rights, or rights to a trademark of a legal owner, if such person is not able to believably explain or justify the acquisition or origin of such rights.

**Criminal Procedure Law Section 355. Criminally Acquired Property:**

(1) Property shall be recognised as criminally acquired, if such property directly or indirectly has come into the property or possession of a person as a result of a criminal offence.

(2) If the opposite has not been proven, property, including financial resources, shall be recognised as criminally acquired if such property or resources belong to a person who:

- 1) is a member of an organised criminal group, or supports such group;
- 2) has him or herself engaged in terrorist activities, or maintains permanent relations with a person who is involved in terrorist activities;
- 3) has him or herself engaged in the trafficking of human beings, or maintains permanent relations with a person who is engaged in the trafficking of human beings;
- 4) has him or herself engaged in criminal activities with narcotic or psychotropic substances, or maintains permanent relations with a person who is engaged in such activities;
- 5) has him or herself engaged in criminal activities with counterfeit currency, State financial instruments or maintains constant relations with a person who is involved in such activities;
- 6) has him or herself engaged in criminal activities in order to cross the State boundary or to promote relocation of another person across the State boundary, or to ensure a possibility to other persons to reside illegally in the Republic of Latvia, or maintains constant relations with a person who is involved in such activities;
- 7) has him or herself engaged in criminal activities in relation to child pornography or sexual abuse of children, or maintains constant relations with a person who is involved in such activities.

Chapter 27 of the Criminal Procedure Law is in the process of redrafting with the purpose to ensure that no listing of particular offences is provided for which reversal burden of prove is requested. Thus it can be applied more extensively.

Until present, the lawful origin of proceeds of crime or other property had to be proved in accordance with the first Paragraph of Section 355 and this provision is applied to cases of alleged private and public sector bribery, money laundering and other offences.

**(b) Observations on the implementation of the article**

The reviewing experts noted that, according to 355 CPL, the burden of proof in confiscation proceedings rests with the prosecution. At the time of the country visit, Latvia was working on amendments to existing legislation to reverse the burden of proof. In future, the person will have the burden of proof that the origin of the property is legally acquired. The reversal of burden of proof is attributed to the property and will be expanded to the criminal offense of illicit enrichment. As reported during the country visit, amendments were expected to enter into force approximately mid-2014.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 9**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision mentioned above.

**Criminal Procedure Law Section 360. Rights of Third Persons:**

(1) If criminally acquired property has been found on a third person, such property shall be returned, on the basis of ownership, to the owner or lawful possessor thereof.

(2) If criminally acquired property has been returned to the owner or lawful possessor thereof, the third person who acquired such property, or pledge, in good faith has the right to submit a claim, in accordance with civil procedures, regarding compensation for the loss, including against an accused or convicted person.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 1**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures mentioned above.

**Law on Special Protection of Persons Section 4. Rights to Special Protection:**

(1) The following persons testifying in criminal proceedings (hereinafter - person testifying in criminal proceedings) have the right to special protection:

- 1) a victim, witness or another person who is testifying or has testified regarding a serious or especially serious crime;
- 2) a minor who is testifying regarding the crimes provided for in Sections 161, 162 and 174 of the Criminal Law; and
- 3) a person the danger to whom may influence the person testifying in criminal proceedings.

(2) A person who is not testifying in criminal proceedings, but participates in the uncovering, investigation or adjudication of a serious or especially serious crime, as well as a person who is in danger due to the activities of the referred to persons (hereinafter - another person to be protected), has the right to special protection.

**Criminal Procedure Law Section 299. Content of Special Procedural Protection:**

Special procedural action is the protection of the life, health, and other lawful interests of a victim, witness, and other persons who testify or have testified in criminal proceedings regarding serious or especially serious crimes, as well as of a minor who testifies regarding the crimes provided for in Sections 161, 162, and 174 of the Criminal Law, and of a person the threat to whom may influence the referred to persons (hereinafter in this Chapter - threatened person).

**Criminal Procedure Law Section 300. Reason and Grounds for Special Procedural Protection:**

(1) The basis for special procedural protection shall be a real threat to the life, health or property of a person, expressed real threats, or information that provides a person directing the proceedings with a sufficient basis for believing that a threat may be real in connection with the testimony provided by such person.

(2) A written submission of a threatened person, or the representative or defence counsel thereof, if a threatened person agrees to it and a proposal of a person directing the proceedings shall be the basis for the determination of special procedural protection.

In Latvia, the protection mechanisms are more or less similar to the protection mechanisms of persons involved in other criminal offenses. Each case is evaluated on an individual basis (risk assessment) before a decision is taken.

There are two mechanisms in Latvia: criminal procedure protection (hide/concealing a person's identity etc. in criminal proceedings) and physical protection which is regulated in law on protection of persons (special law).

Hearings are public in Latvia, however, in case of procedural protection measures they may not be public (application of section 309 of CL to make it a closed session).

The Prosecutor General makes the final decision if a person goes into the witness protection programme (according to section 303 of CL).

The person who requests to be protected has to reveal facts to the law enforcement agencies that are not known, prove that he or she is threatened or intimidated and the witness has to himself or herself want to be protected.

In 2010, special procedural protection was assigned to one witness in the framework of the criminal case for criminal offences provided in the Criminal Law Section 320 Acceptance of Bribes.

In 2011, special procedural protection was assigned to one witness in the framework of the criminal case for criminal offences provided in the Criminal Law Section 320 Acceptance of Bribes and Section 323 Giving of Bribes.

For offences provided in the UNCAC, in 2010 one witness and in 2011 another one were ensured protection.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Latvia had put in place a comprehensive legal framework for the protection of witnesses, based on provisions of the CPC (criminal procedure protection) and the specific Law on Special Protection of Persons (physical protection). Among the persons protected are the victims, witnesses or other persons who testify or have testified regarding a serious or especially serious crime (section 4, paragraph 1, of the Law). A person who is not testifying in criminal proceedings, but participates in the uncovering, investigation or adjudication of a serious or especially serious crime, as well as a person who is in danger due to the activities of another person to be protected, has also the right to special protection (section 4, paragraph 2, of the Law).

The basis for special procedural protection is the existence of a real threat to life, health or property of a person, expressed real threats, or information that provides a person directing the proceedings with a sufficient basis for believing that a threat may be real in connection with the testimony provided by such person (section 300, paragraph 1 CPL).

The reviewing experts concluded that the provision has been adequately implemented.

**(c) Successes and good practices**

- The comprehensive legal framework for the protection of witnesses.

**Article 32 Protection of witnesses, experts and victims**

**Subparagraph 2 (a)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia adopted and implemented the measures described in the paragraph above.

**Law on Special Protection of Persons Section 16. Special Protection Measures:**

Special protection of a person shall be ensured by utilising the investigatory operations activities specified in the Investigatory Operations Law, as well as the following special protection measures:

- 1) a security guard for the person to be protected;
- 2) the securing against unsanctioned wiretapping of the conversations of the person to be protected, the securing against unsanctioned control of his or her correspondence;
- 3) the movement of the person to be protected to other unknown (confidential) residential premises;
- 4) the issuance of a passport and other documents with different personal identity data;
- 5) the change of the permanent residence and place of work of the person to be protected;
- 6) the protection and non-issuance from State information systems of the data of the person to be protected;
- 7) the transfer of the person to be protected to another state in accordance with entered into international agreements or an agreement with such state;
- 8) if necessary, insurance of the property of the person to be protected; and/or
- 9) escorting of the detained and convicted persons to be protected separately from other prisoners.

**Criminal Law Section 305. Violation of Provisions Regarding Special Protection of Persons:**

(1) For a person who commits failing to comply with procedures regarding special protection of persons set out by law, or who commits disclosure of identification data or the location of a person under protection, where commission is by a person who has knowledge, in connection with fulfilment of his or her official duties or other circumstances, in regard to the information about the person under special protection and who has been warned as to non-disclosure of such information, the applicable punishment is deprivation of liberty for a term not exceeding three years or a fine not exceeding sixty times the minimum monthly wage.

(2) For a person who commits the same acts, if commission thereof is for purposes of

acquiring property, the applicable punishment is deprivation of liberty for a term not exceeding five years.

(3) For a person who commits intentional disclosure of the organisation, methods, tactics, means of special protection measures or information regarding the persons involved in the performance of protection measures, which has been committed by the protected person, if as a result thereof the death of a person or other serious consequences have been caused, the applicable punishment is deprivation of liberty for a term not exceeding five years or a fine not exceeding one hundred and twenty times the minimum monthly wage.

(4) For a person who commits acts provided for in Paragraphs one or two of this Section, if as a result thereof the death of a person or other serious consequences have been caused, the applicable punishment is deprivation of liberty for a term not exceeding ten years.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 32 Protection of witnesses, experts and victims**

**Subparagraph 2 (b)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

**Criminal Procedure Law Section 308. Special Features of the Course of Procedural Actions in Pre-trial Proceedings:**

(1) A person for whom special procedural protection has been determined shall be summoned to an interrogation through the intermediation of a special protection institution.

(2) In recording in documents procedural actions wherein a protected person participates for whom personal identity data has been supplemented with a pseudonym, a person directing the proceedings shall only indicate a pseudonym in place of the identity data of such person. If an indication of the address of the receipt of a consignment is necessary, the address of a special protection institution shall be indicated.

(3) In performing procedural actions wherein several persons participate and wherein the prevention of the possibility of identifying a person under special procedural protection is necessary, technical means that do not allow for an identification of such person shall be used. Persons under protection have the right to not answer questions, if the answers may provide the opportunity to determine the identity thereof.

(3<sup>1</sup>) An official, who performs protection measures for a person involved in the criminal proceedings not exceeding his or her powers, has the right to be present in procedural actions which are performed with a person under special procedural protection.

(4) With the consent of the Prosecutor General, criminal proceedings against an accused for whom special procedural protection has been determined may be isolated in separate records.

(5) The address of a special protection institution shall be indicated instead of the address of a person under special procedural protection in the list of persons to be summoned to a court session. Only the pseudonym of a person whose personal identity data have been substituted with a pseudonym, and

the address of a special protection institution, shall be entered.

**Criminal Procedure Law Section 309. Special Features of a Trial:**

(1) A criminal case wherein a person has been recognised as requiring special procedural protection shall be examined in a closed court session.

(2) If necessary, a protected person may participate in a court session by using technical means, complying with the procedures specified in Section 140 of this Law, if the person him or herself is located outside of the court room.

(3) A person whose personal identity data have been substituted with a pseudonym in criminal proceedings has the right to not testify in court, if there are grounds for believing that the safety of such person is threatened. Such person shall not be held criminally liable regarding the refusal to testify in court. In such case, the testimony provided in pre-trial proceedings by the person whose personal identity data has been substituted with a pseudonym shall not be read in a court session, and such testimony may not be used as evidence in the case.

(4) If a person whose personal identity data has been substituted with a pseudonym in criminal proceedings provides testimony in court using technical means in order not to allow for the possibility of identifying such person, visual or acoustic disturbances shall be created, ensuring the court with the possibility to see and hear such person without the referred to disturbances. Persons under protection have the right to not answer questions, if the answers may provide the opportunity to determine the identity thereof.

(5) If necessary, a person whose identity is being hidden may be interrogated by court in a separate room, ensuring the ability to hear the provided testimony in the court room, as well as the possibility to ask the person questions and hear the answers.

(6) If the identity data of a person whose data is being substituted in criminal proceedings with a pseudonym has been disclosed in a court session, the Prosecutor General shall assign, with a decision thereof, a special protection institution to perform the protection measures of such person specified in a special law.

**(b) Observations on the implementation of the article**

The reviewing experts noted that sections 308 and 309 CPL deal with the evidentiary rules allowing witnesses and experts to give testimony before the court in a manner that ensures their safety.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 3**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bilateral agreements on the protection of witnesses and victims have been concluded with Estonia and Lithuania, whereas draft agreements were being reviewed – at the time of the country visit – with Austria, Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 4**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

In the Latvian domestic legal system, the provisions of paragraph 4 do apply to victims insofar as they are witnesses.

#### **Law on Special Protection of Persons Section 4. Rights to Special Protection:**

(1) The following persons testifying in criminal proceedings (hereinafter - person testifying in criminal proceedings) have the right to special protection:

- 1) a victim, witness or another person who is testifying or has testified regarding a serious or especially serious crime;
- 2) a minor who is testifying regarding the crimes provided for in Sections 161, 162 and 174 of the Criminal Law; and
- 3) a person the danger to whom may influence the person testifying in criminal proceedings.

(2) A person who is not testifying in criminal proceedings, but participates in the uncovering, investigation or adjudication of a serious or especially serious crime, as well as a person who is in danger due to the activities of the referred to persons (hereinafter - another person to be protected), has the right to special protection.

#### **(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 5**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision described above.

#### **Criminal Procedure Law Section 309. Special Features of a Trial:**

(1) A criminal case wherein a person has been recognised as requiring special procedural protection shall be examined in a closed court session.

(2) If necessary, a protected person may participate in a court session by using technical means, complying with the procedures specified in Section 140 of this Law, if the person him or herself is located outside of the court room.

(3) A person whose personal identity data have been substituted with a pseudonym in criminal proceedings has the right to not testify in court, if there are grounds for believing that the

safety of such person is threatened. Such person shall not be held criminally liable regarding the refusal to testify in court. In such case, the testimony provided in pre-trial proceedings by the person whose personal identity data has been substituted with a pseudonym shall not be read in a court session, and such testimony may not be used as evidence in the case.

(4) If a person whose personal identity data has been substituted with a pseudonym in criminal proceedings provides testimony in court using technical means in order not to allow for the possibility of identifying such person, visual or acoustic disturbances shall be created, ensuring the court with the possibility to see and hear such person without the referred to disturbances. Persons under protection have the right to not answer questions, if the answers may provide the opportunity to determine the identity thereof.

(5) If necessary, a person whose identity is being hidden may be interrogated by court in a separate room, ensuring the ability to hear the provided testimony in the court room, as well as the possibility to ask the person questions and hear the answers.

(6) If the identity data of a person whose data is being substituted in criminal proceedings with a pseudonym has been disclosed in a court session, the Prosecutor General shall assign, with a decision thereof, a special protection institution to perform the protection measures of such person specified in a special law.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 33 Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

**Labour Law Section 9. Prohibition to Cause Adverse Consequences:**

(1) It is prohibited to apply sanctions to an employee or to otherwise directly or indirectly cause adverse consequences for him or her because the employee, within the scope of employment legal relationships, exercises his or her rights in a permissible manner, as well as when if he or she informs competent institutions or officials regarding suspicions with respect to the committing of criminal offences or administrative violations in the workplace.

(2) If in the case of a dispute, an employee indicates conditions, which could be a basis for the adverse consequences caused by the employer, the employer has a duty to prove that the employee has not been punished or adverse consequences have been directly or indirectly caused for him or her because the employee, within the scope of employment legal relationships, exercises his or her rights in a permissible manner.

For violation of these provisions administrative liability shall be enacted.

**(b) Observations on the implementation of the article**

The reviewing experts noted that, despite the existence of provisions of labour law on the protection of employees who report suspicions with regard to the commission of criminal offences, there is still no ad hoc legislation in Latvia ensuring their protection, as set forth in article 33 of UNCAC. Taking into

account the non-binding nature of this provision of the Convention, the reviewers encouraged the Latvian authorities to explore the possibility of putting in place a comprehensive and focused legal framework on the protection of reporting persons.

## **Article 34 Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described in the article at issue.

The Procurement Monitoring Bureau has rights to suspend further implementation of a contract if violations of procurement procedure have been detected. Decisions of the Procurement Monitoring Bureau can be challenged at the court. The Procurement Monitoring Bureau is an institution under the supervision of the Ministry of Finance, which has powers to suspend entering into agreement in case of detecting a violation of a procurement procedure.

#### **Criminal Procedure Law Section 22 Rights to Compensation for Inflicted Harm**

A person upon whom harm has been inflicted by a criminal offence shall, taking into account the moral injury, physical suffering, and financial loss thereof, be guaranteed procedural opportunities for the requesting and receipt of moral and financial compensation.

### **(b) Observations on the implementation of the article**

The reviewing experts noted that, with regard to consequences of acts of corruption, the national authorities made reference to the Procurement Monitoring Bureau (an institution under the supervision of the Ministry of Finance), which has the right to suspend entering into agreement or contract if violations of procurement procedure have been detected.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 35 Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

In 2005, the Parliament of Latvia adopted the Law On Compensation of Damages caused by Institutions of Public Administration. The purpose of this Law is to ensure rights stipulated by the Constitution and Administrative Procedure Law to receive relevant compensation for damage or

personal damage and moral injury caused by the public administration in the form of decisions of actual conduct.

**Criminal Procedure Law Section 22. Rights to Compensation for Inflicted Harm**

A person upon whom harm has been inflicted by a criminal offence shall, taking into account the moral injury, physical suffering, and financial loss thereof, be guaranteed procedural opportunities for the requesting and receipt of moral and financial compensation.

**Criminal Procedure Law Section 350. Compensation for Harm Caused to a Victim**

(1) Compensation is payment specified in monetary terms that a person who has caused harm with a criminal offence pays to a victim as atonement for moral injury, physical suffering, or financial loss.

(2) Compensation is an element of the regulation of criminal-legal relations that an accused pays voluntarily or on the basis of a court adjudication.

(3) If a victim believes that the entire harm caused to him or her has not been compensated with a compensation, he or she has the right to request the compensation thereof in accordance with the procedures specified in the Civil Procedure Law. In determining the amount of consideration, the compensation received in criminal proceedings shall be taken into account.

(4) In requesting consideration in accordance with civil legal procedures, a victim shall be discharged from the State fee.

(5) An adjudication in criminal proceedings regarding the guilt of a person shall be binding in the adjudication of a civil case.

**(b) Observations on the implementation of the article**

The reviewing experts noted that, in relation to the implementation of article 35 of UNCAC, Latvia reported on section 22 CPC, which guarantees the rights of a victim to compensation for the damage and financial loss derived from a criminal offence. In addition, section 350 CPC provides for the procedure that should be in place to materialize this right. Moreover, the Law on Compensation of Damages caused by the institutions of public administration was adopted in 2005.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 36 Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described by article 36.

The Corruption Prevention and Combating Bureau (KNAB) is an independent public administration institution under the supervision of the Cabinet of Ministers. This supervision is carried out by the Prime Minister who has rights of higher institutions or officials to examine the lawfulness of decisions taken by lower institutions or officials and to revoke unlawful decisions, as well as to issue an order to take a decision in case of unlawful failure to act. Its aim is to fight corruption in Latvia in a coordinated and comprehensive way through prevention, investigation and education. KNAB is also a

pre-trial investigatory body and has traditional police powers.

The Bureau is not part of any law enforcement institution and its work is not really supervised by any institution, supervision by PM is formalistic and it is not related to the core functions of the Bureau (investigations, administrative examinations). If we take into account independence of the Bureau as a law enforcement institution then it is the only institution on such level. There are several institutions which are independent according to our Constitution (State Audit Office, Financial Capital Market Commission are two of these institutions) but there is a different system for appointment of officials at these institutions and their functions and structure are also different.

The Bureau has rights to draft and propose amendments to the existing legislation as well as to make draft laws. Corruption offences and organized crime are separated both under the Criminal Law and on the institutional level.

Under the law on the implementation of the UNCAC, the Economic Police Bureau does not retain any direct function relevant to UNCAC the way as, for example, the Ministry of Justice is - under the same Law - the central authority for mutual assistance requests (normally it is a function of the Prosecutor's General office), but in the daily work this police unit investigates crimes and criminal offences provided in the Criminal Procedure Law and some of these are also provided in UNCAC (for example, private sector corruption, money laundering and other).

The budget of the Bureau is adopted in the package of all independent institutions.

The Director of the Bureau is appointed by the Parliament for a term of five years. The Director is selected through an open competition procedure by the commission consisting of non-political appointees: Prosecutor General, Director of the State Chancellery, Supreme Court Chairman, Director of the Constitution Protection Bureau, Director of the Security Police or authorised persons.

The staff is selected in accordance with internal procedure. Training is organized in cooperation with other institutions.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Corruption Prevention and Combating Bureau (KNAB) was established in October 2002 and has been fully operational since February 2003. The Bureau, the only law enforcement body of an independent status, mandates in the area of prevention of corruption and further carries out anti-corruption-investigations and operative work within its authority. It also monitors the observance of regulations on the financing of political parties and their associations and has rights to draft and propose amendments to the existing legislation, as well as to make draft laws. The Director of the Bureau is appointed by the Parliament for a term of five years.

The reviewing experts concluded that the provision has been adequately implemented.

#### **(c) Successes and good practices**

The review team welcomed the existence and work of this specialized body and considered its function as a good practice in the anti-corruption field.

### **Article 37 Cooperation with law enforcement authorities**

#### **Paragraph 1**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented into the domestic legal system the measures described above.

**Criminal Law Section 58. Release from Criminal Liability:**

(1) A person who has committed a criminal offence in regards to which the elements set out in this Law are present, but which has not caused such harm as requires that a criminal punishment be adjudged, may be released from criminal liability.

(2) A person who has committed a criminal violation or a less serious crime may be released from criminal liability if there is a settlement effected with the victim or with his or her representative.

(3) A person who has given substantial assistance in the uncovering of a serious or especially serious crime, which is more serious or dangerous than the crime committed by the person himself or herself, may be released from criminal liability. This provision shall not apply to person who are held criminally liable for especially serious crimes provided for in Sections 116, 117, 118, 125, 159, 160, 176, 190.<sup>1</sup>, 251, 252 and 253.<sup>1</sup> of this Law or to a person who has established or managed himself or herself an organised group or a gang.

(4) A person may also be released from criminal liability in particular cases provided for in the Special Part of this Law.

(5) A person may also be released from criminal liability if it is established that his or her rights to the termination of criminal proceedings in reasonable term have not been observed.

**Criminal Law Section 58.<sup>1</sup> Conditional Release from Criminal Liability:**

(1) A person who has committed a criminal violation or a less serious crime, may be conditionally released from criminal liability by a public prosecutor if, taking into account the nature of the offence and the harm caused, information characterising the accused and other circumstances of the matter, there is acquired a conviction that the accused will not commit further criminal offences.

(1<sup>1</sup>) A person who is accused for committing of a serious crime and who has given substantial assistance in the uncovering of a serious or especially serious crime, which is more serious or dangerous than the crime committed by the person himself or herself, may be also conditionally released from criminal liability by a prosecutor in accordance with the procedures specified by the Law. This provision shall not apply to persons who are held criminally liable for serious crimes provided for in Sections 125, 159, 160, 176, 190.<sup>1</sup>, 251, 252 and 253.<sup>1</sup> of this Law or to a person who has been an organiser of a crime.

(2) In conditionally releasing from criminal liability, the public prosecutor shall decide not to continue the criminal prosecution of the person for the offence if in the probationary period, the person does not commit a new criminal offence and fulfils the duties imposed.

(3) In conditionally releasing from criminal liability, the public prosecutor shall determine for the person a probationary period of not less than three and not exceeding eighteen months. The probationary period shall commence on the day of the coming into effect of the public prosecutor's decision.

(4) In conditionally releasing from criminal liability, the public prosecutor, with the consent of the person, may impose as a duty:

- 1) to apologise to the victim;
- 2) to rectify the harm caused within a specific time period;
- 2<sup>1</sup>) not to change his or her place of residence without the consent of the State Probation Service;
- 3) to register periodically at the State Probation Service and to participate in probation

programmes in accordance with the instructions of the State Probation Service;  
3<sup>1</sup>) to notify regarding change of the place of residence;  
4) to refrain from specific types of actions or activities; and  
5) to receive medical treatment for alcoholism, narcotic, psychotropic, toxic substance addiction or other addictions.

(5) If a person who has been conditionally released from criminal liability, during the period of probation commits a new intentional criminal offence or does not perform the imposed duties, his or her criminal prosecution shall be continued.

**Criminal Law Section 60. Reduction of Punishment in Exceptional Cases:**

If a convicted person has helped uncover a crime, committed by other persons, which is more serious or more dangerous than the criminal offence committed by the person, the court, by whose judgment such person has been convicted, may reduce the punishment specified in the judgment, but where life imprisonment has been adjudged, a term of deprivation of liberty for twenty years shall be substituted therefore.

In 2011, offenders provided information to competent authorities that contributed to disclosure of offences provided in the Criminal Law (section 320 on “Acceptance of Bribes”). The punishment of two convicted persons was decreased.

**(b) Observations on the implementation of the article**

As already noted, the CPL provides the prosecutors with discretionary powers by enabling them to enter into agreements (form of plea-bargaining agreements), on the basis of own initiative or on the initiative of an accused or his/her defence counsel, regarding the admission of guilt and punishment (chapter 38, sections 433-438 CPL).

