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Joint First and Second Evaluation Rounds

Evaluation Report on Liechtenstein

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INTRODUCTION

1. Liechtenstein joined the partial agreement establishing GRECO on 1 January 2010 that is, after the closure of the first and second evaluation rounds. It is therefore the subject of a joint evaluation procedure covering the themes of the first and second rounds (see paragraph 3). The GRECO Evaluation Team (hereafter the GET) comprised Mr Ulrich BUSCH-GERVASONI, Senior Public Prosecutor, Head of Unit, Public Prosecutor's Office Frankfurt am Main (Germany), Ms Elena KONCEVICIUTE, International Relations Officer, Special Investigation Service (Lithuania) and Mr Claudio MASCOTTO, Prosecutor, General Prosecutor's Office of Geneva (Switzerland) and Ms Eline WEEDA, supervisor, Financial Markets Authority (Netherlands). The team, accompanied by Mr Christophe SPECKBACHER from the GRECO Secretariat, visited Liechtenstein from 11 to 15 April 2011. Before the visit, the GET received replies to the evaluation questionnaires (Greco Eval I/II (2011) 1E Eval I – Part 1 and Greco Eval I-II (2011) 1E Eval II – Part 2), copies of relevant legislation and other documentation.

2. The GET met representatives from Liechtenstein's following institutions: Ministry of Foreign Affairs (the Head of the Anti-Corruption Working Group), Ministry of Justice, the Office of the Public Prosecutor, National Police (Criminal Police Division), First Instance Court (Court of Justice), Public Procurement Unit, the Secretariat of Parliament, the Complaints Commission for Administrative Matters, the Finance Administration and the Tax Administration, the Office of Land and Public Registration, the Office of Human and Administrative Resources, the National Audit Office, the General Secretariat of the Municipality of Vaduz, the Financial Intelligence Unit. The GET also met with representatives of the Financial Market Authority (Executive Office [Legal/International Affairs], Other Financial Intermediaries Division [supervision and legal department], Media (daily newspaper *Vaterland* and *Volksblatt*), Radio Liechtenstein (public radion station), the Liechtenstein Chamber of Lawyers and two individual lawyers (one of whom in his capacity as trustee), Liechtenstein Global Trust - LGT[1], the Union of administration employees, academics/research (*Liechtenstein Institut*), the Liechtenstein Chamber of Commerce and Industry.

3. In accordance with Article 10.3 of its Statute, GRECO had decided that:

   - the First Evaluation Round would deal with the following themes:

     - **Independence, specialisation and means available to national bodies engaged in the prevention of and fight against corruption**[2]: Guiding Principle 3: authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy); Guiding Principle 7: specialised persons or bodies dealing with corruption, means at their disposal);
     - **Extent and scope of immunities**[3]: Guiding Principle 6: immunities from investigation, prosecution or adjudication of corruption); and

   - the Second Evaluation Round would deal with the following themes:

     - **Proceeds of corruption**[4]: Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised

[1] The LGT Group is the wealth and asset management group of the Princely House of Liechtenstein
[2] Themes I and II of the first evaluation round
[3] Theme III of the first evaluation round
[4] Theme I of the second evaluation round

crime), together, for members having ratified the Criminal Law Convention on Corruption (ETS 173), with articles 19.3, 13 and 23 of the Convention;

- **Public administration and corruption**[5]**:** Guiding Principles 9 (public administration) and 10 (public officials);
- **Legal persons and corruption**[6]**:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), together, for members having ratified the Criminal Law Convention on Corruption (ETS 173), with articles 14, 18 and 19.2 of the Convention.

4. Liechtenstein has signed (but not ratified) the Council of Europe Criminal Law Convention (ETS 173) and its Additional Protocol (ETS No. 191) on 17 November 2009. The Civil Law Convention on corruption (ETS174) has not been ratified nor signed.

5. This report was prepared on the basis of the replies to the questionnaires and the information provided during the on-site visit. The main objective of the report is to assess the effectiveness of measures adopted by the authorities of Liechtenstein to comply with the provisions referred to in paragraph 3. For each theme, the report presents a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Liechtenstein on how to improve compliance with the provisions under consideration.

I. OVERVIEW OF LIECHTENSTEIN'S ANTI-CORRUPTION POLICY

a. Description of the situation

General information; perception and phenomenon of corruption

6. With a population of about 36,000 and an area of 160 km^2, Liechtenstein is the fourth-smallest State in Europe. With the second highest GDP per capita in the world (and 34,334 working places for a country of that size), it is also one of the most prosperous ones. In accordance with the Constitution, *the Principality is a constitutional, hereditary monarchy on a democratic and parliamentary basis (Art. 79 and 80); the power of the State is inherent in and issues from the Prince Regnant and the People and shall be exercised by both in accordance with the provisions of the present Constitution.* The Collegial Government, which consists of the Head of the Government and four Government Councillors, is answerable to the Prince and to the Diet (Parliament). The State consists of two regions (without administrative function) with eleven communes[7]. The Principality forms a monetary and Customs Union with Switzerland and therefore, a variety of Swiss laws apply in Liechtenstein as well.

