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COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES**

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Working Group on Bribery in International Business Transactions (CIME)

ESTONIA

UPDATED INFORMATION ON ANTI-CORRUPTION ACTIVITIES

**REQUEST BY ESTONIA TO ACCEDE TO THE OECD CONVENTION ON COMBATING BRIBERY
OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS**

This report, which has been prepared by the Estonian authorities, is for background at the meeting of the Working Group on 26-28 June 2001 under agenda item 7. It complements information provided in DAF/IME/BR/WD(2000)34 and DAF/IME/BR/WD(2001)34/ADD2.

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INTRODUCTION

1. One of Estonia's priorities, in connection with co-operating with the OECD, is to have closer association with the efforts to combat bribery and corruption. Even though, in a survey done by Transparency International, which compared countries on the basis of an annual Corruption Perceptions Index, Estonia was found to be the least corrupt country in Eastern and Central Europe, ranking 27th among the countries reviewed, closer co-operation with the OECD would be mutually beneficial. Estonia's formal adherence to the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, which became effective in 1999 and has the status of a legally binding treaty, would be an essential part of this co-operation.
2. The Convention is open to accession by a non-signatory, which is a member of the OECD or has become a full participant in the OECD Working Group on Bribery in International Business Transactions. As a non-member of the OECD, Estonia has access to adhere to the Convention by joining the Working Group.
3. Estonian representatives participated in the information meeting for non-OECD Members on OECD Efforts to Combat Bribery and Corruption, held on June 5, 2000. In September 2000, as a reply to the *Questionnaire to non-members seeking accession to the Convention* [DAFFE/IMEBR/WD(2000)43], Estonia submitted information about its legal and institutional frameworks for combating domestic and international corruption. On January 9, 2001, Estonia formally applied for accession to participate in the Working Group.
4. Estonia's request to adhere to the Working Group will be initially considered by the OECD's Council on the basis of an OECD's Secretariat background paper and a technical opinion of the Working Group. As its positive contribution to the ongoing examination of Estonia's request to participate in the work of the OECD Working Group on Bribery in International Business Transactions, Estonia established an informal *ad hoc* task force for compiling an extensive updated information report concerning the Estonian anti-corruption situation and activities. This report is based mainly on the Working Group questionnaire, but also contains information culled with the aid of member countries' examinations.

I. PARTICIPATION IN INTERNATIONAL TRADE AND INVESTMENT

A. Overview of economy

Successful economic reforms

5. The Republic of Estonia is small (population of 1.4 million), but is considered to have one of the most advanced economies among those countries which have undergone the transition process. Liberalisation, macro-economic stabilisation, restructuring and privatisation, and legal and institutional reforms for developing rule of law and healthy competition were the main ingredients of Estonia's economic strategy, which contributed to the achieving of a high level of commercial and financial integration with the global economy.

6. A properly functioning market economy has evolved in Estonia, the structure of which is fairly similar to that of the industrial countries. By the end of the year 2000, the share of the primary sector in the GDP had decreased to 5 per cent and the share of the tertiary sector had increased to 62 per cent.

7. As a result of its successful economic strategy, Estonia has re-joined the rank of upper middle-income countries. The next challenge Estonia faces now is the process of catching up with the richer nations.

8. Estonia officially started the development of co-operative activities in 1998. Since then, as an indicator of international recognition, there has been an increasing interest in Estonia's reform experiences by less developed countries, as well as a growing interest in implementing trilateral development co-operation projects by other donor countries.

International recognition

9. The general consensus of opinion is that Estonian efforts have met with considerable success. The Heritage Foundation's 2001 Index, which measures economic freedom in over 150 countries, ranks Estonia as being 14th (close to Austria, Canada, Denmark, and Japan)¹.

10. The Milken Institute's Capital Access Index 2000 has Estonia in the 8th position among the 81 countries reviewed (after the United States, Hong Kong, Switzerland, Luxembourg, UK, Singapore, and the Netherlands)².

11. The Emerging Markets Access Index 2000, which measures the level of access that foreign goods, services, and investments enjoy in some 44 emerging economies, ranks Estonia 4th, after Hong Kong, Chile, and Singapore³.

1 <http://www.heritage.org/index/>

2 <http://www.milken-inst.org/pdf/pbriefs/localglobal.pdf>

12. Included for the first time in the *World Competitiveness Scoreboard 2000*, published annually since 1989 by the Switzerland-based Institute for Management Development, Estonia ranks 22nd among the 49 countries listed, after New Zealand, and before Spain, France, Greece, and Italy⁴.

The EU accession process

13. As an example of the recognition given to Estonia's achievements, Estonia was invited to begin the European Union accession negotiations in December 1997. Estonia has been found to be meeting the Copenhagen political criteria of "stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities". It is also regarded as a "functioning market economy" that should be able to make the progress necessary to cope with the competitive pressures and market forces of the Union in the medium term⁵.

14. Estonia has set January 1, 2003, as the target date for joining the Union. In accession negotiations, Estonia has presented its position papers in all chapters, except for the chapter concerning institutions, and the chapter concerning miscellaneous matters, where no questions have been raised. A total of 19 chapters, of the *acquis communautaire* of 31, have been provisionally closed.

Foreign economic relations

15. Estonia has set for itself, as a priority, the goal of attracting foreign capital. This has been reflected in structural reforms. The laws dealing with ownership reform and private ownership of land, the foreign investments law, and the privatisation law were adopted during the earliest stage of the reform process, in 1991-1993. At the same time, Estonia started negotiating trade and economic agreements with its major trading partners. On November 13, 1999, Estonia became a member of the World Trade Organisation.

16. Foreign economic relations have served as an engine for the development of Estonia's small and open economy. The average yearly economic growth of over 5 per cent, since 1995, has, to a great extent, been based on the rapid growth of exports and a high level of investments. Complemented by a related transfer of technology, progress has been made in moving up the value-added chain, and trade has been reoriented towards the OECD countries.

17. Estonia's external economic relations are dominantly with OECD countries, primarily with the neighbouring Nordic countries of Finland and Sweden. Also Germany, the United Kingdom, Denmark, Norway, the Netherlands, and the United States (OECD member countries), and Latvia, Lithuania, and Russia (OECD non-member countries) are major trade or investment partners.

Major player in the regional level

18. Estonia is an important regional partner for the Baltic Sea region countries, and particularly, a major player for the other two Baltic states. Estonia is among Latvia's and Lithuania's main trading partners and is one of their biggest foreign investors.

3 http://www.dartmouth.edu/tuck/fac_research/centers/caee_email.html

4 <http://www.imd.ch/wcy/ranking/index.cfm>

5 http://europa.eu.int/comm/enlargement/dwn/report_11_00/pdf/en/es_en.pdf

19. On April 23, 2001, Estonia's largest bank, *Hansapank*, signed an agreement to privatise Lithuania's second largest bank, *Lietuvos taupomasis bankas* (Lithuanian Savings Bank), which took effect on June 1, 2001. *Hansapank* has, after purchasing *Lietuvos taupomasis bankas*, 28.8 per cent of the Lithuanian banking market, if measured by assets, and 36 per cent, if measured by deposits. In Latvia, *Hansapank* has a market share of 17 per cent.

Gross domestic product

20. In 2000, Estonia's GDP growth, supported by a healthy demand for exports, reached 6.4 per cent. The Estonian government has been given acknowledgement for the progress achieved with the second-generation reforms, for its success in implementing the programme of economic policies approved by the IMF, for accelerating accession negotiations with the European Union, and for the good country ratings assigned to Estonia by rating agencies.

21. According to preliminary calculations, the GDP, at current prices, was 84.4 billion EEK (5.4 billion EUR) in 2000. The growth of GDP was mainly influenced by manufacturing (an increase, in constant prices, of 16.8%) and construction (13.3%), followed by mining and quarrying (10.9%), transport, storage and communications (7.8%), and financial intermediation (7.4%). Compared to 1999, the proportions of the general government final consumption expenditure, of the gross fixed capital formation, and of the domestic demand in GDP, calculated by the expenditure approach at current prices, decreased (to 22.2%, 23.5%, and 104.9% of GDP, respectively).

22. The government's general financial balance, which deteriorated sharply in 1999, improved significantly in 2000 and has been in surplus in the first quarter of 2001. Tax administration was improved, and the conservative approach to expenditures kept the public debt level at 5 per cent of GDP.

Financial stability

23. The stability of the whole financial sector as a whole was significantly increased by the strategic participation of foreign banks, of Nordic origin, in local financial institutions. Over 90 per cent of the banking sector belonged to foreign strategic investors. Cheaper foreign loans and the rapid increase of domestic deposits, in the year 2000, reflected the increased trustworthiness of the banking sector.

24. As is characteristic of Estonia's monetary system, the development of the anchor currency's interest rates was reflected in the domestic money market throughout the year 2000. Despite the shrinking margin between Estonian and euro interest rates, domestic money market interest rates followed the anchor currency interest rates closer than ever before. However, partly due to the high liquidity of the Estonian financial sector, the climbing euro interest rates were never really transferred to the Estonian credit market.

Privatisation

25. Privatisation in Estonia has followed the German *Treuhand* model, with vast authority and independence given to the Privatisation Agency. The privatisation process is now practically finished. In fact, the Privatisation Agency is scheduled to be wound down by the end of 2001. The selling of remaining state-owned shares will continue under the State Assets Act.

26. In 2000, the biggest privatisation transactions were the sale of the *Ringhäälingu Saatekeskus* (the broadcasting transmission centre) 49 per cent shares to *TéléDiffusion de France*, and the *Edelaraudtee AS* (railway passenger services) sale to GB Railways (UK).

27. In June 2000, a general agreement (basic terms of the sale) with the Minneapolis based energy company NRG Energy Inc (USA) was concluded, by which NRG Energy will acquire a 49 per cent stake in *Narva Elektriijaamad* (Narva Power Plants), which consists of two oil-shale generation plants, that together supply more than 90 per cent of Estonia's electricity, and has a controlling stake in *AS Eesti Põlevkivi*, which owns Estonia's oil-shale mines. A supplemental packet of agreements covering remaining issues will probably be worked out during the year 2001, after which the acquisition will enter into force.

28. On April 30, 2001, the agreement on the sale of 66 percent of the shares in *Eesti Raudtee* (Estonian railway operator and infrastructure company) to Baltic Rail Services (BRS). The shareholders in BRS are Jarvis International of the U.K. (25.5 per cent); the U.S. rail operator Rail World Inc. (25.5 per cent); Railroad Development Corporation of the United States (5 percent); and Ganinger Invest, which is owned by Estonian businessmen (44 per cent). Another major privatisation in 2001 was the sale of *AS Tallinna Vesi* (Tallinn's water supplier) majority shares to International Water UU, which is owned by the U.K. companies International Water and United Utilities International.

Objectives of the current economic policy

29. In April 2001, the Estonian pre-accession economic program was unveiled, outlining development guidelines until 2015. The objectives of the programme are the fulfilment of the Copenhagen economic criteria and the preparation for participation in the Economic and Monetary Union (EMU). The programme is a strategic document, which contains medium-term macroeconomic forecasts and determines the general quantitative objectives of the economic policy, the planned economic policy instruments, and the structural reforms for the next years.

30. According to the programme, Estonia will be continuing with a number of key long-term reforms, notably, with those of public finance and administration, the pension system, as well as with the further restructuring and privatisation of the few remaining large infrastructure companies where state participation is still dominant. Over the medium term, these measures will further strengthen the working of market forces, improve resource allocation and contribute to private sector confidence.

31. Monetary policy will remain focused on ensuring long-term price stability. Stability-oriented macroeconomic policies and a business-friendly environment will continue to attract foreign capital inflows, mainly foreign direct investment, which will promote structural changes, increase the competitiveness of businesses and further stimulate export reorientation to global markets. The sound economic policies, stable banking sector, price stability, increasing integration with Nordic and other Western markets, and the successful completion of first generation structural reforms will make the Estonian economy well positioned for a new take-off of economic growth.

32. Estonia's economy is forecasted to remain on a growth trajectory of 5 per cent during 2001-2002. The fiscal situation is under control despite the costs associated with structural reforms. And the balance of payments is in equilibrium, with capital inflows covering mounting current account deficits.

B. Well developed trade relations

33. In 1992-1993, Estonia carried out a unilateral and full liberalisation of its trade policy. During the past years, regional trade agreements have played an important role in creating a framework for Estonian trade relations. Free trade agreements with the EU and the European Free Trade Association (EFTA) countries have contributed to a rapid reorientation of Estonian export trade, and to an increased trade in processed goods such as machinery, paper, and textiles. Free trade agreements have also been made with

Latvia, Lithuania, Ukraine, Czech Republic, Slovak Republic, Slovenia, Poland, Hungary, Turkey, and Faroe Islands.

34. As a result of its successful trade policy, during the transition years, the Estonian trade structure changed markedly, with intra-industry trade becoming increasingly dominant, while the share of non-processed goods has diminished.

35. According to the preliminary data of the Statistical Office of Estonia, the foreign trade of goods and services accounted for 197.3 per cent of GDP in 2000. The export of goods and services accounted for 96.5 per cent, and the import of goods and services accounted for 100.8 per cent of GDP.

36. The value of Estonian foreign trade in 2000, on the basis of the special trade system, was 126.1 billion EEK (8.1 billion EUR), of which, export was 53.9 billion EEK (3.4 billion EUR) and import was 72.2 billion EEK (4.7 billion EUR). Estonia's export increased by 52 per cent and import increased by 43 per cent, as compared with 1999. Foreign trade turnover increased 1.5 times.

37. On the basis of the general trade system, in 2000, Estonian foreign trade accounted for 151.3 billion EEK (9.7 billion EUR), of which export trade was 65.1 billion EEK (4.2 billion EUR) and import trade was 86.2 billion EEK (5.5 billion EUR). The EU share of Estonia's trade, in terms of import, is the biggest among the Central and Eastern European (CEE) countries (63%). The share of EU countries, in export, was 77 per cent. Estonia's export to CIS countries accounted for 4 per cent of total exports.

38. In 2000, Estonia's main export partners, on the basis of the special trade system, were Finland (32.4 per cent of total exports) and Sweden (20.5 per cent of total exports). Among the 10 biggest export destinations were also Germany, Latvia, the United Kingdom, Denmark, Lithuania, the Netherlands, Russia, and Norway. Finland was also Estonia's main import partner, with 27.4 per cent of total imports. Other bigger import partners were Sweden, Germany, Russia, Japan, China, Italy, Latvia, Denmark, and the United Kingdom.

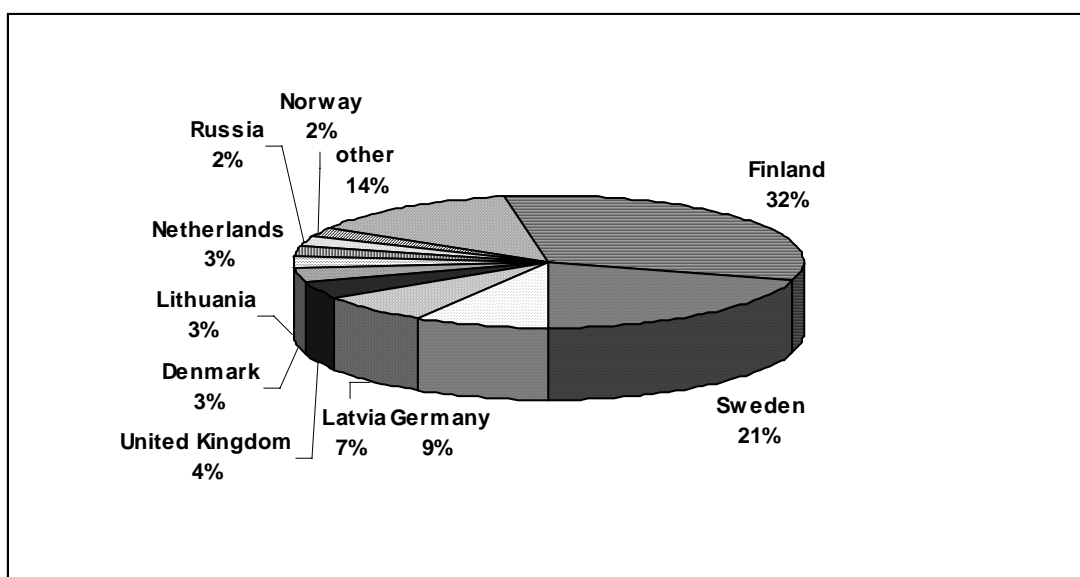


Figure 1. Estonia's main export partners in 2000

39. In addition to the rapid increase of exports (nominally 55 per cent in 2000), there was also an essential change in the whole structure of Estonia's export trade. There has been an essential shift towards high technology electronics, and value added timber and textile products. A large part of Estonia's export trade consisted of re-exportation after inward processing. By now, the modern machinery and equipment

subcontracting industry accounts for nearly half of Estonian exports. This development has been brought about by the subsidiaries of Nordic conglomerates. Other main export articles were lumber and products thereof, textiles, metals and products thereof, furniture, and agricultural products and processed foods.

40. The share of EU countries in Estonia's import trade was 63 per cent. Import from CIS countries formed 11 per cent of total imports. A major percentage of import trade consisted of importation for inward processing. Almost 40 per cent of Estonia's main imports in 2000 consisted of machinery and technical equipment. Other main imports were agricultural products and processed foods, metals and products thereof, textiles, transport equipment, chemical products, and mineral products.

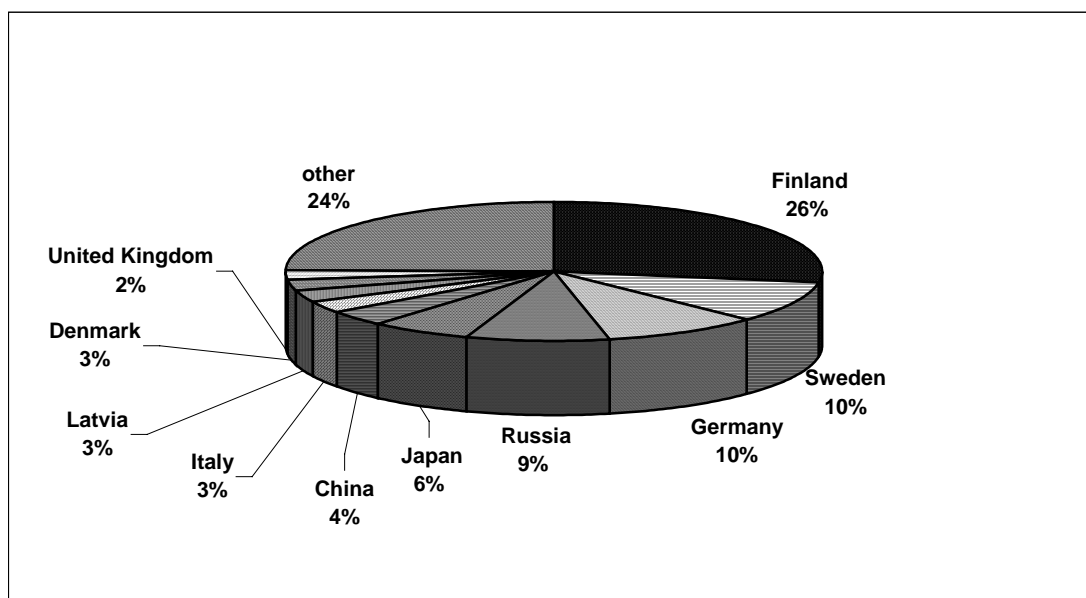


Figure 2. Estonia's main import partners in 2000

C. Openness to foreign capital

41. Estonia has a favourable investment climate. There are no exchange controls or restrictions on foreign investments. In addition to the favourable tax policy, the government will continue with the equal treatment of foreign and domestic investors, and will further support the business climate through economic policies for retaining the openness, competitiveness, and attractiveness of the Estonian economy.