In this context, the CL enables the (conditional) release from criminal liability of a person who has committed a criminal violation or less serious crime, or is accused of having committed a serious crime, if this person has given substantial assistance in the uncovering of a serious or especially serious crime, which is more serious or dangerous than the crime committed by the person himself or herself. Exceptions to this treatment are provided for persons who have been the organizers of the crime or have established or managed an organized group or gang (sections 58 and 58.1 CL). Moreover, according to section 199.1 CL, as amended, a person accused of active bribery in the private sector may be released from criminal liability if s/he, after the commission of the criminal offence, voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence. The court may reduce the punishment specified in the judgment for a convicted person who has helped uncover a crime, (section 60 CL).

The reviewing experts concluded that the provision has been adequately implemented.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 2**

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented into the domestic legal system the measures described above.

**Criminal Law Section 58. Release from Criminal Liability:**

(1) A person who has committed a criminal offence in regards to which the elements set out in this Law are present, but which has not caused such harm as requires that a criminal punishment be adjudged, may be released from criminal liability.

(2) A person who has committed a criminal violation or a less serious crime may be released from criminal liability if there is a settlement effected with the victim or with his or her representative.

(3) A person who has given substantial assistance in the uncovering of a serious or especially serious crime, which is more serious or dangerous than the crime committed by the person himself or herself, may be released from criminal liability. This provision shall not apply to person who are held criminally liable for especially serious crimes provided for in Sections 116, 117, 118, 125, 159, 160, 176, 190.<sup>1</sup>, 251, 252 and 253.<sup>1</sup> of this Law or to a person who has established or managed himself or herself an organised group or a gang.

(4) A person may also be released from criminal liability in particular cases provided for in the Special Part of this Law.

(5) A person may also be released from criminal liability if it is established that his or her rights to the termination of criminal proceedings in reasonable term have not been observed.

**Criminal Law Section 58.<sup>1</sup> Conditional Release from Criminal Liability:**

(1) A person who has committed a criminal violation or a less serious crime, may be conditionally released from criminal liability by a public prosecutor if, taking into account the nature of the offence and the harm caused, information characterising the accused and other circumstances of the matter, there is acquired a conviction that the accused will not commit further criminal offences.

(1<sup>1</sup>) A person who is accused for committing of a serious crime and who has given substantial assistance in the uncovering of a serious or especially serious crime, which is more serious or dangerous than the crime committed by the person himself or herself, may be also conditionally released from criminal liability by a prosecutor in accordance with the procedures specified by the Law. This provision shall not apply to persons who are held criminally liable for serious crimes provided for in Sections 125, 159, 160, 176, 190.<sup>1</sup>, 251, 252 and 253.<sup>1</sup> of this Law or to a person who has been an organiser of a crime.

(2) In conditionally releasing from criminal liability, the public prosecutor shall decide not to continue the criminal prosecution of the person for the offence if in the probationary period, the person does not commit a new criminal offence and fulfils the duties imposed.

(3) In conditionally releasing from criminal liability, the public prosecutor shall determine for the person a probationary period of not less than three and not exceeding eighteen months. The probationary period shall commence on the day of the coming into effect of the public prosecutor's decision.

(4) In conditionally releasing from criminal liability, the public prosecutor, with the consent of the person, may impose as a duty:

- 1) to apologise to the victim;
- 2) to rectify the harm caused within a specific time period;
- 2<sup>1</sup>) not to change his or her place of residence without the consent of the State Probation Service;
- 3) to register periodically at the State Probation Service and to participate in probation programmes in accordance with the instructions of the State Probation Service;
- 3<sup>1</sup>) to notify regarding change of the place of residence;
- 4) to refrain from specific types of actions or activities; and
- 5) to receive medical treatment for alcoholism, narcotic, psychotropic, toxic substance addiction or other addictions.

(5) If a person who has been conditionally released from criminal liability, during the period of probation commits a new intentional criminal offence or does not perform the imposed duties, his or her criminal prosecution shall be continued.

**Criminal Law Section 60. Reduction of Punishment in Exceptional Cases:**

If a convicted person has helped uncover a crime, committed by other persons, which is more serious or more dangerous than the criminal offence committed by the person, the court, by whose judgment such person has been convicted, may reduce the punishment specified in the judgment, but where life imprisonment has been adjudged, a term of deprivation of liberty for twenty years shall be substituted therefore.

**Criminal Law Section 324. Release of a Giver of a Bribe and Intermediary from Criminal Liability**

(1) A person who has given a bribe shall be released from criminal liability if this bribe is extorted from this person or if, after the bribe has been given, he or she voluntarily informs of the occurrence. A person who has given a bribe shall be released from criminal liability if he or she voluntarily informs of the occurrence.

(2) Extortion of a bribe shall be understood to be the demanding of a bribe in order that legal acts be performed, as well as the demanding of a bribe associated with threats to harm lawful interests of a person.

(3) An intermediary or abettor respecting a bribe shall be released from criminal liability if, after commission of the criminal act, he or she voluntarily informs of the occurrence.

Amendments to section 324 have been elaborated abolishing the mandatory nature of release from criminal liability and introducing additional condition for release from criminal liability.

**Section 324 of the Criminal Law Release of a Giver of a Bribe and Intermediary from Criminal Liability after adopted amendments**

(1) A person who has given a bribe may be released from criminal liability if this bribe is extorted from this person or if, after the bribe has been given, he or she voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence. A person who has given a bribe may be released from criminal liability if he or she voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence.

(2) Extortion of a bribe shall be understood to be the demanding of a bribe in order that legal acts be performed, as well as the demanding of a bribe associated with threats to harm lawful interests of a person.

(3) An intermediary or abettor of a bribe shall be released from criminal liability if, after commission of the criminal acts, he or she voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence.

**Criminal Law Section 199.<sup>1</sup> Release of the Giver of Benefits from Criminal Liability:**

A person who has unlawfully offered or given material values, property or benefits of other nature shall be released from criminal liability if he or she, after committing of the criminal offence, voluntarily informs of the occurrence.

Amendments to section 199.<sup>1</sup> have been elaborated abolishing the mandatory nature of release from criminal liability and introducing additional condition for release from criminal liability for giving bribes in private sector.

**Criminal Law Section 199.<sup>1</sup> Release of the Giver of Benefits from Criminal Liability after adopted amendments**

A person who has unlawfully offered or given material values, property or benefits of other nature may be released from criminal liability if he or she, after committing of the criminal offence, voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 3**

*3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

**Criminal Law Section 58. Release from Criminal Liability:**

(1) A person who has committed a criminal offence in regards to which the elements set out in this Law are present, but which has not caused such harm as requires that a criminal punishment be adjudged, may be released from criminal liability.

(2) A person who has committed a criminal violation or a less serious crime may be released from criminal liability if there is a settlement effected with the victim or with his or her representative.

(3) A person who has given substantial assistance in the uncovering of a serious or especially serious crime, which is more serious or dangerous than the crime committed by the person himself or herself, may be released from criminal liability. This provision shall not apply to person who are held criminally liable for especially serious crimes provided for in Sections 116, 117, 118, 125, 159, 160, 176, 190.<sup>1</sup>, 251, 252 and 253.<sup>1</sup> of this Law or to a person who has established or managed himself or herself an organised group or a gang.

(4) A person may also be released from criminal liability in particular cases provided for in the Special Part of this Law.

(5) A person may also be released from criminal liability if it is established that his or her rights to the termination of criminal proceedings in reasonable term have not been observed.

**Criminal Law Section 324. Release of a Giver of a Bribe and Intermediary from Criminal Liability**

(1) A person who has given a bribe shall be released from criminal liability if this bribe is extorted from this person or if, after the bribe has been given, he or she voluntarily informs of the occurrence. A person who has given a bribe shall be released from criminal liability if he or she voluntarily informs of the occurrence.

(2) Extortion of a bribe shall be understood to be the demanding of a bribe in order that legal acts be performed, as well as the demanding of a bribe associated with threats to harm lawful interests of a person.

(3) An intermediary or abettor respecting a bribe shall be released from criminal liability if, after commission of the criminal act, he or she voluntarily informs of the occurrence.

Amendments to section 324 have been elaborated abolishing the mandatory nature of release from criminal liability and introducing additional condition for release from criminal liability.

**Section 324 of the Criminal Law Release of a Giver of a Bribe and Intermediary from Criminal Liability after adopted amendments**

(1) A person who has given a bribe may be released from criminal liability if this bribe is extorted from this person or if, after the bribe has been given, he or she voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence. A person who has given a bribe may be released from criminal liability if he or she voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence.

(2) Extortion of a bribe shall be understood to be the demanding of a bribe in order that legal acts be performed, as well as the demanding of a bribe associated with threats to harm lawful interests of a person.

(3) An intermediary or abettor of a bribe shall be released from criminal liability if, after commission of the criminal acts, he or she voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence.

**Criminal Law Section 199.<sup>1</sup> Release of the Giver of Benefits from Criminal Liability:**

A person who has unlawfully offered or given material values, property or benefits of other nature shall be released from criminal liability if he or she, after committing of the criminal offence, voluntarily informs of the occurrence.

Amendments to section 199.<sup>1</sup> have been elaborated abolishing the mandatory nature of release from criminal liability and introducing additional condition for release from criminal liability for giving bribes in private sector.

**Criminal Law Section 199.<sup>1</sup> Release of the Giver of Benefits from Criminal Liability after adopted amendments**

A person who has unlawfully offered or given material values, property or benefits of other nature may be released from criminal liability if he or she, after committing of the criminal offence, voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 4**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision delineate above.

**Criminal Procedure Law Section 299. Content of Special Procedural Protection:**

Special procedural action is the protection of the life, health, and other lawful interests of a victim, witness, and other persons who testify or have testified in criminal proceedings regarding serious or especially serious crimes, as well as of a minor who testifies regarding the crimes provided for in Sections 161, 162, and 174 of the Criminal Law, and of a person the threat to whom may influence the referred to persons (hereinafter in this Chapter - threatened

person).

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 5**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bilateral agreements on the protection of witnesses and victims have been concluded with Estonia and Lithuania, whereas draft agreements were being reviewed – at the time of the country visit – with Austria, Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 38 Cooperation between national authorities**

**Subparagraph (a)**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision at issue.

**Criminal Procedure Law Section 387. Institutional Jurisdiction:**

(1) Officials authorised by the State Police shall investigate any criminal offence, with the exception of the cases specified in Paragraphs two to ten of this Section, except if the Prosecutor General has assigned the performance thereof.

(2) Officials authorised by the Security Police shall investigate criminal offences that have been performed in the field of State security or in State security institutions, or other criminal offences within the framework of the competence thereof and in cases where the Prosecutor General has assigned the performance thereof.

- (3) Officials authorised by the Financial Police shall investigate criminal offences in the field of State revenue and in the actions of officials and employees of the State Revenue Service.
- (4) Officials authorised by the Military Police shall investigate criminal offences committed in the military service and in military units, or in the places of deployment thereof, as well as criminal offences committed in connection with the execution of official duties by soldiers, national guardsmen, or civilians working in military units.
- (5) Officials authorised by the Latvian Prison Administration shall investigate criminal offences committed by detained or convicted persons, or by employees of the Latvian Prison Administration in places of imprisonment.
- (6) Officials authorised by the Corruption Prevention and Combating Bureau shall investigate criminal offences that are related to violations of the provisions of the financing of political organisations (parties) and the associations thereof, and criminal offences in the State Authority Service, if such offences are related to corruption.
- (7) Officials authorised by customs authorities shall investigate criminal offences in the field of customs matters.
- (8) Officials authorised by the State Border Guard shall investigate criminal offences that are related to the illegal crossing of the State border, the illegal transportation of a person across the State border, or illegal residence in the State, as well as criminal offences committed by a border guard as a State official.
- (9) Captains of seagoing vessels at sea shall investigate criminal offences committed on vessels of the Republic of Latvia.
- (10) The commander of a unit of the Latvian National Armed Forces shall investigate criminal offences committed by the soldiers of such unit, or that have been committed at the location of the deployment of such unit (in the closed territory of the place of residence), if the relevant investigating institutions of the foreign state are not investigating such offences.
- (11) The Prosecutor General shall determine the institutional jurisdiction of concrete criminal offences.
- (12) If the investigation of a concrete criminal offence is under the jurisdiction of more than one investigating institutions, the institution that initiated criminal proceedings first shall investigate such criminal offence.
- (13) If an investigating institution receives information regarding a serious or particularly serious crime that is taking place or has taken place, and the investigation of such offence is not included in the competence thereof, and the performance of emergency investigative actions are necessary for the detention of the perpetrator of the offence or for the recording of evidence, such institution shall initiate criminal proceedings, inform the relevant competent investigating institutions regarding such initiation of proceedings, perform the emergency investigative actions, and transfer the materials of the initiated criminal proceedings on the basis of jurisdiction.
- (14) The Prosecutor General shall resolve the disputes of investigating institutions regarding the jurisdiction of criminal offences.

In accordance with section 395 CPL, groups shall be created comprising representatives from various institutions for the purpose of conducting investigation of large and complex cases.

### **Section 395 of the Criminal Procedure Law “Investigation in a Group”**

- (1) If a large volume of work must be performed in criminal proceedings, or criminal proceedings are particularly complex, the higher-level prosecutor, the head of the investigating institution or a competent official of the investigating institution shall take a decision on investigation of a criminal offence in a group, indicating the concrete persons who will participate in the investigation and criminal prosecution and appointing the person directing the criminal proceedings as the head of the investigative group. Such decision shall not be subject to appeal.
- (2) An entry regarding a taken decision shall be made in the Criminal Proceedings Register.
- (3) The head of an investigative group shall organise the work of the group and take all

decisions on direction of the criminal proceedings the application of security measures, and the extension of the application term.

There are no records of sharing information with other institutions but that takes place on regular basis both on formal and informal level. Information about on-going investigations in other institutions can be received from special information system containing information regarding initiated criminal proceedings, determined criminal offences, persons directing the proceedings, persons who have the right to defence and victims.

In practice, the Bureau and Organised Crime Enforcement Department of the State Police jointly investigated corruption offences on the eastern border of Latvia. Further, exchange of information takes place on regular basis among all the law enforcement institutions in Latvia both on formal and informal level.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that, although there are no relevant records, the sharing of information was reported to take place on a regular basis at both the informal and formal levels. Information on ongoing investigations and criminal proceedings is compiled and can be made available through a special information system. Section 395 CPC enables the conduct of “investigation in a group”. In practice, the KNAB and the Organized Crime Enforcement Department of the State police have investigated jointly corruption cases.

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 38 Cooperation between national authorities**

#### **Subparagraph (b)**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(b) Providing, upon request, to the latter authorities all necessary information.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision at issue.

##### **Criminal Procedure Law Section 387. Institutional Jurisdiction:**

(1) Officials authorised by the State Police shall investigate any criminal offence, with the exception of the cases specified in Paragraphs two to ten of this Section, except if the Prosecutor General has assigned the performance thereof.

(2) Officials authorised by the Security Police shall investigate criminal offences that have been performed in the field of State security or in State security institutions, or other criminal offences within the framework of the competence thereof and in cases where the Prosecutor General has assigned the performance thereof.

(3) Officials authorised by the Financial Police shall investigate criminal offences in the field of State revenue and in the actions of officials and employees of the State Revenue Service.

(4) Officials authorised by the Military Police shall investigate criminal offences committed in the military service and in military units, or in the places of deployment thereof, as well as criminal offences committed in connection with the execution of official duties by soldiers,

national guardsmen, or civilians working in military units.

(5) Officials authorised by the Latvian Prison Administration shall investigate criminal offences committed by detained or convicted persons, or by employees of the Latvian Prison Administration in places of imprisonment.

(6) Officials authorised by the Corruption Prevention and Combating Bureau shall investigate criminal offences that are related to violations of the provisions of the financing of political organisations (parties) and the associations thereof, and criminal offences in the State Authority Service, if such offences are related to corruption.

(7) Officials authorised by customs authorities shall investigate criminal offences in the field of customs matters.

(8) Officials authorised by the State Border Guard shall investigate criminal offences that are related to the illegal crossing of the State border, the illegal transportation of a person across the State border, or illegal residence in the State, as well as criminal offences committed by a border guard as a State official.

(9) Captains of seagoing vessels at sea shall investigate criminal offences committed on vessels of the Republic of Latvia.

(10) The commander of a unit of the Latvian National Armed Forces shall investigate criminal offences committed by the soldiers of such unit, or that have been committed at the location of the deployment of such unit (in the closed territory of the place of residence), if the relevant investigating institutions of the foreign state are not investigating such offences.

(11) The Prosecutor General shall determine the institutional jurisdiction of concrete criminal offences.

(12) If the investigation of a concrete criminal offence is under the jurisdiction of more than one investigating institutions, the institution that initiated criminal proceedings first shall investigate such criminal offence.

(13) If an investigating institution receives information regarding a serious or particularly serious crime that is taking place or has taken place, and the investigation of such offence is not included in the competence thereof, and the performance of emergency investigative actions are necessary for the detention of the perpetrator of the offence or for the recording of evidence, such institution shall initiate criminal proceedings, inform the relevant competent investigating institutions regarding such initiation of proceedings, perform the emergency investigative actions, and transfer the materials of the initiated criminal proceedings on the basis of jurisdiction.

(14) The Prosecutor General shall resolve the disputes of investigating institutions regarding the jurisdiction of criminal offences.

**(b) Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

**Article 39 Cooperation between national authorities and the private sector**

**Paragraph 1**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

Disclosure obligation is provided in the **Law on Credit Institutions Section 63**:

(1) Non-disclosable information at the disposal of credit institutions shall be provided to State institutions, State officials or other institutions and officials according to the procedures specified in this Law in the following cases:

- 1) the Financial and Capital Market Commission - implementation of the supervision functions specified by law;
- 2) the Office for the Prevention of the Laundering of the Proceeds Derived from Crime - according to the procedures and in the amount specified in the Law On the Prevention of the Laundering of the Proceeds Derived from Crime;
- 3) courts - within the scope of the matters in the record-keeping thereof on the basis of a court (judge) decision;
- 4) investigative institutions - in the pre-trial criminal procedure on the basis of request from the person directing the proceedings, which has been approved by investigation judge;
- 5) the Office of the Prosecutor - in the pre-trial criminal procedure on the basis of request from the Office of the Prosecutor, which has been approved by the investigation judge;
- 6) persons performing investigative field work - in investigative field-work records matters on the basis of a request from persons performing investigative field work, which has been accepted by the Chief Justice of the Supreme Court or a specially authorised Justice of the Supreme Court authorised by him or her;
- 7) the Corruption Prevention and Combating Bureau - in the cases referred to in Paragraph one, Clauses 4 and 6 of this Section, as well as on the basis of a request from the director or a person specially authorised by him or her, which has been accepted by the Chief Justice of the Supreme Court or his or her authorised Justice of the Supreme Court if the information is necessary in order to ensure the control of the restrictions specified for State officials in the Law On Prevention of Conflict of Interest in Activities of Public Officials and to ascertain the cash savings of State officials, income received, transactions performed or debt obligations, or if the information is necessary, in order to ensure the control of the norms specified in the Political Organisation (Parties) Financing Law, ascertain the annual financial operations of political organisation (parties) and the associations thereof, expenditures in the pre-election period and the veracity and lawfulness of the financial resources and donations (gifts) received indicated in the election income and expenditure declaration;
- 8) bailiffs - on the basis of request to which is appended a copy of the adjudication of such court or other institution or official, in the implementation of which are performed official activities, or only on the basis of a request - in cases when information is necessary for the compilation of an inventory list, as well as in the performance of the inventory of property for the purpose of dividing common property or in an inheritance matter;
- 9) the State Treasury - on the basis of a request by the head or an employee authorised by him or her regarding the accounts and transactions of budget financed institutions;
- 10) the State Audit Office - on the basis of a request, which has been accepted by the Auditor General, regarding legal persons which have the capacity to act with State or local government property, or which are financed from the State or local government resources, or which implement State or local government procurement and supply;
- 11) the State Revenue Service - on the basis of a request, which has been accepted by the director-general of the State Revenue Service, the deputy thereof or territorial office director in accordance with the regulatory enactments of the Republic of Latvia and the European Union and international agreements regarding taxpayers, which have been ratified by the *Saeima* of the Republic of Latvia, if:
  - a) a taxpayer does not submit to the tax administration declarations or tax calculations provided for in the pertinent tax laws,

- b) during an audit of a taxpayer, violations in the accounting records or regulatory enactments regarding tax have been determined, or
  - c) a taxpayer does not make tax payments in compliance with the requirements of tax laws;
  - 12) the State Revenue Service if the credit institution is a savings income disburser in accordance with Section 45, Paragraph one of the Law On Taxes and Fees or it disburses or ensures the disbursement of savings income in accordance with Section 45, Paragraph three of the referred to law;
  - 13) notaries who examine an inheritance matter, information that is necessary for ascertaining the entirety of property of an estate of natural persons - estate-leavers.
- (2) Except in the cases referred to in Paragraph one, Clauses 1 and 12, the information necessary for a State institution or State official shall be requested in writing, indicating in the request the precise name and amount of information, as well as the justification for the request for information - the relative regulatory enactment, international agreement or European Union regulatory enactment; and
- 14) an Orphan's court on the basis of a request from the chairperson of the Orphan's court, regarding:
    - a) the entirety of property of an estate, transactions performed by and balance on accounts for a child or other person without the capacity to act, if the parents, guardian or trustee does not provide the Orphan's court with requested information regarding the management of the property of the child or other person without the capacity to act or there are justified suspicions that information provided by the parents, guardian or trustee is false, and
    - b) natural persons - estate-leavers - balance on accounts for the drawing up of a property list (estate inventory list).
- (3) A credit institutions shall without delay, but not later than within a period of 14 days, provide the requested information if the procedures specified in Paragraphs one and two of this Section have complied with. In the case referred to in Paragraph one, Clause 12 of this Section, the credit institution shall provide information according to the procedures and time periods specified in the Law On Taxes and Fees.
- (4) Non-disclosable information shall be provided by credit institutions to another Member State and foreign state court and investigatory institutions according to the procedures specified in international agreements.
- (5) Other Member States and foreign laundering of the proceeds derived from crime or financing of terrorism prevention control services or credit institution operations supervision institutions shall be provided by the relevant Latvian institutions with non-disclosable information, on the basis of a mutual co-operation agreement or other agreement. The relevant Republic of Latvia institution shall acquire the non-disclosable information according to the procedures specified in Paragraphs one and two of this Section. Such institution prior to providing information to a Member State or foreign institution shall ascertain regarding protection against disclosure of the relevant information.
- (6) Existing non-disclosable information at the disposal of a credit institution shall be provided by the credit institution to another Member State or foreign registered credit institution according to the procedures specified in the Law On the Prevention of the Laundering of the Proceeds Derived from Crime.

Further, reporting obligation is also provided in the Chapter IV Reporting on Unusual and Suspicious Transactions of the Law On the Prevention of Money Laundering and Terrorism Financing.

### **Criminal Law Section 315. Failing to Inform of Crimes:**

For a person who commits failing to inform, where it is known with certainty that preparation for or commission of a serious or especially serious crime is taking place, the applicable punishment is deprivation of liberty for a term not exceeding four years, or custodial arrest, or

community service, or a fine not exceeding sixty times the minimum monthly wage.

In Latvia, there is an active cooperation of the private sector with law enforcement agencies. However, often people are afraid to give information as an intervention by the State Police may lead to audits or structural problems of a company. In Latvia, information of financial institution is protected, there is no operational access to bank information, always need to get permission from the investigating judge (section 321 (5)).

**(b) Observations on the implementation of the article**

The reviewing experts noted that, with regard to the cooperation between the investigating and prosecuting authorities and the private sector, the Law on Credit Institutions provides for the obligation of credit institutions to disclose information at their disposal to State institutions and officials. However, in practice, it was observed that there is often caution to disclose information due to the fear that an intervention of the State police may lead to audits.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 39 Cooperation between national authorities and the private sector**

**Paragraph 2**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures mentioned in the paragraph at issue.

In Latvia, there is an active dialogue with the public to encourage reporting on potential crimes. It is understood that the institution have to have the public trust to have a successful cooperation with the public.

In order to facilitate reporting for corruption crimes the Corruption Prevention and Combating Bureau established a separate unit Report Centre. A complaint can be lodged in person, in writing, by sending an e-mail, calling to free hot line. Information can be left also after office hours, anonymous information containing factual statements is also taken into consideration.