7. The Liechtenstein authorities refer to a recent academic paper[8] which stresses i.a. that due to the small size of the country, politics, culture and the economy are closely linked; such a network of relationships is in principle susceptible to corruption, but at the same time, it entails stronger social control. Because of the limited resources, domestic corruption can lead to misallocations in a small country that have an even more harmful impact than in larger countries. During the visit of the GET, interlocutors pointed at the very limited role of watchdogs (media, political parties), the

[5] Theme II of the second evaluation round

[6] Theme III of the second evaluation round

[7] The region of Oberland (Upper Land) consists of the communes of Vaduz, Balzers, Planken, Schaan, Triesen and Triesenberg; the region of Unterland (Lower Land) consists of the communes of Eschen, Gamprin, Mauren, Ruggell and Schellenberg.

[8] Wolf, Sebastian (2009): Korruption und Kleinstaat, Konstanz; paper published in 2011

existence of a culture of silence motivated by the feeling of wealth and other factors that would hinder the disclosure of certain forms of corruption. It was stressed that clientelism, favours and conflicts of interest might be issues of particular importance at local level, notably because of weaker or inexistent safeguards (control of the administration, statutory rules applicable to public officials etc.). Interlocutors however also stressed the strong social control in Liechtenstein due to the country's size as counterbalancing factor.

8. Since 2005, the National Police have investigated five cases of abuse of authority and four cases involving a breach of official secrecy. A survey carried out in 2004 among the various offices of the National Public Administration generally assessed potential vulnerabilities as low. The replies to the questionnaire indicate that the danger of corruption in the domestic public sector in connection with organised crime, familiar in larger countries, is hardly imaginable in Liechtenstein due to its small size. Nevertheless, the Government is currently working on tightening national criminal laws against corruption, especially also in connection with private sector bribery. Liechtenstein is aware of its relative importance as an international financial market place and efforts are being done in recent years to strengthen the countries anti-money laundering preventive capacities and to assist other countries in their own efforts. The GET noted that the annual report of the Police for 2010 contains empirical data and analytical information on criminal phenomena in Liechtenstein, including various figures concerning economic crime cases – including corruption / insider dealings, money laundering and confiscation measures applied – which represented in 2010 approx. 13 % of the total volume of cases/criminality dealt with (approx. 2000 cases):

	2010 number	2009 number	Cases solved in 2010 (1)	Identified suspects
Economic crime offences - total	197	209		97
Fraud / breach of trust	144	146		49
Bankruptcy offences	7	6		2
Money laundering / organised crime	44	54		58
Deprivation/forfeiture/confiscation	1	2		0
Terrorism financing	0	0		0
Corruption / insider dealings	1	1		0

(1) the table contained in the police report shows no data on the number of economic crime cases solved, contrary to the various other categories of offences for which the figures show an average elucidation rate of 38%.

Criminal law

9. Bribery and other corruption-related offences involving the public sector are contained in Section 22 of the Criminal Code (hereinafter, the CC), which criminalises abuse of authority (article 302 CC), acceptance of gifts by civil servants (article 304 CC), acceptance of gifts by managing employees of a public enterprise (article 305 CC), acceptance of gifts by experts (article 306 CC), acceptance of gifts by staff members and expert advisors (article 306a CC), active bribery of persons referred to under article 304, 305, 306, 306a and of foreign civil servants (article 307 CC), passive trading in influence involving a civil servant, a managing employee of a public enterprise, a member of Parliament or of a city council, a foreign civil servant ("prohibited intervention" – article 308). Private sector bribery is criminalised / prosecuted as criminal breach of trust (article 153 CC) and under the provisions on Inducement to breach or cancel a contract (article 4) of the Unfair Competition Act – UCA.

10. Criminal law makes a distinction between the following categories of offences: a) felonies (*Verbrechen*) are criminal offences threatened with a maximum of more than 3 years

imprisonment (article 17 paragraph 1 CC); b) misdemeanours (*Vergehen*) are all other kinds of criminal offences, if not stipulated otherwise in additional criminal laws (article 17 paragraph 2 CC); c) Infringements (*Übertretungen*) are set forth in separate (criminal) laws such as in the Unfair Competition Act (UCA), for example in article 4 (combined with article 22) UCA mentioned above; infringements are punishable with a financial penalty (*Busse*) – as opposed to "fines" under the CC. The Liechtenstein authorities explained that *Übertretungen* are nevertheless treated as criminal offences and that the rules contained in the CC and Criminal Procedure Code are applicable unless their scope is, of course, limited by reference to certain categories of offences. The sanctions applicable are summarised in the following table, which also shows that most of the above offences qualify as misdemeanours:

Provisions	**Sanctions**	**Type of offence**
Criminal breach of trust (article 153 CC)	- up to 3 years imprisonment or a fine of up to 360 daily rates - up to 10 years imprisonment if particularly great damage	- Misdemeanour - Felony
Inducement to breach or cancel a contract (article 4 UCA)	Financial penalty of up to CHF 100,000 [EUR 76,000]	- Infringement
Abuse of authority (article 302 CC)	- 6 months to 5 years imprisonment (art. 302 para.1) or - 1 to 10 years imprisonment (if committed in connection with a foreign state or international body) (art. 302 para.2)	- Felony in all cases
Acceptance of gifts by civil servants (article 304 CC)	- up to 3 years imprisonment, in case of breach of duty (art. 304 para.1) - up to one year imprisonment if no breach of duty (art.304 para 2) - up to 5 years imprisonment, in case of breach of duty and if the value of the benefit exceeds CHF 10,000 [EUR 7,600]) (art. 304 para.3) - up to 3 years imprisonment if no breach of duty but the value of the benefit exceeds CHF 10,000 [EUR 7,600]); (art.304 para.3) - accepting or obtaining a promise of a minor benefit shall not be punished unless the act is committed on a professional basis (art.304 para.4)	- Misdemeanour - Misdemeanour - Felony - Misdemeanour
Acceptance of gifts by managing employees of a public enterprise (article 305 CC)	- up to 1 year imprisonment if there is no breach of duty and up to 3 years, in case of breach of duty (art. 305 para.1) - in case of minor benefit and the act is not committed on a professional basis: the offender shall not be punished (art.305 para.2)	- Misdemeanour in all cases
Acceptance of gifts by experts (article 306 CC)	- up to 3 years imprisonment	- Misdemeanour
Acceptance of gifts by staff members and expert advisors (article 306a CC)	- up to 1 year imprisonment	- Misdemeanour
Active bribery (article 307 CC)	Mirroring the above distinctions and depending on the case, bribery of a civil servant, of a member of the Liechtenstein Parliament or of a municipal council, of a foreign civil servant: - up to two years imprisonment in the circumstances of art. 304 para.1, 305 para.1, 306, 306a para. 1 and 2 - up to six months imprisonment or a fine of up to 360 daily rates in the circumstances of art. 304 para.2 and 305 para.1	- Misdemeanour in all cases
(Passive) trading in influence (Prohibited intervention of article 308)	- up to three years imprisonment, - the offender is not punishable if the benefit is minor and committed on a non-professional basis, or if s/he acts within the scope of his/her powers to engage in representation against payment	- Misdemeanour

11. Article 74 paragraph 4 CC defines the concepts of "civil servant" (*Beamter*) and "foreign civil servant[9]; Article 309 CC defines the concepts of "public enterprises" and "managing employees"[10].

12. Under article 278 CC, founding or participating in a criminal association constitutes a criminal offence in connection with all felonies and with certain misdemeanours including bribery under article 304 CC (acceptance of gifts by civil servants) and 307 CC (active bribery of persons referred to under article 304, 305, 306, 306a). Founding or participating in a criminal organisation is a criminal offence under article 278a CC; the definition of the offence takes into account criminal acts of bribery in a general manner.

Main initiatives, projects

13. In July 2003, the Government appointed an Anti-Corruption Working Group under the lead of a representative of the Office for Foreign Affairs, and involving the Ministries of General Government Affairs and Justice, the Office of the Public Prosecutor, the Criminal Police, and the Financial Intelligence Unit; its mandate is to prepare recommendations on possible steps relating a) to the Council of Europe's Civil Law and Criminal Law Conventions on Corruption and the UN Convention against Corruption, and b) practical measures to combat corruption at the national level, especially by including preventive measures in the context of ongoing projects. In May 2010, the Working Group's mandate was expanded to enable it to follow-up, prepare, propose and possibly implement concrete measures required under the above conventions (and any other anti-corruption treaties ratified by Liechtenstein), including those stemming from participation in the UN and GRECO. The ratification of the United Nations Convention against Corruption (UNCAC) took place on 8 July 2010 – it entered into force on 7 August 2010 in respect of Liechtenstein. In the context of the ratification of the Criminal Law Convention on Corruption, various aspects of the incriminations are under discussion[11]. The reform – which was initially expected to be adopted by Parliament before the end of 2010 together with the ratification of the Convention is now scheduled for the end of 2011 or in 2012. Signing the Civil Law Convention on Corruption (ETS No. 174) is also under consideration.

14. The replies to the questionnaire also stress that with respect to abuse of the Liechtenstein financial centre for corruption offences abroad, the Liechtenstein Government has adopted and

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[9] Article 74 CC

1) For the purposes of this Act: (…)

4. "civil servant" means any person appointed in the name of the State, a municipal association, a municipality or another person under public law, with the exception of a church or religious community, to carry out legal acts as an organ thereof, alone or together with others, or otherwise entrusted with responsibilities of the national or municipal administration;

4a. "foreign civil servant" means any person holding an office in legislation, administration or justice in another State who carries out a public responsibility for another State or an authority or public enterprise of such State or who is an official or representative of an international organisation; (…)

[10] Article 309 *Public enterprises; managing employees*

1) A public enterprise for the purposes of articles 305 to 308 shall mean any enterprise that is operated by one or more territorial entities themselves or more than half of which is held directly or indirectly by one or more territorial entities or for which one or more territorial entities may appoint the majority of the members of the board of directors or super-vision.