42. The overall favourable judgement passed by the international community on the Estonian economic and regulatory situation applies, in particular, to the regulatory framework for doing business in Estonia, and its treatment of foreign investment. Estonia, departing from the traditional national treatment principle, has very few restrictions or requirements on foreign investments, so that it offers relatively high levels of freedom and protection of property rights.

43. Estonia has concluded 23 bilateral investment protection treaties, 18 of which were with developed countries. The Estonian authorities are of the view, that since Estonia's investment related legislation is consistent with OECD principles and practices, there is no apparent need for new investment protection treaties with OECD member states. In the future, Estonia will conclude new investment protection treaties only with non-OECD countries where Estonian companies have business interests.

44. Estonia participated in the MAI negotiations in the OECD. As a WTO member, Estonia also participates in investment-rules related consultations in that organisation.

45. Due to the predominance of external liabilities, Estonia's net investment position at the end of 2000 was negative by 46.9 billion EEK, which is 55.7 per cent of the anticipated gross domestic product (GDP). This figure exceeded the end figure of 1999 by 3.5 billion EEK.

Outward FDI

46. Estonia's economic sectors had invested 44 billion EEK (52% of Estonia's anticipated GDP) abroad. In 2000, investment in foreign countries increased by 6.4 billion EEK, of which, 47 per cent were direct investments. The increasing gold and foreign currency reserves of the central bank yielded 34 per cent of the investment growth. The reserves were still responsible for 35 per cent of all investments made abroad.

47. Over half of Estonia's investments abroad have been made in Latvia (54%) and almost 1/3 in Lithuania. Over 1 per cent of the total FDI stock has been invested in Cyprus, Italy, and Ukraine.

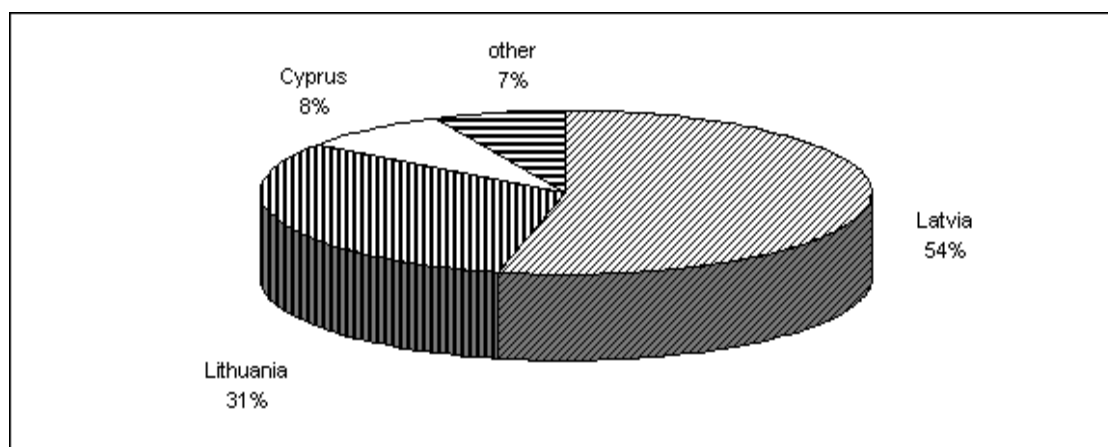


Figure 3. Direct investments made abroad, by countries, as of 31 December 2000

48. The main sector of Estonia's FDI outflow, 61 per cent, consists of finance, most of it being in the banking sector. Real estate, leasing, and business activities accounts for 14 per cent; transport, storage and communication for 10 per cent; manufacturing for 9 per cent; and retail and wholesale for 5 per cent.

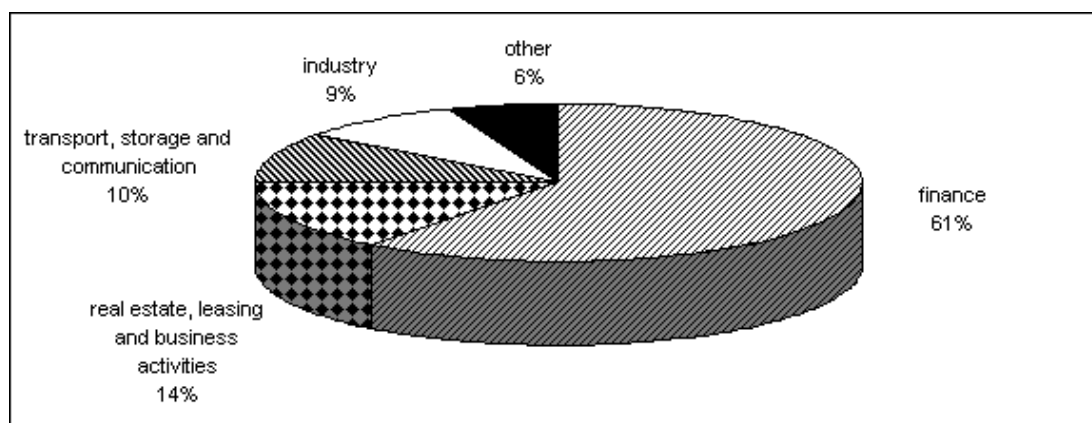


Figure 4. Direct investments made abroad, by spheres of activity, as of 31 December 2000

Inward FDI

49. By the end of 2000, 90.9 billion EEK of foreign investments had been made in Estonia (108% of the anticipated GDP). Sweden (41%) and Finland (30%) are responsible for most of the FDI. Also, Norway, the United States, Denmark, Germany, and the United Kingdom have FDI stock of over 1 billion EEK. The Netherlands, Liechtenstein, Russia, Switzerland, and Singapore also have more than 1 per cent of the total FDI in Estonia.

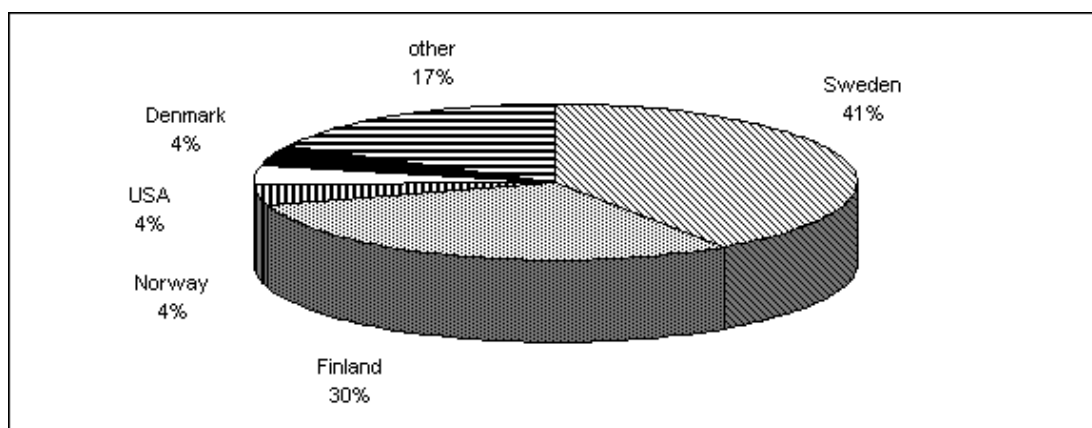


Figure 5. Direct investments made into Estonia, by countries, as of 31 December 2000

50. The annual growth of FDI due to the balance of payments transactions (including growing reinvestment of earnings), changes in the exchange rate and securities prices was 10 billion EEK (12%). The 49 per cent share of FDI in all investments made in Estonia reflects investors' lasting interest. Several investors have increased their direct investments at the expense of portfolio investments, reducing, thus, Estonia's portfolio investment liabilities in equity securities against end of 1999.

51. At the end of 2000, the majority of the FDI inflow had quite evenly been distributed between finance (25%), transport, storage and communications (22%), and industry (21%).

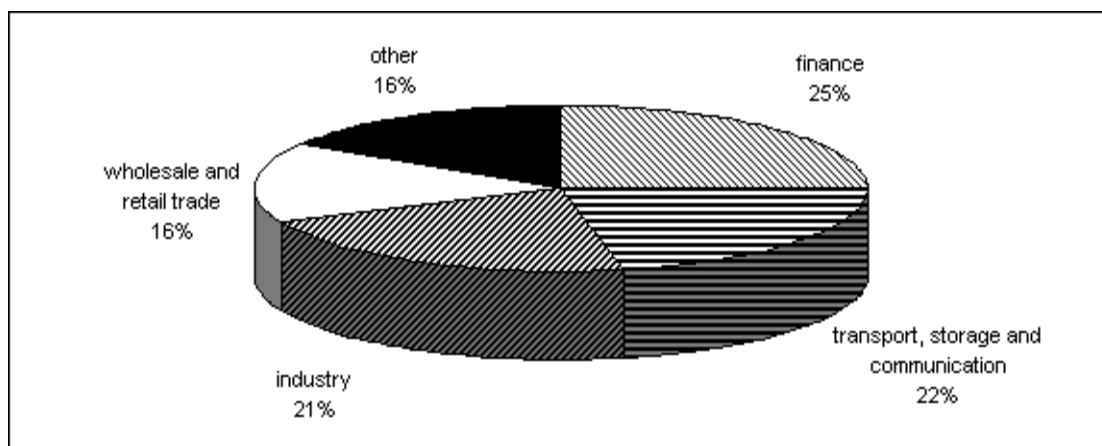


Figure 6.

Direct investments made into Estonia, by spheres of activity, as of 31 December 2000

II. CURRENT LEVEL OF CORRUPTION

Statistics

52. The latest available statistics are from the year 2000. According to these figures, 23 persons were sentenced for accepting bribes and 17 persons were sentenced for bribing in 2000. One person was acquitted for act of corruption in 2000.

Court statistics in 2000

	Accepting bribe	Failure to submit declaration of economic interests subject to disclosure, or presentation of false information therein	Giving bribe
Criminal cases	35	1	25
Convicted	23		17
Acquitted	12	1	8

International studies

53. In Transparency International's annual Corruption Perceptions Index, Estonia was found to be the least corrupt country in Eastern and Central Europe, ranking 27th among the countries reviewed⁶. In *The World Competitiveness Yearbook 2001*, published by the Switzerland-based Institute for Management Development, Estonia ranks 24th among the 49 countries listed in the evaluation of the level of bribing and corruption.

54. The first Situation Report on Corruption in the Baltic Sea Region was presented to the Heads of Government at the Baltic Sea States Summit in Kolding, April 12-13, 2000, by the Task-Force on Organised Crime (TFOC) in the Baltic Sea Region. The Report described the current situation in the field of corruption and indicated the future steps to be taken. A new version of the Situation Report is being presented to the meeting of the TFOC on June 20-22, 2001, in Bornholm.

55. In late 2000, the World Bank issued the report *Anticorruption in Transition: A Contribution to the Policy Debate*. According this report Estonia is one of the least corrupted countries in the CEE.

⁶ <http://www.transparency.de/documents/cpi/2000/cpi2000.html>

According to the administrative corruption index and the state capture index Estonia belongs in the “medium-medium” category.

56. The *2000 Regular Report* from the European Commission states that corruption is a relatively limited problem in Estonia. Only isolated cases can be reported, mainly in the local administrations where business and officialdom are more closely interconnected. Overall, Estonia has made considerable progress as regards the fight against corruption. Estonia has ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. It has also signed, but not ratified, the Council of Europe Criminal and Civil Law Conventions on Corruption. Estonia has not yet signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. These efforts need to be continued and reinforced, in particular, as regards the fight against corruption in the police and customs administrations.

III. LEGAL FRAMEWORK FOR FIGHTING BRIBERY AND CORRUPTION

A. Corruption preventive measures

Anti-corruption Act

57. For the prevention of corruption Estonia has an Anti-corruption Act, which should be viewed together with the Public Service Act, the State Property Act, the State Procurement Act and the Criminal Code. These acts form the framework for understanding corruption and establish the rules of procedure for public officials to observe in their work. As interrelated matters in combating corruption, Parliament adopted such legal acts as the Money Laundering Prevention Act and the Credit Institutions Act.

58. The Anti-corruption Act (RT⁷ I 1999, 16, 276; 87, 791; 2000, 25, 145) provides the legal bases for the prevention of corruption and prosecution of officials involved in corruption. A corruptive act is defined in the Criminal Code and in the new Penal Code (adopted 6 June 2001), which is replacing the Criminal Code of 1 March 2002.

59. The first version of the Anti-corruption Act was passed by the Parliament in January 1995. The revised version of the Act was adopted on 27 January 1999 and came into force on 1 March 1999. The act provides the legal basis for the prevention of corruption and the prosecution of officials involved in corruption.

60. According to section 2 of the Anti-corruption Act, the means to prevent corruption are the following:

§ 2. Means of corruption prevention

The means to prevent corruption are the following:

- 1) Declaration of the economic interests of officials and persons listed in § 4 of this Act and disclosure of declarations of economic interests in the cases prescribed by law;
- 2) Restriction on employment and activities specified in Chapter 3 of this Act;
- 3) Procedural restrictions specified in Chapter 4 of this Act.

61. According to the Act, an official is bound to submit a declaration of economic interests that contains data about his or her immovable property, vehicles, the holding shares and other securities. Data about debts, contracts of suretyship and other proprietary obligations, in case the debt exceeds six months salary, should be submitted also. In addition to that, additional sources of income that exceed 10 per cent of the previous six months salary are to be declared. Bank accounts, taxable income and dividends are also to be declared.

⁷ RT = *Riigi Teataja* = *State Gazette*

62. Elected representatives and public officials are obligated to submit a declaration of economic interests every year one month after expiry of the term for submission of income tax returns or within one month after the date of commencement of official employment. If the composition of the property change exceeds 30 per cent or 100 000 EEK, a new declaration should be submitted at least one month after the change in economic status. The declarations of economic interests are submitted to and held by the head of the institution. The holder of the declaration may inspect it on his or her own initiative and is obliged to inspect it in case of suspicion in corruption. The declarations of certain high-ranking officials will be published in the *Riigi Teataja Lisa*⁸.

63. Several restrictions on employment and activities were established by the Act. An official is restricted from operating as an undertaking, from holding a second job, or from working in a relationship of direct subordination with a close relative or close relative by marriage, while in public service.

64. According to the Act an official can not be a member of the directing or supervisory body of a company, except as a representative of the state, a local government or legal person in public law of a company with the participation of the state, local government or legal person in public law. An official may operate as an undertaking, be a partner of a general partnership or general partner of a limited partnership only with the permission of the person or agency who has appointed or elected the official to office, or hired the official under an employment contract if such activity does not hinder the performance of duties of employment or damage the reputation of the position or office.

§ 19. Definition of restriction on employment and activities

(1) For the purposes of this Act, a restriction on employment and activities means a restriction to operate as an undertaking, hold a second job or work in a relationship of direct subordination with a close relative or close relative by marriage, while in public service.

(2) Officials specified in subsection 4 (1) of this Act shall not:

1) Hold a second job with a work load higher and at a time different than permitted by the immediate superior if such employment damages the reputation of the position or office, or if performance of the duties of employment also means supervision over the other employer;

2) Be a member of the directing or supervisory body of a company, except the representative of the state, a local government or legal person in public law of a company with the participation of the state, local government or legal person in public law;

3) Be the director of a branch of a foreign company;

4) Be employed in an office where an official who directly monitors him or her, or is his or her immediate superior is a close relative or close relative of the official by marriage;

5) Be a member of a legal person in public law and, at the same time, the directing or supervisory body of a legal person directly monitored by the legal person in public law;

6) Be a member of the directing or supervisory body of a company with state or local government holding within three years after resignation from the public service.

(3) An official may operate as an undertaking, be a partner of a general partnership or general partner of a limited partnership only with the permission of the person or agency who has appointed or elected him or her to office or hired under an employment contract if such activity does not hinder the performance of duties of employment or damage the reputation of the position or office. Everyone has the right to obtain information from the official who has appointed or elected an official to office or hired him or her under an employment contract concerning this permission.

⁸ Appendix to the State Gazette

(4) An official shall not exercise supervision over the activities of himself or herself as an undertaking, or over a general partnership of which he or she is a partner or a limited partnership of which he or she is a general partner in performing his or her duties of employment or service.

(5) For the purposes of this Act, close relatives mean grandparents, parents, brothers, sisters, children and grandchildren; close relatives by blood mean the spouse, his or her parents, brothers, sisters and children.

§ 20. Special rules for restrictions on employment and activities of officials

(1) The restrictions on employment and activities of officials specified in clauses 4 (2) 1)-16) of this Act are not regulated by § 19 of this Act but are provided for in §§ 63 and 84 of the Constitution of the Republic of Estonia and in the Acts concerning the activities of the Riigikogu, the Government of the Republic, the Legal Chancellor, the State Audit Office, the Bank of Estonia, prosecutor's offices, armed forces and the border guard, judges, the police, notaries' offices, bailiffs and local governments, and in other legislation which separately regulates the official position, rights and obligations of the officials of such categories.

(09.11.1999 entered into force 06.12.1999 - RT I 1999, 87, 791)

(2) Taking into account the specific character of some offices, the Government of the Republic may establish a list of offices the employment in which may be permitted, regardless of the restrictions provided for in clauses 19 (2) 4) and 5) of this Act, by the minister in whose area of government the place of employment is, provided there is no risk of corruption involved. The minister shall justify the grant of permission every time. Upon the establishment of exceptions, the person who establishes the exceptions shall exercise regular supervision over the justification thereof and submit a corresponding report together with the opinion of the State Audit Office to the Riigikogu committee specified in subsection 14 (2) of this Act.