**(b) Observations on the implementation of the article**

As reported during the country visit, there is an active dialogue with the public to encourage citizens to report on potential crimes. The Latvian authorities also referred to the establishment by KNAB of a separate report centre in order to facilitate the reporting of corruption-related offences. A complaint can be lodged in person, in writing, through e-mail or by calling to a free hotline. Anonymous information containing factual statements is also taken into consideration. The Report Centre has been working over the last ten years as filtering system in order to select substantive information from applications containing data from other institutions. Increase in reporting is observed if information about opened new investigation is released by the Bureau. More information is received on the free hot-line.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 40 Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented into the domestic legal system the measures mentioned above.

#### **Law on Credit Institutions Section 63:**

(1) Non-disclosable information at the disposal of credit institutions shall be provided to State institutions, State officials or other institutions and officials according to the procedures specified in this Law in the following cases:

- 1) the Financial and Capital Market Commission - implementation of the supervision functions specified by law;
- 2) the Office for the Prevention of the Laundering of the Proceeds Derived from Crime - according to the procedures and in the amount specified in the Law On the Prevention of the Laundering of the Proceeds Derived from Crime;
- 3) courts - within the scope of the matters in the record-keeping thereof on the basis of a court (judge) decision;
- 4) investigative institutions - in the pre-trial criminal procedure on the basis of request from the person directing the proceedings, which has been approved by investigation judge;
- 5) the Office of the Prosecutor - in the pre-trial criminal procedure on the basis of request from the Office of the Prosecutor, which has been approved by the investigation judge;
- 6) persons performing investigative field work - in investigative field-work records matters on the basis of a request from persons performing investigative field work, which has been accepted by the Chief Justice of the Supreme Court or a specially authorised Justice of the Supreme Court authorised by him or her;
- 7) the Corruption Prevention and Combating Bureau - in the cases referred to in Paragraph one, Clauses 4 and 6 of this Section, as well as on the basis of a request from the director or a person specially authorised by him or her, which has been accepted by the Chief Justice of the Supreme Court or his or her authorised Justice of the Supreme Court if the information is necessary in order to ensure the control of the restrictions specified for State officials in the Law On Prevention of Conflict of Interest in Activities of Public Officials and to ascertain the cash savings of State officials, income received, transactions performed or debt obligations, or if the information is necessary, in order to ensure the control of the norms specified in the Political Organisation (Parties) Financing Law, ascertain the annual financial operations of political organisation (parties) and the associations thereof, expenditures in the pre-election period and the veracity and lawfulness of the financial resources and donations (gifts) received indicated in the election income and expenditure declaration;
- 8) bailiffs - on the basis of request to which is appended a copy of the adjudication of such court or other institution or official, in the implementation of which are performed official activities, or only on the basis of a request - in cases when information is necessary for the compilation of an inventory list, as well as in the performance of the inventory of property for the purpose of dividing common property or in an inheritance matter;
- 9) the State Treasury - on the basis of a request by the head or an employee authorised by him or her regarding the accounts and transactions of budget financed institutions;
- 10) the State Audit Office - on the basis of a request, which has been accepted by the

Auditor General, regarding legal persons which have the capacity to act with State or local government property, or which are financed from the State or local government resources, or which implement State or local government procurement and supply;

11) the State Revenue Service - on the basis of a request, which has been accepted by the director-general of the State Revenue Service, the deputy thereof or territorial office director in accordance with the regulatory enactments of the Republic of Latvia and the European Union and international agreements regarding taxpayers, which have been ratified by the *Saeima* of the Republic of Latvia, if:

a) a taxpayer does not submit to the tax administration declarations or tax calculations provided for in the pertinent tax laws,

b) during an audit of a taxpayer, violations in the accounting records or regulatory enactments regarding tax have been determined, or

c) a taxpayer does not make tax payments in compliance with the requirements of tax laws;

12) the State Revenue Service if the credit institution is a savings income disburser in accordance with Section 45, Paragraph one of the Law On Taxes and Fees or it disburses or ensures the disbursement of savings income in accordance with Section 45, Paragraph three of the referred to law;

13) notaries who examine an inheritance matter, information that is necessary for ascertaining the entirety of property of an estate of natural persons - estate-leavers.

(2) Except in the cases referred to in Paragraph one, Clauses 1 and 12, the information necessary for a State institution or State official shall be requested in writing, indicating in the request the precise name and amount of information, as well as the justification for the request for information - the relative regulatory enactment, international agreement or European Union regulatory enactment; and

14) an Orphan's court on the basis of a request from the chairperson of the Orphan's court, regarding:

a) the entirety of property of an estate, transactions performed by and balance on accounts for a child or other person without the capacity to act, if the parents, guardian or trustee does not provide the Orphan's court with requested information regarding the management of the property of the child or other person without the capacity to act or there are justified suspicions that information provided by the parents, guardian or trustee is false, and

b) natural persons - estate-leavers - balance on accounts for the drawing up of a property list (estate inventory list).

(3) A credit institutions shall without delay, but not later than within a period of 14 days, provide the requested information if the procedures specified in Paragraphs one and two of this Section have complied with. In the case referred to in Paragraph one, Clause 12 of this Section, the credit institution shall provide information according to the procedures and time periods specified in the Law On Taxes and Fees.

(4) Non-disclosable information shall be provided by credit institutions to another Member State and foreign state court and investigatory institutions according to the procedures specified in international agreements.

(5) Other Member States and foreign laundering of the proceeds derived from crime or financing of terrorism prevention control services or credit institution operations supervision institutions shall be provided by the relevant Latvian institutions with non-disclosable information, on the basis of a mutual co-operation agreement or other agreement. The relevant Republic of Latvia institution shall acquire the non-disclosable information according to the procedures specified in Paragraphs one and two of this Section. Such institution prior to providing information to a Member State or foreign institution shall ascertain regarding protection against disclosure of the relevant information.

(6) Existing non-disclosable information at the disposal of a credit institution shall be provided by the credit institution to another Member State or foreign registered credit institution according to the procedures specified in the Law On the Prevention of the

Laundering of the Proceeds Derived from Crime.

**Law on Credit Institutions Section 63.<sup>1</sup>**

(1) A credit institution in the cases provided for by law and in international agreements ratified by the Saeima does not have the right to inform a client or a third person regarding the fact that information in respect of the client's account or the transaction (transactions) therein have been provided to a court or the Office of the Prosecutor.

(2) A court, the Office of the Prosecutor, investigation institution or persons performing investigative field work in requesting information regarding the accounts and transactions performed of natural persons and legal persons, the request in addition to the information referred to in Section 63, Paragraph two of this Law shall indicate, that the credit institution does not have the right to inform the client and third persons regarding the receipt of such request, as well on the basis of which law and international agreement such a prohibition is specified.

In accordance with **paragraph 5 of section 121 of the Criminal Procedure Law (Professional Secrets Protected by Criminal):**

(5) Undisclosable information or documents, which contain such information and are at the disposal of credit institutions or financial institutions, shall be requested in pre-trial proceedings only with the decision of an investigating judge. Transactions in the accounts of clients of credit institutions or financial institutions shall be monitored in pre-trial proceedings for a certain time period only with the permission of an investigating judge. Transaction in the account of a client of a credit institution or financial institution may be monitored for a period of time up to three months, but, if necessary, the investigating judge may extend the time period for a period of time up to three months.

**(b) Observations on the implementation of the article**

The reviewing experts noted that, in accordance with section 121, paragraph 5 CPL, bank accounts can be monitored, and information contained therein can be disclosed only with the decision of an investigating judge. Bank documents are subject to disclosure to a number of different state agencies, including the Prosecutor, if approved by the investigating judge under Section 63 of the Law on Credit Institutions.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures mentioned above.

The computerised system ECRIS was established in April 2012 to achieve an efficient exchange of information on criminal convictions between EU countries.

Examples such as the Fourniret case of 2004 and numerous subsequent studies have demonstrated that national courts frequently pass sentences on the sole basis of past convictions featuring in their national register, without any knowledge of convictions in other countries. Consequently, criminals

were often able to escape their past simply by moving between EU countries.

In response to this obvious need, ECRIS was created to improve the exchange of information on criminal records throughout the EU. It establishes an electronic interconnection of criminal records databases to ensure that information on convictions is exchanged between EU countries in a uniform, speedy and easily computer-transferable way. The system gives judges and prosecutors easy access to comprehensive information on the offending history of any EU citizen, no matter in which EU countries that person has been convicted in the past. Through removing the possibility for offenders to escape their criminal past simply by moving from one EU country to another, the system could also serve to prevent crime. Since ECRIS concerns only EU nationals, it is currently not possible to determine whether third country nationals were previously convicted in other EU countries without consulting all of them. This is why the creation of a European index of **convicted third-country nationals** to supplement ECRIS is under consideration. This would allow for the detection of convicted third-country nationals in all EU countries.

From 2005 in Latvia Law on Punishment Records is in force governing that information about criminal offences and administrative violations is stored at the Information Centre of the Ministry of Interior of Latvia. That allows institutions in Latvia and EU institutions in accordance with the established procedure to obtain information from the Information Centre of the Ministry of Interior.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted Latvia's compliance with article 41 of UNCAC and specifically the establishment in April 2012 of the computerized system ECRIS to achieve efficient exchange of information on criminal convictions among the Member States of the European Union. Since 2005, the Law on Punishment Records is in force and regulates that information about criminal offences and administrative violations is stored at the Information Centre of the Ministry of Interior. The reviewing experts concluded that the provision has been adequately implemented.

### **Article 42 Jurisdiction**

#### **Subparagraph 1 (a)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision at issue.

#### **The Criminal Law Section 2. Application of The Criminal Law in the Territory of Latvia:**

(1) The liability of a person who has committed a criminal offence in the territory of Latvia shall be determined in accordance with this Law.

(2) If a foreign diplomatic representative, or other person, who, in accordance with the laws in force or international agreements binding upon the Republic of Latvia, is not subject to the jurisdiction of the Republic of Latvia, has committed a criminal offence in the territory of Latvia, the issue of this person being held criminally liable shall be decided by diplomatic procedures or in accordance with bilateral agreements of the states.

#### **The Criminal Law Section 3. Applicability of The Criminal Law to Aircraft, and Sea and River Vessels Outside the Territory of Latvia:**

A person who has committed a criminal offence outside the territory of Latvia, on an aircraft, or a sea or river vessel or other floating means of conveyance, if this means of conveyance is registered in the Republic of Latvia and if it is not provided otherwise in international agreements binding upon the Republic of Latvia, shall be held liable in accordance with this Law.

**The Criminal Law Section 4. Applicability of The Criminal Law Outside the Territory of Latvia:**

(1) Latvian citizens, non-citizens and foreigners who have a permanent residence permit for the Republic of Latvia, shall be held liable, in accordance with this Law, in the territory of Latvia for an offence committed in the territory of another state or outside the territory of any state regardless of whether it has been recognised as criminal and punishable in the territory of commitment.

(2) Soldiers of the Republic of Latvia who are located outside the territory of Latvia shall be held liable for criminal offences in accordance with this Law, unless it is provided otherwise in international agreements binding upon the Republic of Latvia.

(3) Foreigners who do not have permanent residence permits for the Republic of Latvia and who have committed serious or especially serious crimes in the territory of another state which have been directed against the Republic of Latvia or against the interests of its inhabitants, shall be held criminally liable in accordance with this Law irrespective of the laws of the state in which the crime has been committed, if they have not been held criminally liable or committed to stand trial in accordance with the laws of the state where the crime was committed.

(4) Foreigners who do not have a permanent residence permit for the Republic of Latvia and who have committed a criminal offence in the territory of another state, in the cases provided for in international agreements binding upon the Republic of Latvia, irrespective of the laws of the state in which the offence has been committed, shall be held liable in accordance with this Law if they have not been held criminally liable for such offence or committed to stand trial in the territory of another state.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the jurisdictional principle of territoriality is established in sections 2 and 3 CL.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 42 Jurisdiction**

**Subparagraph 1 (b)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision mentioned above.

**The Criminal Law Section 3. Applicability of The Criminal Law to Aircraft, and Sea and River Vessels Outside the Territory of Latvia:**

A person who has committed a criminal offence outside the territory of Latvia, on an aircraft, or a sea or river vessel or other floating means of conveyance, if this means of conveyance is registered in the Republic of Latvia and if it is not provided otherwise in international agreements binding upon the Republic of Latvia, shall be held liable in accordance with this Law.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 42 Jurisdiction**

**Subparagraph 2 (a)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted the necessary measures to establish its jurisdiction as described above.

**The Criminal Law Section 4. Applicability of The Criminal Law Outside the Territory of Latvia:**

(1) Latvian citizens, non-citizens and foreigners who have a permanent residence permit for the Republic of Latvia, shall be held liable, in accordance with this Law, in the territory of Latvia for an offence committed in the territory of another state or outside the territory of any state regardless of whether it has been recognised as criminal and punishable in the territory of commitment.

(2) Soldiers of the Republic of Latvia who are located outside the territory of Latvia shall be held liable for criminal offences in accordance with this Law, unless it is provided otherwise in international agreements binding upon the Republic of Latvia.

(3) Foreigners who do not have permanent residence permits for the Republic of Latvia and who have committed serious or especially serious crimes in the territory of another state which have been directed against the Republic of Latvia or against the interests of its inhabitants, shall be held criminally liable in accordance with this Law irrespective of the laws of the state in which the crime has been committed, if they have not been held criminally liable or committed to stand trial in accordance with the laws of the state where the crime was committed.

(4) Foreigners who do not have a permanent residence permit for the Republic of Latvia and who have committed a criminal offence in the territory of another state, in the cases provided for in international agreements binding upon the Republic of Latvia, irrespective of the laws of the state in which the offence has been committed, shall be held liable in accordance with this Law if they have not been held criminally liable for such offence or committed to stand trial in the territory of another state.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the jurisdictional principle of passive personality is established in section 4 CL. It should be noted that dual criminality is not required for the establishment of jurisdiction in respect of acts committed abroad. Section 4, paragraph 4 CL provides for extraterritorial jurisdiction over an offence committed outside the national territory, in the cases provided for in

international agreements by which Latvia is bound “irrespective of the laws of the State in which the offence has been committed”.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 42 Jurisdiction**

### **Subparagraph 2 (b)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted the necessary measures to establish its jurisdiction as described above.

#### **The Criminal Law Section 4. Applicability of The Criminal Law Outside the Territory of Latvia:**

(1) Latvian citizens, non-citizens and foreigners who have a permanent residence permit for the Republic of Latvia, shall be held liable, in accordance with this Law, in the territory of Latvia for an offence committed in the territory of another state or outside the territory of any state regardless of whether it has been recognised as criminal and punishable in the territory of commitment.

(2) Soldiers of the Republic of Latvia who are located outside the territory of Latvia shall be held liable for criminal offences in accordance with this Law, unless it is provided otherwise in international agreements binding upon the Republic of Latvia.

(3) Foreigners who do not have permanent residence permits for the Republic of Latvia and who have committed serious or especially serious crimes in the territory of another state which have been directed against the Republic of Latvia or against the interests of its inhabitants, shall be held criminally liable in accordance with this Law irrespective of the laws of the state in which the crime has been committed, if they have not been held criminally liable or committed to stand trial in accordance with the laws of the state where the crime was committed.

(4) Foreigners who do not have a permanent residence permit for the Republic of Latvia and who have committed a criminal offence in the territory of another state, in the cases provided for in international agreements binding upon the Republic of Latvia, irrespective of the laws of the state in which the offence has been committed, shall be held liable in accordance with this Law if they have not been held criminally liable for such offence or committed to stand trial in the territory of another state.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the jurisdictional principle of active personality is established in section 4 CL. It should be noted that dual criminality is not required for the establishment of jurisdiction in respect of acts committed abroad. Section 4, paragraph 4 CL provides for extraterritorial jurisdiction over an offence committed outside the national territory, in the cases provided for in international agreements by which Latvia is bound “irrespective of the laws of the State in which the offence has been committed”.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 42 Jurisdiction**

### **Subparagraph 2 (c)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted the necessary measures to establish its jurisdiction as described above.

#### **The Criminal Law Section 4. Applicability of The Criminal Law Outside the Territory of Latvia:**

(1) Latvian citizens, non-citizens and foreigners who have a permanent residence permit for the Republic of Latvia, shall be held liable, in accordance with this Law, in the territory of Latvia for an offence committed in the territory of another state or outside the territory of any state regardless of whether it has been recognised as criminal and punishable in the territory of commitment.

(2) Soldiers of the Republic of Latvia who are located outside the territory of Latvia shall be held liable for criminal offences in accordance with this Law, unless it is provided otherwise in international agreements binding upon the Republic of Latvia.

(3) Foreigners who do not have permanent residence permits for the Republic of Latvia and who have committed serious or especially serious crimes in the territory of another state which have been directed against the Republic of Latvia or against the interests of its inhabitants, shall be held criminally liable in accordance with this Law irrespective of the laws of the state in which the crime has been committed, if they have not been held criminally liable or committed to stand trial in accordance with the laws of the state where the crime was committed.

(4) Foreigners who do not have a permanent residence permit for the Republic of Latvia and who have committed a criminal offence in the territory of another state, in the cases provided for in international agreements binding upon the Republic of Latvia, irrespective of the laws of the state in which the offence has been committed, shall be held liable in accordance with this Law if they have not been held criminally liable for such offence or committed to stand trial in the territory of another state.

#### **(b) Observations on the implementation of the article**

See above on the extraterritorial application of the Latvian criminal laws through section 4 CL.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 42 Jurisdiction**

### **Subparagraph 2 (d)**

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted the necessary measures to establish its jurisdiction as described above.

**The Criminal Law Section 4. Applicability of The Criminal Law Outside the Territory of Latvia:**

.....

(3) Foreigners who do not have permanent residence permits for the Republic of Latvia and who have committed serious or especially serious crimes in the territory of another state which have been directed against the Republic of Latvia or against the interests of its inhabitants, shall be held criminally liable in accordance with this Law irrespective of the laws of the state in which the crime has been committed, if they have not been held criminally liable or committed to stand trial in accordance with the laws of the state where the crime was committed.

....

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 42 Jurisdiction**

### **Paragraph 3**

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision mentioned above.

All the offences established by the Convention are criminal offences under the legislation of Latvia. If a national has committed a crime, it shall be investigated by national authorities.

On the grounds of information received from a foreign country alleging that nationals of Latvia are involved in bribery offence, the Bureau started own investigation. As a result of pre-trial investigation nationals of Latvia are alleged having committed also other crimes in addition to the one disclosed by the law enforcement institution in other country. The case has been sent for criminal prosecution.

**(b) Observations on the implementation of the article**

The reviewing experts noted that, in relation to the establishment of jurisdiction to facilitate the application of the principle “*aut dedere aut judicare*”, the Latvian authorities indicated that all offences established in accordance with UNCAC are considered as criminal offences domestically and therefore every national who has committed a crime is subject to investigation by national authorities.

The Latvian legislation has no separate provisions stipulating that criminal proceedings have to be opened if the extradition is denied. However, the opening of investigation is mandatory if there is information indicating that an offence has been committed. Under the Latvian legislation, prosecutors and investigators have an obligation to act upon receipt of information about an offence. This a general rule, stipulated in sections 6 and 371 CPL, and as such is applicable.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 42 Jurisdiction**

### **Paragraph 4**

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures mentioned above.

The Criminal Law provides for jurisdiction over offences established in accordance with the Convention.

#### **(b) Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

## **Article 42 Jurisdiction**

### **Paragraph 5**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision at issue.

#### **The Criminal Procedure Law Section 5. Application of the Law in International Co-operation:**

The legal norm of a foreign state indicated in a request motivated by the foreign state may be applied in international co-operation without additional examining of the validity thereof.

#### **The Criminal Procedure Law Section 679.<sup>1</sup>**

Exchange of information concerning criminal case investigated in Latvia provides for exchange of information in cases there are grounds to believe that investigation concerning the same offences is carried out in other country as well.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 42 Jurisdiction**

**Paragraph 6**

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted grounds of criminal jurisdiction other than those described above.

**The Criminal Law Section 2. Application of The Criminal Law in the Territory of Latvia:**

(1) The liability of a person who has committed a criminal offence in the territory of Latvia shall be determined in accordance with this Law.

(2) If a foreign diplomatic representative, or other person, who, in accordance with the laws in force or international agreements binding upon the Republic of Latvia, is not subject to the jurisdiction of the Republic of Latvia, has committed a criminal offence in the territory of Latvia, the issue of this person being held criminally liable shall be decided by diplomatic procedures or in accordance with bilateral agreements of the States.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Chapter IV. International cooperation**

In general, the reviewing experts identified as a good practice the comprehensive and coherent domestic legislation on international cooperation in criminal matters, which regulates in a detailed manner all forms of international cooperation used by the Latvian authorities.

**Article 44 Extradition**

**Paragraph 1**

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented into the domestic legal system the measures mentioned above.

**The Criminal Procedure Law Section 696. Grounds for the Extradition of a Person:**

- (1) A person who is located in the territory of Latvia may be extradited for criminal prosecution, trial, or the execution of a judgment, if a request has been received from a foreign state to extradite such person regarding an offence that, in accordance with the law of Latvia and the foreign state, is criminal.
- (2) A person may be extradited for criminal prosecution, or trial, regarding an offence the committing of which provides for a punishment of deprivation of liberty the maximum limit of which is not less than one year, or a more serious punishment, if the international agreement does not provide otherwise.
- (3) A person may be extradited for the execution of a judgment by the state that rendered the judgment and convicted the person with a punishment that is related to deprivation of liberty for a term of not less than four months, if the international agreement does not provide otherwise.
- (4) If extradition has been requested regarding several criminal offences, but extradition may not be applied for one of such offences because such offence does not comply with the conditions regarding the possible or imposed punishment, the person may also be extradited regarding such criminal offence.

The Criminal Procedure Law (Annex 2) stipulates that for corruption and money laundering offences a person shall be extradited to other EU country without examining whether such offences are criminal in accordance with the Laws of Latvia.

**The Criminal Procedure Law Section 675. Criminal-legal Co-operation in Competent Authorities**

- (1) The competent authorities that are specified in regulatory enactments shall send and received requests for criminal-legal co-operation, and such institutions shall regulate international co-operation in criminal matters.
- (2) A Latvian competent authority may agree, in criminal-legal co-operation, with a foreign competent authority regarding the direct communication between courts, Prosecutor's Offices, and investigating institutions.
- (3) If an agreement with a foreign state regarding criminal-legal co-operation does not exist, the Minister for Justice and the Prosecutor General have the right, within the framework of the competence specified in this Part of this Law, to submit to the foreign state a request for criminal-legal co-operation, or to receive a request from the foreign state for criminal-legal co-operation.
- (4) The officials referred to in Paragraph three of this Section may request from, or submit to, a foreign state a confirmation that reciprocity will be observed in criminal-legal co-operation, that is, that the co-operation partner will hereinafter provide assistance, observing the same principles.

The Prosecutor General' Office is responsible for extradition matters.

In Latvia, the fulfilment of the double criminality requirement is a condition for granting extradition requests (section 696 CPL). There is a duty to check whether the crime for which extradition is requested is an offence according to the Latvian legislation. Offences specified in UNCAC are established as domestic offences in Latvia. Therefore no issues of double criminality arise with regard to those offences.

In Latvia, there has been no extradition based on UNCAC. The Latvian CPL allows to extradite based on the reciprocity principle.

In terms of the EU arrest warrants, a list of criminal offences is foreseen in the relevant Framework Decision, including bribery and money-laundering, for which dual criminality is not required.

The Latvian authorities focus on the description of the offence in question and then check if the crime would be punishable in Latvia as well. If the criminal conduct is punishable in Latvia, then extradition can take place (example; extradition request based on the concept of causing substantial harm).

Latvia has been encountering challenges in keeping good statistics on international cooperation as there has been no electronic database. However, efforts to improve this are ongoing. An information system for a legal assistance request database is in the planning process and should be working by September 2013. The project is supported financially by the EU.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that a two-tier system on extradition has been put in place in Latvia. With regard to other Member States of the European Union, the surrender of fugitives is carried out in line with the requirements of the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States of the European Union.

The UNCAC can be used as a legal basis for extradition if other regional instruments (see below) are not applicable. Extradition can also be granted on the basis of reciprocity (see section 675 CPL).

A person may be extradited for criminal prosecution, or trial, for an offence punishable for a maximum period of imprisonment of at least one year, or a more serious punishment, unless an international agreement provides otherwise. If extradition is requested for purposes of enforcement of a sentence, the person sought may be extradited if s/he was convicted to serve a sentence of not less than four months, unless an international agreement provides otherwise (see section 697 CPL).

Chapters 65 and 66 of the CPL contain the regulatory framework for conducting the domestic extradition proceedings, including for the execution of European Arrest Warrants. The consideration of an extradition request of a foreign State (passive extradition) involves both the competent judicial authority (three-member Chamber of Criminal Cases of the Supreme Court) and the responsible administrative authority (Cabinet of Ministers, on the basis of a proposal of the Minister of Justice) which finally judges on whether to grant or not the extradition request (if the judicial chamber has found the person sought eligible for extradition).