2) Managing employees for the purposes of articles 305 to 308 shall mean employees of an undertaking in whom significant influence on the general management of a company is vested. They shall be considered equivalent to general managers, members of the board, and authorized signatories.

[11] Concerning i.a. passive bribery of members of Parliament and Municipal Councils, passive bribery of foreign public officials, bribery in the private sector, and also removing the general requirement of a breach of duty from the incriminations. Different options are being discussed, including the use of broader concepts / definitions (such as "public official") or redrafting more precisely the existing criminal provisions so as to fill all the gaps. The GET noted that article 14 CC imposes a strict reading of the categorisation of persons provided for in criminal offence definitions.

implemented a zero-tolerance policy. Over the past years, awareness-raising efforts have been deployed at the level of various national actors, contributing to the exposure of major international corruption cases (British Aerospace, Siemens Hellas, etc.).

b. Analysis

15. The GRECO evaluation team (hereinafter the "GET") welcomes the decision of the Principality of Liechtenstein to join the international anti-corruption efforts, with the ratification of the United Nations Convention Against Corruption on 8 July 2010 and the recent accession to GRECO. As indicated in paragraph 13, the ratification of the Council of Europe Criminal Law Convention on Corruption is still under consideration as its provisions are seen as more stringent than those of the UNCAC. The GET urges the Principality to accelerate the ratification and implementation process in order to address the current obvious gaps in the incrimination of bribery and trading in influence (for instance as regards passive bribery and trading in influence of assembly members and foreign public officials), a matter will be examined in-depth in the context of the Third Round evaluation of Liechtenstein. For the time being, acts of bribery in the private sector have been given a special status by the Liechtenstein legislator: they are not dealt with as a bribery offences as such; instead, they are criminalised / prosecuted as a form of breach of trust under article 153 CC and/or as inducement to breach or cancel a contract under article 4 of the Unfair Competition Act (UCA). This has recurring negative consequences for the purposes of the standards examined in the present report. The matter is being examined in Liechtenstein and the on-site discussions confirmed that various options are being considered (for possible decision in 2012) including keeping the current approach but removing some of the above limitations, or providing for specific offences of bribery in the private sector in the CC. The second approach would probably allow to achieve consistency, bearing also in mind that the drafters of the Council of Europe anti-corruption instruments have always stressed that bribery in the private sector is of no less importance for society at large than public sector corruption.

16. Although the fight against corruption is clearly on Liechtenstein's political agenda, the in-depth discussions conducted on site left the GET with the clear impression that for the time being, national initiatives are essentially externally-driven and that in certain areas, the country is at an early stage of implementing anti-corruption measures; recent developments run the risk of being ineffective if they are not fully "owned" by the country. For instance, the specialised anti-corruption police unit was set up in December 2007 to ensure "that the prosecution of corruption offences in Liechtenstein is efficient, effective and up to international standards"[12]. However, between 2005 and the time of the visit, the criminal police has only dealt with some cases of abuse of authority and of breaches of official secrecy, but with no single case of bribery or trading in influence as such; moreover, none of the interlocutors of the GET referred to the practical importance of the anti-corruption unit despite its intended central role (in particular, it is authorised to receive all reports on corruption directly, in deviation from the usual official channel). Thus, little evidence of the effective role of the unit was available on-site and therefore, its usefulness can only be assessed as far as its potential is concerned.

17. Likewise, the Anti-Corruption Working Group appointed in July 2003 (to facilitate/coordinate the implementation of international instruments and recommendations for improvements emanating from mechanisms such as GRECO and to devise preventive measures to be included in existing projects) is certainly a useful tool to ensure coordinated and effective action, but so far it has not adopted an anti-corruption agenda or action plan of its own. The current composition of the

[12] Government Order RA 2007/3367 of 4 December 2007 on the Organisational Implementation of the Fight Against Corruption in Liechtenstein.