(14.03.2000 entered into force 29.03.2000 – RT I 2000, 25, 145)

(3) Taking into account the specific character of some offices, a local government may establish a list of offices the employment in which may be permitted, regardless of the restrictions provided for in clauses 19 (2) 4) and 5) of this Act, by the executive body of the local government, provided there is no risk of corruption involved. The executive body of a local government shall justify the grant of permission every time. Upon the establishment of exceptions, the person who establishes the exceptions shall exercise regular supervision over the justification thereof and submit a corresponding report together with the opinion of the county governor to the committee or member of the council specified in subsection 14 (4) of this Act.

(14.03.2000 entered into force 29.03.2000 – RT I 2000, 25, 145)

65. A prohibition to perform acts, which enable an official to receive income derived from corrupt practices, is interpreted as a procedural restriction. The main procedural restrictions are:

1) Prohibition to take reward or higher pay for operations without provisions to do so;

2) Obligation to notify the immediate superior or head of the agency and the police in writing of any offering, giving or acceptance of a bribe;

3) Prohibition to engage in self-dealing or the concluding of other transactions of a similar nature or involving a conflict of interests.

§ 21. Definition of procedural restrictions

(1) For the purposes of this Act, a procedural restriction means a prohibition to perform acts which enable to receive income derived from corrupt practices.

(2) Procedural restrictions do not apply to activities as a result of which income on shares of a company is received, unless otherwise provided by law. An official may also receive income as royalties, revenue from patents, interest on deposits, on immovables which are subjected to commercial lease or use by other persons, fee for the works published in print or electronic media, and other income which does not presume the employment of the recipient thereof to promote the economic benefit of another person, unless otherwise provided by law.

§ 24. Prohibited transactions

(1) An official shall not engage in self-dealing, or conclude transactions of similar nature or involving a conflict of interest. He or she shall not authorise persons subordinate to him or her to perform such transactions instead of him or her.

(2) Self-dealing, which is prohibited, means *inter alia* the following:

1) concluding, with regard to property entrusted to him or her by an agency, transactions with oneself or a legal person the shares of which belong either wholly or partially to him or her, his or her close relatives or close relatives by marriage, or a board or decision-making body of which he or she is a member;

2) Concluding, as a person entitled to represent a state agency in transactions, transactions with the state through an administrative agency concerned, or concluding, as a person entitled to represent a local government agency in transactions, transactions with a local government through an administrative agency concerned;

3) Concluding, as a representative of the state or a local government, property transactions with other employers in whose employment he or she is;

4) Concluding, as a representative of the state or a local government, property transactions with legal persons specified in subsection 25 (1) of this Act;

5) Concluding, as a representative of the state or a local government, property transactions with a non-profit association or political party of which he or she is a member;

6) Concluding, as a representative of the state or a local government, property transactions with an employer, company, non-profit association or political party over the activities of which he or she exercises supervision;

7) Concluding, as a representative of the state or a local government, property transactions with one's close relatives, close relatives by marriage or oneself.

(3) The restrictions concerning the representatives of the state or a local government provided for in subsection (2) of this section also apply to the representative of a legal person in public law.

(4) Transactions concluded in violation of the prohibitions provided for in subsection (1) of this section are void.

66. A conflict of interest occurs if an official, in the course of his or her duties of employment, is required to make a decision or participate in the making of a decision which significantly influences the economic interests of the official, his or her close relatives or close relatives by marriage, or legal persons.

67. According to the Act an official shall not solicit, in connection with his or her duties of employment, gifts or other benefits made or granted by persons to him or her, his or her close relatives or close relatives by marriage. An official shall also not accept gifts or consent to the benefits which are made or granted to him or her, his or her close relatives or close relatives by marriage, and the acceptance of

which may directly or indirectly influence the impartial performance of his or her duties of employment or service.

§ 26. Restriction on acceptance of gifts

(1) An official shall not solicit, in connection with his or her duties of employment, gifts or other benefits made or granted by persons to him or her, his or her close relatives or close relatives by marriage.

(2) An official shall not accept gifts or consent to the benefits which are made or granted to him or her, his or her close relatives or close relatives by marriage, and the acceptance of which may directly or indirectly influence the impartial performance of his or her duties of employment or service.

(3) Gifts received in violation of the restrictions provided for in subsections (1) and (2) of this section shall belong to the employer of the corresponding official, unless otherwise provided by an international custom or diplomatic etiquette.

68. Accordingly to the Act, an official shall refrain from acts of corruption or entry into relationships involving the risk of corruption. In case of possible marriage which creates a danger of corruption, an official who has a relationship involving the risk of corruption or who creates such relationship or receives a proposal to do so, shall promptly notify his or her immediate superior or a person or body with employment or appointment authority or a body with election authority thereof in writing. To terminate the relationship, he or she shall apply for the relocation of himself or herself or the other party to another position, or for the conclusion of transactions to be entrusted to another person, or shall take other steps to terminate the relationship involving the risk of corruption which has been or may be created. Failure to give notification of a relationship involving the risk of corruption shall bring about liability pursuant to the law mentioned above.

69. The Act also obligates an official to give notification of bribery. An official is required to notify an immediate superior or the head of the agency, and the police, in writing, of any offering, giving or acceptance of a bribe, which becomes known to him or her. Failure to give notification of an offering, giving or acceptance of a bribe, pursuant to the procedure provided for in this Act, shall be the basis for the release of the official from public service.

Code of conduct

70. With adoption of the Anti-corruption Act, the Public Service Code of Ethics (as appendix 1) was enacted into the Public Service Act (RT I 1999, 7, 112; 10, 155; 16, 271; 16, 276; 2000, 25, 144; 25, 145; 28, 167; 102, 672; 2001, 7, 17; 7, 18; implemented 1 January 1996). Estonia has adopted a code of conduct for members of professions especially exposed to corruption (e.g. lawyers – Code of Conduct of the Estonian Bar, internal auditors). The main legal act regulating the behaviour of elected or public officials is the Anti-corruption Act, which among other rules for elected representatives and public officials, provides an obligation of mandatory prevention of relationships involving risk of corruption.

Special Committee on Anti-corruption Activities

71. The Parliament has established the Special Committee on Anti-Corruption Activities for the execution of the tasks provided by the Anti-Corruption Act and to assist the implementation of corruption preventive measures. The committee revises that the data presented in the declarations of the economic interests of officials are correct. At the same time, the task of the committee is the supervision of the restrictions on employment and activities of members of the Parliament. The committee informs both the Parliament and the public in general of the efficiency of the implementation of the Anti-corruption Act.

This overview contains both numerical data and the problems that have emerged in the application of the Act. The committee is the controller of suspected corruption.

Corruption-combating programmes

72. In December 1999, the *Estonian Law Center Foundation (Eesti Õiguskeskus)* started the project *Limitation of corruption in transition community*. The duration of the project is 2 years. The project is directed towards analysis of legal aspects in the process of limiting corruption. The main task of the project is to find out what are the areas which involve a risk of corruption, and to propose a legally sound measurement of corruption. Experiences from other countries will be studied and the possibility of applying them in Estonia will be explored. The project has functioned for over a year and has reached a stage where the legal aspects of corruption, and areas in which acts of corruption may occur in Estonia, are being established.

73. The Jaan Tõnisson Institute ran the programme *To bring into consciousness corruption in Estonia* in 1998-1999. This consisted of conferences, sociological research projects, conducting interviews, and the training of journalists.

74. There is the decision of the Government, made on 25 July 2000, which approves the basic principles of crime control up to the year 2003. This approves the fast and efficient application of criminal procedures, especially in the prosecution of corruption and other malfeasance.

75. Special training programmes have been set up at the law faculty of the University of Tartu, at the Police School, and the Academy of Public Defence. Police officers from the Security Police Board receive regular training in the fight against corruption. Some of this training is also carried out by Finnish and Dutch experts.

Public Information

76. The Public Information Act (RT I 2000, 92, 597; implemented 1 January 2001) was adopted to guarantee the transparency of public power. The Act provides an access for citizens and the media to obtain information held by local and state authorities. Accordingly to the Act, there are some types of internal office information (restricted information), which can not be transmitted to citizens and the mass media. Information on corruption, collected within the framework of criminal investigation, is restricted until trial.

77. In Estonia, the public is informed about the dangers of corruption, as well as the legal norms established to repress this phenomena, through the mass media. The public can make complaints concerning corruption and suspected cases of corruption to a round the clock police telephone number. The confidentiality of the source is ensured, and the anonymous information is also accepted. The authorities then look into the matter, to see if there is any validity to the complaint. In recent years, the participation of the third sector in the fight against corruption has increased.

Use of public finance

78. The most relevant acts regulating the use of public finances are the State Budget Act, State Assets Act, Public Procurement Act and regulations made on the basis of these laws. The Public Procurement Act, which aims to ensure the most rational and economical use of financial resources intended for public procurement, provides for the prevention of unlawful use of public finances. To control

the use of public finances, the State Audit Office was created by the Estonian Constitution, and its aim is to audit:

- 1) The economic activities of state agencies, state enterprises and other state organisations;
- 2) The use and preservation of state assets;
- 3) The use and disposal of state assets which have been transferred into the control of local governments;
- 4) The economic activities of enterprises in which the state holds more than one-half of the votes by way of parts or shares, or whose loans or contractual obligations are guaranteed by the state.

79. The mechanisms which are in place to prevent the unlawful use of public finances are the police, the prosecution, and the courts. The legal chancellor supervises the public sector.

Government procurement

80. There are special rules ensuring transparency and equality in the tendering of public contracts in Public Procurement Act (RT I 2001, 40, 224; implemented 1 April 2001). The procedure provided for in this act applies to the following public procurements:

§ 2. Definition and objects of public procurement

(1) For the purposes of this Act, “public procurement” means purchasing of goods, contracting for construction work and services, granting of construction work concessions, and contracting for design solutions by contracting authorities specified in subsection 5 (1) of this Act.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(2) Purchasing of goods or contracting for services from state agencies, city or rural municipality governments or local government agencies by the Bank of Estonia or contracting authorities specified in clause 5 (1) 1) of this Act, purchasing of goods or contracting for services by the Bank of Estonia for the performance of the functions specified in § 2 of the Bank of Estonia Act (RT I 1993, 28, 498; 30, correction notice; 1994, 30, 463; 1998, 64/65, 1006; 1999, 16, 271), and contracting for health services or health promotion or disease prevention services, except for purchasing of medicinal products or purchasing or commercial lease of medical technology and related rights, by the Estonian Health Insurance Fund is not public procurement.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(3) The objects of public procurement are goods, including proprietary rights, and services, construction work, construction work concessions and design solutions.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(4) “Construction work” means any work related to construction or to demolition of structures or parts thereof. Performance of geotechnical or geodetic site investigations, construction design, construction supervision, expert assessment of building designs and structures, and construction management for organising construction work are deemed to be services.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(5) "Construction work concession" means the exclusive right to exploit a structure, received as consideration for the performance of construction work provided for in subsection (4) of this section. For a construction work concession, the state agency must obtain a permission relating to the construction work concession from the Government of the Republic.

(6) For the purposes of this Act, "design solution" means a project submitted by a participant in a design contest in the field of design and meeting the requirements specified in the design contest notice (hereinafter project).

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(7) The procedure provided for in this Act applies to public procurements the estimated value of which (the annual sum together with value added tax) is:

- 1) 100 000 kroons (EEK⁹) or more upon purchasing of goods or contracting for services;
- 2) 500 000 kroons or more upon contracting for construction work;
- 3) 500 000 kroons or more upon contracting for draft legislation;
- 4) 500 000 kroons or more upon purchasing of goods or contracting for services by a contracting authority specified in clause 5 (1) 1) of this Act from a penal institution or a company founded by the state for the administration of the production units of a penal institution;
- 5) 100 000 kroons or more upon contracting for a design solution, including all contest awards and other amounts payable to the participants in the design contest;
- 6) 2 million kroons or more upon purchasing of goods or contracting for services or design solutions by a contracting authority specified in clause 5 (1) 6) of this Act whose net turnover during the previous financial year exceeded 500 million kroons;
- 7) 4 million kroons or more upon contracting for construction work by a contracting authority specified in clause 5 (1) 6) of this Act whose net turnover during the previous financial year exceeded 500 million kroons.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

81. According to section 5 of the Act, a contracting authority is:

§ 5. Contracting authority

(1) For the purposes of this Act, a contracting authority is:

- 1) A state agency, city or local government, or a local government agency;
- 2) A legal person in public law or a body of a legal person in public law;
- 3) A legal person in private law which is not a company and all the founders or members of which are, jointly or separately, the state, a local government and/or a legal person in public law;
- 4) A legal person in private law which is not a company and which, to the extent of more than 50 per cent, is financed or more than one-half of the members of the supervisory board or management board of which are appointed jointly or separately by the state, a local government and/or a legal person in public law;
- 5) An undertaking if it has received a construction work concession from the state, a local government or a person specified in clauses 2)–4) of this subsection and enters into procurement contracts for construction work on the basis of such concession, or if the state, a local government or persons

⁹ 1 EUR = 15.6466 EEK; 100 000 EEK = 6391 EUR

specified in clauses 2)–4) of this subsection jointly or separately finance the actual or all of the activities of the undertaking to the extent of more than 50 per cent, or if the state and a local government jointly or separately hold a majority of the votes or more than 50 per cent of the shares in the undertaking either directly or through other persons;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

6) An undertaking if the state or a local government has granted a special or exclusive right to the undertaking pursuant to the Competition Act (RT I 1998, 30, 410; 1999, 89, 813; 2000, 53, 343; RT III 21, 232) and if the purchasing of goods or contracting for services or construction work is necessary for the exercise of the special or exclusive right, or if the state, a local government or persons specified in clauses 2)–4) of this subsection jointly or separately hold a majority of votes or more than 50 per cent of the shares in the undertaking directly or through other persons and if the area of activity of the undertaking is either the construction or operation of permanent networks with the intention to provide services relating to the production, transportation, transmission or distribution of water, gas, electricity or thermal energy to the public, or the use of a geographic area in order to prospect for or extract fuels or enable air or water transport undertakings to use an airport, port or other terminal structure, or the operation of networks enabling the public to use services relating to railway, tramway, trolleybus or bus transport, automatic systems or cable distribution, or the construction or operation of public telecommunications networks for ensuring one or more telecommunications services.

(2) Production, transportation, transmission or distribution of water, gas, electricity or thermal energy by an undertaking to networks servicing the public is not deemed to be an activity specified in clause (1) 6) of this section if consumption of water or electricity is necessary for activities other than those specified in clause (1) 6) of this section, or if the supply of the public network depends solely on consumption by the undertaking and does not exceed 30 per cent of the average overall production of water or electricity by the undertaking during the last three years, or if production of gas or thermal energy by the undertaking results inevitably from activities other those specified in clause (1) 6) of this section, or if the public network is supplied with a surplus of gas or thermal energy for the purposes of the economic use thereof and such surplus does not exceed 20 per cent of the average turnover of the undertaking during the last three years.

82. The announcements of the tendering are printed in official bulletin.

83. According to the Public Procurement Act, persons who have been in a relationship with a tenderer which may give rise to justified doubts as to the persons' objectivity shall not be representatives of or experts for contracting authorities (State).

Internal audit and internal control

84. The introduction of internal audits and internal controls has a very important role to play in the prevention of corruption. The Parliament (*Riigikogu*) adopted on 7 July 2000 the Government of the Republic Act Amendment Act. This amendment ensures the introduction of the system of internal controls in ministries, local governments, county governments, and state agencies. At the same time, the State Public Servants Official Titles and Salary Scale Act Amendment Act was adopted, by which the position of an internal auditor was introduced in government and state agencies.

85. The aim of an internal audit is to evaluate and analyse the system of internal control in an executive public authority, as well as to assess its efficiency and compliance with established requirements. The Government of the Republic Act establishes the general rules for the conduct of internal audits in

government agencies and in state agencies administered by government agencies, including provisions for reporting the results.

86. Sections 92¹ - 92³ of the Government of the Republic Act constitute the internal control and internal audit system. An internal audit system is a comprehensive set of measures implemented in the directing of government agencies and state agencies administered by government agencies in order to achieve lawfulness and purposefulness and to ensure:

- 1) Compliance with legislation;
- 2) Protection of property from damage caused by squandering, non-purposeful use, incompetent management, etc.;
- 3) The purposefulness of the activities of the agencies in the performance of their duties;
- 4) Collection, storage and publication of truthful, updated and reliable information concerning the activities of the agencies.

87. The head of a government agency or a state agency administered by a government agency shall implement the internal audit system in the agency and is liable for the efficiency of the system. In order to conduct an internal audit, a person responsible for the internal audit shall be appointed and, if necessary, a corresponding structural unit shall be formed in direct subordination to the head of the government agency or the state agency administered by a government agency.

88. The Ministry of Finance started the project *Good practice in internal audit* in May 2000. This project helps to create and introduce the system of internal audit in the Estonian public sector. The project proceeds from the necessity to harmonize, on one hand, the activities of the Estonian public sector with the norms and practices of the European Union, and on the other hand, to improve substantially with the existing resources, the administrative capacity of the Estonian public sector, as well as to improve the control over Estonian national resources.

B. Penal legislation in the field of corruption

89. The current Criminal Code, the new Penal Code and the Anti-corruption Act contain legal provision on corruption.

Definition of officials

90. Criminal Code's Chapter 8 applying to Criminal Official Misconduct and matters of corruption and other related crimes defines an "official" as follows:

Chapter 8

Criminal Official Misconduct

§ 160. Definition of official

An official is a person who has an official position in an agency, enterprise or organisation based on any form of ownership and to whom administrative, supervisory, managerial, operational or organisational functions, or functions relating to the organisation of movement of tangible assets, or functions of a representative of state authority have been assigned by the state or the owner.

(2) Upon implementation of section 1642 of this Code, the persons listed in section 4 of the Anti-corruption Act (RT I 1995, 14, 170; 68, 1142; 2000, 25, 145) are deemed to be officials.

(19.01.95 entered into force 20.02.95 - RT I 1995, 14, 170)

91. However, only officials listed in section 4 of the Anti-Corruption Act can be held responsible for the act of corruption itself.

§ 4. Official

(1) Pursuant to this Act, an official is a state or local government official who has an official position provided for in subsection 3 (2), or a non-staff public servant performing his or her duties.