The double criminality requirement, as a precondition for granting extradition, is provided for in section 696, paragraph 1 CPL. In interpreting whether double criminality is fulfilled, consideration is given to the conduct underlying the offence in question. In the context of surrender to other EU Member States on the basis of a European Arrest Warrant, dual criminality is not required for 32 offences punishable by deprivation of liberty of at least three years, including corruption and money laundering .

The reviewing experts concluded that the provision has been adequately implemented. However, they also recommended that the national authorities continue efforts to put in place and render fully operational information system compiling in a systematic manner information on extradition and mutual legal assistance cases, with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements.

## Article 44 Extradition

### Paragraph 2

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Latvia has adopted and implemented the measures mentioned above.

**The Criminal Procedure Law (Annex 2)** provides that for corruption and money laundering offences a person shall be extradited to a European Union Member State without examining whether such offences are criminal in accordance with the Laws of Latvia.

#### (b) Observations on the implementation of the article

The reviewing experts noted that, in the context of surrender to other EU Member States on the basis of a European Arrest Warrant, dual criminality is not required for 32 offences punishable by deprivation of liberty of at least three years, including corruption and money laundering.

The reviewing experts concluded that the provision has been adequately implemented.

## Article 44 Extradition

### Paragraph 3

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Latvia has adopted and implemented at domestic level the measures described above.

#### **Paragraph 4 of Section 696. Grounds for the Extradition of a Person of the Criminal Procedure Law:**

(4) If extradition has been requested regarding several criminal offences, but extradition may not be applied for one of such offences because such offence does not comply with the conditions regarding the possible or imposed punishment, the person may also be extradited regarding such criminal offence.

#### **However, in accordance with Section 697. Reasons for a Refusal to Extradite a Person of the Criminal Procedure Law:**

- (1) The extradition of a person may be refused, if:
  - 1) a criminal offence has been committing completely or partially in the territory of Latvia;
  - 2) the person is being held as a suspect, is accused, or is being tried in Latvia regarding the same criminal offence;
  - 3) a decision has been taken in Latvia to not commence, or to terminate, criminal proceedings regarding the same criminal offence;
  - 4) extradition has been requested in connection with political or military criminal offences;

- 5) a foreign state requests the extradition of a person for the execution of a punishment imposed in a judgment by default, and a sufficient guarantee has not been received that the extradited person will have the right to request the repeated adjudication of the case;
  - 6) extradition has been requested by a foreign state with which Latvia does not have an agreement regarding extradition.
- (2) The extradition of a person shall not be admissible, if:
- 1) the person is a Latvian citizen;
  - 2) the request for the extradition of the person is related to the aim of commencing criminal prosecution of such person or punishing such persons due to his or her race, religion affiliation, nationality, or political views, or if there are sufficient grounds for believing that the rights of the person may be violated due to the referred to reasons;
  - 3) a court adjudication has entered into effect in Latvia in relation to the person regarding the same criminal offence;
  - 4) the person may not, in accordance with a Latvian law regarding the same criminal offence, be held criminally liable, tried, or execute a punishment in connection with a limitation period, amnesty, or another legal basis;
  - 5) the person has been granted clemency, in accordance with the procedures specified by law, regarding the same criminal offence;
  - 6) the foreign state does not provide a sufficient bail that such state will not impose the death punishment on such person and execute such punishment;
  - 7) the person may be threatened with torture in the foreign state.
- (3) An international agreement may provide for other reasons for a refusal of extradition.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 44 Extradition**

### **Paragraph 4**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

In accordance with **Paragraph 2 of Section 696 of the Criminal Procedure Law:**

(2) A person may be extradited for criminal prosecution, or trial, regarding an offence the committing of which provides for a punishment of deprivation of liberty the maximum limit of which is not less than one year, or a more serious punishment, if the international agreement does not provide otherwise.

**Section 697 of the Criminal Procedure Law:**

(1) The extradition of a person may be refused, if:

- 1) a criminal offence has been committing completely or partially in the territory of Latvia;
  - 2) the person is being held as a suspect, is accused, or is being tried in Latvia regarding the same criminal offence;
  - 3) a decision has been taken in Latvia to not commence, or to terminate, criminal proceedings regarding the same criminal offence;
  - 4) extradition has been requested in connection with political or military criminal offences;
  - 5) a foreign state requests the extradition of a person for the execution of a punishment imposed in a judgment by default, and a sufficient guarantee has not been received that the extradited person will have the right to request the repeated adjudication of the case;
  - 6) extradition has been requested by a foreign state with which Latvia does not have an agreement regarding extradition.
- (2) The extradition of a person shall not be admissible, if:
- 1) the person is a Latvian citizen;
  - 2) the request for the extradition of the person is related to the aim of commencing criminal prosecution of such person or punishing such persons due to his or her race, religion affiliation, nationality, or political views, or if there are sufficient grounds for believing that the rights of the person may be violated due to the referred to reasons;
  - 3) a court adjudication has entered into effect in Latvia in relation to the person regarding the same criminal offence;
  - 4) the person may not, in accordance with a Latvian law regarding the same criminal offence, be held criminally liable, tried, or execute a punishment in connection with a limitation period, amnesty, or another legal basis;
  - 5) the person has been granted clemency, in accordance with the procedures specified by law, regarding the same criminal offence;
  - 6) the foreign state does not provide a sufficient bail that such state will not impose the death punishment on such person and execute such punishment;
  - 7) the person may be threatened with torture in the foreign state.
- (3) An international agreement may provide for other reasons for a refusal of extradition.

The “political offence exception” is included among the optional grounds for refusal of extradition requests. However, it is not applicable for offences covered by the UNCAC.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 44 Extradition**

**Paragraph 5**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia does make extradition conditional on the existence of a treaty; the Convention is partly considered as a legal basis for extradition in respect to the offences to which the article under review applies.

Latvia has recognized article 44 of the UNCAC as sufficient legal basis for extradition (notification of 5 June 2009 to the Secretary-General of the United Nations). Further, if it would be not possible to apply European Convention on Extradition and its four additional protocols, the Convention on simplified extradition procedure between Member States of the European Union or any bilateral extradition agreement, then the UNCAC would apply.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 44 Extradition**

**Subparagraph 6 (a)**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia does make extradition conditional on the existence of a treaty; the Convention is considered as a legal basis for extradition in respect to the offences to which the article under review applies. Further, if it would be not possible to apply European Convention on Extradition and its four additional protocols, the Convention on simplified extradition procedure between Member States of the European Union or any bilateral extradition agreement, then the UNCAC would apply.

Latvia confirmed that the Secretary General of the United Nations has been informed that the Convention is considered a legal basis for cooperation on extradition (notification of 5 June 2009 to the Secretary-General of the United Nations).

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 44 Extradition**

**Subparagraph 6 (b)**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

See comments on subparagraph 6(a) of article 44.

**(b) Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

**Article 44 Extradition**

**Paragraph 7**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia does make extradition conditional on the existence of a treaty; the Convention is considered as a legal basis for extradition in respect to the offences to which the article under review applies. Further, if it would be not possible to apply European Convention on Extradition and its four additional protocols, the Convention on simplified extradition procedure between Member States of the European Union or any bilateral extradition agreement, then the UNCAC would apply.

Latvia confirmed that the Secretary General of the United Nations has been informed that the Convention is considered a legal basis for cooperation on extradition (notification of 5 June 2009 to the Secretary-General of the United Nations).

In addition, Chapters 65 and 66 of the CPL contain the regulatory framework for conducting the domestic extradition proceedings, including for the execution of European Arrest Warrants.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 44 Extradition**

**Paragraph 8**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision described above.

In accordance with **Section 697 of the Criminal Procedure Law**, a person may be extradited for criminal prosecution, or trial, regarding an offence the committing of which provides for a punishment of deprivation of liberty the maximum limit of which is not less than one year, or a more serious punishment, if the international agreement does not provide otherwise.

Further, a person may be extradited for the execution of a judgment by the state that rendered the judgment and convicted the person with a punishment that is related to deprivation of liberty for a term of not less than four months, if the international agreement does not provide otherwise.

**The Criminal Procedure Law Section 715. Conditions related to the Extradition of a Person to a European Union Member State:**

(1) A person to be extradited has the rights referred to in Section 698 of this Law, as well as the right to agree or not agree to an extradition, and the right to be held criminally liable and be tried only regarding criminal offence regarding which he or she is being extradited, except for the cases provided for in Section 695, Paragraph two of this Law.

(2) A person to be extradited shall certify his or her consent for the extradition, and the waiving of his or her rights to be held criminally liable and tried only regarding the criminal offences regarding which he or she is being extradited, to a public prosecutor in the presence of an advocate, and a protocol shall be written regarding such certification.

(3) If a person to be extradited is a Latvian citizen, such person has the right to waive the rights that guarantee that the Latvian citizen, after the conviction thereof in a European Union Member State, be transferred back to Latvia for the serving of an imposed sentence. If a citizen of Latvia does not waive such rights, the Prosecutor General's Office shall request the referred to guarantee to the state which has taken a European arrest warrant.

(4) The course of the term of the execution of a European arrest warrant in relation to a person who has criminal-procedural immunity shall commence from the moment when such person loses the immunity in accordance with the procedures specified by law. The proposal to revoke criminal procedural immunity shall be submitted to the competent authority by the Prosecutor General's Office.

(5) Latvia shall accept European arrest warrants for execution in the Latvian or English language.

No extradition was refused for offences provided in the Convention.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Chapters 65 and 66 of the CPL contain the regulatory framework for conducting the domestic extradition proceedings, including for the execution of European Arrest Warrants. As reported during the country visit, the consideration of an extradition request of a foreign State (passive extradition) involves both the competent judicial authority (three-member Chamber of Criminal Cases of the Supreme Court) and the responsible administrative authority (Cabinet of Ministers, on the basis of a proposal of the Minister of Justice) which finally judges on whether to grant or not the extradition request (if the judicial chamber has found the person sought eligible for extradition).

In relation to the grounds for refusal of an extradition request, the national authorities brought to the attention of the review team section 98 of the Constitution, which stipulates that "a citizen of Latvia may not be extradited to a foreign country, except in the cases provided for in international agreements ratified by the *Saeima* if by the extradition the basic human rights specified in the Constitution are not violated". An example of an ongoing case of extradition of a Latvian citizen to the United States of

America, based on the applicable bilateral treaty, was also brought to the knowledge of the review team.

Other grounds for refusal of extradition requests are set forth in section 697 CPL. They are either optional (commission of offence in Latvia; pending proceedings for the same offence in Latvia; decision in Latvia not to commence or terminate criminal proceedings for the offence in question; the nature of the offence in question as political or military one; judgment rendered in absentia in the requesting State; lack of extradition agreement) or mandatory (nationality (additionally to the constitutional provision); anticipated discriminating treatment or torture in the requesting State; ne bis in idem; lapse of time; amnesty or other legal grounds; clemency; death penalty). Other grounds for refusal may be provided for in applicable international agreements. The fact that the offence for which extradition is requested involves fiscal matters is not included among the grounds for refusal. Particularly in the context of the administrative phase of extradition whereby the Cabinet of Ministers decides whether to grant an extradition request or not, the fact that such extradition may harm the sovereignty of Latvia is also considered as an optional ground for refusal (section 708, paragraph 3, point 1 CPL). The decision on the admissibility or denial of extradition should be reasoned (section 705 CPL).

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 44 Extradition**

### **Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision described above.

#### **The Criminal Procedure Law Section 713. Simplified Extradition:**

- (1) A person may be extradited to a foreign state in accordance with simplified procedures, if:
  - 1) the written consent of the person to be extradited has been received for the extradition thereof in accordance with simplified procedures;
  - 2) the person to be extradited is not a Latvian citizen;
  - 3) [29 June 2008].
- (2) A person being extradited shall certify his or her consent for extradition in accordance with simplified procedures to a public prosecutor in the presence of an advocate before a decision is taken regarding the admissibility of extradition.
- (3) After the receipt of consent, a public prosecutor shall ascertain only that which is referred to in Paragraph one of this Section, and immediately submit to the Prosecutor General the materials related to extradition.
- (4) The Prosecutor General shall take one of the following decisions:
  - 1) regarding extradition of a person;
  - 2) regarding a refusal to extradite a person;
  - 3) regarding the non-application of simplified extradition.
- (5) A decision taken by the Prosecutor General shall not be subject to appeal.
- (6) A foreign state and a person to be extradited shall be informed regarding the extradition of the person or a refusal to extradite such person, and the relevant decision shall be transferred to the Ministry of the Interior for execution.

## **(b) Observations on the implementation of the article**

As reported during the country visit, the domestic legislation does not include any specific evidentiary requirements for extradition purposes. Instead, article 12, paragraph 2, of the European Convention of Extradition, which defines the necessary documentation that needs to be submitted to the requested State, is of relevance, where applicable.

With regard to the time needed for granting an extradition request, the Latvian authorities reported on different timeframes depending on the process followed. In typical proceedings for extradition to third countries, the process may take up to one year to be completed. The maximum detention for purposes of extradition is one year and cannot be prolonged. If the person sought agrees to extradition (simplified extradition – see section 713 CPL), s/he can be extradited within three weeks. The simplified process is not applicable for Latvian citizens. In the case of EU arrest warrants, the process is fast, as the Minister is not involved. If there is an agreement to surrender, the process is completed at the same day if the person is surrendered to Estonia and Lithuania and within 10-14 days to other EU Member States. If the decision is appealed, the Supreme Court looks at the matter within 20 days. The maximum period of the surrender process should not exceed 90 days.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 44 Extradition**

### **Paragraph 10**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

### **The Criminal Procedure Law Section 699. Detention of a Person for the Purpose of Extradition:**

(1) An investigator or public prosecutor may detain a person for up to 72 hours for the purpose of extradition, if there are sufficient grounds for believing that such person has committed a criminal offence in the territory of another state regarding which extradition has been provided for, or if the a foreign state has announced a search for such person and issued a request for temporary arrest or extradition.

(2) An investigator or public prosecutor shall write a protocol regarding the detention of a person for the purpose of extradition, indicating therein the given name, surname, and other necessary personal data of the detained person, the reason for the detention, as well as when such person was detained and who detained such person. The detaining person and the person to be extradited shall sign the detention protocol.

(3) A detaining person shall inform a person to be extradited regarding the rights thereof, a notation in the detention protocol shall be made regarding such informing.

(4) The Prosecutor General's Office shall be informed immediately, but not later than within 24 hours, regarding the detention of a person by sending to such Office the detention documents of such person. The Prosecutor General's Office shall inform the state that announced a search for the person.

(5) If temporary or extradition arrest has not been applied within 72 hours from the moment of

the detention of a person, the detained person shall be released or another security measure shall be applied.

**The Criminal Procedure Law Section 701. Application of Temporary Arrest:**

- (1) A judge shall decide on the application of temporary arrest in a court session, with the participation of a public prosecutor and the person to be extradited.
- (2) Having heard a public prosecutor, a person to be extradited, and an advocate, if he or she participates, a judge shall take a reasoned decision that shall not be subject to appeal.
- (3) Temporary arrest shall be applied for 40 days from the day of the detention of a person, if an international agreement does not specify otherwise.
- (4) A public prosecutor may release a person from temporary arrest, if a request of a foreign state regarding the extradition of such person, or a report regarding justified reasons for the delay of such request, has not been received within 18 days after the detention.
- (5) A public prosecutor shall release a person from temporary arrest, if:
  - 1) an extradition request is not received within 40 days;
  - 2) an extradition arrest is not applied within 40 days;
  - 3) circumstances have become known that exclude the possibility of extradition.
- (6) The release of a person shall not cause impediments to the repeated placing under arrest or extradition of such person, if a request regarding extradition is received later.

**The Criminal Procedure Law Section 702 Extradition Arrest:**

- (1) An extradition arrest shall be applied after a request regarding the extradition of a person has been received along with the following:
  - 1) a request of a foreign state regarding the arrest of such person or a judgment that has entered into effect in relation to the concrete person;
  - 2) a description of a criminal offence or a decision on the holding of the person criminally liable;
  - 3) the text of the section of the law on the basis of which the person has been held criminally liable or convicted, and the text of the section of the law that regulates a limitation period;
  - 4) information regarding the person to be extradited.
- (2) If circumstances are not known that exclude the possibility of extradition, the executor of an examination shall submit a proposal regarding an extradition arrest and the materials that justify such proposal to an investigating judge in whose territory of operation the person was detained or the Prosecutor General's Office is located.
- (3) A proposal regarding an extradition arrest shall be adjudicated in accordance with the same procedures as a request regarding temporary arrest.
- (4) If a person to be extradited is placed under arrest in Latvia or serving a sentence in Latvia imposed regarding the committing of another criminal offence, the term of the extradition arrest shall be counted from the moment of the releasing of the person.
- (5) The term of the arrest of a person to be extradited shall not exceed one year, and, in addition, shall not be longer than the term of a sentence imposed in a foreign state, if such term is less than one year, counting from the moment of the application of the detention or arrest.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 44 Extradition**

**Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

**The Criminal Procedure Law Section 6. Mandatory Nature of Criminal Proceedings:**

The official who is authorised to perform criminal proceedings has a duty within his or her competence to initiate criminal proceedings and to lead such proceedings to the fair regulation of criminal legal relations provided for in the Criminal Law in each case where the reason and grounds for initiating criminal proceedings have become known.

In accordance with the Criminal Procedure Law Section 697 Reasons for a Refusal to Extradite a Person extradition shall not be admissible if the person is a Latvian citizen.

There are different provisions concerning extradition of persons to a European Union Member State. In accordance with **The Criminal Procedure Law Section 714 Extradition of a Person to a European Union Member State:**

(2) If a person has been extradited regarding an offence referred to in Annex 2 to this Law (that among other includes corruption and money laundering crimes), and if, regarding the committing of such offence, a punishment of deprivation of liberty is provided for in the state that took the European arrest warrant the maximum limit of which is not less than three years, an examination regarding whether such offence is also criminal on the basis of the Latvian law shall not be conducted.

(3) If a European arrest warrant has been taken in a foreign state regarding a Latvian citizen, then the extradition of such person shall take place with the condition that the person be transferred back to Latvia, after the conviction thereof, for the serving of a sentence of deprivation of liberty imposed on such person. Execution of the imposed sentence shall take place in accordance with the procedures specified in Sections 782-801 of this Law.

(4) The extradition of a person may be refused, if:

- 1) the reasons referred to in Section 697, Paragraph one, Clauses 1-3 of this Law exist;
- 2) the person may not, in accordance with a Latvian law regarding the same criminal offence, be held criminally liable, tried, or have a punishment executed due to a limitation period;
- 3) the offence has been committed outside of the territory of the state that has taken a European arrest warrant, and such offence, in accordance with Latvian law, is not criminal.

(5) The extradition of a person shall not be admissible, if:

- 1) in accordance with Latvian law, the person may not be held criminally liable, tried, or punished in connection with amnesty;
- 2) the person has been convicted regarding the same criminal offence and has served or is serving a punishment in one of the European Union Member State, or such punishment may no longer be executed;
- 3) the person has not reached the age at which, in accordance with Latvian law, criminal liability comes into effect.
- 4) the extradition of a Latvian citizen is requested for the execution of a punishment imposed by a European Union Member State.

## **(b) Observations on the implementation of the article**

Pursuant to section 98 of the Constitution, “a citizen of Latvia may not be extradited to a foreign country, except in the cases provided for in international agreements ratified by the Saeima if by the extradition the basic human rights specified in the Constitution are not violated”. An example of an ongoing case of extradition of a Latvian citizen to the United States of America, based on the applicable bilateral treaty, was brought to the knowledge of the review team.

In relation to the establishment of jurisdiction to facilitate the application of the principle “*aut dedere aut judicare*”, the Latvian authorities indicated that all offences established in accordance with UNCAC are considered as criminal offences domestically and therefore every national who has committed a crime is subject to investigation by national authorities. The Latvian legislation has no separate provisions stipulating that criminal proceedings have to be opened if the extradition is denied. However, the opening of investigation is mandatory if there is information indicating that an offence has been committed. Under the Latvian legislation, prosecutors and investigators have an obligation to act upon receipt of information about an offence. This a general rule, stipulated in sections 6 and 371 CPL, and as such is applicable (see also under article 42, paragraph 3, of the UNCAC).

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 44 Extradition**

### **Paragraph 12**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

In accordance with the **Criminal Procedure Law Section 696 Paragraph 3** a person may be extradited for the execution of a judgment by the state that rendered the judgment and convicted the person with a punishment that is related to deprivation of liberty for a term of not less than four months, if the international agreement does not provide otherwise.

### **The Criminal Procedure Law Section 714 Extradition of a Person to a European Union Member State:**

(1) A person located in the territory of Latvia may be extradited to a European Union Member State for the commencement and performance of criminal prosecution, trial, and the execution of a judgment, if the foreign state has taken a European arrest warrant in relation to such person, and the grounds for extradition referred to in Section 696 of this Law exist.

(2) If a person has been extradited regarding an offence referred to in Annex 2 to this Law, and if, regarding the committing of such offence, a punishment of deprivation of liberty is provided for in the state that took the European arrest warrant the maximum limit of which is not less than three years, an examination regarding whether such offence is also criminal on

the basis of the Latvian law shall not be conducted.

(3) If a European arrest warrant has been taken in a foreign state regarding a Latvian citizen, then the extradition of such person shall take place with the condition that the person be transferred back to Latvia, after the conviction thereof, for the serving of a sentence of deprivation of liberty imposed on such person. Execution of the imposed sentence shall take place in accordance with the procedures specified in Sections 782-801 of this Law.

(4) The extradition of a person may be refused, if:

- 1) the reasons referred to in Section 697, Paragraph one, Clauses 1-3 of this Law exist;
- 2) the person may not, in accordance with a Latvian law regarding the same criminal offence, be held criminally liable, tried, or have a punishment executed due to a limitation period;
- 3) the offence has been committed outside of the territory of the state that has taken a European arrest warrant, and such offence, in accordance with Latvian law, is not criminal.

(5) The extradition of a person shall not be admissible, if:

- 1) in accordance with Latvian law, the person may not be held criminally liable, tried, or punished in connection with amnesty;
- 2) the person has been convicted regarding the same criminal offence and has served or is serving a punishment in one of the European Union Member State, or such punishment may no longer be executed;
- 3) the person has not reached the age at which, in accordance with Latvian law, criminal liability comes into effect.
- 4) the extradition of a Latvian citizen is requested for the execution of a punishment imposed by a European Union Member State.

**The Criminal Procedure Law Section 715. Conditions related to the Extradition of a Person to a European Union Member State:**

(1) A person to be extradited has the rights referred to in Section 698 of this Law, as well as the right to agree or not agree to an extradition, and the right to be held criminally liable and be tried only regarding criminal offence regarding which he or she is being extradited, except for the cases provided for in Section 695, Paragraph two of this Law.

(2) A person to be extradited shall certify his or her consent for the extradition, and the waiving of his or her rights to be held criminally liable and tried only regarding the criminal offences regarding which he or she is being extradited, to a public prosecutor in the presence of an advocate, and a protocol shall be written regarding such certification.

(3) If a person to be extradited is a Latvian citizen, such person has the right to waive the rights that guarantee that the Latvian citizen, after the conviction thereof in a European Union Member State, be transferred back to Latvia for the serving of an imposed sentence. If a citizen of Latvia does not waive such rights, the Prosecutor General's Office shall request the referred to guarantee to the state which has taken a European arrest warrant.

(4) The course of the term of the execution of a European arrest warrant in relation to a person who has criminal-procedural immunity shall commence from the moment when such person loses the immunity in accordance with the procedures specified by law. The proposal to revoke criminal procedural immunity shall be submitted to the competent authority by the Prosecutor General's Office.

(5) Latvia shall accept European arrest warrants for execution in the Latvian or English language.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the conditional surrender of a Latvian citizen to the requesting State upon the condition that this person will be returned to Latvia to serve his/her sentence is provided for in section 715, paragraph 3 CPL, and only in relation to the European Arrest Warrant procedure.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 44 Extradition**

### **Paragraph 13**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

In accordance with the **Criminal Procedure Law Section 696 Paragraph 3** a person may be extradited for the execution of a judgment by the state that rendered the judgment and convicted the person with a punishment that is related to deprivation of liberty for a term of not less than four months, if the international agreement does not provide otherwise.