Working Group reflects the strong focus on repressive anti-corruption aspects, including the transnational financial dimension of corruption; but agencies/offices/organisations likely to play a preventive role, especially at state and communal administrative levels or in the business sector, are not involved in those efforts. It would also appear that the fight against corruption is mainly discussed from a legal point of view. A survey carried out in 2004 among various public offices assessed overall vulnerabilities as low but its findings were not used to have a more in-depth look at certain specific areas more likely to be exposed to risks of corruption. In fact, most of the interlocutors met by the GET appeared to be little familiar with the multifaceted character of corruption and linked it exclusively to monetary bribes. At the same time, some acknowledged that the size of the country was a factor of risks for conflict of interests and exchanges of favours, especially at local level. The GET takes the view that the level of awareness of potential problems posed both by corruption and conflict of interest situations is clearly unsatisfactory and calls for more attention. The GET recommends **to enhance the active role of the Anti-Corruption Working Group i) by extending its composition so as to include agencies/organisations responsible for the prevention of corruption at the level of public administration and business in particular; and ii) by giving it the mandate to initiate further preventive measures as well as awareness-raising initiatives on the various dimensions of corruption in national and local administration, and in the private sector, involving as much as possible the general public and the media.**

II. INDEPENDENCE, SPECIALISATION AND MEANS AVAILABLE TO NATIONAL BODIES ENGAGED IN THE PREVENTION OF AND FIGHT AGAINST CORRUPTION

a. Description of the situation

Courts

18. The organisation of the courts is provided for in the Constitution and other texts such as the Act on the Organisation of Courts (AOC) of 2007[13]. Ordinary courts deal with criminal and civil cases. Liechtenstein also has Public law courts, the Administrative Court and the State Court, each composed of 5 members and 5 substitutes appointed by the Prince for a period of 5 years.

19. Jurisdiction in (civil and) criminal matters is exercised in the first instance by the Court of Justice (*Landgericht*), in the second instance by the Court of Appeal (*Obergericht)*, and in the third and last instance by the Supreme Court (*Oberster Gerichtshof*). In penal matters, the Court of Justice deals with cases in its composition as a Criminal Tribunal (cases are tried before a panel composed of the President, an assistant judge, and 3 criminal law judges)[14] or as a Lay Judges Tribunal (the panel is composed of the President and two lay judges)[15]. As a rule, the Lay Judges Tribunal deals with all offences listed in article 15 CPC – the list includes the corruption offences of article 304 to 312 CC (whether felonies or misdemeanours) – and the Criminal Court with all offences which are felonies (thus including abuse of authority under article 302 CC). The other corruption offences mentioned in the beginning of the present report – i.e. criminal breach of trust (article 153 CC) and inducement to breach or cancel a contract (article 4 UCA) are tried before a single judge. The Court of Appeal and the Supreme Court are collegial bodies and criminal cases

[13] *Gerichtsorganisationsgesetz (GOG)*

[14] The composition of the Criminal Tribunal is as follows: a) one judge of the Court of justice as chairperson, b) one judge of the Court of justice as deputy Chair and one non-professional judge as substitute deputy Chair; c) one judge of the Court of justice as assistant judge; d) three penal law judges and two substitutes for each such judge.

[15] The composition of the Lay Judges Tribunal is as follows: a) one judge of the Court of justice as chairperson, b) one judge of the Court of justice as deputy Chair, c) two lay judges and one substitute for each such judge.

are tried before a panel of 5 judges which includes both professional and non-professional judges (Court of Appeal) or only non-professional judges (Supreme Court). Pursuant to article 181 CPC, trials are public (the public may be excluded only on grounds of morality or public order).

20. The overall management of the courts (as well as the elaboration of legislation and other tasks) is the responsibility of the Department of Justice; the court presidents are responsible for the specific management of their respective institution, including the distribution of tasks, the management of caseload, the supervision of lengths of proceedings, in-service training and professional supervision. The Constitution (article 101) and the AOC (articles 48-50) provide for a disciplinary control mechanism (including appeal possibilities) under the responsibility of the courts and their presidents. The government and the parliament retain the power to order both regular (every 5 years as a rule) and exceptional audits of the functioning of courts (article 51 AOC).

Judges

21. The courts of Liechtenstein make use of a pool of judges which includes a) professional judges (who have satisfied the conditions for preliminary employment/training as candidate judges and the final recruitment before they enjoy life long tenure), b) ad hoc judges (appointed for a specific period of time or a specific task or case, as the need arises) and c) lay judges (citizens appointed for a renewable term of 5 years, they remain in office until their successor is sworn in). Currently, there are 18 professional and 16 *ad hoc* non-professional judges assisted by approximately 40 staff working for the courts. The number of lay judges appointed to the Court of Justice (the Lay Judges Tribunal) is 5.

22. The recruitment / selection of judges is governed by the Constitution, the Act on the Appointment of Judges (AAJ)[16] of 2003 and the Judicial Office Act (JOA)[17] of 2007. Generally, junior judges recruited to work professionally in the Liechtenstein judiciary in first instance courts need to be certified lawyers and undergo a 6 months traineeship after a selection process based on open public competition and selection by the conference of court presidents; later, they will undergo the recruitment phase. The Gross annual salary of a first instance junior professional judge (or prosecutor) is approx. 100.000 Euros. All judges are recruited following a selection by a joint commission, upon a proposal by the parliament and appointment by the Prince (whose approval is also required at the selection stage[18]). The same procedure applies for the designation of chairs and deputy-chairs (for a 5 years' term) of the first, second and third instance courts within the respective pool of judges. The hiring of *ad hoc* and lay judges does not require a public announcement.