(2) For the purposes of this Act, the following are also deemed to be officials:

- 1) Members of the Parliament;
- 2) The President of the Republic;
- 3) Members of the Government of the Republic;
- 4) The Chief Justice and justices of the Supreme Court;
- 5) The Chairman and members of the Board of the Bank of Estonia, the President of the Bank of Estonia;
- 6) The Commander (Commander-in-Chief) of the Armed Forces;
- 7) The Auditor General;
- 8) The Legal Chancellor;
- 9) Heads of foreign missions of Estonia;
- The State Secretary;
- County governors;
- 12) The Chief Public Prosecutor and prosecutors;
- 13) Judges of administrative, county, city and circuit courts;
- 14) Members of rural municipality and city councils;
- 15) Members of rural municipality and city governments, city district elders;
- 16) Members of administrative councils of rural municipality districts and city districts;
- 17) Notaries;
- 18) Police officers;
- 19) Bailiffs, prison officers and probation officers;
- 20) Officers of the armed forces, armed forces officials, border guard officials, rescue service officials, and officials of the National Defence League;
- 21) The Commander of the National Defence League, members of the General Staff and central bodies of the National Defence League, and heads of units of the National Defence League and members of the bodies thereof;
- 22) Members of the management boards and supervisory boards of companies with state participation;
- 23) Members of the management boards and supervisory boards of companies with local government participation;
- 24) Members of the management boards and supervisory boards of companies with the participation of a legal person in public law;

25) Members of a body making decisions on transfer of state assets or municipal property or property of other legal persons in public law.

(14.03.2000 entered into force 29.03.2000 – RT I 2000, 25, 145)

Bribery

92. The sections 164, 164¹, 165 and 165¹ of the Criminal Code enact the punishments for accepting, arranging and giving a bribe and giving a bribe to a foreign official.

(See chapter 5 Review of implementation of principles of the Convention and 1997 Recommendation article 1 The offence of bribery of a foreign public official)

Act of corruption

93. According to section 164² of the Criminal Code, an act of corruption is an unjustifiable or unlawful decision or action taken by a public official, or the omission to make a justifiable lawful decision or action, or the use of his or her official position for corrupt profit-seeking purposes or other personal gain.

§ 164². Act of corruption

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

(1) For the purposes of this Act, an act of corruption is the making of undue or unlawful decisions or performance of such acts, or failure to make reasoned and lawful decisions or perform such acts by an official through the use of his or her official position for receiving income derived from corrupt practices or other self-serving purposes.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

(2) An act of corruption is punishable by a fine or deprivation of the right of employment in a particular position or operation in a particular area of activity.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

(3) An act of corruption, if it causes significant damage, is punishable by a fine and deprivation of the right of employment in a particular position or operation in a particular area of activity, or up to three years' imprisonment.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

(4) Same act is punishable by up to six years' imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity if:

1) It is committed repeatedly, or

2) It is committed by a group of persons, or

(17.04.96 entered into force 24.05.96 - RT I 1996, 31, 631)

3) It causes major damage, or

4) It is committed by using extortion.

(19.01.95 entered into force 20.02.95 - RT I 1995, 14, 170)

94. Section 164² of the Criminal Code, subsection 4, provides for separate responsibility for the Act of Corruption committed either repeatedly, or by a group of persons, or for causing major damage, or for using extortion. These are all considered to be separately qualified offences. When corruption is committed in an organised manner (by a group of persons) it can be punished as a separate offence with aggravating circumstances. If the offence has been committed as the result of conspiracy, it can be looked upon as a grave form of the separate offence, and it will be punished more severely. In dealing with the participants or instigator of a crime, the court has to consider the level and nature of everyone's participation in the crime, when passing sentence.

95. The Criminal Code, in sections 162¹ and 162², also provides for the liability for violation of restrictions on employment and activities, or procedural restrictions established by the Anti-Corruption Act, and for failure to give notification of a relationship involving the risk of corruption.

“§162¹. Violation of restrictions on employment and activities, or procedural restrictions established by Anti-corruption Act.

Violation of restrictions on employment and activities, or procedural restrictions established by the Anti-corruption Act is punishable by up to two years' imprisonment together with deprivation the right of employment in the particular office or operation in a particular area of activity or employment in the public service if:

- 1) Significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby, or if
- 2) An administrative punishment has been imposed on the offender for the same act.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

§ 162². Failure to give notification of relationship involving risk of corruption. Failure to give notification of a relationship involving the risk of corruption is punishable by a fine or up to one year imprisonment together with deprivation of the right of employment in the particular office or operation in the particular area of activity or employment in the public service if:

- 1) Significant proprietary damage or other serious consequences to the rights or interests of a person, the state or a local government protected by law has been caused thereby, or if
- 2) An administrative punishment has been imposed on the offender for the same act.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276).”

Trading of influence

96. On 28 February 2000, an amendment of the Criminal Code (section 164⁶) was implemented, which criminalized the so-called trading of influence. It declares that the trading of influence is the acceptance of remuneration by an official who promises to influence another official to make a decision favourable to the person who gives the remuneration.

97. For the trading of influence, the punishment shall be imprisonment for up to two years. For the acceptance of a more than adequate remuneration, determined by an Act or other legislation, for the provision of services or the making of decisions by an official, or the acceptance of remuneration for services without charge, the punishment shall be imprisonment for up to two years, with the loss of the right of employment or operation in a particular area of activity.

Acceptance of a of a more than adequate remuneration

98. Pursuant to section 166³ of the Criminal Code, an official can be punished for acceptance of a of a more than adequate remuneration, determined by an Act or other legislation, for the provision of services or making of decisions by an official, or acceptance of remuneration for services without charge, and if this act has caused significant proprietary damage or other serious consequence to the rights or interests of an individual, the state or a local government protected by law.

Counterfeiting or falsification

99. Counterfeiting or falsification of a document is punishable by the Criminal Code. Section 166 of the Code provides for the liability for counterfeiting or falsification related to an official position, in the following formulation:

“§ 166. Counterfeiting or falsification related to office

(1) Counterfeiting or falsification of a document, if such act is related to an office and significantly violates the rights or interests of a person, enterprise, agency or organisation which are protected by law or to national interests, is punishable by a fine and deprivation of the right of employment in a particular position or operation in a particular area of activity, or up to three years’ imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity.

(19.05.93 entered into force 27.06.93 - RT I 1993, 33, 539)

(2) Counterfeiting or falsification of an invoice, other payment document, declaration, balance sheet or other accounting document necessary for verification of the correctness of taxes, if such act is related to an office and is committed with the purpose of paying less taxes or if less taxes are paid as a result, is punishable by a fine and deprivation of the right of employment in a particular position or operation in a particular area of activity, or up to three years’ imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity.

(14.12.94 entered into force 13.01.95 - RT I 1995, 5, 40).”

100. At the same time, section 164⁵ of the Code provides for the responsibility for submission of false information to a person or an agency or a committee which verifies declarations of economic interests in the following formulation:

“§ 164⁵. Submission of false information to person or agency or committee, which verifies declarations of economic interests.

(1) The submission of incomplete or false information or failure to submit information in good time to a person or agency or the committee set out in the Anti-corruption Act which exercises lawful supervision over declarations of economic interests is punishable by detention or up to six months’ imprisonment.

(2) The same act is punishable by imprisonment between six months and two years together with deprivation of the right of employment in the particular office or operation in the particular area of activity if significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276).”

101. The creating or using of an invoice or any other accounting document or record containing false or incomplete information, or unlawfully omitting to make a record of a payment in order to commit,

conceal or disguise, such offences of corruption can constitute an official crime, chapter 8 in Criminal Code.

Money laundering

102. Since the 1 July 1999, money laundering has been established as a separate criminal offence. Money laundering is the conversion or transfer of, or the performance of legal acts with, property required as a result of an act punishable pursuant to criminal procedure, the purpose or consequence is the concealment of the actual owner or the illicit owner of property. Estonia has also criminalized the failure to comply with the stipulations of the Money Laundering Prevention Act (RT I 1998, 110, 1811; 2000, 84, 533). All offences can be predicate offences to money laundering.

(See chapter 5 Review of implementation of principles of the Convention and 1997 Recommendation article 7 Money laundering)

103. The Code of Administrative Procedure stipulates the responsibilities of an authorised person in connection with the violation of the Money Laundering Prevention Act. Criminal accountability is provided for the intentional non-notification of suspicion of money laundering to the Financial Intelligence Unit or for presenting intentionally incorrect information to this Unit.

The establishment, the management and participation in a criminal organisation

104. The establishment, the management, and participation in a criminal organisation are established as criminal offences in Estonia. According to section 196 of the Criminal Code, a criminal organisation is a lasting structured association consisting of 3 or more persons, acting with the view to commit first or second degree crimes. Being a member of the criminal organisation is punishable by imprisonment from 3 to 8 years. Leaders of the criminal organisation, or its subunit, and recruiters will be punished by imprisonment from 5 to 10 years. This means, that participation in a criminal organisation is punishable even if the person does not take actively part in the actual execution of the offences, and even if the offences are not actually committed.

“§ 196¹. Membership in or forming of criminal organisation or recruiting of members thereto or leading such organisation or part thereof

(1) Membership in a criminal organisation, i.e. a permanent organisation consisting of three or more persons who share a distribution of tasks and whose aim is or whose activities are directed at the commission of criminal offences in the first or second degree, is punishable by three to eight years' imprisonment.

(2) Forming an organisation specified in subsection (1) of this section, recruiting of members thereto or leading such organisation or a part thereof is punishable by five to ten years' imprisonment.

(3) A member of a criminal organisation who did not participate in the preparation, attempt or commission of any of the criminal offences committed by such organisation shall be released from punishment if he or she voluntarily gives notice of his or her membership in such organisation.

(17.04.96 entered into force 24.05.96 - RT I 1996, 31, 631).”

Corporate criminal responsibility (liability of legal persons)

105. Legal persons can not be held accountable for offences of corruption and money-laundering, and related corruption. However, section 5 of Code of Administrative Offences provides that in certain cases

regulated by law, legal persons can be held accountable for committing an administrative offence. The Anti-Corruption Act does not provide for the accountability of legal persons, but provides for the accountability of natural person. At the same time, section 137 of the Credit Institutions Act (RT I 1999, 23, 349; 2000, 35, 222; 40, 250, implemented 1 July 1999) provides for the administrative accountability of legal persons for activities which can be related to money laundering. However, it should be mentioned that the new Penal Code provides for the criminal liability of legal persons.

C. Draft legislation

106. One of Estonia's priorities is the completion of penal law reform. On 6 June 2001, the Parliament adopted a new Penal Code, which is one of the most essential acts in the implementation of penal law reform. The Penal Code will enter into force on March 1, 2002.

107. The main drafts of the penal law reform, under readings in the Parliament, are the Code of Criminal Procedure and Code of Misdemeanour Procedure. The current version of the Code of Criminal Procedure has been "exhausted", both technically and practically. Present procedure is long, slow, bureaucratic, and expensive. The new draft was elaborated upon the Italian Code, which is based on the principles of the rule of law, efficiency, and economy. The draft will be adopted in 2001.

108. The draft of the Misdemeanour Procedure Code awaits the 2nd reading in Parliament. The elaboration of the draft of the Misdemeanour Procedure Code stems directly from the Penal Code. The Current Code of Administrative Offences will be abolished. The administrative offences will be part of the Penal Code. The general principle is that the Misdemeanour Procedure will be based upon the provisions of the criminal procedure, with exceptions provided for in the Misdemeanour Procedure Code. This draft will be adopted in 2001.

IV. PROCEDURE AND ORGANISATION

A. Organisations

109. The organisations involved in the prevention, detection, and repression of corruption at a national and at a decentralised level are the police, the prosecutors, and the courts.

Security Police Board

110. Accordingly to section 105 of the Code of Criminal Procedure, the competence to investigate (pre-trial investigation) corruption belongs to the Security Police Board, apart from those cases where some local government officials (of a lower position) commit the act of corruption. In these cases the authority to investigate corruption belongs to the Police Board, the Central Criminal Police and police prefectures.

111. The main tasks of the Security Police Board are the protection of the constitutional order, the nation's territorial integrity, and the state's secrets; the carrying out of surveillance; the combating of

terrorism; the supporting of independent statehood; prevention, obstruction, and detection of certain crimes (basically, cases of high priority, including corruption), and the pre-trial proceeding of these criminal cases. The Security Police gained the status of an independent institution on 18 June 1993. In March 2001, the Security Institutions Act (RT I 2001, 7, 17) regulating the activities and stipulating the composition and functions of the Security Police Board entered into force. The Act states that one of the main purposes of this organisation is the supporting of independent statehood; the prevention, obstruction, and detection of certain crimes, and the pre-trial proceeding of these criminal cases.

112. While pre-trial investigation of corruption cases by the Security Police Board should follow the procedures stipulated in the Code of Criminal Procedure. The Prosecutor's Office oversees the legality, speed, and the precision of the investigation. The Security Police Board and the Prosecutor's Office co-operate with the aim of sending pre-investigated criminal case to court. The Security Police Board conducts the preliminary investigation of the case and the prosecution, while supervising over the legality of the investigation, makes consultations on the next steps of investigation.

113. Certain officials of the Security Police Board have specialized in the fight against corruption. The existence of this specialized office and the concrete results of its activities show to the community that it is possible to fight against corruption. As a result, citizens are more liable to cooperate with law enforcement agencies.

114. The Security Police Board, which has a capacity for the preliminary investigation of corruption, would also have the capacity, provided by law, to investigate organised crime, if at least 3 members of an organised crime group are high state officials or police officers, or the organised crime group has conspired to commit or has committed a terrorist act, or a terrorist act against an official representative of a foreign state. Otherwise, organised crime shall be dealt with by the Central Criminal Police, which co-operates closely with the Security Police Board.

Police Board and Central Criminal Police

115. The Police Board, the Central Criminal Police and the police prefectures have authority to investigate corruption, if the act of corruption is committed by lower position local government officials.

Financial Intelligence Service and Tax Fraud Investigative Centre

116. The Financial Intelligence Service is assigned to combat money laundering, which might be closely related to corruption. The Tax Fraud Investigative Centre is authorised to carry out the preliminary investigation of tax fraud.

Prosecutor's offices

117. The prosecutor's office supervises the legality of the registration of reports of criminal offences and the legality of pre-trial procedures; the legality of surveillance by surveillance agencies pursuant to the Surveillance Act; and represents public prosecution during trials.

118. The prosecutor's office has the right to commence criminal proceedings; and during pre-trial investigation, among other procedural activities provided by the Code of Criminal Procedure, can give written instructions to preliminary investigators concerning the investigation of criminal offences, the performance of procedural acts, the choice, alteration or annulment of preventive measures, the legal assessment of criminal offences, the search of the persons who have committed a criminal offence, the commencement or termination of surveillance, and ascertain the possibility of applying simplified

proceedings. The written instructions of a prosecutor given to a preliminary investigator pursuant to the procedure provided for in the Code of Criminal Procedure are binding for the preliminary investigator. An appeal against received instructions, filed with a higher-ranking prosecutor, does not suspend the compliance with such instructions.

119. Accordingly to the section 22 of the Code of Criminal Procedure, a prosecutor shall exercise his or her authority in criminal proceedings independently and is governed only by law. Section 2 of the Prosecutor's Office Act also provides that prosecutors shall be independent in the performance of their duties and act only pursuant to law and according to their conscience. At the same time, section 9 of the Act provides that the Minister of Justice shall exercise supervisory control over the prosecutor's office. The supervisory control exercised by the Minister of Justice shall not pertain to decisions that prosecutors make in performing their duties imposed by law and shall not prejudice the independence of prosecutors.

120. Accordingly to the Prosecutor's Office Act, prosecutors shall not be employed elsewhere, outside of their professional duties, except for teaching or research. A prosecutor shall not be a founder, managing partner, member of the management board or supervisory board of a commercial undertaking, director of a branch of a foreign commercial undertaking, or a member of a political party.

121. A prosecutor must be an Estonian citizen with active legal capacity, who is at least 21 years of age, has a law degree, is proficient in the Estonian language to the extent established by or pursuant to the law, is of high moral character, and has the suitable personality for such a position of authority.

B. Criminal Procedure

122. Estonia's criminal system is based on the principle of mandatory prosecution. Section 3 of the Code of Criminal Procedure imposes on investigators and prosecutors the obligation to commence criminal proceedings and detect criminal offences in the following formulation:

§ 3. Obligation to commence criminal proceedings and detect criminal offences

(19.04.2000 entered into force 01.07.2000 - RT I 2000, 35, 222)

(1) After the elements of a criminal offence have become evident, a preliminary investigator or prosecutor shall, within the limits of his or her competence, commence criminal proceedings and take the measures prescribed by law to establish that a criminal act has taken place, and to identify the person who committed the criminal offence.

(19.04.2000 entered into force 01.07.2000 - RT I 2000, 35, 222)

(2) If the elements of another criminal offence become evident upon the conduct of the proceedings in a criminal matter in court, the court shall notify the prosecutor of such elements in writing unless otherwise provided for in this Code.

123. According to section 22 of the Code of Criminal Procedure, a prosecutor shall exercise his or her authority in criminal proceedings independently and is governed only by law. At the same time, section 9 of the Prosecutor's Office Act provides that the Minister of Justice shall exercise supervisory control over the Prosecutor's Office. The supervisory control exercised by the Minister of Justice shall not pertain to decisions that prosecutors make in performing their duties imposed by law and shall not prejudice the independence of prosecutors.

124. However, criminal proceedings according to section 5 of the Code of Criminal Procedure shall be terminated under certain circumstances:

§ 5. Facts preventing conduct of proceeding in criminal matter

(1) A criminal proceeding shall not be commenced, and a criminal proceeding shall be terminated in the following cases:

(19.04.2000 entered into force 01.07.2000 - RT I 2000, 35, 222)

- 1) If no criminal act has taken place;
- 2) If an act has no necessary elements of a criminal offence;
- 3) If the limitation period has expired;
- 4) If an amnesty prevents the application of a punishment for the criminal offence, or if clemency is granted to specific persons;
- 5) With regard to a person who at the time of committing an act dangerous to the society has not attained the age when the application of criminal liability according to law is possible;
- 6) In the case of conciliation between the victim and accused in a criminal offence prescribed in § 113, subsection 115 (1), §§ 121, 122, 128¹, 129 and 130 of the Criminal Code, except in the cases prescribed in subsection 391 (5) of this Code;
- 7) If the criminal proceeding may be commenced only on the basis of a complaint by the victim and the victim has not submitted a complaint;
- 8) Upon the death of the person, except if it is necessary to conduct the proceeding in criminal matter for the rehabilitation of the deceased person, or upon detection of new facts, for the resumption of criminal proceedings with regard to another person;
- 9) With regard to a person concerning whom a judgment has entered into force in respect of the same charges, or with regard to a person concerning whom a court ruling has entered into force in respect of the termination of the criminal proceedings on the same basis;
- 10) With regard to a person concerning whom an order of a preliminary investigator or prosecutor concerning the termination of the criminal proceedings in respect of the same charges has not been annulled.

(2) If the facts prescribed in clauses (1) 1), 2), 3) or 4) of this section become evident during the stage of court hearing, the court shall complete the hearing of the criminal matter and make a judgment of acquittal or a judgment of conviction without punishment.

(3) Termination of a criminal proceeding is prohibited on the bases prescribed in clause (1) 3) or 4) of this section if such bases are contested by the suspect or the accused. In such cases, the proceeding in the criminal matter shall be resumed according to the standard procedure.