#### **The Criminal Procedure Law Section 781. Procedures for the Adjudication of a Request for the Execution of a Sentence Imposed in a Foreign State:**

- (1) A competent authority shall adjudicate a request for the execution of a sentence imposed in a foreign state within 10 days.
- (2) A competent authority shall ascertain whether the grounds and conditions exist for the execution of a sentence imposed in a foreign state and whether there are reasons for the refusal of execution, and shall accept a request for adjudication or refuse the execution thereof.
- (3) If a competent authority considers that provided information is not sufficient, such institution shall request additional information or documents and determine the term for the submission thereof. The term for deciding specified in Paragraph one of this Section shall be counted from the moment of the receipt of requested materials.
- (4) If an adjudication applies to two or more offences of which not all are such offences regarding which the execution of a sentence in Latvia is possible, a competent authority shall request a clarification of which part of the sentence applies to the offences that comply with such requirements.
- (4<sup>1</sup>) If a competent authority receives several requests of foreign states regarding the execution of a sentence in respect of one and the same person or property at the same time, it shall merge the examination of such requests in one proceedings.
- (5) A competent authority shall immediately notify the state that submitted a request regarding a taken decision.
- (6) If a request has been accepted for adjudication, the Ministry of Justice shall transfer such request, together with attachments, to a court for the determination of a sentence to be executed in Latvia.

#### **The Criminal Procedure Law Section 782. Determination of a Sentence to be Executed in Latvia:**

- (1) A sentence to be executed in Latvia shall be determined, on the basis of a request of a foreign state regarding the execution of a sentence imposed in such state, by a court of the same level, according to the dwelling place and place of residence of the convicted, and in the same composition as the level of the court and the composition that would adjudicate the

offence if the criminal proceedings were to take place in Latvia.

(2) The factual circumstances determined in the adjudication of a court of a foreign state, and the guilt of a person, shall be binding on a Latvian court.

(3) A sentence determined in Latvia shall not aggravate the condition of a convicted person, yet such sentence shall, as much as possible, comply with the sentence determined in a foreign state.

(4) A court shall adjudicate a matter regarding a sentence to be executed in Latvia in accordance with the procedures specified in Section 61 of this Law. A convicted person may retain an advocate for the receipt of legal assistance.

(5) If, at the moment of the adjudication of a matter, a person is being held under arrest in a foreign state, a court shall request, with the intermediation of the Ministry of Justice and using technical means, the transfer of such person to Latvia or the ensuring of participation in proceedings for the determination of a sentence to be executed.

(6) A convicted person and prosecutor may appeal a court decision to the Senate of the Supreme Court in accordance with cassation procedures within 10 days.

(7) A complaint shall be adjudicated in accordance with the same procedures as a cassation complaint or protest submitted in criminal proceedings taking place in Latvia, and in an amount permitted by international treaties binding on Latvia and this Chapter.

#### **The Criminal Procedure Law Section 783. Determination of a Punishment to be Executed in Latvia and Related to Deprivation of Liberty:**

(1) A court shall determine deprivation of liberty or custodial arrest if a punishment related to deprivation of liberty has been imposed in a foreign state, and a punishment related to deprivation of liberty is provided for in the Criminal Law of Latvia regarding the same offence.

(2) The duration of a punishment shall comply as much as possible with the duration of a punishment specified in a foreign state, yet such duration shall not exceed the maximum limit of deprivation of liberty or custodial arrest provided for in the Criminal Law of Latvia regarding the same offence.

(3) The minimal limit of deprivation of liberty or custodial arrest specified in the Criminal Law of Latvia does not have any significance in deciding a matter regarding a punishment to be executed in Latvia.

(4) The entire term during which a convicted person was detained, and the term that he or she spent under arrest, and the place of the execution of a punishment, in connection with an offence regarding which a punishment was determined in a foreign state, shall be counted in the term of the serving of a sentence.

(5) The type of prison, in commencing the execution of a punishment shall be determined on the basis of the same criteria as in a case where a punishment regarding the offence were determined in criminal proceedings taking place in Latvia.

(6) A punishment imposed in a foreign state and related to deprivation of liberty shall not be substituted with a fine.

(7) A punishment related to deprivation of liberty may be determined as conditional in Latvia, if a court is convinced that the convicted person, without having served the sentence, will hereinafter not commit new criminal offences. In such case, the same conditions shall be applied as in a case where the person were to be convicted conditionally in criminal proceedings taking place in Latvia.

#### **The Criminal Procedure Law Section 777. Content and Conditions of the Execution of a Sentence Imposed in a Foreign State**

(1) The execution in Latvia of a sentence imposed in a foreign state is the uncontested recognition of the validity and lawfulness of such sentence and the execution thereof in accordance with the same procedures as if the sentence was determined in criminal proceedings taking place in Latvia.

(2) The recognition of the validity and lawfulness of a sentence imposed in a foreign state shall not exclude the harmonisation thereof with the sanction provided for in the Criminal

Law of Latvia regarding the same offence.

(3) The execution of a sentence imposed in a foreign state shall be possible, if:

- 1) Latvia has a treaty with the foreign state regarding the execution of sentences imposed by such state;
- 2) a foreign state has submitted a request regarding the execution of the sentence imposed in such state;
- 3) the sentence has been determined in the foreign state with a valid adjudication in completed criminal proceedings;
- 4) the convicted person could be punished regarding the same offence in accordance with the Criminal Law of Latvia;
- 5) a limitation period for the execution of the sentence has not entered into effect in the foreign state or in Latvia;
- 6) at the moment of the rendering of a judgment, a limitation period of criminal liability had not entered into effect in accordance with the Criminal Law of Latvia;
- 7) at least one of the reasons for the submission of a request for the execution of a sentence referred to in Section 804 of this Law exists in the foreign state.

(4) The execution of a sentence imposed in a European Union Member State is possible, if an extradition is refused in accordance with Section 714, Paragraph five, Clause 4 of this Law

**The Criminal Procedure Law Section 759. Application of a Valid Judgment of a Foreign State in Criminal Proceedings of Latvia:**

With a judgment of a court of Latvia, the sentence to be executed by a person who has been transferred on the basis of a request of a foreign state for the serving of a sentence in Latvia shall be determined in accordance with the procedures provided for in the Criminal Law of Latvia for the determination of a sentence based on several judgments.

**The Criminal Procedure Law Section 780. Reasons for the Rejection of a Request for the Execution of a Sentence Imposed in a Foreign State**

A request for the execution of a sentence imposed in a foreign state shall be rejected, if:

- 1) there are grounds for believing that the sentence has been determined due to the race, religious affiliation, nationality, gender, or political views of the person, or if the order is recognised as political or expressly military;
- 2) the execution of the sentence would be in contradiction to the international obligations of Latvia toward another state;
- 2<sup>1</sup>) the execution of the sentence may harm the sovereignty, security, social order or other substantial interests of the State of Latvia;
- 3) the execution of the sentence would be in contradiction to the basic principles of the Latvia legal system;
- 4) criminal proceedings concerning the same offence regarding which the sentence has been imposed in a foreign state are taking place in Latvia or have been completed with a final adjudication;
- 5) the execution of the sentence in Latvia is not possible;
- 6) a competent authority of Latvia finds that the foreign state is capable of executing the judgment itself;
- 7) the offence was not committed in the foreign state that imposed the sentence to be executed;

**(b) Observations on the implementation of the article**

The reviewing expert noted that If the extradition of a Latvian citizen is requested for purposes of enforcing a sentence, the domestic legal framework enables the execution of the sentence in Latvia (see chapters 70 and 71 of the CPL).

The reviewing experts concluded that the provision has been adequately implemented.

## Article 44 Extradition

### Paragraph 14

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Latvia confirmed compliance with the provision under review.

##### **The Criminal Procedure Law Section 8. Principle of Equality:**

The Criminal Procedure Law shall determine a uniform procedural order for all persons involved in criminal proceedings irrespective of the origin, social and financial situation, employment, citizenship, race, nationality, attitude toward religion, sex, education, language, place of residence, and other conditions of such persons.

##### **The Criminal Procedure Law Section 12. Guaranteeing of Civil Rights:**

(1) Criminal proceedings shall be performed in compliance with internationally recognised civil rights and without allowing for the imposition of unjustified criminal procedural duties or excessive intervention in the life of a person.

(2) Civil rights may be restricted only in cases where such restriction is required for public safety reasons, and only in accordance with the procedures specified by this Law according to the character and danger of the criminal offence.

(3) The application of safety measures related to the deprivation of liberty, the infringement of the immunity of publicly inaccessible places, and the confidentiality of correspondence and means of communication shall be permitted only with the consent of the investigating judge or court.

(4) An official, who performs the criminal proceedings, has a duty to protect the confidentiality of the private life of a person and the commercial confidentiality of a person. Information regarding such confidentiality shall be obtained and used only in the case where such information is necessary in order to clarify conditions that are to be proven.

(5) A natural person has the right to request that a criminal case does not include information regarding the private life, commercial activities, and financial situation of such person or the betrothed, spouse, parents, grandparents, children grandchildren, brothers or sisters of such person, as well as of the person with whom the relevant natural person is living together and with whom he or she has a common (joint) household (hereinafter - the immediate family), if such information is not necessary for the fair regulation of criminal legal relations.

##### **The Criminal Procedure Law Section 698. Person to be Extradited and his or her Rights:**

(1) A person to be extradited is a person whose extradition has been requested or who has been detained or placed under arrest for the purpose of extradition.

(2) A person to be extradited has the following rights:

1) to know who has requested his or her extradition and regarding what his or her extradition has been requested;

2) to use a language that he or she understands in the extradition proceedings;

3) to provide explanations in connection with extradition;

4) to submit requests, also requests regarding a simplified extradition;

5) to familiarise him or herself with all materials of the examination;

6) to retain an advocate for the receipt of legal assistance.

**The Law on Judicial Power Section 4. Equality of Persons before the Law and the Court:**

- (1) All persons are equal before the law and the court, and they have equal rights to the protection of the law.
- (2) A court shall adjudge a trial irrespective of the origin, social and financial status, race or nationality, sex, education, language, attitude towards religion, type and nature of occupation, place of residence, or the political or other views of a person.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 44 Extradition**

**Paragraph 15**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

**The Criminal Procedure Law Section 697. Reasons for a Refusal to Extradite a Person:**

- (1) The extradition of a person may be refused, if:
  - 1) a criminal offence has been committing completely or partially in the territory of Latvia;
  - 2) the person is being held as a suspect, is accused, or is being tried in Latvia regarding the same criminal offence;
  - 3) a decision has been taken in Latvia to not commence, or to terminate, criminal proceedings regarding the same criminal offence;
  - 4) extradition has been requested in connection with political or military criminal offences;
  - 5) a foreign state requests the extradition of a person for the execution of a punishment imposed in a judgment by default, and a sufficient guarantee has not been received that the extradited person will have the right to request the repeated adjudication of the case;
  - 6) extradition has been requested by a foreign state with which Latvia does not have an agreement regarding extradition.
- (2) The extradition of a person shall not be admissible, if:
  - 1) the person is a Latvian citizen;
  - 2) **the request for the extradition of the person is related to the aim of commencing criminal prosecution of such person or punishing such persons due to his or her race, religion affiliation, nationality, or political views, or if there are sufficient grounds for believing that the rights of the person may be violated due to the referred to reasons;**
  - 3) a court adjudication has entered into effect in Latvia in relation to the person regarding the same criminal offence;
  - 4) the person may not, in accordance with a Latvian law regarding the same criminal offence, be held criminally liable, tried, or execute a punishment in connection with a

- limitation period, amnesty, or another legal basis;
  - 5) the person has been granted clemency, in accordance with the procedures specified by law, regarding the same criminal offence;
  - 6) the foreign state does not provide a sufficient bail that such state will not impose the death punishment on such person and execute such punishment;
  - 7) the person may be threatened with torture in the foreign state.
- (3) An international agreement may provide for other reasons for a refusal of extradition.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 44 Extradition**

### **Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

There are no provisions in the Criminal Procedure Law stipulating that extradition may be refused on the sole ground that the offence is considered to involve fiscal matters. Section 708 of the Criminal Procedure Law stipulates that the Cabinet (Government) may refuse extradition only if one of the following circumstances exists:

- 1) the extradition of the person may harm the sovereignty of the State.
- 2) the offence is considered political or military;
- 3) there are sufficient grounds for believing that extradition is related to the aim of prosecuting the person due to his or her race, religious affiliation, nationality, gender, or political views.

Further, fiscal offences are criminalised under the legislation of Latvia thus extradition can be executed unless other conditions or circumstances are not observed preventing from extradition.

Further, Latvia is a party to the Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union Article 8 of which provides that mutual assistance may not be refused solely on the ground that the request concerns an offence which the requested Member State considers a fiscal offence.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 44 Extradition**

### **Paragraph 17**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

**The Criminal Procedure Law Section 705. Completion of an Examination** stipulates that:  
(1) Having assessed the grounds and admissibility for the extradition of a person, a public prosecutor shall take a **reasoned decision** on the following:  
1) the admissibility of the extradition of the person;  
2) a refusal to extradite the person.  
(2) If a decision has been taken regarding the admissibility of the extradition of a person, a copy of the decision shall be issued to such person.  
(3) A person to be extradited may appeal a decision on the admissibility of extradition to the Supreme Court within 10 days of the day of the receipt thereof. If the decision is not appealed, such decision shall enter into effect.

In the course of examination of an extradition request, if a request does not have sufficient information in order to decide a matter regarding extradition, the Prosecutor General's Office shall request from the foreign state the necessary additional information for determining the term for the submission of information (Section 704 CPL).

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 44 Extradition**

### **Paragraph 18**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

Latvia has adopted and enforced the Framework Decision of the Council of the European Union concerning European Arrest Warrant and extradition procedures among Member States.

In 2011, 210 European Arrest warrants were issued by the Prosecutor's General Office and 19 persons were detained on the territory of Latvia for the purpose of extradition. In 2010, 25 persons were detained on the territory of Latvia for the purpose of extradition.

In 2011, 94 persons were extradited to Latvia.

Latvia has ratified the European Convention on Extradition and its three Additional Protocols and further concluded bilateral extradition treaties with Australia, Canada, Russian Federation and the United States of America.

## **(b) Observations on the implementation of the article**

The review team encouraged the Latvian authorities to engage in the negotiation of, and conclude, further bilateral treaties or agreements with foreign countries (particularly non-European countries) with a view to giving practical effect to, or enhancing, the provisions of article 44 of UNCAC.

### **Article 45 Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

##### **The Criminal Procedure Law Section 764 Grounds for the Execution in Latvia of a Punishment Related to the Deprivation of Liberty Imposed in a Foreign State:**

(1) The grounds for the execution in Latvia of a punishment related to the deprivation of liberty imposed in a foreign state (hereinafter – punishment of deprivation of liberty) shall be as follows:

- 1) a request of the Ministry of Justice to transfer the execution of a punishment of deprivation of liberty to Latvia and the consent of the foreign state for such transfer;
- 2) a request of the foreign state to take over the punishment of deprivation of liberty imposed in the foreign state and the consent of the Ministry of Justice for such takeover.

(2) The provisions of this Chapter shall be applicable regardless of whether the person convicted in the foreign state is in the foreign state or in Latvia.

##### **Section 767. Consent of a Person Convicted in a Foreign State for his or her Takeover for Serving the Punishment of Deprivation of Liberty in Latvia:**

(1) A person convicted in a foreign state who is serving the punishment of deprivation of liberty in the foreign state may be taken over for serving the punishment in Latvia, if the person agrees thereto.

(2) A person convicted in a foreign state may be taken over for serving of the punishment in Latvia without a consent of the relevant person if:

- 1) the person is in Latvia;
- 2) the person has escaped from serving the punishment in the foreign state and has entered Latvia and the relevant foreign state has requested to ensure the serving of the punishment in Latvia;
- 3) the judgment or administrative decision contains an order regarding removal or deportation of the person from the foreign state after release of the relevant person from prison;
- 4) there is a reason to believe that, taking into account the age or physical or mental state of the person, taking over for serving the punishment is necessary, and if the representative of the person convicted in the foreign state agrees thereto.

(3) A person convicted in a foreign state subjected to removal or deportation shall be taken over without a consent of the person, if an opinion of the relevant person on transfer thereof, a copy of the removal or deportation order has been appended to the request of the foreign state and other conditions of Section 766 of this Law exist.

In accordance with **Paragraph 3 of Section 714 of the Criminal Procedure Law:**

(3) If a European arrest warrant has been taken in a foreign state regarding a Latvian citizen, then the extradition of such person shall take place with the condition that the person be transferred back to Latvia, after the conviction thereof, for the serving of a sentence of deprivation of liberty imposed on such person. Execution of the imposed sentence shall take place in accordance with the procedures specified in Sections 782-801 of this Law.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the transfer of sentenced persons is based on the domestic legal framework regulating the execution of a foreign criminal judgment in Latvia (mentioned above). Concrete provisions provide for the consent of the convicted person (section 767 CPL), the process to be followed and, in the case of transfer to another EU Member State, the applicable grounds for refusal (see section 776 CPL). Moreover, Latvia is a State party to the European Convention on the Transfer of Sentenced Persons and its Additional Protocol, as well as the European Convention on the International Validity of Criminal Judgments and the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 1**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

Latvia is State party to :

- the European Convention on Mutual Assistance in Criminal Matters, Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
- the European Convention on the Transfer of Proceedings in Criminal Matters
- the European Convention on the international validity of criminal judgements
- the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences
- Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union.

Latvia is also a party to the Council of Europe Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, however central authorities in the context of this Convention are the State Police (for pre-trial investigation before criminal prosecution), Prosecutor's General Office (pre-trial investigation stage before the case is sent to the Court), Ministry of Justice (in the course of trial). The State police will be invited to participate in the country visit along with the Prosecutor's General Office and Ministry of Justice.

The following bilateral agreements concerning mutual assistance in criminal cases has been signed with the United States of America, Russia, Belarus, Moldova, Ukraine, Uzbekistan, Kyrgyzstan.

The Corruption Prevention and Combating Bureau in 2011 has sent 30 mutual assistance requests in relation to offences covered by the Convention through the Prosecutor's General Office. The Prosecutor's General has no overall statistics providing information about mutual assistance cases concerning offences covered by this Convention. This information can be prepared for the visit.

In 2011, one mutual assistance request was received and executed at the Ministry of Justice concerning the offences covered by the Convention.

One mutual assistance request was sent in relation to offences covered by the Convention through the Ministry of Justice.

The State Police in 2011 has received 471 mutual assistance requests, executed 385 requests. In 2010, the number of received requests was 335, executed- 271. However, it has to be noted that very few of these requests are related to the offences covered by the Convention.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that mutual legal assistance can be afforded for a wide range of measures in relation to investigations, prosecutions and judicial proceedings. As reported during the country visit, in terms of the applicable domestic legal framework, chapter 64 of the CPL regulates issues pertaining to “international cooperation in the criminal legal field”, whereas chapter 82 focuses on the assistance to a foreign State in the “performance of procedural actions”.<sup>1</sup>

In relation to treaty-based assistance, Latvia can use UNCAC on the understanding that no regional instrument (for example, a convention of the Council of Europe) applies in a given case. It was reported that so far there were two cases based on UNCAC and both of them referred to outgoing requests. Another request based on UNCAC was received by the Latvian authorities in 2011.

The reviewing experts concluded that the provision has been adequately implemented. However, similarly to extradition, the reviewing experts indicated the lack of a systematic approach to gather statistics in the field of MLA and took note of the reported efforts to put in place an information system on legal assistance (see the aforementioned recommendation under the sub-section on “extradition”).

## **Article 46 Mutual legal assistance**

### **Paragraph 2**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal*

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<sup>1</sup> In accordance with section 138 CPL, investigative actions are procedural actions that are directed toward the acquisition of information or the examination of already acquired information in concrete criminal proceedings. Chapter 10 of the CPL provides for the following, inter alia, procedural activities: interrogation (section 145); interrogation of an expert and an auditor (section 156); confrontation (section 157); search (section 179); inspection of the location of an event and premises (sections 162 and 163); search (section 179 et seq.); seizure (section 186); expert examination (section 193) etc.

*person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

The liability of legal persons for criminal offences was introduced in 2005 by providing that criminal liability of legal entities is carried through coercive means. The reason why liability of legal entities for criminal offences is not introduced directly is connected with theoretical and legal circumstances. According to the Constitution of Latvia “Everyone shall be presumed innocent until their guilt has been established in accordance with law”. Due to the fact that it is impossible to prove guilt, which is subjective and mental attitude, of a legal entity, introduction of criminal liability of legal entity would be anti-constitutional. According to Section 12 of the Criminal Law, a natural person who has committed a criminal offence acting as an individual or as a member of the collegial institution of the relevant legal person on the basis of a right to represent the legal person, to act on behalf of or to take decisions in the name of such legal person, or realising control within the scope of the legal person or while in the service of the legal person, shall be criminally liable therefor. For legal persons, who are not public law legal persons, the coercive measures provided for in Chapter VIII<sup>1</sup> of the Criminal Law may be applied. According to Paragraph one of Section 70<sup>1</sup> of the Criminal Law for the criminal offences provided for in the Special Part of the Criminal Law, coercive measures may be applied to a legal person, if the criminal offence has been committed in the interests of the legal person by a natural person in conformity with the provisions of Paragraph one of Section 12 CL.

Moreover, according to Paragraph one and two of Section 439 of the Criminal Procedure Law if it has been ascertained during the course of criminal proceedings that a natural person, acting individually or as a member of a collegial authority of the relevant legal person, has committed a criminal offence in the interests of such legal person based on the right to represent the legal person, operate under the assignment thereof, or take decisions on behalf of the legal person, or in actualising control within the framework of the legal person or while in the service of the legal person, a person directing the proceedings may take a reasoned decision on the fact that proceedings are being initiated for the application of coercive measures to the legal person. Proceedings for the application of coercive measures to a legal person take place within the framework of the criminal proceedings in which the natural person referred to in Paragraph two of this Section has been recognised as a suspect or is being held criminally liable. Therefore, before a subjective side of the criminal offence is not proven, there is no legal basis to decide on criminal liability of a legal person and on coercive measures applicable to a legal person.

There are no cases when Latvian legal persons have been under investigation by law enforcement institutions of other countries. However, in one of the criminal cases in relation to offences covered by the Convention Latvia is in the process of imposing coercive measures (criminal liability) to two foreign legal persons for giving bribes to Latvian public officials.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Subparagraph 3 (a) to 3 (i)**

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia can afford the forms of mutual legal assistance listed in the provision above.

**The Criminal Procedure Law Section 673. Types of International Co-operation:**

(1) Latvia shall request international co-operation in criminal matters from a foreign state (hereinafter also - criminal-legal co-operation), and shall ensure such co-operation:

- 1) in the extradition of a person for criminal prosecution, trial, or the execution of a judgment, or for the determination of compulsory measures of a medical nature;
- 2) in the transfer of criminal proceedings;
- 3) in the transfer of a convicted person for the execution of a sentence of deprivation of liberty;
- 4) in the execution of procedural actions;
- 5) in the recognition and execution of a judgment;
- 6) in other cases provided for in international treaties.

(2) Criminal-legal co-operation with international courts and with courts and tribunals established by international organisations (hereinafter - international court) shall provide for the transfer of persons to international courts, for procedural assistance for such courts, and for the execution of the adjudications of international courts.

All the activities provided in this provision are stipulated in the Criminal Procedure Law:

Chapter 66 Extradition of a Person to a Foreign State

Chapter 67 Takeover in Latvia of Criminal Proceedings Commenced in a Foreign State

Chapter 68 Transfer of Criminal Proceedings Commenced in Latvia

Chapter 69 Takeover of a Person Convicted in a Foreign State for the Serving of a Sentence in Latvia

Chapter 70 Transfer of a Person Convicted in Latvia for the Serving of a Sentence in a Foreign State

Chapter 71 of the Criminal Procedure Law Execution in Latvia of a Sentence Imposed in a Foreign State

Chapter 73 Assistance to a Foreign State in the Performance of Procedural actions

**Paragraph 1 of Section 673 CPL** provides for the general framework in the area of international co-operation as it stipulates that Latvia shall request international co-operation in criminal matters from a foreign state (Latvia as requesting state) and shall ensure such co-operation (Latvia as the country executing request of another country). In accordance with the Section 138 of the Criminal Procedure Law investigative actions are procedural actions that are directed toward the acquisition of information or the examination of already acquired information in concrete criminal proceedings. Chapter 10 of the Criminal Procedure Law provides for procedural activities: interrogation (Section 145),

interrogation of an expert and an auditor (Section 156), confrontation (Section 157), search (Section 179), seizure (Section 186) and other activities.

Detailed provisions of execution of requests of foreign states are provided in **Chapter 82 CPL**. Assistance in the Performance of Procedural Actions, including transfer of an item to a foreign state (Section 858), performance of procedural activities by using technical means (Section 851), issuance of procedural documents of a foreign state (Section 859), execution of a procedural adjudication of a European Union Member State regarding provision of property for confiscation or provision of acquiring evidence in Latvia (Section 860), performance of special investigation activities (Section 853) and other.