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[16] *Richterbestellungsgesetz (RBG)*

[17] *Richterdienstgesetz (RDG)*

[18] According to article 96 of the Constitution (the same rules are contained in a more detailed manner in the AAJ): *1) For the selection of judges, the Prince Regnant and the Diet shall refer to a joint commission chaired by the Prince, who shall have a casting vote. He may appoint as many members to this body as the Diet delegates representatives. The Diet shall appoint one member for each electoral group represented in it. The Government shall appoint the member of the Government responsible for supervising the administration of justice. The commission's deliberations shall be confidential. The commission may only recommend candidates to the Diet with the Prince's assent. If the Diet chooses the recommended candidate, he or she shall be appointed a judge by the Prince. 2) If the Diet rejects a candidate recommended by the commission and no agreement on a new candidate can be reached within four weeks, the Diet shall propose its own candidate and set a date for a referendum. In the event of a referendum, the citizens entitled to vote shall have the right to nominate candidates under the conditions of an initiative (Art. 64). If the vote concerns more than two candidates, a second ballot must be held pursuant to Art. 113 para. 2. The candidate who receives the absolute majority of votes cast shall be appointed a judge by the Prince. (…)*".

23. The independence of judges is guaranteed by article 95 of the Constitution (LV): "*In the exercise of their judicial office within the lawful limits of their powers, judges are independent (…). The influence of non-judicial bodies on [their] decisions and judgements is only permissible to the extent expressly provided for by the Constitution* (article 12)" (as the GET noted, Article 12 provides that: "*The Prince Regnant has the right of pardon, of mitigating and commuting legally awarded penalties, and of quashing initiated investigations*"; there is some limit to this power since it is only at the instigation of the Diet that the Prince Regnant can exercise his prerogative of remission or mitigation in favour of a member of the Government sentenced on account of his official acts. The JOA further guarantees that judges are neither removable nor transferable unless the JOA provides otherwise (article 2). The AOC (articles 56 and 57) provides for rules on the exclusion and self-withdrawal of judges and other judicial functions (including experts), for instance in case of a personal interest in a case under consideration, the existence of personal ties with one of the parties or of responsibilities in the management of an entity involved in the proceedings. All judge functions are incompatible with secondary activities likely to affect the due performance of their duties, as well as with membership in Parliament or Government, or with the mandate of a mayor or member of a municipal council, with a function as a lawyer or trustee or assets manager, and professional judges may not exercise an activity; professional judges may carry out other secondary activities only with the approval of the supervisory authority (articles 24-25 JOA). All judges are prohibited from receiving gifts or other advantages that are directly or indirectly offered to them or their relatives in connection with the exercise of duties (article 22 JOA). The replies to the questionnaire also indicate that judges are also subject to the general requirements applicable to all State personnel (see Chapter V – Public administration – of the present report).

Investigating judges

24. Liechtenstein has the institution of the investigating judge (IJ) who is first of all responsible for authorising/supervising coercive measures. Besides, s/he must be involved by the prosecutor, thereby taking the lead, as soon as there is a need to apply custodial measures (in other situations, the involvement of the IJ by the prosecutor is optional). The articulation between the prosecutor and the IJ is specified in Sections 21a and 126 CPC and in principle, the prosecutor remains involved/informed throughout proceedings handled by the IJ. Given the size of the country, there is no organic dissociation between adjudicating and investigating judges: out of the 14 first instance judges dealing with criminal and civil cases, 4 perform functions of IJ at the same time; however, the judicial functions are separated (the same judge cannot deal both with the investigative and adjudicative function in a given case).

Prosecution services

25. The prosecutor's office is a unified structure headed by the chief Prosecutor and currently staffed with 6 prosecutors (not including the chief Prosecutor) assisted by 5 secretarial staff. Prosecutors constitute a group of civil servants separate from the judiciary. Due to the limited size of the office, there is no specialisation. The cases are distributed according to a plan of allocation of cases that has to be decreed by the Prosecutor General on an annual basis (article 10 PSA).

26. The prosecution service has been subject to a specific legal framework on the organisation and employment of prosecutors since the recent adoption of the Prosecution Service Act[19] (hereinafter, the PSA) of 15 December 2010, which entered into force on 1 February 2011. This law regulates at present the organisation and functioning of the services, as well as the