(4) Criminal proceedings concerning a criminal offence in the third degree or a criminal offence in the second degree committed as a result of negligence shall not be commenced, and criminal proceedings concerning such criminal offence may be terminated if the victim does not wish to participate in the proceedings due to conciliation. Termination of criminal proceedings on the basis of conciliation is not permitted if the prosecutor or a participant in the criminal proceedings contests such termination. The commencement or resumption of criminal proceedings after new facts concerning the same criminal offence become evident is permitted if the officials referred to in subsection 107¹ (6) of this Code, the prosecutor or the court deem it necessary.

(19.04.2000 entered into force 01.07.2000 - RT I 2000, 35, 222)

125. Mechanisms have been established to ensure that prosecution is not discontinued as a result of undue pressure or undue considerations. There is the possibility for complaining under section 183 subsection 3: a complaint may be submitted against the decision of a prosecutor on the adjudication of a complaint, or against the activities of a prosecutor during investigation, with a higher-ranking prosecutor.

126. According to the Code, judges and lay judges shall be independent in the administration of justice in criminal matters and shall be governed only by law. The court, prosecutors, and preliminary investigators are required to take all measures prescribed by law for comprehensive, thorough, and objective investigation of the facts of a criminal matter, and to ascertain the facts which may convict or vindicate a suspect or defendant, and to bring forth all mitigating or aggravating circumstances.

127. During preliminary investigation, a preliminary investigator shall decide on the direction of the investigation and performance of investigative activities independently, except in the cases where the obtaining of a prosecutor's or the court's consent or permission is prescribed in the Code. A preliminary investigator shall bear full responsibility for the legality and timeliness thereof.

128. Pursuant to section 117 in the Code, the information concerning a pre-trial investigation may be disclosed only with the permission of a preliminary investigator and to such extent, as he or she deems possible. If necessary, a preliminary investigator shall warn the participants in the proceeding, witnesses, experts, specialists, interpreters or translators, or impartial observers of investigative activities that it is prohibited to disclose the information concerning the pre-trial investigation.

129. Accordingly to section 36 and section 169 of the Code defence lawyers, as well as lawyers of parties claiming damages, have the right of access to the case file after the preliminary investigator declares a pre-trial investigation to be completed, and the collected evidence to be sufficient for the preparation of a summary of charges.

130. According to the Public Information Act, the information collected during preliminary investigation is restricted until trial. Section 28 of the Prosecutor's Office Act provides that a prosecutor shall not disclose information which becomes known to him or her in connection with the performance of his or her duties, if this may prejudice the administration of justice. The obligation of professional secrecy has an unspecified term.

131. According to the Surveillance Act, surveillance agencies (in case of corruption – Security Police Board) have the right to conduct the following special surveillance activities:

- 1) Covert collection of information by persons who are engaged in surveillance activities or recruited therefore;
- 2) Covert collection of comparative samples, and the covert examination and initial examination of documents and objects;
- 3) Covert surveillance;
- 4) Covert identification.

132. The Security Police Board and the Police Board also have the right to conduct the following special surveillance activities:

- 1) Covert entry into housing, other buildings and constructions and other premises, data banks, workplaces and means of transport for the purpose of collecting and recording information and installing technical appliances necessary therefore;
- 2) Covert examination of postal items;
- 3) Wire tapping and recording of messages and other information forwarded by telegraph, telephone, or other commonly used technical communication channels;
- 4) Staging of criminal offences for the purpose of detention of a criminal or detection of a criminal offence.

133. The conducting of special or exceptional surveillance activities is allowed only with the permission of the court. The procedures for obtaining the court's permission to apply special surveillance activities are the following: the National Security Police Commissioner, the National Police Commissioner, or the official performing their duties, shall submit a reasoned written application to the chairman of the Tallinn Administrative Court or an administrative court judge of the Tallinn Administrative Court designated to grant permission to conduct, in the course of a commenced surveillance proceeding, a particular exceptional surveillance activity specified by the Surveillance Act. For instance, if this exceptional activity is necessary for the detection of an intentionally committed crime in the second degree, for which imprisonment of at least four years is prescribed as punishment (corruption, which is committed repeatedly, or committed by a group of persons, or has caused major damage, or has been committed by using extortion), or to conduct an exceptional surveillance activity specified in clause 12 (2) 4) of the Act (staging of criminal offences for the purpose of detention of a criminal or detection of a criminal offence), which is necessary for the prevention or detection of a crime in the second degree, for which imprisonment of at least two years is prescribed as punishment (corruption without aggravating circumstances mentioned above). The judge shall promptly review the submitted application and grant permission in writing, or deny permission in writing, and be able to justify the decision.

134. According to § 88 of the Estonian Credit Institutions Act, banking secrecy does not constitute an obstacle for law enforcement authorities in gathering evidence. In response to a written inquiry, a credit institution shall disclose information, subject to banking secrecy, to law enforcement authorities.

(See chapter 5 Review of implementation of principles of the Convention and 1997 Recommendation point 9.1.3. Bank secrecy)

135. Special and exceptional surveillance activities are permitted only if it is impossible to collect information necessary for a criminal investigation through other surveillance activities or procedural acts established by the acts providing for criminal procedures.

136. The Criminal Code, in sections 172 and 172¹, provides for the protection of vulnerable targets in the framework of any criminal case (including corruption). These sections deal with offences such as the use of violence or the threat of using violence against a witness, victim, plaintiff, civil defendant, expert, specialist, interpreter and/or suspect/accused person and/or their relatives and closely related persons, with the aim of obstructing and hindering justice, or as an act of revenge for testifying or for the performing of official functions in the course of a criminal case. More severe criminal sanctions are provided for when violence, or the threat of using violence, is used against a judge, lay judge, counsel, prosecutor, preliminary investigator, distraint officer, or their relatives and closely related persons, with the aim of obstructing and hindering justice, or for revenge for the performance of their functions and duties within a criminal procedure.

137. As a preventive measure against the intimidation of witnesses, the anonymity provided for in the Code of Criminal Procedure can be granted.

C. International co-operation

138. The Act ratifying the Criminal Law Convention on Corruption is under the 1st reading of Parliament. Estonia ratified the Civil Law Convention on Corruption (RT II, 2000, 27, 164) on 18 October 2000.

139. Estonia has ratified the following Conventions governing procedures for judicial co-operation and mutual assistance:

- 1) European Convention on Extradition;
- 2) First Additional Protocol to the European Convention on Extradition;
- 3) Second Additional Protocol to the European Convention on Extradition;
- 4) Baltic Agreement on Extradition;
- 5) European Convention on the Transfer of proceedings in Criminal Matters;
- 6) Baltic Agreement on the Transfer of proceedings in Criminal Matters;
- 7) Convention on the Transfer of Sentenced Persons;
- 8) European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol;
- 9) European Convention on Laundering, Search, Seizure and Confiscation of the proceeds of crime.

140. Estonia has expressed willingness to ratify relevant EU Conventions (First protocol to the PIF Convention and The EU Corruption Convention) upon accession.

Mutual legal assistance

141. Estonia does not require the concluding of a formal bilateral agreement to comply with a request for mutual legal assistance in criminal matters. As for now, there are provisions in chapter 10 of the Codes of Criminal Procedure (international co-operation), for mutual legal assistance. Requests for legal assistance in criminal matters shall be adjudicated on the basis of the international agreements of the Republic of Estonia. Legal assistance to states with whom an international agreement has not been entered into shall be provided pursuant to the principles arising from the criminal conventions of the Council of Europe, which have been ratified by the Republic of Estonia, and Part 10 of the Code of Criminal Procedure.

142. Generally, Estonia would give effect to any mutual legal assistance request, as long as the request formally replies to the rules provided by the Code of Criminal Procedure. There has been only one known request for mutual legal assistance, concerning corruption, which was presented to Estonia at the beginning of this year.

143. Estonia refuses to grant assistance if the request concerns a case which is not considered to be an offence by Estonian laws. There are no specific factors that prevent or hinder mutual legal assistance in corruption cases.

(See chapter 5 Review of implementation of principles of the Convention and 1997 Recommendation point 3.3. Penalties and Mutual legal assistance)

144. Estonian citizens can be extradited for corruption cases on the basis of the European Convention on Extradition and its additional protocols which was ratified on 19 February 1997. Pursuant to section 36 of the Constitution of the Republic of Estonia, the extradition of the national is decided by the Government. Estonia reserves the right to delay or refuse extradition if the national appeals the extradition. But finally, the decision to extradite, or to refuse to extradite, is made by the Government (section 407 subsection 1 of the Code of Criminal Procedure). If an Estonian national commits the act of corruption in a foreign state, competent authorities would require the country, where the crime was committed, to send all relevant materials, evidence, and files to Estonia for the purpose of prosecuting the perpetrator.

(See chapter 5 Review of implementation of principles of the Convention and 1997 Recommendation point article 10 Extradition)

V. REVIEW OF IMPLEMENTATION OF PRINCIPLES OF THE CONVENTION AND 1997 RECOMMENDATION

A. Implementation of the principles of the convention

1. ARTICLE 1. THE OFFENCE OF BRIBERY OF FOREIGN PUBLIC OFFICIALS

145. Chapter 8 of the Criminal Code establishes the criminal official misconduct. The relevant provisions read as follows:

§ 164. Accepting bribe

(1) An official who, personally or through an intermediary, receives property, proprietary rights or other proprietary benefits as a bribe for the performing or refraining from performing an act in the interests of the person who gives the bribe, and the official is required to perform or can perform such act using his or her official position, shall be punished by up to four years' imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity.

(2) Same acts are punishable by up to seven years' imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity if committed:

- 1) Repeatedly, or
- 2) By a group of persons, or
- 3) On a large-scale basis, or
- 4) Using extortion.

(17.04.96 entered into force 24.05.96 - RT I 1996, 31, 631)

(3) A person who receives a bribe shall be released from punishment if he or she, voluntarily, is the first to submit a written notification of the events after having received property, proprietary rights or other proprietary benefits but before he or she performs or refrains from performing an act in the interests of the person who gives the bribe.

(08.01.96 entered into force 05.02.96 - RT I 1996, 6, 101)

§ 164¹. Arranging bribe

(1) Arranging a bribe is punishable by up to four years' imprisonment.

(2) Arranging a bribe is punishable by up to seven years' imprisonment if committed:

- 1) Repeatedly, or
- 2) By a person who has a criminal record for bribery, or

3) Using an official position.

(3) A person who arranges a bribe shall be released from punishment if he or she arranges the bribe under extortion or if he or she, voluntarily, is the first to submit a written notification of the events after having arranged the bribe but before the person who receives the bribe performs or refrains from performing an act in the interests of the person who gives the bribe.

(08.01.96 entered into force 05.02.96 - RT I 1996, 6, 101)

§ 165. Giving bribe

(1) Giving a bribe is punishable by up to four years' imprisonment.

(2) Giving a bribe is punishable by up to seven years' imprisonment if committed:

1) Repeatedly, or

2) By a person who has a criminal record for bribery.

(3) A person who gives a bribe shall be released from punishment if a bribe is extorted from him or her or if he or she, voluntarily, is the first to submit a written notification of the events after having given the bribe but before the person who receives the bribe performs or refrains from performing an act in the interests of the person who gives the bribe.

(08.01.96 entered into force 05.02.96 - RT I 1996, 6, 101)

§ 165¹. Giving bribe to foreign official

(1) Giving a bribe to an official of a foreign state or an international organisation is punishable by up to four years' imprisonment.

(2) Same act is punishable by up to seven years' imprisonment if it is committed:

1) Repeatedly, or

2) By a person who has a criminal record for bribery.

(3) A person who commits an act specified in subsection (1) of this section shall be released from punishment if a bribe is extorted from him or her or if he or she, voluntarily, is the first to submit a written notification of the events after having given the bribe but before the person who receives the bribe performs or refrains from performing an act in the interests of the person who gives the bribe.

(13.05.98 entered into force 19.06.98 - RT I 1998, 51, 756)

146. In the Penal Code, which will be implemented on 1 March 2002, bribery offences are prescribed under chapter 13 as follows:

§ 303. Acceptance of gratuities

(1) An official who accepts property or other benefits in return for a lawful act which he or she has committed or which there is reason to believe that he or she will commit or for a lawful omission which he or she has committed or which there is reason to believe that he or she will commit taking advantage of his or her official position in the interests of the person offering the gratuities or any other person shall be punished by a fine or up to 3 years' imprisonment.

(2) The same act, if committed:

1) At least twice;

2) By extorting the gratuities;

3) By a group; or

4) On a large-scale basis,

Is punishable by up to 5 years' imprisonment.

(3) An act provided for in subsection (1) or (2), if committed by a legal person, is punishable by a fine.

§ 304. Accepting bribe

(1) An official who accepts property or other benefits in return for an unlawful act which he or she has committed or which there is reason to believe that he or she will commit, or for an unlawful omission which he or she has committed or which there is reason to believe that he or she will commit taking advantage of his or her official position in the interests of the person offering the bribe or any other person shall be punished by 1 to 5 years' imprisonment.

(2) The same act, if committed:

1) At least twice;

2) By extorting the bribe;

3) By a group; or

4) On a large-scale basis,

is punishable by 2 to 10 years' imprisonment.

(3) The act provided for in subsection (1), if committed by a legal person, is punishable by a fine.

(4) The act provided for in subsection (2), if committed by a legal person, is punishable by a fine or compulsory dissolution.

§ 305. Arranging gratuities

(1) Arranging a gratuity is punishable by a fine, detention or up to one year of imprisonment.

(2) The same act, if committed:

1) At least twice, or

2) By taking advantage of an official position,

is punishable by a fine, detention or up to 3 years' imprisonment.

(3) An act provided for in subsection (1) or (2), if committed by a legal person, is punishable by a fine.

§ 306. Arranging bribe

(1) Arranging a bribe is punishable by a fine, detention or up to one year of imprisonment.

(2) The same act, if committed:

1) At least twice, or

2) By taking advantage of an official position,

is punishable by a fine, detention or up to 3 years' imprisonment.

(3) An act provided for in subsection (1) or (2), if committed by a legal person, is punishable by a fine.

§ 307. Granting of gratuities

- (1) Granting a gratuity is punishable by a fine, detention or up to 3 years' imprisonment.
- (2) The same act, if committed at least twice, is punishable by up to 5 years' imprisonment.
- (3) An act provided for in subsection (1) or (2), if committed by a legal person, is punishable by a fine.

§ 308. Giving bribe

- (1) Giving a bribe is punishable by 1 to 5 years' imprisonment.
- (2) The same act, if committed at least twice, is punishable by 2 to 10 years' imprisonment.
- (3) The act provided for in subsection (1), if committed by a legal person, is punishable by a fine.
- (4) The act provided for in subsection (2), if committed by a legal person, is punishable by a fine or compulsory dissolution.

§ 309. Granting of gratuities to officials of foreign states or international organisations

- (1) Granting a gratuity to an official of a foreign state or an international organisation is punishable by a fine, detention or up to 3 years' imprisonment.
- (2) The same act, if committed at least twice, is punishable by up to 5 years' imprisonment.
- (3) An act provided for in subsection (1) or (2), if committed by a legal person, is punishable by a fine.

§ 310. Giving bribe to officials of foreign states or international organisations

- (1) Giving a bribe to an official of a foreign state or an international organisation is punishable by 1 to 5 years' imprisonment.
- (2) The same act, if committed at least twice, is punishable by 2 to 10 years' imprisonment.
- (3) The act provided for in subsection (1), if committed by a legal person, is punishable by a fine.
- (4) The act provided for in subsection (2), if committed by a legal person, is punishable by a fine or compulsory dissolution.

1.1 The Elements of the Offence

147. Chapter 8 of the Criminal Code, sections 164, 164¹, 165 and 165¹ apply to the giving, arranging and accepting of a bribe to a variety of persons who have an official position in an agency, enterprise or organisation, based on any form of ownership, and to whom administrative, supervisory, managerial, operational or organisational functions, or functions relating to the organisation of the movement of tangible assets, or functions of a representative of state authority, which have been assigned by the state or the owner.

1.1.1 any person

148. Chapter 8, section 164 presumes only special subject - an official who can accept a bribe. Sections 164¹, 165 and 165¹ apply to a “person”. It means any natural person. Any person aged at least 15 years can be prosecuted and sentenced for an offence.

1.1.2 intentionally

149. The offence of a domestic or foreign public official needs to be committed intentionally. Pursuant to section 8 of the Criminal Code, a criminal offence is committed intentionally if the offender comprehends the intention and the nature of the activity, or non-activity, and in the case when the act is considered to be completed. This is determined by the appearance of certain consequences, the foreseeing of these consequences, and the desire to achieve such consequences. This covers *dolus eventualis*.

1.1.3 to offer, promise or give

150. Section 164 - accepting a bribe is the main offence as concerns to arranging and giving a bribe. The promise and offer to bribe are not criminalized. They are covered by the new Penal Code.

1.1.4 any undue pecuniary or other advantage

151. Chapter 8 sections 164, 164¹, 165 and 165¹ prohibit the giving, arranging and accepting a property, proprietary rights or other proprietary benefits. Section 164 does not refer to the requirement that benefit be “undue”. Also this section does not cover “other advantage” as provided in the Convention. Therefore the new Penal Code meets requirements of the Convention.

1.1.5 whether directly or through intermediaries

152. The bribes given directly or through intermediaries are covered by Chapter 8. Section 165¹ does not expressly apply to a person who gives a bribe to foreign public officials through intermediaries. The section 164¹ also covers this situation.

1.1.6 to a foreign public official

153. Section 165¹ uses the term “official of foreign state” which complies with the requirements of the OECD Convention and the Council of Europe Criminal Law Convention on Corruption.

1.1.7 for that official or for a third party

154. As for now the bribery offence does not include the case where the briber and foreign public official enter into an agreement to transmit the bribe directly to third party in exchange for an act by the foreign public official. This is covered by the new Penal Code.

1.1.8 in order that the official act or refrain from acting in relation to the performance of official duties

155. Pursuant to section 164 this wording is included as follows: “for the performing or refraining from performing an act in the interests of the person who gives the bribe, and the official is required to perform or can perform such act using his or her official position”.

1.1.9/1.1.10 in order to obtain or retain business or other improper advantage/in the conduct of international business

156. It is irrelevant under chapter 8 whether a bribe is given “in order to obtain or retain business or other improper advantage/in the conduct of international business.

1.2 Complicity

157. In accordance with section 17 the incitement, aiding and abetting, or authorisation of an act of a foreign public official are criminalized. Abettor or instigator is a person who induced another person to commit a crime. An aider is a person who accomplices with advice, conduct, by giving the instrument or means, by withdrawing the obstacle or the creation of opportunity, also a person who promised the concealment of offender, instruments or means, traces of crime or proceeds derived from crime.