In accordance with the **Section 215 of the CPL** the following special investigative actions shall be performed in accordance with the provisions of this Chapter:

- 1) control of legal correspondence;
- 2) control of means of communication;
- 3) control of data in an automated data processing system;
- 4) control of the content of transmitted data;
- 5) audio-control of a site or a person;
- 6) video-control of a site;
- 7) surveillance and tracking of a person;
- 8) surveillance of an object;
- 9) a special investigative experiment;
- 10) the acquisition in a special manner of the samples necessary for a comparative study;
- 11) control of a criminal activity;

Further, temporary acceptance or transfer of a person may take place (Section 854 and Section 855). If in the framework of the request of foreign state information from banks has to be provided permission of the investigation judge is required and this information is requested and disclosed on the basis of the **CPL Section 121. Professional Secrets Protected by Criminal Proceedings:**

(5) Undisclosable information or documents, which contain such information and are at the disposal of credit institutions or financial institutions, shall be requested in pre-trial proceedings only with the decision of an investigating judge. Transactions in the accounts of clients of credit institutions or financial institutions shall be monitored in pre-trial proceedings for a certain time period only with the permission of an investigating judge. Transaction in the account of a client of a credit institution or financial institution may be monitored for a period of time up to three months, but, if necessary, the investigating judge may extend the time period for a period of time up to three months;

and **Section 190. Submission of Objects and Documents Requested by a Person Directing the Proceedings:**

(1) A person directing the proceedings, without conducting the seizure provided for in Section 186 of this Law, is entitled to request from natural or legal persons, in writing, objects, documents and information regarding the facts that are significant to criminal proceedings, including in the form of electronic information and document that is processed, stored or transmitted using electronic information systems.

(2) If natural or legal persons do not submit the objects and documents requested by a person directing the proceedings during the term specified by such person directing the proceedings, the person directing the proceedings shall conduct a seizure or search in accordance with the procedures specified in this Law.

(3) The heads of legal persons have a duty to perform a documentary audit, inventory, or departmental or service examination within the framework of the competence thereof and on the basis of a request of a person directing the proceedings, and to submit documents, within a specific term, together with the relevant additions regarding the fulfilled request.

(4) [19 January 2006]

(5) If a document or object significant to criminal proceedings is located in any administrative case, civil case or another criminal case, a person directing the proceedings shall request it from the holder of the relevant case. The original of a document or object shall be issued only temporarily for conducting of an expert-examination, but in other cases a certified copy of a document or image of an object shall be issued.

### **Section 880 Taking of a Decision on Imposition of Attachment on Property or of a Decision on a search and Sending to a European Union Member State**

(1) Imposition of an attachment on property in another European Union Member State shall take place on the basis of a decision on imposition of attachment on property taken by a person directing the proceedings in pre-trial proceedings and approved by the investigating judge. Search in another European Union Member State shall be performed on the basis of a decision on a search taken by the investigating judge.

(2) The information referred to in Section 180, Paragraph two of this Law shall be indicated in the decision on a search, but in the decision on imposition of attachment on property – information referred to in Section 361, Paragraph five of this Law.

(3) The investigating judge, upon approval of a decision on imposition of attachment on property taken by a person directing the proceedings or upon taking of a decision on a search, shall, without delay but not later than within three working days, complete a certification completed in a special form, informing the person directing the proceedings thereof. The person directing the proceedings shall provide the translation of the certification in the official language of the relevant European Union Member State or in the language which has been indicated by the relevant European Union Member State for the receipt of certification to the General Secretariat of the Council of the European Union.

(4) In the stage of trial the decision on imposition of the attachment on the property or the decision on a search shall be taken, certification shall be completed and the translation thereof shall be provided by a court in the record-keeping of which the criminal case is located.

(5) The person directing the proceedings shall submit the decision on imposition of the attachment on property or the decision on a search, the certification and the translation thereof, to the Prosecutor General's Office which shall, without delay but not later than within three working days, send it to the competent authority of the relevant European Union Member State.

In 2011, Latvia has to execute search of premises of two different persons in Sweden in the framework of two unrelated criminal cases. In two cases, real estate owned by a Latvian citizen and a foreign citizen was arrested on behalf of the request of the Corruption Prevention and Combating Bureau. The same year several citizens of other countries were interrogated on behalf of the request of the Corruption Prevention and Combating Bureau.

#### **(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 46 Mutual legal assistance**

#### **Subparagraph 3 (j) to 3 (k)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

(j) *Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

(k) *The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

**Section 793 CPL. Grounds for the Execution of an Adjudication of a European Union Member State Regarding a Confiscation of Property** stipulate that:

The grounds for the execution in Latvia of an adjudication of a European Union Member State regarding a confiscation of the property, the instrumentalities of a criminal offence and the proceeds of crime (hereinafter – adjudication regarding a confiscation of property) shall be as follows:

- 1) an adjudication regarding a confiscation of property or a certified copy thereof and a certification completed in a special form;
- 2) a fact that a person, to whom the adjudication regarding confiscation of property applies to, has a place of residence (to a legal person – a registered legal address) or he or she owns property or has other income in Latvia;
- 3) a decision of a court of Latvia on confiscation of property to be executed in Latvia and a writ of execution regarding transfer of the decision for execution.

**Section 785 CPL. Grounds for the Execution of an Adjudication Regarding Recovery of a Financial Nature:**

The grounds for the execution of an adjudication rendered in a European Union Member State regarding a fine (for legal persons – recovery of money), the compensation specified in the same adjudication to the victim, the reimbursement of procedural expenditure and the payment to a foundation or organisation for the support of victims (hereinafter – adjudication regarding recovery of a financial nature) shall be:

- 1) an adjudication of the competent authority of a European Union Member State regarding recovery of a financial nature or a certified copy thereof and a certification completed in a special form;
- 2) a fact that a person, to whom recovery of a financial nature applies to, has a place of residence in Latvia (to a legal person – a registered legal address) or he or she owns property or has other income;
- 3) an adjudication of the court of Latvia regarding determination of recovery of a financial nature to be executed in Latvia;
- 4) a writ of execution issued by the court of Latvia regarding transfer of the adjudication regarding recovery of a financial nature for execution in Latvia.

The Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence is also applicable.

In one of the cases investigated by the Corruption Prevention and Combating Bureau, proceeds of crime (money on bank accounts) of more than 700 000 USD have been frozen in Estonia, 175 000 EUR and Estonian kronas in Estonia, in Cyprus 0,5 million EUR were arrested. A private property in Sweden was arrested.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## Article 46 Mutual legal assistance

### Paragraph 4

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

#### (a) **Summary of information relevant to reviewing the implementation of the article**

Latvia can transmit information relating to criminal matters as described in the paragraph under review.

**Section 679.<sup>1</sup> of the Criminal Procedure Law**, adopted in July 2012, governs the exchange of information in relation to criminal proceedings carried out in Latvia for the same offence if there are sufficient grounds to believe that another state investigates the same offence and international legal cooperation has not confirmed this fact.

Exchange of information during pre-trial stage is ensured by the Prosecutor's General Office, in the stage before starting criminal prosecution - State Police. After the case is submitted to the Court the competent authority for exchange of information is the Ministry of Justice.

Exchange of information can be launched in the framework of the Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.

#### **Section 679.<sup>1</sup> Exchange of Information Regarding Criminal Proceedings Taking Place in Latvia for the Same Criminal Offence**

(1) If there is a justified reason to believe that criminal proceedings for the same criminal offence are taking place in another state concurrently with the criminal proceedings taking place in Latvia and sufficient confirmation has not been obtained beforehand as a result of international co-operation, a person directing the proceedings shall, with the intermediation of the competent authority, request the foreign state to provide information regarding it. The person directing the proceedings shall indicate the information referred to in Section 678 of this Law in the request. The request shall be translated into the official language of the relevant European Union Member State or into the language, which was indicated by the state for communication to the General Secretariat of the Council of the European Union.

(2) Having received a request of a foreign state to provide information regarding whether criminal proceedings for the same criminal offence are taking place in Latvia, the competent authority shall provide information to the foreign state within the time period indicated in the request, but if a time period has not been indicated information shall be provided as soon after receipt of the request as possible.

(3) The following shall be indicated in the information to a foreign state regarding whether criminal proceedings for the same criminal offence are taking place in Latvia:

- 1) contact information of the person directing the proceedings;
- 2) information regarding whether criminal proceedings for the same criminal offence are taking place or have taken place and whether the same person is related thereto;
- 3) if criminal proceedings for the same criminal offence are taking place in Latvia – the criminal procedural stage and, if a final adjudication has been rendered, the essence of the adjudication.

(4) The Prosecutor General's Office shall be the competent authority in exchange of information in pre-trial proceedings, and the State Police – for the commencement of criminal

prosecution. After transfer of a case to a court the Ministry of Justice shall be the competent authority for exchange of information.

The exchange of information is also possible on the basis of the **Law on the Exchange of Information for the Prevention, Detection and Investigation of Criminal Offences**. The Law was drafted and adopted on the basis of the Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.

There are no statistical data prepared according to this criteria, however this information could be prepared for the on-site visit.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 5**

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision described above.

**Section 679.<sup>1</sup> Exchange of Information Regarding Criminal Proceedings Taking Place in Latvia for the Same Criminal Offence**

(1) If there is a justified reason to believe that criminal proceedings for the same criminal offence are taking place in another state concurrently with the criminal proceedings taking place in Latvia and sufficient confirmation has not been obtained beforehand as a result of international co-operation, a person directing the proceedings shall, with the intermediation of the competent authority, request the foreign state to provide information regarding it. The person directing the proceedings shall indicate the information referred to in Section 678 of this Law in the request. The request shall be translated into the official language of the relevant European Union Member State or into the language, which was indicated by the state for communication to the General Secretariat of the Council of the European Union.

(2) Having received a request of a foreign state to provide information regarding whether criminal proceedings for the same criminal offence are taking place in Latvia, the competent authority shall provide information to the foreign state within the time period indicated in the request, but if a time period has not been indicated information shall be provided as soon after receipt of the request as possible.

(3) The following shall be indicated in the information to a foreign state regarding whether criminal proceedings for the same criminal offence are taking place in Latvia:

- 1) contact information of the person directing the proceedings;
- 2) information regarding whether criminal proceedings for the same criminal offence are taking place or have taken place and whether the same person is related thereto;
- 3) if criminal proceedings for the same criminal offence are taking place in Latvia – the criminal procedural stage and, if a final adjudication has been rendered, the essence of the adjudication.

(4) The Prosecutor General's Office shall be the competent authority in exchange of information in pre-trial proceedings, and the State Police – for the commencement of criminal prosecution. After transfer of a case to a court the Ministry of Justice shall be the competent authority for exchange of information.

**The Criminal Procedure Law Section 375. Familiarisation with the Materials of a Criminal Case:**

(1) During criminal proceedings, the materials located in the criminal case shall be a secret of the investigation, and the officials who perform the criminal proceedings, as well as the persons to whom the referred to officials present the relevant materials in accordance with the procedures provided for in this Law, shall be permitted to familiarise themselves with such materials.

(2) After the completion of criminal proceedings and the entering into effect of the final adjudication, employees of the court, the Prosecutor's Office, and investigating institutions, and persons whose rights were infringed upon in the concrete criminal proceedings, as well as persons who performed scientific activities shall be permitted to familiarise themselves with the materials of the criminal case. All final adjudications in criminal cases, ensuring protection of the information specified by law, shall be publicly accessible.

(3) Information regarding the place of residence and telephone number, or the number (address) of other means of communication, of a person (except for a person who has the right to defence) involved in criminal proceedings shall be stored in a separate reference that shall be attached to a criminal case, and only the officials who perform the criminal proceedings may familiarise themselves with such reference.

(4) Persons involved in the criminal proceedings and which have the right to familiarise with the materials of a criminal case shall be notified in writing regarding the duty to keep a State secret and regarding the liability which is intended for disclosure of the State secret. Making of copies of the documents containing the State secret is not permissible.

**The Criminal Procedure Law Section 678. Form and Content of Criminal Proceedings Co-operation Document**

(1) A request for criminal-legal co-operation shall be submitted in writing, if an international agreement or law has not specified otherwise.

(2) A request shall indicate:

- 1) the name of the authority of the submitter of the request;
- 2) the object and essence of the request;
- 3) a description of the criminal offence and the legal classification of such offence;
- 4) information that may help to identify a person.

(3) A request shall also indicate other information that is necessary for the execution thereof.

(4) If in co-operation of criminal proceedings with the Member States of the European Union a special document is provided for, the form and content thereof shall be defined by the Cabinet.

(5) The competent authority, in sending a request for criminal-legal co-operation, may request a foreign state to ensure the confidentiality of the information contained in the request.

**(b) Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 8**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

Section 816 CPL indicates those reasons for refusal of the execution of a request of a foreign state.

**The Criminal Procedure Law Section 816. Reasons for Refusal of the Execution of a Request of a Foreign State:**

The execution of a request of a foreign state may be refused, if:

- 1) the request is related to a political offence, except the case when a request applies to terrorism or financing of terrorism;
- 2) the execution of the request may harm the sovereignty, security, social order, or other substantial interests of the State of Latvia;
- 3) sufficient information has not been submitted and the acquisition of additional information is not possible.

**Information from banks and credit institutions is requested on the grounds of Paragraph 5 of Section 121 CPL:**

(5) Undisclosable information or documents, which contain such information and are at the disposal of credit institutions or financial institutions, shall be requested in pre-trial proceedings only with the decision of an investigating judge. Transactions in the accounts of clients of credit institutions or financial institutions shall be monitored in pre-trial proceedings for a certain time period only with the permission of an investigating judge. Transaction in the account of a client of a credit institution or financial institution may be monitored for a period of time up to three months, but, if necessary, the investigating judge may extend the time period for a period of time up to three months;

**and Section 190 CPL. Submission of Objects and Documents Requested by a Person Directing the Proceedings:**

(1) A person directing the proceedings, without conducting the seizure provided for in Section 186 of this Law, is entitled to request from natural or legal persons, in writing, objects, documents and information regarding the facts that are significant to criminal proceedings, including in the form of electronic information and document that is processed, stored or transmitted using electronic information systems.

(2) If natural or legal persons do not submit the objects and documents requested by a person directing the proceedings during the term specified by such person directing the proceedings, the person directing the proceedings shall conduct a seizure or search in accordance with the procedures specified in this Law.

(3) The heads of legal persons have a duty to perform a documentary audit, inventory, or departmental or service examination within the framework of the competence thereof and on the basis of a request of a person directing the proceedings, and to submit documents, within a specific term, together with the relevant additions regarding the fulfilled request.

(4) excluded [19 January 2006]

(5) If a document or object significant to criminal proceedings is located in any administrative case, civil case or another criminal case, a person directing the proceedings shall request it from the holder of the relevant case. The original of a document or object shall be issued only temporarily for conducting of an expert-examination, but in other cases a certified copy of a document or image of an object shall be issued.

In 2012, a mutual legal assistance request was received from Italy concerning bank information and there was no problem receiving such information.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that bank secrecy is not included among the grounds for refusal of MLA requests; neither the nature of the offence for which assistance is requested as a fiscal crime constitutes a reason to deny such assistance (also by virtue of article 1 of the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, as reported during the country visit).

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 46 Mutual legal assistance**

#### **Subparagraph 9 (a)**

*9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

There are no limitations concerning mutual assistance in general. However, certain restrictions are in place concerning implementation of compulsory measures and special investigation.

#### **(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 46 Mutual legal assistance**

#### **Subparagraph 9 (b)**

*9.( b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such*

*assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

**The Criminal Procedure Law Section 816. Reasons for the Refusal of the Fulfilment of a Request of a Foreign State:**

The execution of a request of a foreign state may be refused, if:

- 1) the request is related to a political offence, except for the case when a request applies to terrorism or financing of terrorism;
- 2) the execution of the request may harm the sovereignty, security, social order, or other substantial interests of the State of Latvia;
- 3) sufficient information has not been submitted and the acquisition of additional information is not possible.

**The Criminal Procedure Law Section 818. Application of Compulsory (coercive) Measures:**

Latvia may refuse the application of a compulsory measure regarding an offence that is not criminally punishable in Latvia, if:

- 1) Latvia does not have a treaty regarding mutual legal assistance in criminal cases with the state that submitted the request;
- 2) such treaty exists, but the foreign state has undertaken to apply compulsory measures in such state only regarding offences that are criminally punishable in such state.

In the context of international cooperation in criminal matters the Criminal Procedure Law stipulates that Latvia in addition to the extradition of a person for criminal prosecution, trial, or the execution of a judgment, the transfer of criminal proceedings, the transfer of a convicted person for the execution of a sentence of deprivation of liberty, the execution of procedural actions, in the recognition and execution of a judgment, execution of security measure unrelated to deprivation of liberty will request and will provide assistance for the determination of compulsory (coercive) measures of a medical nature.

Further, the Criminal Procedure Law stipulates that a person may be extradited for criminal prosecution, or trial, regarding an offence the committing of which provides for a punishment of deprivation of liberty the maximum limit of which is not less than one year, or a more serious punishment, if the international agreement does not provide otherwise.

A person may be extradited for the execution of a judgment by the state that rendered the judgment and convicted the person with a punishment that is related to deprivation of liberty for a term of not less than four months, if the international agreement does not provide otherwise.

A special investigative action shall be performed on the basis of a request of a foreign state only in a case where such operation would be admissible in criminal proceedings taking place in Latvia regarding the same offence. In Latvia special investigative actions shall be performed for crimes if applicable sanction is deprivation of liberty for a term exceeding two years.

A person convicted in a foreign state may be taken over for the serving of a sentence in Latvia at the moment of the receipt of a request, the convicted person has at least six months until the end of the serving of the sentence.

One of the reasons for rejection of the request for the execution of a sentence imposed in a foreign

state is that the expenses for the execution of the sentence are not proportionate with the severity and harm caused by the criminal offence.

In general the execution of a request of a foreign state may be refused, if:

- 1) the request is related to a political offence, except for the case when a request applies to terrorism or financing of terrorism;
- 2) the execution of the request may harm the sovereignty, security, social order, or other substantial interests of the State of Latvia;
- 3) sufficient information has not been submitted and the acquisition of additional information is not possible.

Other reasons for refusal of a request for foreign state are provided in the Criminal Procedure Law, however there are no provisions related to *de minimis* nature except for the cases of execution of sentence imposed in a foreign state as described above.

There are no *de minimis* provisions in relation to general execution or refusal of execution of the request of a foreign State.

Certain conditions are applicable to the takeover of a person for the serving of a sentence. The Criminal Procedure Law Section 751 stipulates that at the moment of the receipt of a request, the convicted person has at least six months until the end of the serving of the sentence.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the execution of MLA requests involving coercive measures is subject to the double criminality requirement (section 818 CPL).

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 46 Mutual legal assistance**

#### **Subparagraph 9 (c)**

*9. (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented into the domestic legal system the measures described above (see above).

##### **Criminal Procedure Law Section 849 Execution of a Request of a Foreign State:**

If, in executing a request of a foreign state, facts are acquired for the further examination of which the performance of other emergency procedural actions are necessary, the executor of the request is entitled, in accordance with the procedures specified in this Law, to perform such activities, notifying the initiator of the request thereof.

#### **(b) Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

## Article 46 Mutual legal assistance

### Subparagraph 10 (a)

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

### (a) Summary of information relevant to reviewing the implementation of the article

Latvia confirmed compliance with the provision under review.

#### **Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters:**

#### **Article 13 - Temporary transfer of detained persons to the requested Party**

- 1 Where there is agreement between the competent authorities of the Parties concerned, a Party which has requested an investigation for which the presence of a person held in custody on its own territory is required may temporarily transfer that person to the territory of the Party in which the investigation is to take place.
- 2 The agreement shall cover the arrangements for the temporary transfer of the person and the date by which the person must be returned to the territory of the requesting Party.
- 3 Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Party.
- 4 The transferred person shall remain in custody in the territory of the requested Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from which the person was transferred applies for his or her release.
- 5 The period of custody in the territory of the requested Party shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Party.

#### **The Criminal Procedure Law Section 820. Temporary Transfer of a Person:**

- (1) On the basis of a request of a foreign state, a person who has been detained in Latvia, is being held under arrest in Latvia or is serving a sentence related to deprivation of liberty in Latvia may be transferred for a specific term to the foreign state for the provision or confronting of testimony with the condition that such person will be immediately transferred back to Latvia after the completion of the procedural action, but not later than the last day of the term of transferral.
- (2) Transfer may be refused, if:
  - 1) the person detained, arrested, or convicted does not agree to such transfer;
  - 2) the presence of such person is necessary in criminal proceedings taking place in Latvia;
  - 3) the transportation of the person prohibits the possibility to complete criminal proceedings in Latvia in a reasonable term;
  - 4) other substantial reasons exist.
- (3) The term that a person has spent, on the basis of a request of a foreign state, under arrest in

the foreign state shall be included in the term of a security measure and a served sentence.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Subparagraph 10 (b)**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

**(a) Summary of information relevant to reviewing the implementation of the article**

See above.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Subparagraph 11 (a) to 11 (d)**

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provisions under review.

**Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union Article 9** provides for temporary transfer of a person for testimony or confrontation purposes. The same provisions are stipulated in the Council of Europe Convention on Mutual Assistance in Criminal Matters and Second Additional Protocol of this Convention (Article 3 and 13), including obligation of keeping of transferred person in custody. With regards to the Additional Protocol Latvia has made a declaration that before an agreement is reached under paragraph 1 of the Article 13, the consent referred to in paragraph 3 of the Article 13 will be required.

**Section 821 of the CPL Temporary Acceptance of a Person**

(1) If a foreign state requests that a person who is being held under arrest, or is serving a punishment related to deprivation of liberty, in such foreign state be located in Latvia during a procedural action, the competent authority may permit the acceptance of such person during the performance of the procedural action.

(2) A person who has been conveyed to Latvia on the basis of a request of a foreign state shall be held under arrest on the grounds of the documents referred to in Section 702, Paragraph one, Clause 1 of this Law. After execution of the request, such persons shall be immediately transferred back to the foreign state, but not later than the last day of the term of transfer.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 12**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia does comply with the provision under review.

**Section 823 of the CPL. Immunity of a Person**

(1) Criminal proceedings shall not be commenced or continued against a person regarding an offence that was committed before the arrival of such person in Latvia if he or she arrived in Latvia with the consent of Latvia for the execution of a request of a foreign state.

(2) The immunity specified in Paragraph one of this Section shall be terminated for a person after 15 days from the moment when such person could leave the territory of Latvia, as well as in the case where the person has left the territory of Latvia and then voluntarily returned to Latvia.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## Article 46 Mutual legal assistance

### Paragraph 13

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has established a central authority as described in the paragraph at issue.

##### **The Criminal Procedure Law Section 812. Competent Authorities in the Examination of a Request of a Foreign State:**

- (1) In the pre-trial proceedings, the Prosecutor General's Office shall examine and decide a request of a foreign state, and up to the commencement of criminal prosecution the State Police shall also examine and decide such request.
- (2) After transfer of a case to a court, the Ministry of Justice shall examine and decide a request of a foreign state.
- (3) If state or competent authorities have come to an agreement regarding direct contact, the relevant institutions shall examine and decide requests.

The Central Authority for transferring mutual assistance requests is Prosecutor's General Office, however no statistics are available concerning requests in relation to offences provided by the Convention.

In accordance with the Law on the implementation of the United Nations Convention against Corruption (effective as of 3 February 2006), the Central Authority for sending and receiving mutual legal assistance requests is Ministry of Justice.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Ministry of Justice is the competent authority when the MLA request is based on UNCAC. The Secretary-General of the United Nations has been notified accordingly (notification of 5 June 2009). The Prosecutor's General Office is responsible for requests submitted under the Council of Europe instruments. It is also exclusively responsible for the extradition requests.

The reviewing experts concluded that the provision has been adequately implemented.

## Article 46 Mutual legal assistance

### Paragraph 14

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Latvia confirmed compliance with the provision under review. The Secretary General has been notified of the languages acceptable to Latvia (notification of 5 June 2009).

**The Criminal Procedure Law Section 678. Paragraph 1 Form and Content of Criminal Proceedings Co-operation Document** stipulates:

(1) A request for criminal-legal co-operation shall be submitted in writing, if an international agreement or law has not specified otherwise.

**Section 679 of the CPL Language of a Request for Criminal-legal Co-operation**

(1) A request for criminal-legal co-operation shall be written and submitted in the official language.

In accordance with notifications under the Article 46 (14) the Republic of Latvia has declared that requests and supplementary documents addressed to the Republic of Latvia shall be sent together with their translation in Latvian.

**Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters Article 4** stipulates that requests for mutual assistance, as well as spontaneous information, shall be addressed in writing.