[19] *Staatsanwaltschaftsgesetz - StAG*

recruitment, training, employment, supervision, rights and obligations and termination of employment of prosecutors. Under article 4 PSA, prosecutors enjoy independence unless the law provides otherwise; they fulfil their duties autonomously and under their own responsibility (but they are subject to hierarchical authority (see below). The reform of February 2011 strengthened the independence of public prosecutors through various measures, which counterbalance the right of the Government to issue general and case-specific instructions (article 8 PSA): a) prohibition for the government (and subsequently for the Chief Prosecutor) to issue instructions on the non-initiation or on the abandonment of charges and proceedings; b) instructions as a rule must be issued in writing; c) a prosecutor can object to an instruction and in case it is confirmed in writing, s/he is taken the case away; d) the law makes it clear that objecting to an instruction does not violate confidentiality. Moreover, anyone can lodge a complaint against a decision, action or lack of action of a prosecutor (article 21). As indicated earlier, Article 12 of the Constitution overrules the above legal guarantees, and as the GET further noted, article 8 paragraph 5 PSA provides that "*the constitutional right of the Prince to quash initiated proceedings remains unaffected*"; moreover, article 2 paragraph 6 of the Criminal Procedure Code still provides for the following powers of the Prince: "*the public accusation shall cease as soon as the Prince orders that against an offence entailing criminal liability, no criminal proceedings are to be initiated or that already initiated proceedings must be terminated*."

27. The Chief Prosecutor and his deputy are designated by the government among the prosecutors in exercise. The selection and career system of professional prosecutors is now similar to that for professional judges except for the nomination/appointment stage. Following a public announcement, prosecutors can be recruited by the government either as candidate-prosecutors (young Liechtenstein nationals who have concluded successfully advanced legal studies or a professional experience as a lawyer; they will follow a 3 years initial training) or as prosecutors: these are candidate prosecutors who have satisfied the requirements during their initial training, or practitioners from Liechtenstein who have in the past successfully performed functions as a judge or prosecutor, or Austrian and Swiss nationals who have served continuously as a judge or prosecutor for at least 5 years before their application. Prosecutors and candidate prosecutors are appointed by the government upon the chief prosecutor's proposal (which does not bind the government for the appointment of prosecutors).

28. In accordance with article 34 PSA, all confirmed prosecutors enjoy at present life-long tenure (in the past some prosecutors were appointed for a renewable term of 1 or 2 years); it is still permitted to hire prosecutors on a temporary basis (for a term of up to 3 years, renewable in exceptional circumstances for an additional 2 years' term). The PSA provides for rules on conflicts of interest and disqualification (articles 22-24), the prohibition of gifts (article 40), and incompatibilities analogous to judges (article 41). The replies to the questionnaire also indicate that prosecutors are also subject to the general requirements applicable to all State personnel (see Chapter V – Public administration – of the present report).

29. The administrative supervision (file management, processing time, length of proceedings, training of staff) of the prosecution services is the responsibility of the chief prosecutor, who is himself under the general supervision of the Government. Prosecutors are subject to the same rules on the termination of the employment relationship and discipline as judges (articles 50 and 51 PSA refer back to various provisions of the JOA. There is one exception: the PSA does not state that prosecutors are neither removable nor transferable and the PSA enables the government to terminate the employment relationship with a prosecutor in case of significant service-related or economic reasons such as shortage of funding. The disciplinary judicial authority is the Chair of

the Court of Appeal; a special panel of 3 judges to the Court of Appeal has then appellate jurisdiction.

Police

30. The National Police, organised on the basis of the Police Act of 21 June 1989 (PA)[20], is composed of about 80 statutory police officers and about 40 civil employees hired as support staff for tasks mainly related to the general maintenance of security and public order[21]. The specific conditions, as well as training (including the requirement to attend police schools – also abroad) and specific background requirements are regulated in a government ordinance: in principle, only nationals can be recruited to work for the police force and the GET was told on-site that police officers are the only category of civil servants subject to the requirement for clean criminal record requirement and background checks policy; the Chief of Police is under the general authority of the government and subject to the instructions of the member of government responsible for police-related matters (articles 7 to 9 PolG). One of the three main Divisions is the Criminal Police Division (whose Head is represented on the Anti-Corruption Working Group – see paragraph 13); its officers conduct the investigations, where applicable upon request from the Office of the Public Prosecutor or the investigating judge. Certain investigative acts (see hereinafter paragraphs 24, 32 et seq.) are always to be carried out by the investigating judge him/herself or with his/her presence. The Criminal Police Division is divided in different Units dealing with: 1) crime intelligence and state security, 2) financial crime, 3) minor offences (*"Sonderdelikte"*), 4) serious crimes, 5) forensics. The Financial Crime Unit, which also deals with money laundering cases initiated domestically or from abroad, comprises a corruption investigation unit[22] which was created by a directive of December 2007 in response to the UNCAC requirement for specialisation. In contrast to the official chain of command, the corruption investigators must immediately inform the Office of the Public Prosecutor when they gain knowledge of a corruption offence. The unit is composed of two (financial) investigators: one completed training as an auditor and post-graduate studies in economic crime in Switzerland; the other is a business economist and has many years of financial investigation experience. They also receive specialised in-service training[23]. The unit is an integral part of the police structure; it has no separate budget. The unit is directed by the chief of the Criminal Police.