1.3 Attempt and conspiracy

158. Attempt and conspiracy are provided by section 15 of the Criminal Code:

§ 15. Liability for preparation and attempt

(1) Preparation of crime is the obtaining or adjusting of instruments or means to commit a crime or any other action which creates possibility of the crime to be committed.

(2) An attempt is an intentional act the purpose of which is to commit an offence, if the crime was not accomplished by reason not depending on the will of offender.

159. The punishment for an attempt may be assessed pursuant to section of this code, which prescribes the elements of the crime committed. Upon assessing punishment the court considers person, the manner and gravity of crime, degree and reasons for criminal intent due to which the crime was not accomplished.

2. ARTICLE 2 RESPONSIBILITY OF LEGAL PERSONS

160. Article 2 of the Convention requires each Party to take such measures as may be necessary, in accordance with its legal principles, to establish liability of legal persons for the bribery of a foreign public official. This requirement does not refer only criminal liability.

2.1. Criminal liability

161. Current Criminal Code does not foresee liability of legal persons. However, section 5 of the Code of Administrative Offences provides that in certain cases regulated by law, legal persons can be responsible for committing administrative offence. Anti-corruption Act does not foresee administrative responsibility of legal persons.

162. It should be mentioned that the Penal Code provides responsibility of legal persons. In the cases provided by law legal person is responsible for act, which is committed by a body or senior official thereof in the interest of the legal person. Punishment of a legal person does not preclude punishment of the natural person who committed the offence. The court may impose a fine for legal persons of 50 000 EEK to 25 000 000 EEK. The court may apply the compulsory liquidation of a legal person if the part of person's activity is the commission of crimes.

3. ARTICLE 3. SANCTIONS

163. The Convention requires Parties to institute effective, proportionate and dissuasive criminal penalties comparable to those applicable to bribery of the Party's own domestic officials. The Convention also mandates that for a natural person, criminal penalties include deprivation of liberty sufficient to enable mutual legal assistance and extradition. The Convention also requires each Party to take such measures as necessary to ensure that the bribe and the proceeds of the bribery of the foreign public official are subject to seizure and confiscation. The Convention requires each Party consider the imposition of additional administrative or civil sanctions.

3.1 /3.2 Criminal penalties for bribery of domestic and foreign official

164. Pursuant to section 164 of the Criminal Code accepting a bribe is punishable up to four years' imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity. Same acts are punishable by up to seven years' imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity if committed in aggravating circumstances (repeatedly, by a group of persons, on a large-scale basis or using extortion).

165. Giving a bribe is punishable by up to four years' imprisonment. Giving a bribe is punishable by up to seven years' imprisonment if committed repeatedly or by a person who has a criminal record for bribery.

166. Arranging a bribe is punishable by up to four years' imprisonment. Arranging a bribe is punishable by up to seven years' imprisonment if committed repeatedly or by a person who has a criminal record for bribery or using an official position.

167. Giving a bribe to an official of a foreign state or an international organisation is punishable by up to four years' imprisonment. Same act is punishable by up to seven years' imprisonment if it is committed repeatedly or by a person who has a criminal record for bribery.

3.3 Penalties and Mutual legal assistance

168. Estonia ratified European Convention on Mutual Legal Assistance in Criminal Matters and its additional protocol in 1997. The Code of Criminal Procedure also contains provisions on international cooperation. According to the Code of Criminal Procedure requests of foreign countries for legal assistance

in criminal matters are adjudicated on the basis of the international agreements of the Republic of Estonia (section 397). Legal assistance to states with whom an international agreement has not been entered into is provided pursuant to the principles arising from the criminal conventions of the Council of Europe (on the basis of principle of reciprocity). In procedures that are not regulated by international treaties or the provisions on international cooperation contained in the Code of Criminal Procedure, other provisions of the Code of Criminal Procedure are followed.

169. Estonia has concluded legal assistance agreements with Latvia, Lithuania, Ukraine, Poland and Russia. Legal assistance to states with whom there is no international agreement is provided on the basis of principles arising from the Council of Europe criminal conventions and part of the Code of Criminal Procedure on international cooperation. The provisions of the Code are applied unless otherwise provided in an international agreement entered into by Estonia. Legal institutions, which submit requests for legal assistance to foreign countries and settle requests for legal assistance from foreign countries within their area of capacity are the courts of the Republic of Estonia, the Public Prosecutor's Office, the Ministry of Justice and the Ministry of Internal Affairs.

3.4 Penalties and extradition

170. Estonia acceded to the European Convention on Extradition in 1993 and it entered into force in 1997 (RT II 1997, 8/9, 38). In accordance with the Convention on Extradition, persons are extradited in the case of offences that are punishable by more than one year imprisonment both in the requesting and requested state.

3.5 Seizure and Confiscation of the bribe and its proceeds

171. Under sections 146 and 146¹ of the Code of Criminal Procedure the seizure is provided as follows:

§ 146. Seizure of property

(1) The property of a suspect, accused or persons bearing proprietary liability for the acts of the suspect or accused shall be seized by a preliminary investigator in order to secure a civil action or seizure. Property shall be seized during the search or seizure, or at another time.

(2) Property shall be seized on the basis of an order of a preliminary investigator and only with the consent of a prosecutor. In the cases which allow no postponement, property may be seized without the consent of a prosecutor; however, the prosecutor shall be notified of the seizure of property within one twenty-four hour period.

(3) Seized property shall be presented to the persons who are present. The minutes of the seizure of property shall set out the number, volume, weight, individual characteristics, level of wear and tear and the value of the seized objects.

(4) Seized property shall be deposited into storage with liability against a signature, or shall be taken in the possession of a preliminary investigator pursuant to the procedure provided by law.

(5) For the seizure of an immovable, a preliminary investigator shall submit the order on seizure with the consent of a prosecutor to the land registry of the location of such immovable for the entry of a notation in the land register concerning a prohibition on disposal of immovable.

(6) For the seizure of a building which is a movable, a preliminary investigator shall submit the order on seizure with the consent of a prosecutor to the building register of the location of such building; for the seizure of a vehicle, the order shall be submitted to the motor vehicle register.

§ 146¹. Seizure of property in case of suspicion of money laundering

(1) Property which is the object of suspicion of money laundering is seized by the preliminary investigator conducting the proceedings in the criminal offence of money laundering in order to secure a request for international legal assistance, seizure or civil matter if other measures are exhausted.

Property shall be seized pursuant to the procedure provided for in this Code on the basis of an order of a preliminary investigator or prosecutor and only with the consent of a judge.

172. According to section 33 of the Criminal Code a court may apply confiscation of the instruments and means used to commit an offence and the assets acquired through the offence.

173. Pursuant to section 33¹ of the Code the value confiscation is allowed: if the assets acquired by an offence have been transferred, consumed or the confiscation thereof is impossible for another reason, the court may order the offender to pay an amount which corresponds to the value of the assets subject to confiscation.

3.8 Civil Penalties and Administrative Sanctions

174. The Estonian legal system does not impose additional civil or administrative sanctions in case of bribery.

4. ARTICLE 4. JURISDICTION

4.1. Territorial jurisdiction

175. The spatial validity of Estonian criminal law is determined with the principle of territoriality. The area under the jurisdiction of the Republic of Estonia covers besides mainland also the territorial sea and air space. In accordance with section 4 of the Criminal Code criminal liability extends to all persons who have committed an offence in the territory of the Republic of Estonia or on board of a ship or aircraft registered in the Republic of Estonia, regardless of the location of such ship or aircraft at the moment of commission of an offence.

4.2. Nationality and other extraterritorial jurisdiction

176. Section 5 of the Criminal Code also establishes the validity of the Code with regard to acts committed outside of the territory of the Republic of Estonia. An Estonian citizen, foreign citizen or a stateless person may be held criminally liable for an act committed outside the territory of the Republic of Estonia if on the basis of an international treaty an application has been made to bring criminal charges against the person and at the place of commission of the act such an act is also punishable in accordance with criminal law or if at the place of commission of the act criminal law of no country is valid; if the act had been committed against an Estonian citizen, legal person registered in the Republic of Estonia or against the Republic of Estonia and if such an act is criminally punishable on the basis of the present Code and of the criminal law of the place of commission of the act or if at the place of commission of the act criminal law of no country is valid.

177. The Criminal Code is also applicable with regard to acts committed outside the area of its validity if such an act is an offence according to Estonian law, if such an act is criminally punishable at the place of

commission of the act or if criminal law of no country is valid at the place of commission of the act and if the person committing the act was an Estonian citizen at the time of its commission or became an Estonian citizen after the commission of the act, or if the perpetrator was a foreign citizen or stateless person at the time of commission of the act, if the person has been detained in the Republic of Estonia and is not subject to extradition. Regardless of the law of the place of commission of the act the Criminal Code is applicable to acts which on the basis of an international treaty concluded by Estonia are punishable also when the act is committed outside the borders of the Republic of Estonia.

4.3. Consultation Procedures

178. Estonian law does not contain provisions on procedures to allow consultations in cases where several states have jurisdiction in an alleged offence. In practice, this issue has covered by the European Convention on Mutual Legal Assistance in Criminal Matters.

4.4. Review of Current Basis for Jurisdiction

179. The Penal Code will clarify the present regulation on jurisdiction:

§ 5. Territorial applicability of law

- (1) The penal law of the Republic of Estonia shall apply to acts committed within the territory of Estonia.
- (2) The penal law of the Republic of Estonia applies to acts committed on or against ships or aircraft registered in the Republic of Estonia, regardless of the location of the ship or aircraft at the time of commission of the offence and the penal law of the country where the offence is committed.

§ 6. Applicability of law by reason of person concerned

The penal law of the Republic of Estonia shall apply to an act committed outside the territory of Estonia if pursuant to the penal law of the Republic of Estonia the act constitutes a criminal offence and the at the place of commission of the act such act is punishable pursuant to penal law or if no penal power is applicable there and:

- 1) a request for punishing the person has been submitted on the basis of an international agreement;
- 2) the act is committed against a citizen of the Republic of Estonia or a legal person registered in the Republic of Estonia;

the offender was at the time of commission of the act a citizen of the Republic of Estonia or become one after the commission of the act, or an alien who has been apprehended in the Republic of Estonia and is not extradited.

§ 7. Applicability of penal law to acts against internationally protected legal rights

Regardless of the law of the place of commission of an act, the penal law of the Republic of Estonia shall apply to an act committed outside the territory of Estonia if the punishability of the act arises from an international agreement binding on Estonia.

§ 8. Applicability of law to acts against Estonian legal rights

Regardless of the law of the place of commission of an act, the penal law of the Republic of Estonia shall apply to acts committed outside the territory of Estonia if according to the penal law of the Republic of Estonia the act is a criminal offence in the first degree and damages:

- 1) the life and health of the population of the Republic of Estonia;
- 2) the exercise of state authority and the defence capability of the Republic of Estonia;
- 3) the environment of the Republic of Estonia.

5. ARTICLE 5. ENFORCEMENT

180. Article 5 of the Convention states that the investigation and prosecution of the bribery of foreign public official shall be subject to the applicable rules and principles of each Party. It requires that each Party ensure that the investigation and prosecution of the bribery of foreign public official shall not be influenced by considerations of national economic interests, the potential effect upon relation with another State or the identity of the natural or legal persons involved.

5.1. Rules and principles regarding investigation and prosecution

181. Rules and principles regarding investigation and prosecution are contained in the Code of Criminal Procedure and the Public Prosecutor's Act.

182. Pursuant to section 90 of the Code of Criminal Procedure, the reasons and grounds for commencement of criminal proceedings are:

- 1) Appearance for voluntary confession;
- 2) Petitions by persons;
- 3) Notices by enterprises, agencies, officials, and non-profit organisations and working collectives;
- 4) Information published in the press;
- 5) Detection of the elements of a criminal offence by a preliminary investigator, court or judge.

183. After the elements of a criminal offence have become evident, a preliminary investigator or prosecutor is obliged to, within the limits of his or her competence, commence criminal proceedings and take the measures prescribed by law to establish that a criminal act has taken place, and to identify the person who committed the criminal offence. Criminal proceedings are commenced by a preliminary investigator or prosecutor with the first investigative activity or other procedural act upon the existence of reason and grounds for criminal proceedings. If criminal proceedings are commenced by a prosecutor, materials of the criminal matter will be forwarded pursuant to investigative jurisdiction. A petition or a notice in a criminal matter which does not fall within the jurisdiction of a preliminary investigator, prosecutor or court will be immediately referred to a preliminary investigator, prosecutor or court within the jurisdiction of which the criminal matter falls (section 93 of the Code of Criminal Procedure).

184. A preliminary investigator makes decisions concerning performance of investigative activity during pre-trial proceedings independently. Courts, prosecutors and preliminary investigators are required to explain the rights of persons participating in a criminal matter to the persons, and to ensure that the persons have the possibility to exercise the rights (section 45 of the Code of Criminal Procedure).

185. Pursuant to section 1, subsection 1, point 1 of the Prosecutor's Office Act (RT I 1998, 41/42, 625), supervision over the legality of pre-trial procedure and interrogation is within the competence of the prosecutor's office. Pursuant to section 120, subsection 2 of the Code of Criminal Procedure, a prosecutor will, within the limits of his or her competence:

§ 120. Prosecutor in pre-trial proceedings

(1) In pre-trial proceedings, a prosecutor has:

1) The right to commence criminal proceedings;

(19.04.2000 entered into force 01.07.2000 - RT I 2000, 35, 222)

2) The right, if necessary, to conduct individual procedural acts in a criminal matter in which a preliminary investigator is conducting the proceeding, or in a criminal matter which is referred to him or her for the approval of the summary of charges. In the performance of a procedural act, a prosecutor has all the rights and obligations of a preliminary investigator;

3) The obligation to exercise supervision over the legality of pre-trial investigation pursuant to subsection (2) of this section.

(2) Upon the exercise of supervision over the legality of pre-trial investigation, a prosecutor shall, within the limits of his or her competence:

1) Require explanations from a preliminary investigator concerning the receipt, registration and settlement of petitions and notices submitted concerning a criminal offence, and concerning the process of pre-trial investigation and the termination of criminal proceedings;

2) Require criminal files, documents, materials and other information concerning committed criminal offences or criminal offences being planned, the process of pre-trial investigation and the persons who committed a criminal offence;

3) Monitor the compliance with the requirements of law in police institutions concerning the receipt, registration and settlement of submitted petitions and notices concerning criminal offences;

4) Annul or alter unlawful or unjustified orders of preliminary investigators;

5) Give written instructions to preliminary investigators concerning the investigation of criminal offences, the performance of procedural acts, the choice, alteration or annulment of preventive measures, the legal assessment of criminal offences, the search of the persons who have committed a criminal offence, the commencement or termination of surveillance, and concerning the ascertainment of the possibility to apply simplified proceedings;

6) Notify the persons who have the right to impose disciplinary punishments of the elements of a disciplinary offence, which have become evident in the activities of a preliminary investigator or competent police officer;

7) Sanction searches and other activities of a preliminary investigator in the cases prescribed by law;

8) Extend the term for the settlement and investigation of a petition or a notice concerning a criminal offence in the cases prescribed by law;

9) Return a criminal matter to a preliminary investigator with instructions for the conduct of further investigation or for the elimination of deficiencies;

10) Remove a preliminary investigator from any criminal matter by his or her reasoned order for the conduct of more thorough and objective investigation, and to refer such criminal matter to another preliminary investigator, taking into account the competence of preliminary investigators provided for in subsections 105 (1), (2) or (3) of this Code. Investigative jurisdiction determined by a prosecutor may be altered only by a higher ranking prosecutor;

11) Remove preliminary investigators who have violated the law upon the investigation of a criminal matter from further proceedings in the criminal matter by his or her reasoned order;

12) Commence criminal proceedings or terminate commence criminal proceedings, approve the summaries of charges, and in the cases prescribed by the law, approve an order of a preliminary investigator, refer criminal matters to court;

(19.04.2000 entered into force 01.07.2000 - RT I 2000, 35, 222)

13) Perform the tasks provided for in Chapter 33 of this Code upon the application of simplified proceedings.

(3) Written instructions of a prosecutor given to a preliminary investigator pursuant to the procedure provided for in this Code are binding on the preliminary investigator. An appeal against received instructions filed with a higher ranking prosecutor does not suspend the compliance with such instructions, except for the cases prescribed in subsection 106 (2) of this Code.

186. Written instructions of a prosecutor given to a preliminary investigator pursuant to the procedure provided for in the Code are binding on the preliminary investigator. An appeal against received instructions filed with a higher ranking prosecutor does not as a rule suspend the compliance with such instructions.

5.2. Consideration such as National Economic Interest

187. The investigation and the prosecution of the bribery of foreign public official must not be influenced by considerations of national economic interests, the potential effect upon relation with another State or the identity of the natural or legal persons involved.

6. ARTICLE 6. STATUTE OF LIMITATIONS

188. Section 53 of the Criminal Code contains provisions concerning the statute of limitations. The provisions that are relevant in respect of the foreign bribery offences provide for a limitation period of 5 years. This period shall be calculated from the time of the commission of the offence.

7. ARTICLE 7. MONEY LAUNDERING

189. Money laundering has been a separate criminal offence in Estonia since July 1, 1999. Elements are described in section 148¹⁵ of the Criminal Code as follows:

§148¹⁵ Money laundering

(1) Money laundering is punishable by a fine or detention or up to four years' imprisonment.

(2) Same act is punishable by two to seven years' imprisonment if committed:

1) by a group of persons, or

2) repeatedly.

(3) Money laundering is punishable by three to ten years' imprisonment if committed:

1) on a large-scale basis, or

2) by a criminal organisation.

190. The Criminal Code does not define money laundering. The definition is included in section 2 of the Money Laundering Prevention Act as follows:

§2 Money laundering

Money laundering is the conversion or transfer of, or the performance of legal acts with property acquired as a direct result of an act punishable pursuant to the criminal procedure, the purpose or consequence of which is the concealment of the actual owner or the illicit origin of the property.

191. All criminal offences can be predicate offences in Estonia. Estonian legislation does not require a conviction for the predicate offence before a prosecution for money laundering could be undertaken. While they considered that it would be necessary to show that proceeds originate from a particular predicate offence, they thought that the particular predicate crime could be proved by sufficient circumstantial evidence.

192. Currently, legal persons are not criminally liable for money laundering. As corporate criminal liability is included in the new Penal Code, it will be possible after implementation of the Penal Code.

8. ARTICLE 8. ACCOUNTING

193. Article 8 of the Convention requires that within framework of its laws and regulations the maintenance of books and records, financial statement disclosures and accounting and auditing standards, a Party prohibits the making of falsified or fraudulent accounts, statements and records for the purpose of bribing foreign public officials or of hiding such offence. The Convention also requires that each Party provide for persuasive, proportionate and dissuasive penalties in relation to such omissions and falsifications.