#### (b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

## Article 46 Mutual legal assistance

### Paragraph 15

*15. A request for mutual legal assistance shall contain:*

*(a) The identity of the authority making the request;*

*(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*

*(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*

*(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*

*(e) Where possible, the identity, location and nationality of any person concerned; and*

*(f) The purpose for which the evidence, information or action is sought.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review (see above).

**The Criminal Procedure Law Section 678. Form and Content of Criminal Proceedings Co-operation Document:**

- (1) A request for criminal-legal co-operation shall be submitted in writing, if an international agreement or law has not specified otherwise.
- (2) A request shall indicate:
  - 1) the name of the authority of the submitter of the request;
  - 2) the object and essence of the request;
  - 3) a description of the criminal offence and the legal classification of such offence;
  - 4) information that may help identify a person.
- (3) A request shall also indicate other information that is necessary for the execution thereof.
- (4) If in co-operation of criminal proceedings with the Member States of the European Union a special document is provided for, the form and content thereof shall be defined by the Cabinet.
- (5) A competent authority, in sending a request for criminal-legal co-operation, may request a foreign state to ensure the confidentiality of the information contained in the request.

The Corruption Prevention and Combating Bureau in 2011 has sent 30 mutual assistance requests in relation to offences covered by the Convention through the Prosecutor's General Office. The Prosecutor's General has no overall statistics providing information about mutual assistance cases concerning offences covered by this Convention. This information can be prepared for the visit.

In 2011, one mutual assistance request was received and executed at the Ministry of Justice concerning the offences covered by the Convention.

One mutual assistance request was sent in relation to offences covered by the Convention through the Ministry of Justice.

The State Police in 2011 has received 471 mutual assistance requests, executed 385 requests. In 2010, the number of received requests was 335, and the one of executed requests was 271. However, it has to be noted that very few of these requests are related to the offences covered by the Convention.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 16**

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review (see above).

**Section 814 of the CPL Deciding of a Request of a Foreign State**

(1) A request of a foreign state regarding the provision of assistance in the performance of a procedural action shall be decided immediately, but not later than within 10 days after the receipt thereof. **If additional information is necessary for deciding of a request, such information shall be requested from the state that submitted the request.**

(2) In adjudicating a request of a foreign state, the competent authority shall take one of the following decisions:

1) on possibility of the execution of the request, determining the institution that will fulfil the request, terms, and other conditions;

2) on refusal to fulfil the request or a part thereof, substantiating the refusal.

(3) The state that submitted the request shall be, without delay, informed regarding the decision taken, if the execution of the request or a part thereof has been rejected or if a foreign state has so requested.

#### **Section 815. Fulfilment of a Request of a Foreign State**

(1) An investigating institution, the Prosecutor's Office or a court shall execute a request of a foreign state under the assignment of the competent authority.

(2) The institution executing a request of a foreign state shall, in a timely manner, inform the foreign state, on the basis of an order of the competent authority, regarding the time and place of the performance of a procedural action. The competent authority shall send to the foreign state the materials obtained as a result of the execution of the request.

(3) If a procedural action has not been performed or has been performed partially, a foreign state shall be notified regarding the reasons for the non-execution of a request.

(4) If, in executing a request of a foreign state, facts are acquired for the further examination of which the performance of other emergency procedural actions are necessary, the executor of the request is entitled, in accordance with the procedures specified in this Law, to perform such activities, notifying the initiator of the request thereof.

(5) The executor of a request of a foreign state, having determined during the execution of the request objects and documents, the circulation is prohibited by law and seizure of which is not justified in the request, shall seize such objects and documents, and write a separate protocol regarding such seizure.

#### **(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 46 Mutual legal assistance**

#### **Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

#### **The Criminal Procedure Law Section 674. Legal Basis of Criminal-legal Co-operation:**

(1) The sources of criminal-procedural rights specified in Section 2 of this Law shall regulate criminal-legal co-operation.

(2) The criminal procedure of another state may be applied, if such necessity has been justified in a request for criminal-legal co-operation, and if such application is not in contradiction with the basic principles of Latvian criminal procedure.

(3) Latvia may request that a foreign state, in fulfilling a request for criminal-legal assistance, apply the criminal procedure specified in Latvia, or separate principles thereof. (2) The criminal procedure of another state may be applied, if such necessity has been justified in a request for criminal-legal co-operation, and if such application is not in contradiction with the basic principles of Latvian criminal procedure.

#### **Section 813 of the CPL Procedures for the Fulfilment of a Request of a Foreign State**

(1) A request of a foreign state regarding the provision of assistance in the performance of a procedural action shall be fulfilled in accordance with the procedures specified in this Law.

(2) A request may be fulfilled in accordance with other procedures if so requested by a foreign state and if such execution is not in contradiction with the basic principles of the criminal procedure of Latvia.

(3) On the basis of a request of a foreign state, the competent authority may permit a representative of a foreign state to participate in the performance of a procedural action, or to personally perform such operation in the presence of a representative of the institution fulfilling the request.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that, in executing MLA requests, the criminal procedure of the requesting State may be applied if such necessity has been justified in the request and if such application is not in contradiction to the basic principles of the domestic criminal procedure (section 674, paragraph 2 CPL). With regard to the assistance in the performance of procedural action, a request is executed in accordance with the domestic legislation; it can be executed in accordance with other procedures if so requested by a foreign state and if such execution is not in contradiction with the basic principles of the criminal procedure of Latvia (section 813 CPL). On the basis of a request of a foreign state, the competent authority may permit a representative of a foreign state to participate in the performance of a procedural action, or to personally perform such operation in the presence of a representative of the institution fulfilling the request.

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 46 Mutual legal assistance**

#### **Paragraph 18**

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

## **Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**

### **Article 9 - Hearing by video conference:**

1. If a person is in one Party's territory and has to be heard as a witness or expert by the judicial authorities of another Party, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs 2 to 7.
2. The requested Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting Party by mutual agreement.
3. Requests for a hearing by video conference shall contain, in addition to the information referred to in Article 14 of the Convention, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.
4. The judicial authority of the requested Party shall summon the person concerned to appear in accordance with the forms laid down by its law.
5. With reference to hearing by video conference, the following rules shall apply:
  - a) a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
  - b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;
  - c) the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party in accordance with its own laws;
  - d) at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;
  - e) the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Party.
6. Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Party to the competent authority of the requesting Party.
7. Each Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.
8. Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Parties concerned, in accordance with their national law and relevant international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.
9. Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to

hearings by video conference involving the accused person or the suspect.

### **Section 817 of the CPL Performance of a Procedural Action Using Technical Means**

(1) A procedural action may be performed by using technical means on the basis of a request of a foreign state or on the basis of a proposal of the institution fulfilling a request and with the consent of a foreign state.

(2) A competent official of the state that submitted a request shall perform, in accordance with the procedures of such state, a procedural action using technical means. If necessary, an interpreter shall participate in the performance of such procedural action in Latvia or a foreign state.

(3) A representative of the institution that fulfils a request shall certify the identity of involved persons and ensure the progress of a procedural action in Latvia and the compliance thereof to the basic principles of Latvian criminal procedure.

(4) If, in performing a procedural action, the basic principles of Latvian criminal procedure are violated, a representative of the institution fulfilling a request shall immediately perform measures in order for such operation to continue in accordance with the referred to principles.

(5) A person who has been summoned to provide testimony has the right to not provide testimony also in a case where such non-provision of testimony arises from the laws of the state that submitted the request.

### **Section 140 of the CPL Performance of an Investigative Action by Using Technical Means**

(1) A person directing the proceedings may perform an investigative action by using technical means (teleconference, videoconference) if the interests of criminal proceedings require such use.

(2) During the course of a procedural action using technical means, it shall be ensured that the person directing the proceedings and persons who participate in the procedural action and are located in various premises and buildings can hear each other during a teleconference, and see and hear each other during a videoconference.

(2<sup>1</sup>) In the case referred to in Paragraph two of this Section the person directing the proceedings shall authorise or assign the head of the institution located in the second place of the occurrence of the procedural action to authorise a person who will ensure the course of the procedural action at his or her location (hereinafter – authorised person).

(3) In commencing a procedural action, a person directing the proceedings shall notify:

- 1) regarding the places, date, and time of the occurrence of the procedural action;
- 2) the position, given name, and surname of the person directing the proceedings;
- 3) the positions, given name, and surname of the authorised persons who are located in the second place of the occurrence of the procedural action;
- 4) regarding the content of the procedural action and the performance thereof using technical means.

(4) On the basis of an invitation, persons who participate in a procedural action shall announce the given name, surname, and procedural status thereof.

(5) An authorised person shall examine and certify the identity of a person who participates in a procedural action, but is not located in one room with the person directing the proceedings.

(6) A person directing the proceedings shall inform persons who participate in procedural actions regarding the rights and duties thereof, and in the cases provided for by law shall notify regarding liability for the non-execution of the duties thereof and initiate an investigative action.

(7) An authorised person shall draw up a certification, indicating the place, date, and time of the occurrence of a procedural action, the position, given name, and surname thereof, and the given name, surname, personal identity number, and address of each person present at the place of the occurrence of such procedural action, as well as the announced report, if the Law provides for liability for the non-execution of the duty thereof. Notified persons shall sign regarding such report. The certification shall also indicate interruptions in the course of the procedural action, and the end time of the procedural action. The certification shall be signed

by all the persons present at the place of the occurrence of the procedural action, and such certification shall be sent to a person directing the proceedings for attachment to the minutes of the procedural action.

(8) The investigative actions performed using technical means shall be recorded in pre-trial proceedings in accordance with the procedures specified in Section 143 of this Law, and other procedural actions shall be recorded in accordance with the procedures specified in Section 142 of this Law. During the adjudication of a case, the procedural actions performed using technical means shall be recorded in the minutes of a court session.

#### **Section 382 of the CPL Procedures for Performing Procedural Actions**

(1) A person directing the proceedings shall select and perform procedural actions, within the framework of criminal proceedings, in order to ensure the reaching of the purpose of criminal proceedings as quickly and economically as possible.

(2) If necessary and if required by the interests of criminal proceedings, a procedural action may be performed using technical means (teleconference, video conference) in accordance with the procedures specified in Section 140 of this Law.

#### **(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 46 Mutual legal assistance**

#### **Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

### **Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**

#### **Article 26 - Data protection**

1. Personal data transferred from one to another as a result of the execution of a request made under the Convention or any of its Protocols, may be used by the Party to which such data have been transferred, only:

a for the purpose of proceedings to which the Convention or any of its Protocols apply;

b for other judicial and administrative proceedings directly related to the proceedings mentioned under (a);

c for preventing an immediate and serious threat to public security.

2. Such data may however be used for any other purpose if prior consent to that effect is given by either the Party from which the data had been transferred, or the data subject.

3. Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols where

- such data is protected under its national legislation, and
- the Party to which the data should be transferred is not bound by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, unless the latter Party undertakes to afford such protection to the data as is required by the former Party.

4. Any Party that transfers personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols may require the Party to which the data have been transferred to give information on the use made with such data.

In accordance with the Criminal Procedure law of Latvia in order to be able use information in criminal proceedings, prosecution or judicial proceedings certain procedure has to be followed.

**The Criminal Procedure Law Section 676 Admissibility of Evidence within the Framework of Criminal-legal Co-operation:**

Evidence that has been acquired as a result of criminal-legal co-operation and in accordance with the criminal procedure specified in a foreign state shall be made equivalent to the evidence acquired in accordance with the procedures provided for in this Law.

**Section 129 CPL. Relevance of Evidence**

Evidence shall be attributable to concrete criminal proceedings if information regarding facts directly or indirectly approves the existence or non-existence of the circumstances to be proven in the criminal proceedings, as well as the existence or non-existence of other evidence, or the possibility or impossibility to use other evidence.

**Section 130 CPL. Admissibility of Evidence**

(1) It shall be admissible to use information regarding facts acquired during criminal proceedings, if such information was obtained and procedurally fixed in accordance with the procedures specified in this Law.

(2) Information regarding facts that has been acquired in the following manner shall be recognised as inadmissible and unusable in proving:

- 1) using violence, threats, blackmail, fraud, or duress;
- 2) in a procedural action that was performed by a person who, in accordance with this Law, did not have the right to perform such operation;
- 3) allowing the violations specially indicated in this Law that prohibit the use of a concrete piece of evidence;
- 4) violating the fundamental principles of criminal proceedings.

(3) Information regarding facts that has been obtained by allowing other procedural violations shall be considered restrictedly admissible, and may be used in proving only in the case where the allowed procedural violations are not essential or may be prevented, or such violations have not influenced the veracity of the acquired information, or if the reliability of such information is approved by the other information acquired in the proceedings.

(4) Evidence acquired in a conflict of interest situation shall be allowed only if a maintainer of prosecution is able to prove that the conflict of interests has not influenced the objective progress of the criminal proceedings.

In practice when request for mutual assistance is sent to another country it is by default admitted that all the information stated in the request shall be used for the purposes of investigation, prosecution or other activities considered necessary by the competent authorities.

**Section 847 CPL Confidentiality of Information**

(1) Requests of an international court regarding co-operation and the documents appended to such request shall be held in secrecy, except for cases where the disclosure thereof is necessary for the execution of a request.

(2) In providing legal assistance, the competent authority may request for an international court to perform measures in order not to allow the disclosure of information that might harm the interests of state security, in order to protect Latvian officials, or also to protect other restricted-access information.

(3) The competent authority shall be permitted to provide to international court information provided confidentially by another state only if the state that provided the information has agreed to such provision.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 20**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

**The Criminal Procedure Law Section 233. Measures for Protecting Information in Criminal Proceedings:**

(1) Information regarding the fact of the performance of a special investigative action shall, until the completion thereof, be confidential investigative data regarding the disclosure of which officials or persons who are involved in the performance thereof shall be responsible in accordance with the law. A representative who has the right to familiarise him or herself with all the materials of a criminal case from the moment of the issuance of prosecution shall not be familiarised with the documents that apply to a special investigative action until the completion of such investigative action.

(2) A person directing the proceedings shall use all the measures provided for by law in order to restrict the spread of information that has been acquired as a result of a special investigative action and that has the significance of evidence in criminal proceedings, if such information affects a private secret of a person or affects other restricted-access information protected by law.

(3) Preparation of copies of materials obtained as a result of a special investigative action shall be allowed only in the cases provided for by law, making a note thereof in the protocol of the relevant operation.

Thus information forwarded in the framework of request for mutual assistance shall be treated as confidential.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## Article 46 Mutual legal assistance

### Subparagraph 21 (a) to 21 (d)

*21. Mutual legal assistance may be refused:*

- (a) If the request is not made in conformity with the provisions of this article;*
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

#### (a) Summary of information relevant to reviewing the implementation of the article

The Latvian legal system does recognize grounds for refusal of MLA requests.

##### **The Criminal Procedure Law Section 816. Reasons for the Refusal of the Fulfilment of a Request of a Foreign State:**

The execution of a request of a foreign state may be refused, if:

- 1) the request is related to a political offence, except for the case when a request applies to terrorism or financing of terrorism;
- 2) the execution of the request may harm the sovereignty, security, social order, or other substantial interests of the State of Latvia;
- 3) sufficient information has not been submitted and the acquisition of additional information is not possible.

##### **The Criminal Procedure Law Section 818. Application of Compulsory Measures:**

Latvia may refuse the application of a compulsory measure regarding an offence that is not criminally punishable in Latvia, if:

- 1) Latvia does not have a treaty regarding mutual legal assistance in criminal cases with the state that submitted the request;
- 2) such treaty exists, but the foreign state has undertaken to apply compulsory measures in such state only regarding offences that are criminally punishable in such state.

In one case, mutual legal assistance was refused due to the bad quality of translated documents, however after having provided a new translation request was successfully executed. This was experienced by the Corruption Prevention and Combating Bureau investigating corruption related offence.

#### (b) Observations on the implementation of the article

The reviewing experts noted that section 816 CPL provides for the grounds for refusal of executing a request for assistance (political nature of the offence in question; the fact that the execution of the request may harm the sovereignty, security, social order or other substantial interests of Latvia; and lack of sufficient information, coupled with inability to submit additional information).

The reviewing experts concluded that the provision has been adequately implemented.

## Article 46 Mutual legal assistance

### Paragraph 22

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Latvia confirmed compliance with the provision under review.

Fiscal matters are not considered to be the reason to refuse mutual assistance request in Latvia.

Further, **Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters** stipulates:

#### **Article 1**

The Contracting Parties shall not exercise the right provided for in Article 2.a of the Convention to refuse assistance solely on the ground that the request concerns an offence which the requested Party considers a fiscal offence.

#### (b) Observations on the implementation of the article

The reviewing experts noted that the nature of the offence for which assistance is requested as a fiscal crime does not constitute a reason to deny such assistance (also by virtue of article 1 of the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters).

The reviewing experts concluded that the provision has been adequately implemented.

## Article 46 Mutual legal assistance

### Paragraph 23

*23. Reasons shall be given for any refusal of mutual legal assistance.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Latvia confirmed compliance with the provision under review.

#### **The Criminal Procedure Law Section 814. Deciding of a Request of a Foreign State:**

(1) A request of a foreign state regarding the provision of assistance in the performance of a procedural action shall be decided immediately, but not later than within 10 days after the receipt thereof. If additional information is necessary for the deciding of a request, such information shall be requested from the state that submitted the request.

(2) In adjudicating a request of a foreign state, a competent authority shall take one of the following decisions:

1) regarding the possibility of the execution of the request, determining the institution that will fulfil the request, terms, and other conditions;

2) regarding a refusal to fulfil the request or a part thereof, **substantiating the refusal.**

(3) A state that submitted a request shall immediately be informed regarding a taken decision, if the execution of the request or a part thereof has been rejected or if a foreign state has so requested.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

**The Criminal Procedure Law Section 814. Deciding of a Request of a Foreign State:**

(1) A request of a foreign state regarding the provision of assistance in the performance of a procedural action shall be decided immediately, but not later than within 10 days after the receipt thereof. If additional information is necessary for the deciding of a request, such information shall be requested from the state that submitted the request.

(2) In adjudicating a request of a foreign state, a competent authority shall take one of the following decisions:

1) regarding the possibility of the execution of the request, determining the institution that will fulfil the request, terms, and other conditions;

2) regarding a refusal to fulfil the request or a part thereof, substantiating the refusal.

(3) A state that submitted a request shall immediately be informed regarding a taken decision, if the execution of the request or a part thereof has been rejected or if a foreign state has so requested.

Mutual legal assistance requests are forwarded immediately and deadline for execution is about 3 weeks. If the assigned institution fails to comply with the deadline, prolongation has to be asked explaining the reason for postponing.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 25**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

The Criminal Procedure Law of Latvia does not contain provisions concerning the postponement of mutual legal assistance.

Mutual legal assistance can be postponed in accordance with the **Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**

**Article 7 - Postponed execution of requests**

1. The requested Party may postpone action on a request if such action would prejudice investigations, prosecutions or related proceedings by its authorities.
2. Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.
3. If the request is postponed, reasons shall be given for the postponement. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

**Section 801 CPL. Deferral of the Execution of an Adjudication Regarding a Confiscation of Property**

- (1) A court may defer the execution of an adjudication regarding a confiscation of property, if:
  - 1) the total value which will be obtained as a result of execution of the adjudication may exceed the amount specified in the adjudication because such adjudication is concurrently implemented in several European Union Member States;
  - 2) the execution thereof may cause harm to criminal proceedings in Latvia;
  - 3) the person convicted in a European Union Member State has applied to a court in Latvia contesting the procedures of execution;
  - 4) the execution of confiscation of property is commenced in Latvia.
- (2) A sworn bailiff, having established the reasons referred to in Paragraph one of this Section, shall defer the execution of the decision on a confiscation of property and perform measures for ensuring the execution of confiscation of property. A sworn bailiff shall notify a court and the Ministry of Justice regarding deferring the execution of the decision.
- (3) The Ministry of Justice shall inform a Member State which has taken the adjudication regarding deferring of the execution of the adjudication regarding a confiscation of property.

**Section 825.<sup>3</sup> Reasons for Deferral of the Execution of a Procedural Adjudication Regarding Provision of Property for Confiscation or Provision of Acquiring Evidence of a European Union Member State**

- (1) Execution of procedural adjudication regarding provision of property for confiscation or provision of acquiring evidence may be delayed if:
  - 1) execution thereof may be harmful to a criminal proceeding initiated in Latvia;
  - 2) an attachment is imposed on the property indicated in an adjudication or the indicated items or documents are seized for another criminal proceedings in which the procedural adjudication regarding provision of property for confiscation or provision of acquiring evidence is taken– until the moment of revoking the decision or the entering into effect of the final adjudication in the criminal proceedings; and/or
  - 3) to the property indicated in the adjudication concerning imposition of an attachment on property, a burden is applied according to other procedures – until the repeal of the burden or until the moment when the final adjudication comes into effect.
- (2) Regarding deferral of execution of procedural adjudication regarding provision of property for confiscation or provision of acquiring evidence and the reasons thereof, the competent authority of the issuing state of the adjudication shall be notified, without delay, if possible indicating the time to which the execution of deferral is postponed.

(3) Procedural adjudication regarding provision of property for confiscation or provision of acquiring evidence shall be carried out immediately after elimination of the reasons for execution thereof informing, without delay, the competent authority of the state issuing the adjudication.

(4) The Prosecutor General's Office shall inform the competent authority issuing the adjudication regarding any burden or restriction referring to the property that is indicated in the adjudication regarding imposition of an attachment on the property.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 26**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

In accordance with the **Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters:**

**Article 7 - Postponed execution of requests**

- 1 The requested Party may postpone action on a request if such action would prejudice investigations, prosecutions or related proceedings by its authorities.
- 2 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.
- 3 If the request is postponed, reasons shall be given for the postponement. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

**The Criminal Procedure Law Section 721. Execution of a Decision on the Extradition of a Person to a European Union Member State:**

(3) After the taking of a decision on the extradition of a person, the Prosecutor General's Office may defer the extradition of the relevant person to a European Union Member State for the completion of criminal proceedings commenced in Latvia or the serving of an imposed sentence, or due to serious humanitarian reasons, if there is a justified reason for thinking that extradition in the concrete situation would clearly endanger the life or health of the person. The Prosecutor General's Office shall inform the competent judicial authority of the European Union Member State regarding the decision to defer extradition, and shall come to an agreement regarding another time for the transfer of the person. Upon mutual agreement with

the Member State which takes the European arrest warrant, the Prosecutor General's Office may temporarily transfer the person.

**The Criminal Procedure Law Section 825.<sup>3</sup> Reasons for Deferral of Execution of Procedural Adjudication regarding Provision of Property for Confiscation or Provision of Acquiring Evidence of a European Union Member State:**

(1) Execution of procedural adjudication regarding provision of property for confiscation or provision of acquiring evidence may be delayed if:

- 1) execution thereof may be harmful to a criminal proceeding initiated in Latvia;
- 2) an attachment is imposed on the property indicated in an adjudication or the indicated items or documents are seized for another criminal proceedings in which the procedural adjudication regarding provision of property for confiscation or provision of acquiring evidence is taken- until the moment of revoking the decision or the entering into effect of the final adjudication in the criminal proceedings; and/or
- 3) to the property indicated in the adjudication concerning imposition of an attachment on property, a burden is applied according to other procedures - until the repeal of the burden or until the moment when the final adjudication comes into effect.

(2) Regarding deferral of execution of procedural adjudication regarding provision of property for confiscation or provision of acquiring evidence and the reasons thereof, the competent authority of the issuing state of the adjudication shall be notified, without delay, if possible indicating the time to which the execution of deferral is postponed.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 27**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

**The Criminal Procedure Law Section 823. Immunity of a Person:**

(1) Criminal proceedings shall not be commenced or continued against a person regarding an offence that was committed before the arrival of such person in Latvia if he or she arrived in Latvia with the consent of Latvia for the execution of a request of a foreign state.

(2) The immunity specified in Paragraph one of this Section shall be terminated for a person after 15 days from the moment when such person could leave the territory of Latvia, as well as in the case where the person has left the territory of Latvia and then voluntarily returned to Latvia.

**The Criminal Procedure Law Section 689. Frameworks of the Criminal Liability and of the Execution of a Punishment of a Person Extradited by a Foreign State:**

- (1) A person may be held criminally liable, tried and a punishment may be executed only regarding the criminal offence regarding which such person has been extradited.
- (2) Such conditions do not apply to cases where:
  - 1) the consent of the extraditing state has been received for criminal prosecution, and trial, regarding other offences committed before extradition;
  - 2) an offence has been committed after a person was transferred to Latvia;
  - 3) a person did not leave Latvia for 45 days after being released, though he or she had such opportunity;
  - 4) a person left and returned to Latvia after extradition.
- (3) A person may be extradited to a third country only with the consent of the extraditing state.
- (4) The consent provided for in Paragraph two, Clause 1 of this Section shall be requested in the same way as extradition.
- (5) If a final punishment has been determined for a person on the basis of a totality of criminal offences or on the basis of several judgments, but such punishment has been issued only regarding part of such offences or judgments, the court that determined the final punishment shall determine the executable part of the punishment in accordance with the procedures provided for in Division Sixteen of this Law.