8.1. Accounting and Auditing Requirements

194. The purpose of the Accounting Act (RT I 1994, 48, 790; 1995, 26, 355; 92, 1604; 1996, 40, 773; 42, 811; 49, 953; 1998, 59, 941; 1999, 55, 584; 101, 903; implemented 1 January, 1995) is to create the legal bases and establish general requirements for organising accounting and reporting in the Republic of Estonia pursuant to internationally recognised accounting and reporting principles.

An accounting entity shall:

- 1) Keep accounting records - organise its accounts in such a way as to ensure relevant, objective and comparable information which has been recorded and reported in accordance with generally accepted accounting principles;
- 2) Document all its business transactions;
- 3) On the basis of source documents or summary documents prepared on the basis thereof, post and record all its business transactions in accounting ledgers and journals;
- 4) Prepare and present annual reports;
- 5) Preserve accounting documents.

195. Business transactions are recorded on an accrual basis. An accounting entity shall, within six months after the end of its financial year, submit a signed copy of the entity's annual report to the commercial register for permanent preservation. Accounting entities shall preserve source documents for

seven years. Accounting ledgers, journals, contracts, financial statements, reports and other business documents which are necessary for reconstructing business transactions during audits (correspondence with debtors, business plans supporting loan applications, etc.) shall be preserved for ten years. Business documents relating to long-term rights and obligations shall be preserved for seven years after the expiry of their terms of validity. Personal liability for offences relating to accounting is provided by the Establishment of Personal Liability for Accounting and Correctness of Accounting Information Act (RT I 1993, 43, 620; 1996, 6, 101; implemented 20 July, 1993).

196. An auditor is liable for damage wrongfully caused to an undertaking or third party through an incorrect audit of an annual report. If such damage is caused by several auditors, they are solidarily liable. According to the Authorised Public Accountants Act (RT I 1999, 24, 360; entered into force July 1, 1999) an auditor shall be independent and impartial in the professional activities of auditor and shall operate solely pursuant to law, the auditing rules, the requirements of professional ethics, and the resolutions and recommendations of the bodies of the Board of Auditors.

8.2. Companies Subject to the Accounting and Auditing Requirements

197. The Accounting Act extends to all legal persons in private law and sole proprietors registered in Estonia, to foreign legal persons who have a registered branch or other permanent establishment in Estonia and to legal persons in public law founded in Estonia, with the exception of the Bank of Estonia. The procedure for accounting and reporting for taxation purposes is established by other legislation.

8.3. Penalties

198. Chapter 7 of the Criminal Code (economic crimes) foresees penalties for accounting offences as follows:

§ 148⁴. Inadequate organisation of accounting

(1) Violation of the requirements provided for in legislation regulating accounting or reporting concerning the economic activities, including the commercial or financial activities, or assets of an economic unit, if such violation renders it impossible to correctly ascertain the economic performance, income, expenditure, profit, loss, debts, solvency or amount of assets of the economic unit, is punishable by a fine or deprivation of the right of employment in a particular position or operation in a particular area of activity, or up to one year imprisonment.

§ 148⁵. Falsification, concealment or destruction of accounting data

(1) Falsification, concealment or destruction of accounting or reporting data concerning the economic activities, including the commercial and financial activities, or assets of an economic unit, if, as a result, it is wholly or partially impossible to ascertain the economic performance, income, expenditure, profit, loss, debts, solvency or the amount of assets of the economic unit, is punishable by a fine or deprivation of the right of employment in a particular position or operation in a particular area of activity, or up to two years' imprisonment.

§ 148⁶. Submission of incorrect data

(1) Submission of knowingly incorrect data concerning the income, expenditure, profit, loss, debts or assets of an economic unit to state agencies with supervisory authority or to the committees, auditors or other competent officials appointed by such state agencies, is punishable by a fine or deprivation of the

right of employment in a particular position or operation in a particular area of activity, or up to one year imprisonment.

(3) A person responsible for accounting shall be wholly or partially released from a punishment imposed for the acts specified in this section or sections 148⁴ or 148⁵ of the Criminal Code if he or she, in a timely manner, notifies the police or another competent body of a falsification, concealment or destruction of accounting data which has already been carried out, is in progress or intended. Notification is deemed to be timely if the information received is or was directly beneficial to the prevention of an offence or ascertaining of the offenders.

§ 148¹³. Liability of auditor

An auditor who, in an audit report, intentionally presents incorrectly the facts which become known to him or her during the audit, shall be punished by a fine or up to one year imprisonment.

9. ARTICLE 9. MUTUAL LEGAL ASSISTANCE

9.1.1/9.1.2 Criminal matters/Dual Criminality

199. Estonia is a party to the European Convention on Mutual Assistance in Criminal Matters and its additional protocol. On the basis of these acts and agreements of mutual legal assistance Estonia will provide assistance to foreign states in the stage of preliminary investigation and judicial proceeding of criminal matters. Mutual assistance is in the form of performance of particular procedural acts, procurement of evidence, seizing of property, forwarding of writs of summons, etc. on the basis of requests.

200. Evidence collected in a foreign state is accepted as evidence in criminal proceedings in Estonia unless the evidence was collected by activity which is contrary to the principles of criminal procedure in Estonia.

9.1.2 Dual criminality

201. According to the Act Ratifying the European Convention on Mutual Assistance in Criminal Matters and its additional protocol. Estonia reserved the right to make execution of letters rogatory for search or seizure dependent on following conditions:

- 1) That the offence the motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party;
- 2) The execution of the letters rogatory is consistent with the law of the requested Party.

202. Estonia also reserves the right to refuse the giving mutual legal assistance, if the request concerns an offence, which is not considered offence according to the legislation of the Republic of Estonia.

9.1.3 Bank secrecy

203. Bank secrecy is provided by section 88 subsection 5 of the Credit Institution Act as follows:

§88 Bank secrecy

(5) A credit institution is required to disclose information subject to banking secrecy to the Bank of Estonia for the performance of duties assigned thereto by law. In response to a written inquiry, a credit institution shall disclose information subject to banking secrecy to:

- 1) A court or, in the cases prescribed by law, a person specified in a court ruling;
- 2) A pre-trial investigation authority and the Prosecutor's Office if a criminal proceeding is commenced, and on the basis of a request for legal assistance received from a foreign state pursuant to the procedure provided for in an international agreement;
- 3) A bailiff pursuant to subsection 64¹⁵ (1) of the Code of Enforcement Procedure (RT I 1993, 49, 693; 1997, 43/44, 723; 1998, 41/42, 625; 51, 756; 61, 981; 103, 1695; 1999, 18, 302; 27, 380; 95, 845; 2000, 28, 167; 35, 222);
- 4) A tax authority, pursuant to subsection 20 (1) of the Taxation Act (RT I 1994, 1, 5; 1996, 35, 714; 49, 953; 78, 1379; 81, 1447; 1997, 24, 363; 29, 447; 48, 778; 51, 822; 73, 1201; 77, 1313; 1998, 40, 611; 86/87, 1409; 1999, 24, 360; 27, 394; 71, 685; 92, 823 and 826; 2000, 35, 216), on the condition that the tax authority has not received the required documents and data from the taxpayer or the withholding agent, and in the case the tax administrator has a justified need to verify the correctness of the documents or data received from the taxpayer or the withholding agent;
- 5) The State Audit Office, pursuant to the competence thereof, on the condition that the data cannot be received from the person being audited;
- 6) A person entitled to succeed or a person authorised by the latter, to a notary, to a person making the inventory of an estate at the appointment of a notary and to the administrator of an estate appointed by a court, and to the consular representations of foreign states in connection with estates and data relating thereto, upon submission of relevant written documents;
- 7) A person appointed by the Deposit Guarantee Fund, pursuant to the Deposit Guarantee Fund Act (RT I 1998, 40, 612);
- 8) a foreign banking supervision authority or other financial supervision authority through the Banking Supervision if the obligation to maintain the confidentiality of information subject to banking secrecy extends to such authority;
- 9) An insurance supervisory body or securities supervision authority in connection with data necessary to exercise supervision;
- 10) A depository of declarations of economic interests for the verification of the correctness of the data submitted in a declaration of economic interests of a person specified in § 4 of the Anti-corruption Act (RT I 1999, 16, 276; 87, 791; 2000, 25, 145) in the case of suspicion of corruption.

10. ARTICLE 10. EXTRADITION

10.1. Legal basis for Extradition

204. In Estonia extradition to other countries of persons suspected of offences is regulated by the following acts:

- 1) Section 36 of the Constitution which states that extradition of an Estonian citizen to a foreign country is decided by the Government of the Republic;
- 2) European Convention on Extradition (RT II 1997, 8/9, 38);
- 3) Chapter 35 of the Code of Criminal Procedure which establishes international cooperation in criminal proceedings.

10.2 Extradition for Bribery of a Foreign Public Official

205. The Ministry of Justice forwards a request for extradition submitted by a foreign country immediately to the Public Prosecutor's Office. If the request for extradition arrives directly to the Public Prosecutor's Office, a prosecutor in the Public Prosecutor's Office will immediately also inform the Ministry of Justice about it. A prosecutor in the Public Prosecutor's Office is obliged to review the request and verify whether all necessary documents have been annexed to it. If the request for extradition meets all the requirements a prosecutor in the Public Prosecutor's Office will immediately forward it to the court. Proceeding of the request for extradition of a person to a foreign country is within the jurisdiction of Tallinn City Court. In resolving the request of extradition of a person to a foreign country the court will make one of the following rulings:

- 1) To support extradition of a person to a foreign country;
- 2) Not to support extradition of a person to a foreign country if extradition is legally unjustified.

206. After the court has received the request for extradition a judge will decide on the basis of a reasoned order of a preliminary investigator or prosecutor of the Public Prosecutor's Office granting of a permission to take the person to be extradited into custody. Refusal to permit taking of person into custody will be reasoned.

207. In cases of urgency a city or county court judge may grant a permission for taking a person into custody before the receipt of a request for extradition to a foreign country if a competent authority of a foreign state requests it and if the authority confirms that there is an order for taking the person into custody or there is a judgement of conviction by the court and request for extradition will be sent immediately.

208. A person may be released from custody if the foreign state fails to submit a request for extradition and the required documents within eighteen days after the detention of the person. A person will be released from custody if a request for extradition has not been received within forty days.

10.3 Extradition of nationals

209. No Estonian citizen shall be extradited to a foreign state, except under conditions prescribed by an international treaty and pursuant to procedure provided by such treaty and by law. Extradition shall be decided by the Government. Refusal to extradite will automatically entail an obligation to initiate criminal proceedings against the person.

210. Everyone who is under an extradition order has the right to contest the extradition in an Estonian court.

11. ARTICLE 11. RESPONSIBLE AUTHORITIES

211. The Ministry of Justice is central authority for making and receiving requests relating to consultations, mutual legal assistance and extradition.

B. Implementation of the principles of the 1997 Recommendation

3. TAX DEDUCTIBILITY

212. Estonian legislation does not explicitly prohibit tax deductibility of bribes, deductible expenses are enumerated in detail in different laws and they do not include bribes. Non-deductibility of bribes has been self-evident and that issue has not been raised.

213. The burden of proof in bribery cases is the same as in other tax matters. Legal persons are obliged to provide all necessary information. The Tax Fraud Investigative Centre has been granted powers of surveillance and preliminary investigation and is operational from the 1 April 2001.

Annex 1

Estonia's foreign trade by special trade system, 1995–2000

(billion EEK)

Year	Exports	of which re-exportation after inward processing	%	Imports	of which importation for inward processing	%	Balance (+, -)
1995	19.0	4.4	22. 9	27.4	4.3	15.6	-8.4
1996	21.3	4.9	23. 0	34.9	4.7	13.5	-13.6
1997	29.6	7.9	26. 9	48.9	7.4	15.1	-19.3
1998	35.2	11.2	31. 7	55.2	10.2	18.5	-20.0
1999	35.4	11.5	32. 3	50.5	10.9	21.7	-15.1
2000	53.9	23.6	43. 8	72.2	22.4	31.0	-18.3

Annex 2

Estonia's exports by main trading partners (country of destination, millions EEK, according to general trade system)

Country	1996		1997		1998		1999		2000	
	Value	%	Value	%	Value	%	Value	%	Value	%
Finland	4 529.0	21.5	6 386.5	15.6	8 542.0	18.7	8 378.5	19.4	17 626.2	27.0
Sweden	2 290.8	10.9	5 498.0	13.5	7 609.7	16.7	8 103.6	18.8	11 287.6	17.3
Germany	1 514.7	7.2	2 277.8	5.6	2 512.6	5.5	3 237.3	7.5	4 943.4	7.6
Latvia	1 572.6	7.5	3 516.7	8.6	4 298.6	9.4	3 766.4	8.7	4 679.3	7.2
Russia	3 727.6	17.7	7 679.5	18.8	6 080.7	13.3	3 969.8	9.2	4 445.6	6.8
Netherlands	981.0	4.6	1 374.2	3.4	1 002.7	2.2	1 441.5	3.3	2 857.6	4.4
UK	689.9	3.3	1 492.9	3.7	1 941.9	4.3	1 930.9	4.5	2 547.7	3.9
Lithuania	986.2	4.7	2 479.1	6.1	2 128.0	4.7	1 675.2	3.9	2 046.1	3.2
Denmark	691.6	3.3	1 302.7	3.2	1 657.1	3.6	1 696.6	3.9	1 876.5	2.9
Norway	392.4	1.8	659.9	1.6	940.9	2.1	1 056.0	2.4	1 416.8	2.2
United States	503.2	2.4	764.7	1.9	874.9	1.9	1 056.6	2.5	1 183.1	1.8
Ukraine	788.6	3.7	2 036.3	5.0	2 268.9	5.0	1 234.4	2.9	1 178.5	1.8
Belgium	189.3	0.9	466.8	1.1	547.2	1.2	557.2	1.3	888.1	1.4
France	160.3	0.8	285.4	0.7	412.7	0.9	517.4	1.2	823.1	1.3
Italy	177.6	0.8	307.7	0.7	331.9	0.7	468.5	1.1	632.2	1.0
TOTAL	21 071.6	100.0	40 785.4	100.0	45 575.2	100.0	43 164.5	100.0	65 138.6	100.0

Annex 3

Estonia's imports by main trading partners

(country of origin, millions EEK, according to general trade system)

Country	1996		1997		1998		1999		2000	
	Value	%	Value	%	Value	%	Value	%	Value	%
Finland	9 488.9	32.6	14 421.2	23.4	15 226.2	22.6	13 769.9	22.8	20 500.8	23.9
Russia	4 688.5	16.1	8 889.1	14.4	7 481.1	11.1	8 171.2	13.5	12 122.1	14.1
Germany	2 783.5	9.6	6 191.9	10.0	7 303.1	10.8	5 621.9	9.3	7 614.3	8.8
Sweden	2 466.7	8.5	5 608.1	9.1	6 096.9	9.0	5 603.8	9.3	7 490.0	8.7
Japan	545.9	1.9	2 075.1	3.4	3 314.4	4.9	2 855.3	4.7	4 766.6	5.5
China	127.1	0.4	332.7	0.5	510.3	0.8	706.3	1.2	2 719.1	3.1
Italy	759.0	2.6	1 838.4	3.0	2 198.9	3.3	1 915.9	3.2	2 264.6	2.6
Latvia	577.2	2.0	1 081.3	1.8	1 365.8	2.0	1 313.2	2.2	2 093.7	2.4
United States	710.9	2.4	2 293.0	3.7	3 095.8	4.6	2 680.7	4.4	2 053.8	2.4
Denmark	810.1	2.8	1 592.8	2.6	1 859.1	2.8	1 505.8	2.5	1 892.4	2.2

Country	1996		1997		1998		1999		2000	
	Value	%	Value	%	Value	%	Value	%	Value	%
UK	643.2	2.2	1 894.2	3.1	2 001.6	3.0	1 437.5	2.4	1 871.0	2.2
France	419.9	1.4	1 384.8	2.3	1 675.5	2.5	1 276.3	2.1	1 869.7	2.2
Netherlands	902.8	3.1	1 583.3	2.6	1 732.4	2.6	1 486.1	2.4	1 763.6	2.0
Poland	172.3	0.6	694.1	1.1	908.2	1.3	1 170.5	1.9	1 437.6	1.7
Belgium	447.6	1.5	814.9	1.3	934.2	1.4	935.3	1.5	1 308.1	1.5
Lithuania	470.2	1.6	933.7	1.5	1 101.8	1.6	994.2	1.6	1 276.7	1.5
Norway	245.4	0.8	656.8	1.1	804.8	1.2	663.2	1.1	1 071.4	1.2
TOTAL	29 119.5	100.0	61 661.1	100.0	67 377.9	100.0	60 475.2	100.0	86 158.2	100.0

Annex 4

Estonia's treaties for the promotion and protection of investment

Partner	Date of signature	Date of entry into force
Austria	16 May 1994	01 October 1995
Belgium/Luxembourg	24 January 1996	23 September 1999
China	02 September 1993	01 June 1994
Czech Republic	24 October 1994	18 July 1995
Denmark	06 November 1991	24 February 1992
Finland	13 February 1992	03 December 1992
France	14 May 1992	25 September 1995
Germany	12 November 1992	12 January 1997
Greece	17 April 1997	07 August 1998
Israel	14 March 1994	23 May 1995
Italy	20 March 1997	09 May 2000
Latvia	07 February 1996	23 May 1996
Lithuania	07 September 1995	20 June 1996
Netherlands	27 October 1992	1 September 1993
Norway	15 June 1992	15 June 1992
Poland	06 May 1993	06 August 1993
Spain	11 November 1997	01 July 1998
Sweden	31 March 1992	20 May 1992
Switzerland	21 December 1992	18 August 1993
Turkey	03 June 1997	29 April 1999
Ukraine	15 February 1995	05 July 1995
United Kingdom	12 May 1994	16 December 1994
United States	19 April 1994	19 February 1997

Annex 5

Direct investment outflows by countries in 1994-2000

(thousand EEK)