A person who is a witness/expert in the investigation carried out in Latvia shall not be detained unless the person commits a crime during the stay in Latvia. In order to ensure appearance of witnesses and experts from other states extradition procedure is not normally applied unless the person serves sentence in prison or is under investigation in another country. In the later case request for temporary extradition can be applied.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

**The Criminal Procedure Law Section 680. Expenditures:**

Latvia shall cover expenditures that come about in performing criminal-legal co-operation in the territory thereof and in connection with the transit of a person to Latvia through the territory of a third country, if this Part of this Law, another regulatory enactments, or the mutual agreement of the states does not specify otherwise.

Further, the **European Convention on Mutual Assistance in Criminal Cases Article 20** stipulates that execution of requests for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested Party or the transfer of a person in custody.

**Second Additional Protocol of the European Convention on Mutual Assistance in Criminal Cases Article 5** provides Parties shall not claim from each other the refund of any costs resulting from the application of this Convention or its Protocols, except:

- a) costs incurred by the attendance of experts in the territory of the requested Party;
- b) costs incurred by the transfer of a person in custody carried out under Articles 13 or 14 of the Second Additional Protocol to this Convention, or Article 11 of this Convention;
- c) costs of a substantial or extraordinary nature.

2. However, the cost of establishing a video or telephone link, costs related to the servicing of a video or telephone link in the requested Party, the remuneration of interpreters provided by it and allowances to witnesses and their travelling expenses in the requested Party shall be refunded by the requesting Party to the requested Party, unless the Parties agree otherwise.

3. Parties shall consult with each other with a view to making arrangements for the payment of costs claimable under paragraph 1.c above.

In 2011, the total budget allocated for international legal (mutual) assistance within the Ministry of Finance was 10 903 EUR.

#### **(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 46 Mutual legal assistance**

#### **Subparagraph 29 (a)**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

In order to receive certain information or documents, it has to be stated in the request for assistance and these documents have to be relevant for the investigation in the requesting State Party.

The Criminal Procedure Law stipulates criminal procedural duty which also applies to execution of mutual assistance requests.

#### **The Criminal Procedure Law Section 9. Criminal Procedural Duty:**

(1) In initiated criminal proceedings, each person has a duty to fulfil the requirements of an authorised official for performing criminal proceedings and to comply with the procedural order specified in the Law.

(2) The disputing of the legality and validity of a procedural requirement shall be performing

in accordance with the procedure specified by this Law, yet such disputing does not remove the duty to fulfil such requirement.

(3) The rights to an exception from the execution of the duty specified in Paragraph one of this Section shall be held only by persons for whom immunity from criminal proceedings has been specified.

**The Criminal Procedure Law Section 190. Submission of Objects and Documents Requested by a Person Directing the Proceedings:**

(1) A person directing the proceedings, without conducting the seizure provided for in Section 186 of this Law, is entitled to request from natural or legal persons, in writing, objects, documents and information regarding the facts that are significant to criminal proceedings, including in the form of electronic information and document that is processed, stored or transmitted using electronic information systems.

(2) If natural or legal persons do not submit the objects and documents requested by a person directing the proceedings during the term specified by such person directing the proceedings, the person directing the proceedings shall conduct a seizure or search in accordance with the procedures specified in this Law.

(3) The heads of legal persons have a duty to perform a documentary audit, inventory, or departmental or service examination within the framework of the competence thereof and on the basis of a request of a person directing the proceedings, and to submit documents, within a specific term, together with the relevant additions regarding the fulfilled request.

(4) [19 January 2006]

(5) If a document or object significant to criminal proceedings is located in any administrative case, civil case or another criminal case, a person directing the proceedings shall request it from the holder of the relevant case. The original of a document or object shall be issued only temporarily for conducting of an expert-examination, but in other cases a certified copy of a document or image of an object shall be issued.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Subparagraph 29 (b)**

*29. The requested State Party:*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

**Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**

**Article 11 - Spontaneous information**

1) Without prejudice to their own investigations or proceedings, the competent authorities of a Party may, without prior request, forward to the competent authorities of another Party information obtained within the framework of their own investigations, when they consider

that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under the Convention or its Protocols.

2) The providing Party may, pursuant to its national law, impose conditions on the use of such information by the receiving Party.

3) The receiving Party shall be bound by those conditions.

4) However, any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to be bound by the conditions imposed by the providing Party under paragraph 2 above, unless it receives prior notice of the nature of the information to be provided and agrees to its transmission.

Further, The Criminal Procedure Law Section 847 (adopted in July 2012) provides the possibility to participate in execution of mutual assistance request carried out in Latvia on behalf of other state.

Further, in accordance with the Section 849 of the Criminal Procedure Law (adopted in July 2012) the information and facts disclosed during the execution of mutual assistance request in Latvia if they are subject to further procedural activities authorised institutions will process with these activities and will inform the requesting state.

Documents and items found during the search executed in the framework of mutual assistance request which are not mentioned in the request for assistance shall be seized and described in a separate protocol.

In general terms, it is possible however that the requesting state has to ask for that kind of information, given that access to databases for the general public has to be justified, especially if this access is provided on the basis of payment.

#### **(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

### **Article 46 Mutual legal assistance**

#### **Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

Latvia is a state party to the Council of Europe Convention on Mutual Assistance in Criminal Matters, Additional Protocol, Second Additional Protocol to the Convention, Fourth Additional Protocol to the Convention. Bilateral agreements for the purpose of mutual legal assistance have been concluded with the United States of America, Ukraine, Russian Federation, Belarus, Moldova, and Kyrgyzstan.

Latvia has applied UNCAC for requesting mutual assistance in criminal matters. In 2012, Latvia has applied UNCAC for requesting mutual assistance in criminal matters from Canadian authorities. In 2008, the UNCAC was applied for requesting information from the Russian Federation.

In 2011, one request for mutual assistance was received in relation to the offences established by the Convention from France.

The Prosecutor's General Office has no statistics about offences for which mutual assistance requests have been received.

**(b) Observations on the implementation of the article**

Similarly to extradition, the reviewing experts reiterated their invitation to the Latvian authorities to engage in the negotiation of, and conclude, further bilateral treaties or agreements with foreign countries (particularly non-European countries) with a view to giving practical effect to, or enhancing, the provisions of article 46 of UNCAC.

**Article 47 Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

**The Criminal Procedure Section 725. Grounds for the Takeover of Criminal Proceedings:**

(1) The following are grounds for the takeover of criminal proceedings:

- 1) a request submitted by a foreign state regarding the takeover of criminal proceedings (hereinafter also - request for the takeover of criminal proceedings), and the consent of Latvia to take over such criminal proceedings;
- 2) a request submitted by Latvia regarding the transfer of criminal proceedings (hereinafter also - request for the transfer of criminal proceedings), and the consent of a foreign state to transfer such criminal proceedings;

(2) If an offence in connection with which the takeover of criminal proceedings is being requested (hereinafter in Chapters 67 and 68 - offence) is not criminally punishable in Latvia, but is punishable in accordance with other laws the submitter of the request shall immediately be informed thereof, without taking over the criminal proceedings. The receipt of consent is a basis for the continuation of proceedings in accordance with the procedures provide for in Latvian law.

**The Criminal Procedure Law Section 723. Content and Condition of the Takeover of Criminal Proceedings**

The takeover of criminal proceedings is the continuation in Latvia of criminal proceedings commenced in a foreign state, on the basis of a request of the foreign state or with the consent thereof, if such continuation is required by procedural interests and the offence is punishable in accordance with the Criminal Law of Latvia.

**The Criminal Procedure Law Section 724. Competent authority in the Takeover of Criminal Proceedings:**

- (1) In the pre-trial criminal proceedings, the Prosecutor General's Office shall adjudicate and decide requests regarding the takeover of criminal proceedings.
- (2) In the trial of a criminal case, the Ministry of Justice shall examine and decide requests regarding the takeover of criminal proceedings.

In 2012, the taking over criminal case for corruption and money laundering crimes from Latvia to Sweden was under discussion.

**(b) Observations on the implementation of the article**

The reviewing experts noted that chapter 67 of the CPL regulates issues pertaining to the transfer of criminal proceedings. In addition, Latvia is a State party to the European Convention on the Transfer of Proceedings in Criminal Matters.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (a)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

Secure and rapid exchange of information about persons is possible through the Schengen Information System, Interpol. Financial Intelligence Unit provides rapid and secure information exchange about bank information in other countries.

For the implementation of Council Decision 2007/845/JHA, Member States of the European Union established Asset Recovery Offices for exchange of information concerning assets owned by persons under investigation. Latvia is also member of Camden Assets Recovery Interagency Network.

The Corruption Prevention and Combating Bureau exchanges information with the Central Anti-Corruption Bureau in Poland, Anti-Corruption Unit of Prosecutor's Office in Sweden, Special Investigations Service in Lithuania.

**(b) Observations on the implementation of the article**

The reviewing experts noted that law enforcement cooperation, including exchange of information, is facilitated through the Schengen Information System and Interpol. The Financial Intelligence Unit is entrusted with the provision of secure information about suspicious transactions to foreign counterparts.

Latvia has implemented the Council Decision 2007/845/JHA on the establishment by Member States of the European Union of Asset Recovery Offices for the exchange of information concerning assets

owned by persons under investigation. Latvia is also member of the Camden Assets Recovery Interagency Network.

The KNAB exchanges information with counterparts in Poland, Sweden and Lithuania. The State Police and Border Guards have liaison officers within the Interpol and Europol. From 2013, a liaison officer post will be established in the United Kingdom. The sharing of information is further supported through the domestication of the Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 48 Law enforcement cooperation**

### **Subparagraph 1 (b) (i) to 1 (b) (iii)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above (see above).

#### **(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 48 Law enforcement cooperation**

### **Subparagraph 1 (c)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

Cooperation is carried out in the framework of different international forums. The most recent one was regional meeting for Baltic and Nordic countries in Finland to share best practices in the area of tackling corruption crimes. In November 2012 annual conference of the European Contact-point network against corruption was held in Madrid, Spain.

EU has a comprehensive programme for joint projects in order to facilitate cooperation among EU and third countries in the area of prevention of financial and corruption crimes.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (d)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

Exchange of such information can be done in the framework of Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (e)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action*

*to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

BASED ON ARTICLE K.3 OF THE TREATY ON EUROPEAN UNION, ON THE ESTABLISHMENT OF A EUROPEAN POLICE OFFICE (EUROPOL CONVENTION) to which Latvia is a state party, Article 5 stipulates establishment of liaison officers.

In the framework of cooperation agreement between the Corruption Prevention and Combating Bureau in Latvia and Special Investigations Service in Lithuania, the exchange of experts was arranged.

The State Police and Border Guards have liaison officers within the Interpol and Europol. From 2013 liaison officer post will be established in the UK.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (f)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

Cooperation is carried out on a regular basis through liaison officers from Embassies or through direct communication with partner institutions.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 48 Law enforcement cooperation**

### **Paragraph 2**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has signed bilateral and multilateral agreements on direct cooperation with law enforcement agencies of other States parties. The Convention is considered as basis for mutual law enforcement cooperation in respect of the offences covered by the Convention.

The Corruption Prevention and Combating Bureau has cooperation agreement with the Special Investigations Service in Lithuania.

The Government of Latvia has signed bilateral agreements with Governments of Lithuania, Estonia, Poland for cooperation in tackling crimes, including exchange of information in relation to corruption offences.

In addition, the Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union is used.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that Latvia has concluded bilateral (with Estonia, Lithuania and Poland) and multilateral agreements on direct cooperation with foreign law enforcement agencies. UNCAC is considered as a legal basis for law enforcement cooperation in respect of the offences covered by the Convention.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 48 Law enforcement cooperation**

### **Paragraph 3**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

##### **The Criminal Procedure Law Section 136. Electronic Evidence:**

Evidence in criminal proceedings may be information regarding facts in the form of electronic

information that has been processed, stored, or broadcast with automated data processing devices or systems.

**The Criminal Procedure Law Section 140. Performance of an Investigative Action by Using Technical Means:**

(1) A person directing the proceedings may perform an investigative action by using technical means (teleconference, videoconference) if the interests of criminal proceedings require such use.

**The Criminal Procedure Law Section 143. Use of a Sound and Image Recording:**

(1) During the course of the occurrence of an investigative action, the performer of the investigative action may record sound and image in a recording, notifying persons who participate in the investigative action regarding such recording before the commencement of the investigative action.

(2) A recording shall record the entire course of an investigative action. A partial recording shall not be allowed.

(2<sup>1</sup>) In investigative actions which cover a wide territory or premises or which are to be performed within an extended time period a recording may be made partly fixing only the information and facts possibly related with the criminal offence to be investigated.

(3) Information recorded in a sound and image recording shall be recognised as more precise and more complete in comparison with information recorded in writing.

(4) In writing the minutes of an investigative action, the requirement of Section 142 of this Law shall be observed, yet only the most essential facts from the course of the investigative action and from the disclosed facts shall be referred to in the minutes. All the course of investigative action and the disclosed conditions shall be fixed in the minutes of an investigative action for a time period when investigative actions are not fixed in a recording.

(5) The sound and image recording of an investigative action shall be stored together with a criminal case.

**The Criminal Procedure Law Section 144. Use of Scientific-technical Means in Investigative Actions:**

(1) Scientific-technical means may be used in investigative actions.

In one of the cases investigated by the Corruption Prevention and Combating Bureau, Skype was used for communication between law enforcement institutions during the interrogation of suspect in another state.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

**The Criminal Procedure Law Section 830 Joint Investigative Teams and the Conditions of the Establishment Thereof:**

(1) A joint investigative team is officials of Latvia and one foreign state or several foreign states authorised to perform pre-trial proceedings who operate jointly within the framework of criminal proceedings taking place in one state.

(2) A joint investigative team shall be established for the performance of concrete criminal proceedings, with the involved states mutually agreeing regarding the leader, composition, and term of operation thereof.

(3) A joint investigative team shall be established for the purpose of eliminating unjustified delays of proceedings that are related to the necessity to perform investigative actions in several states, particularly in cases where several states have commenced criminal proceedings regarding the same offence or a significant amount of the investigation is to be performed outside of the territory of the state in which the criminal proceedings are taking place.

**The Criminal Procedure Law Section 831. Competent Officials:**

The Prosecutor General, or, for the entering into of a concrete agreement, a person authorised by him or her, shall sign agreements on behalf of Latvia regarding the establishment of a joint investigative team.

**The Criminal Procedure Law Section 832. Grounds for the Operations of a Joint Investigative Team in Latvia:**

Grounds for the operation of a joint investigative team in Latvia are an agreement, signed by the official provided for in Section 831 of this Law, regarding the participation of Latvia in the establishment of such group.

In 2011, Joint Investigation Team between the Corruption Prevention and Combating Bureau and Swedish Anti-Corruption Division of the Prosecutors Office in Sweden was established in order to coordinate efforts in investigation of foreign bribery of public officials.

**(b) Observations on the implementation of the article**

The reviewing experts noted that chapter 84 of the CPL sets forth the rules for establishing joint investigation teams for the performance of concrete investigative action. In 2011, a joint investigation team between the KNAB and the Anti-Corruption Division of the Prosecutors Office in Sweden was established to coordinate efforts in the investigation of a case involving bribery of foreign public officials.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 50 Special investigative techniques**

**Paragraph 1**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it*

*deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

**Investigatory Operations Law Section 15.<sup>1</sup> Controlled Delivery** provides for the following:

(1) Controlled delivery is the movement of goods or other valuables (including substances, means of payment or other financial instruments) in the territory of Latvia or across the State borders and the control of persons associated with such movement the purpose of which is to prevent or detect criminal offences and to ascertain the persons committing such offences if information has been received or there are justified suspicions regarding the association of the goods or other valuables to be moved with criminal offences.

(2) In performing such controlled delivery of goods and substances, the free sale and purchase of which is prohibited by regulatory enactments or the referred to activities require a special permit, the goods or substances may be fully or partially seized or exchanged.

(3) Controlled delivery is not permitted if it is not possible to fully prevent:

- 1) the endangerment of the life or health of persons;
- 2) the spread of substances dangerous to the life of persons;
- 3) [excluded by the 26 March 2009 Law]; or
- 4) an ecological catastrophe or the irreversible loss of property.

(4) Controlled delivery shall be performed on the basis of a decision of an official of an investigatory operations body, which has been approved by a prosecutor.

(5) If during the implementation of controlled delivery also other special method investigatory operations tasks are to be performed, permission for the implementation of such shall be obtained according to the procedures specified in this Law.

Further, in accordance with the **Criminal Procedure Law Paragraph 1 of the Section 851 Execution of Procedural Activities by Using Technical Means** stipulates that following the request of foreign country or request of the executing institution with the consent of a foreign country procedural activity can be executed by using technical means.

In addition the **Criminal Procedure Law Section 853 Execution of Special Investigation Activities** provides that these activities upon the request of a foreign country shall be executed only in cases when such activities would be admissible in the framework of criminal case investigated in Latvia for the same offence.

In accordance with the **Criminal Procedure Law Section 215 Paragraph 1 Types of Special Investigative Actions:**

(1) The following special investigative actions shall be performed in accordance with the provisions of the Chapter II of the Criminal Procedure Law :

- 1) control of legal correspondence;
- 2) control of means of communication;
- 3) control of data in an automated data processing system;
- 4) control of the content of transmitted data;
- 5) audio-control of a site or a person;
- 6) video-control of a site;
- 7) surveillance and tracking of a person;
- 8) surveillance of an object;
- 9) a special investigative experiment;
- 10) the acquisition in a special manner of the samples necessary for a comparative study;
- 11) control of a criminal activity;

As provided in the **Criminal Procedure Law Section 127 Paragraph 3**, information

regarding facts acquired in investigative action measures, and information that has been recorded with the assistance of technical means, shall be used as evidence only if it is possible to examine such information in accordance with the procedures specified in this Law.

Latvia gets evidence through special investigative and other operational techniques. 73% of initiated cases is based on evidence obtained through special investigative techniques. All cases mentioned in the self-assessment checklist of Latvia were disclosed/investigated using these techniques.

In Latvia, there is an active cooperation with other law enforcement agencies, also abroad such as OLAF.

In Latvia, the evidence produced is admissible in courts. The CPC prescribes this with one exception, i.e. the need to make sure that the information was legally derived. There is a duty to take personal data out of any case material. Section 127 of the CPL states what serves as evidence in criminal procedure. All three features of evidence need to be fulfilled: attributing, credibility, permissibility. Controlled deliveries are not really used for detection of public sector corruption. As to the use of special investigative activities in 95 % of cases investigated by the Bureau the above stated activities are used. In all the cases provided in the self-assessment these measures were applied.

Due to the size of the country and amount of population, undercover operations are not quite used for public corruption offences.

Information gained as the result of special investigative activities can be directly used for investigation. Data and evidences obtained as a result of operational activities can be used also in investigation after the procedure of declassifying of information has been observed.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the CPL (chapter 11) and the Investigatory Operations Law provide for the possibility of making use of special investigative techniques. In accordance with section 215 CPL, the following special investigative actions can be performed (on the basis of a decision of an investigating judge – see section 225 CPL): control of legal correspondence; control of means of communication; control of data in an automated data processing system; control of the content of transmitted data; audio-control of a site or a person; video-control of a site; surveillance and tracking of a person; surveillance of an object; a special investigative experiment; the acquisition in a special manner of the samples necessary for a comparative study; and the control of a criminal activity. Pursuant to section 15 of the Investigatory Operations Law, controlled delivery is also possible (although not really used in the detection of corruption in the public sector). As stipulated in section 127, paragraph 3 CPL, information regarding facts acquired in investigative action measures, as well as information that has been recorded with the assistance of technical means, shall be used as evidence only if it is possible to examine such information in accordance with the procedures specified in the CPL.

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 50 Special investigative techniques**

### **Paragraph 2**

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or*

*arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia confirmed compliance with the provision under review.

Latvia is a party to the Schengen agreement which provides for cross border surveillance activities, use of controlled deliveries and covert investigations.

The Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union also provides use of controlled deliveries and covert investigations.

Latvia is also a state party to the United Nations Convention against Transnational Organised Crime and Council of Europe Criminal Law Convention on Corruption.

Bilateral Agreement between the Government of the Republic of Latvia and the Government of the Republic of Estonia on Cross-Border Cooperation in Combating Crime provides possibility of applying special investigative techniques in Estonia, however these powers are vested in the State Police. If other authorities would like to implement special investigative techniques, it has to be coordinated with the State Police.

The same provisions are stipulated by the Agreement between the Government of the Republic of Latvia and the Government of the Republic of Lithuania on Cooperation in Combating Organised Crime and Other Offences and on joint actions in border regions.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Latvia is a party to the Schengen agreement which provides for cross-border surveillance activities, use of controlled deliveries and covert investigations. The EU Convention on Mutual Assistance in Criminal Matters also provides for the use of controlled deliveries and covert investigations.

Bilateral agreements with Estonia and Lithuania on cross-border cooperation in combating crime provide for the possibility of applying special investigative techniques. However these powers are vested in the State Police.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 50 Special investigative techniques**

**Paragraph 3**

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

Latvia is a State party to agreements in accordance to which special investigative techniques can be used.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

## **Article 50 Special investigative techniques**

### **Paragraph 4**

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Latvia has adopted and implemented the measures described above.

**European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union Article 12 Controlled deliveries:**

1. Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.
2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that Member State.
3. Controlled deliveries shall take place in accordance with the procedures of the requested Member State. The right to act and to direct and control operations shall lie with the competent authorities of that Member State.

**Article 17 Authorities competent to order interception of telecommunications:**

For the purpose of the application of the provisions of Articles 18, 19 and 20, ‘competent authority’ shall mean a judicial authority, or, where judicial authorities have no competence in the area covered by those provisions, an equivalent competent authority, specified pursuant to Article 24(1)(e) and acting for the purpose of a criminal investigation.

**Article 18 Requests for interception of telecommunications:**

1. For the purpose of a criminal investigation, a competent authority in the requesting Member State may, in accordance with the requirements of its national law, make a request to a competent authority in the requested Member State for:
  - (a) the interception and immediate transmission to the requesting Member State of telecommunications; or
  - (b) the interception, recording and subsequent transmission to the requesting Member State of the recording of telecommunications.
2. Requests under paragraph 1 may be made in relation to the use of means of telecommunications by the subject of the interception, if this subject is present in:
  - (a) the requesting Member State and the requesting Member State needs the technical

assistance of the requested Member State to intercept his or her communications;

(b) the requesting Member State and his or her communications can be intercepted in that Member State;

(c) a third Member State which has been informed pursuant to Article 20(2)(a) and the requesting Member State needs the technical assistance of the requested Member State to intercept his or her communications.

3. By way of derogation from Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests under this Article shall include the following:

(a) an indication of the authority making the request;

(b) confirmation that a lawful interception order or warrant has been issued in connection with a criminal investigation;

(c) information for the purpose of identifying the subject of this interception;

(d) an indication of the criminal conduct under investigation;

(e) the desired duration of the interception; and

(f) if possible, the provision of sufficient technical data, in particular the relevant network connection number, to ensure that the request can be met.

4. In the case of a request pursuant to paragraph 2(b), a request shall also include a summary of the facts. The requested Member State may require any further information to enable it to decide whether the requested measure would be taken by it in a similar national case.

5. The requested Member State shall undertake to comply with requests under paragraph 1(a):

(a) in the case of a request pursuant to paragraph 2(a) and 2(c), on being provided with the information in paragraph 3. The requested Member State may allow the interception to proceed without further formality;

(b) in the case of a request pursuant to paragraph 2(b), on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested Member State may make its consent subject to any conditions which would have to be observed in a similar national case.

6. Where immediate transmission is not possible, the requested Member State shall undertake to comply with requests under paragraph 1(b) on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested Member State may make its consent subject to any condition which would have to be observed in a similar national case.

7. When giving the notification provided for in Article 27(2), any Member State may declare that it is bound by paragraph 6 only when it is unable to provide immediate transmission. In this case the other Member State may apply the principle of reciprocity.

8. When making a request under paragraph 1(b), the requesting Member State may, where it has a particular reason to do so, also request a transcription of the recording. The requested Member State shall consider such requests in accordance with its national law and procedures.

9. The Member State receiving the information provided under paragraphs 3 and 4 shall keep that information confidential in accordance with its national law.

**(b) Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.