Country	1994	1995	1996	1997	1998	1999	2000
Austria	0	0	X	X	0	X	0
Belgium	0	0	0	0	0	X	X
Bermuda	0	0	0	X	X	X	0
Bahamas	0	0	0	0	X	X	0
Belarus	0	X	X	X	-3 522	838	1 254
Canada	0	0	0	X	X	0	0
China	0	X	0	0	0	0	0
Czech Republic	0	0	0	0	X	X	X
Cuba	0	0	0	X	0	0	0
Cyprus	0	X	-225 304	-330 280	457 432	12 648	-40 291
Germany	0	6 391	-4 005	511	3 727	449	X
Denmark	0	0	X	X	0	0	0
Spain	0	0	0	X	X	298	X
Finland	0	-1 216	-11 073	-26 196	41 551	45 511	128 199
France	0	0	0	X	X	0	X
Great Britain	0	0	X	X	-7 065	X	X
Hungary	0	0	0	0	0	0	X
India	0	X	X	X	0	0	0
Iceland	0	0	0	0	0	0	X
Italy	0	0	0	0	X	X	X
Jersey	0	0	0	0	0	0	X
Cayman Islands	0	0	0	0	X	X	X
Liberia	0	0	0	0	X	X	0
Lithuania	0	-14 415	-26 445	-480 489	-35 225	-688 681	-398 242
Latvia	0	-23 150	-115 461	-878 213	-332 284	-693 671	-1 882 304
Moldova	0	0	0	X	0	0	0
Malta	0	0	0	0	X	0	0
Netherlands	0	X	X	X	0	X	-5 850
Norway	0	0	X	X	X	-42 187	X
Poland	0	0	0	X	X	X	-13 265
Romania	0	0	0	0	0	0	X
Russia	-3 639	3 290	-6 136	-101 724	31 395	3 849	-37 691
Sweden	0	-2 532	784	-502	-23 404	-21 255	-2 666
Turks and Calicos Islands	0	0	0	0	0	0	0
Ukraine	0	X	-2 275	-94 163	-76 098	-3 133	-2 536
USA	0	X	-2 336	1 942	-169	X	X
Virgin Islands, British	0	0	X	X	X	X	X
Vanuatu	0	X	X	X	0	0	0
Not classified	-23 161	760	528	14 380	X	-1 089	-17 793
Total	-29 800	-29 100	-484 500	-1 912 900	-81 700	-1 239 800	-2 666 400

Annex 6

Direct investment inflows by countries in 1994-2000

(thousand EEK)

Country	1994	1995	1996	1997	1998	1999	2000
United Arab Emirates	X	0	0	0	0	0	0
Afghanistan	X	0	X	X	0	0	0
Argentina	0	0	0	0	0	0	X
Austria	57 321	82 135	51 756	56 618	-50 308	-25 839	-240 942
Australia	2 992	X	X	X	X	X	0
Bosnia-Herzegovina	X	0	0	X	0	0	0
Belgium	-112	38 639	276	-15 658	12 126	-953	24 205
Bulgaria	X	X	X	325	X	X	X
Bahrain	0	0	0	X	0	0	0
Bermuda	0	0	0	0	0	0	X
Brazil	0	X	0	X	0	X	X
Bahamas	30 042	7 726	6 052	119 890	4 853	-132 971	-16 379
Belize	X	2 075	X	5 455	4 664	3 467	47 455
Belarus	X	X	X	91	20	X	X
Canada	2 678	9 631	-12 304	-2 437	-1 436	8 663	2 276
Switzerland	11 440	32 194	36 633	232 435	24 789	-4 426	93 560
China	5 162	293	0	X	X	X	X
Czech Republic	X	14	X	268	X	1 850	10 025
Cyprus	3 614	504	7 387	-8 006	-12 180	35 748	-7 399
Germany	35 373	56 079	79 923	182 778	224 713	60 015	227 411
Denmark	33 661	80 301	168 339	212 467	469 289	308 903	87 646
Dominica	0	0	0	0	0	X	-40 475
Dominican Republic	0	X	0	0	0	X	X
EBRD	0	0	0	168 099	-105 986	0	0
Egypt	0	X	0	0	0	X	0
Spain	0	X	X	-705	X	X	-6 760
Finland	637 363	192 846	629 212	1 128 481	1 740 701	1 713 015	2 531 518
Fiji	0	0	0	0	0	X	0
France	790	874	-9 074	6 918	1 615	50 395	112 390
Great Britain	88 785	182 923	41 590	187 870	387 049	115 586	91 155
Georgia	0	408	0	0	0	0	0
Guernsey	0	0	0	0	0	X	12 528
Gibraltar	29	207	X	X	-3 539	-10 558	52 064
Greece	0	0	0	0	-766	0	X
Hong Kong	5 923	-3 204	710	0	11 726	-58 231	61 887
Hungary	X	-92 940	0	X	X	-398	170
Indonesia	0	0	0	0	0	X	X
Ireland	93 768	19 724	-3 888	-10 043	24 668	69 681	-161 836
Israel	0	276	X	X	528	X	X
Isle of Man	0	0	0	0	X	0	X
India	X	0	144	X	X	-1 128	X

Country	1994	1995	1996	1997	1998	1999	2000
Iceland	X	0	X	X	X	7 472	-2 805
Italy	13 467	-12 816	-7 317	5 762	81 335	8 279	59 551
Jersey	0	0	0	0	0	X	5 237
Japan	3 819	5 012	1 483	4 085	23 254	-15 381	12 002
Saint Kitts and Nevis	0	0	0	0	X	X	X
Korea	0	0	0	0	X	0	0
Kazakhstan	1 448	X	X	0	X	0	X
Cayman Islands	X	X	X	12 447	5 881	-12 954	X
Liechtenstein	579	X	2 430	46 034	151 321	26 967	184 795
Liberia	0	X	0	0	0	0	X
Lithuania	128	-2 923	-7 090	-37 045	4 450	105 254	-9 818
Luxembourg	6 088	4 736	45 455	X	-30 082	41 450	15 959
Latvia	1 129	1 792	-2 602	4 651	-25 369	39 782	-13 392
Monaco	0	0	0	0	X	0	X
Moldova	0	0	0	0	X	0	X
Marshall Islands	42	0	0	X	4 977	X	0
Mali	X	0	0	X	0	0	0
Malta	0	X	0	0	0	0	0
Mauritius	0	X	0	0	0	X	0
Mexico	X	0	0	0	0	0	0
Nigeria	0	0	0	0	0	X	X
Netherlands	198 380	-9 892	12 316	204 883	45 988	-20 514	286 766
Norway	3 672	57 062	75 650	747 482	231 464	190 568	39 709
Nepal	X	0	0	0	0	0	0
Nauru	0	0	0	X	0	0	0
New Zealand	X	0	0	X	0	0	0
Nike	0	X	0	338	X	2 572	-2 146
Panama	476	17 147	-6 983	25 699	-3 594	-384	X
Philippines	0	0	0	0	0	0	X
Pakistan	X	X	0	0	0	0	0
Poland	310	X	X	X	-95	-203	33 651
Portugal	X	X	X	0	X	X	X
Russia	422 553	-60 235	-5 411	-54 059	-192 832	74 025	-83 560
Rwanda	0	0	0	0	0	X	X
Seychelles	0	X	0	0	0	0	X
Sweden	531 555	1 140 763	180 215	366 414	4 780 354	1 435 290	3 125 799
Singapore	0	X	5 759	71 632	35 690	-82 029	31 529
Slovenia	0	0	0	0	X	X	X
Svalbard and Jan Mayen	X	0	0	0	0	0	0
Republic of South Africa	0	0	0	0	X	X	0
Turks and Caicos Islands	X	246	X	2 624	X	-1 218	62 011
Chad	0	0	0	0	0	X	0
Turkmenistan	X	0	0	0	0	0	0
Turkey	-49	0	0	0	0	0	X
Ukraine	12 207	72	-10	-13 499	10 568	-4 212	2 637

Country	1994	1995	1996	1997	1998	1999	2000
USA	148 837	200 578	458 502	139 351	145 036	399 704	-2 208
Uzbekistan	0	0	0	X	0	0	0
Uruguay	X	0	0	0	0	0	0
Venezuela	X	X	X	X	X	X	X
Virgin Islands, British	-735	18 757	3 595	-49 509	11 446	-8 057	-591
Virgin Islands (U.S.)	X	0	0	0	0	0	0
Channel Islands	0	0	0	0	X	X	X
Not classified	168 243	45 657	15 308	10 071	41 242	53 748	18 639
Total	2 819	2 312	1 814	3 694 100	8 071	4 448 000	6 807 300
	200	900	400		400		
FDI net inflow	2 789	2 283	1 329	1 781 200	7 989	3 208 200	4 140 900
	400	800	900		700		

Annex 7

DI from Estonia to other countries

(stock as of 31.12.2000)

Country	Thousand EEK	%
Latvia	3 994 154	53,6
Lithuania	2 329 213	31,3
Cyprus	605 590	8,1
Italy	X	X
Ukraine	94 576	1,3
Russia	42 438	0,6
Sweden	31 228	0,4
Bahamas	24 870	0,3
Poland	15 610	0,2
Czech Republic	X	X
Hungary	X	X
Cayman Islands	X	X
USA	3 490	0,0
Belarus	1 489	0,0
UK	X	X
Spain	1 102	0,0
France	X	X
Romania	X	X
Jersey	X	X
Iceland	X	X
Malta	X	X
Belgium	X	X
Germany	X	X
Austria	X	X
Netherlands	X	X
Norway	-25 674	-0,3

Virgin Islands, British	X	X
Finland	-147 799	-2,0
Not classified	38 864	0,5
Total	7 449 000	100,0

Annex 8

FDI stock in Estonia by countries

(as of 31.12.2000)

Country	Thousand EEK	%
Sweden	18 003 644	40,5
Finland	13 262 675	29,8
Norway	1 896 681	4,3
USA	1 873 967	4,2
Denmark	1 799 080	4,0
Germany	1 159 570	2,6
UK	1 051 779	2,4
Netherlands	983 767	2,2
Liechtenstein	648 347	1,5
Russia	553 088	1,2
Switzerland	485 675	1,1
Singapore	464 545	1,0
Italy	321 267	0,7
France	232 172	0,5
Ireland	184 500	0,4
Bahamas	162 544	0,4
Hong Kong	133 043	0,3
Austria	122 048	0,3
Latvia	107 348	0,2
Turks and Caicos Islands	100 022	0,2
Greece	X	X
Belize	89 578	0,2
Gibraltar	88 052	0,2
Channel Islands	X	X
Belgium	72 672	0,2
Luxembourg	71 246	0,2
Poland	67 781	0,2
Guernsey	58 727	0,1
Japan	45 033	0,1
Virgin Islands, British	36 987	0,1
Canada	36 364	0,1
Seychelles	23 949	0,1
Cyprus	23 775	0,1
Czech Republic	13 154	0,0
Jersey	11 742	0,0
British Indian Ocean Territories	10 380	0,0
Israel	8 743	0,0
Isle of Man	X	X
Ukraine	6 222	0,0
Iceland	6 162	0,0
Cayman Islands	X	X
Nigeria	X	X

Country	Thousand EEK	%
Saint Kitts and Nevis	X	X
Dominica	3 980	0,0
Slovenia	2 972	0,0
Niue	2 495	0,0
Belarus	1 769	0,0
Dominican Republic	X	X
China	1 563	0,0
Bulgaria	X	X
Panama	1 409	0,0
Nepal	X	X
Portugal	X	X
Hungary	810	0,0
Venezuela	X	X
Fiji	X	X
Georgia	X	X
India	500	0,0
Marshall islands	X	X
Liberia	345	0,0
Moldova	308	0,0
Kazakstan	X	X
Samoa	X	X
American Samoa	X	X
Armenia	X	X
Philippines	X	X
Bermuda	X	X
Egypt	X	X
Argentina	X	X
Korea	X	X
Turkey	X	X
Netherlands Antilles	X	X
Nauru	X	X
Rwanda	X	x
Mauritius	X	x
Uzbekistan	X	x
Brazil	X	x
Chad	X	x
Australia	-348	0,0
Spain	-6 020	0,0
Lithuania	-19 596	0,0
Not classified	83 671	0,2
Total	44 495 100	100,0

Annex 9

Direct investment outflows by fields of activity in 1994-2000

(thousand EEK)

Activity	1994	1995	1996	1997	1998	1999	2000
Agriculture, hunting, forestry	0	0	0	x	x	x	x
Fishing	0	0	0	x	0	0	0
Mining, quarrying	0	0	0	0	0	0	x
Manufacturing	30	-6 728	-46 282	-202 700	42 432	-327 273	-220 628
Energy, gas and water supply	0	0	0	0	0	x	x
Construction	0	-591	-787	-13 587	4 163	4 888	-21 994
Wholesale, retail trade	-6 611	-20 164	7 185	-74 452	-178 545	-5 274	-27 263
Hotels, restaurants	0	0	0	x	x	x	x
Transport, storage, communication	0	-3 054	-255 627	-325 489	389 954	36 690	-79 290
Finance	x	x	-172 850	-1 107 616	-317 479	-866 204	-1 643 667
Real estate, renting and business activities	x	4 673	-10 852	-176 170	-8 961	-83 430	-654 539
Public administration and defence; compulsory social security	0	0	x	0	0	x	0
Other community, social and personal service activities	0	x	x	-6 601	x	1 701	-2 785
Not classified	-30 000	760	x	-2 806	-4 056	-1 569	-3 832
Total	-29 800	-29 100	-484 500	-1 912 900	-81 700	-1 239 800	-2 666 400

Annex 10

Direct investment inflows by fields of activity in 1994-2000

(thousand EEK)

Activity	1994	1995	1996	1997	1998	1999	2000
Agriculture, hunting, forestry	37 300	-27 778	-95 134	1 856	105 257	136 733	106 036
Fishing	747	x	-2 219	-2 211	2 243	11 218	-2 307
Mining, quarrying	-374	x	7 061	7 686	47 798	14 523	52 885
Manufacturing	1 480 773	938 248	496 277	1 237 691	1 544 980	1 145 398	924 408
Energy, gas and water supply	x	18 426	-17 102	80 566	125 844	262 819	191 954
Construction	18 153	5 740	38 991	62 755	161 236	24 737	285 185
Wholesale, retail trade	438 299	822 968	894 694	552 891	941 743	442 870	628 277
Hotels, restaurants	38 859	63 260	58 626	77 389	37 327	41 418	278 603
Transport, storage, communication	519 456	320 807	225 078	860 693	299 622	1 075 463	1 122 519
Finance	87 527	146 040	25 750	624 307	4 308 766	909 498	2 096 037
Real estate, renting and business activities	73 743	52 984	126 759	167 935	423 819	262 927	841 206
Public administration and defence; compulsory social security	x	0	x	x	0	x	x
Education	852	-147	760	-604	-245	855	1 369
Health care	10	-7 675	x	x	-338	x	x
Other community, social and personal service activities	920	29 253	45 083	-595	53 060	59 595	142 353
Not classified	107 600	-51 720	6 113	23 923	22 624	56 917	137 999
Total	2 819 200	2 312 900	1 814 400	3 694 100	8 071 400	4 448 000	6 807 300
FDI net inflow	2 789 400	2 283 800	1 329 900	1 781 200	7 989 700	3 208 200	4 140 900

Annex 11

DI from Estonia by fields of activity

(stock as of 31.12.2000)

Activity	Thousand EEK	%
Finance	4 517 766	60,6
Real estate, renting and business activities	1 072 641	14,4
Transport, storage, communication	770 946	10,3
Manufacturing	658 333	8,8
Wholesale, retail trade	346 364	4,6
Construction	32 922	0,4
Electricity, gas and water supply	X	x
Agriculture, hunting, forestry	X	x
Other community, social and personal service activities	7 510	0,1
Hotels, restaurants	X	x
Mining, quarrying	X	x
Not classified	20 188	0,3
TOTAL	7 449 000	100,0

Annex 12

FDI inflow by fields of activity

(stock as of 31.12.2000)

Activity	Thousand EEK	%
Finance	11 113 880	25,0
Transport, storage, communication	9 711 613	21,8
Manufacturing	9 548 536	21,5
Wholesale, retail trade	6 937 609	15,6
Real estate, renting and business activities	3 090 333	6,9
Electricity, gas and water supply	1 051 272	2,4
Hotels, restaurants	876 396	2,0
Construction	648 093	1,5
Agriculture, hunting, forestry	570 641	1,3
Other community, social and personal service activities	506 764	1,1
Mining, quarrying	184 960	0,4
Education	12 900	0,0
Fishing	11 775	0,0
Health care	5 210	0,0
Public administration and defence; compulsory social security	1 838	0,0
Not classified	223 231	0,5
TOTAL	44 495 100	100,0

Annex 13

Court statistics

Court statistics in 1998

	Cases	Convicted	Acquitted
Misuse of official position	19	12	7
Abuse of authority	15	14	1
Negligence related to office	8	5	3
Accepting bribe	34	31	3
Arranging bribe	2	2	-
Failure to submit declaration of economic interests subject to disclosure, or presentation of false information	3	1	2
Giving bribe	8	8	-
Counterfeiting or falsification related to office	5	5	-

Court statistics in 1999

	Cases	Convicted	Acquitted
Misuse of official position	11	8	3
Abuse of authority	10	10	-
Negligence related to office	8	6	2
Accepting bribe	13	12	1
Arranging bribe	1	1	-
Giving bribe	6	6	-
Counterfeiting or falsification related to office	6	6	-

Court statistics in 2000

	Cases	Convicted	Acquitted
Misuse of official position	12	7	5
Abuse of authority	6	6	-
Negligence related to office	19	13	6
Accepting bribe	35	24	11
Arranging bribe	2	2	-
Act of corruption	1	-	1
Failure to submit declaration of economic interests subject to disclosure, or presentation of false information	1	-	1
Giving bribe	25	17	8
Counterfeiting or falsification related to office	12	12	-

Annex 14

Letter from the Minister of Foreign Affairs to the OECD Deputy Secretary General

Välisminister
Minister of Foreign Affairs
Republic of Estonia

14 June 2001 No. 6-4/6995

Dear Mr. Kondo

One of Estonia's major priorities is the development of co-operation with the OECD. An important aspect of this undertaking is a closer association with the OECD's efforts to combat bribery and corruption. This relationship would benefit not only Estonia, but also the OECD and its member countries.

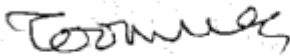
Estonia's formal adherence to the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* would be an essential part of this co-operation. As a non-member of the OECD, Estonia could adhere to the Convention by joining the Working Group on Bribery in International Business Transactions. In this connection, Estonia submitted information about its legal and institutional framework for combating domestic and international corruption in the form of a reply to the *Questionnaire to non-members seeking accession to the Convention*. On 9 January 2001, Estonia formally applied to join the Working Group.

As a preliminary step in the process of eventually participating in the endeavours of the Working Group, Estonia established an informal *ad hoc* task force for compiling an extensive information report concerning ongoing Estonian anti-corruption activities. The information in the report is based mainly on the Working Group questionnaire, using the reports and studies of OECD member countries as model examples.

Mr. Seiichi Kondo
Deputy Secretary-General
Organisation for Economic Co-operation and Development
2, rue André Pascal
75775 PARIS CEDEX 16
FRANCE

Please permit me to present above-mentioned report to the OECD. I sincerely hope that Estonia's application, together with this report, will be seriously evaluated at the Working Group session on 26 June 2001.

Please accept the reassurance of my esteem and highest consideration.



Toomas Hendrik Ilves
Minister of Foreign Affairs