Other authorities involved in the prevention and fight against corruption

31. Like other countries, Liechtenstein has established a Financial Intelligence Unit responsible for the receiving and analysing (and then forwarding as appropriate to the prosecution service) suspicious activities reports received from the financial sector and a series of other professions and businesses. The Law on the FIU Office of March 2002 does not contain particular rules

[20] *Polizeigesetz - PolG*

[21] Most of them carry out this police work parallel to their profession

[22] The term "corruption offences" shall include the following provisions of the Criminal Code: articles 302 CC (abuse of authority), 304 CC (acceptance of gifts by civil servants), 305 CC (acceptance of gifts by executive employees of a public undertaking), 306 CC (acceptance of gifts by experts), 306a CC (acceptance of gifts by employees and experts and advisors), 307 CC (bribery), 308 CC (prohibited intervention), 310 CC (violation of official secrecy), 313 CC (punishable acts in exploiting an official position - with the exception of cases of using armed force or physical force), 153 CC (breach of trust - in the case of bribery in the private sector), 164 CC (receiving of stolen property, if the assets concerned result from one of the offences listed here), 165 CC (money laundering, if the predicate offence is one of the offences listed here); as well as Art 4 of the Act Against Unfair Competition (Inducement to breach or cancel a contract).

[23] Both took part in the First National Anti-Corruption Police Conference hosted by the Swiss Federal Office of Police on 5 November 2009. It is planned to have the corruption investigators attend courses in the International Anti-Corruption Academy to be opened by Interpol and the UN in Vienna. Furthermore, it is planned to intensify cooperation with the Austrian Federal Bureau of Anti-Corruption.

concerning the statutory position of the institution and/or its staff. The FIU is thus organised as a central administrative office under the general authority of the government (the Head of Government is currently the minister responsible for Finance); it is staffed with 7 employees. A particularity of the system in place in Liechtenstein, which illustrates the FIU's anti-corruption role, is that the reporting duty extends not only to money laundering, terrorist financing and organised crime but also to the predicate offences of money laundering, including corruption.

Criminal inquiries into corruption cases; investigative means

32. This matter is regulated by the Criminal Code (CC) and the Criminal Procedure code (CPC)[24]. The principle of mandatory prosecution predominates in Liechtenstein criminal procedure, and the GET understands that all CC offences are prosecutable *ex officio* with the exception of offences against the honour (article 111-116 CC), offences against professional secrecy (article 122-123 CC), defamation of business reputation and offences against property within families (article 152 and 166 CC); further exceptions are contained in separate pieces of legislation and for instance, infringements of the Unfair Competition Act such as article 4 "inducement to breach or cancel a contract" (which is used for prosecuting active bribery in the private sector) are prosecutable only upon complaint from an aggrieved party.

33. Under certain conditions, criminal liability is excluded and/or criminal offences are not prosecutable in case of lack of criminal significance of the act (article 42 CC), and in case the conditions provided for in articles 22a to 22m CPC (so-called "diversionary measures") are met. Liechtenstein has also adopted the principle of "private prosecution": if the Office of the Public Prosecutor decides to discontinue or not to initiate criminal proceedings, a private party may, as a subsidiary plaintiff and subject to the Court of Appeal's control and permission, take over the criminal prosecution in lieu of the public prosecutor with the same rights as the latter.

34. The decision if and when a person is arrested or accounts or assets are seized is the responsibility both of the Office of the Public Prosecutor and of the IJ (the application of the prosecutor is to be approved by the IJ, who then issues the order). The Public Prosecutor, as head of the investigation, is normally the authority who in such cases decides when and where the police will intervene. The corruption investigation unit of the National Police must report directly to the Office of the Public Prosecutor, deviating from the official chain of command.

35. According to article 20 JOA, judges have an obligation of confidentiality, and they may not express personal opinions off-duty about a given case. This confidentiality extends after the employment relationship. They may be absolved of this obligation if the interest in disclosure outweighs secrecy or if the judge must testify in court or before an administrative authority. Similarly, Public prosecutors are subject to official secrecy (article 38 CC), including after cessation of employment. The matter is dealt in greater detail in the newly adopted PSA. Violations of the confidentiality obligation (official secrecy) may, depending on the circumstances, be prosecuted under disciplinary law or criminal law (pursuant to article 310 CC on official secrecy or in some cases, pursuant to 301 CC on prohibited publication). The Head of Government and the responsible member of Government (or their delegate) are entitled to consult the diary of the prosecutor's office, as well as under certain conditions, the documents of the file (article 17 PSA).

36. In accordance with the CPC, investigators can use the following means when they deal with possible corruption cases: hearing of witnesses (by the IJ only), house and body searches with

[24] *Strafgesetzbuch (StGB)* of 1987 and *Strafprozessordnung (StPO)* of 1988

the seizure of documents (only in presence of the IJ). For wilfully committed acts punishable by more than one year imprisonment (this includes several bribery and trading in influence offences except for instance active bribery in the private sector – see table in paragraph 10), surveillance of communications can be applied in accordance with article 103 CPC, subject to approval by the IJ and then, immediately, by the President of the Court of Appeal[25]. The ordered surveillance is limited to three months. The GET noted that following amendments in 2007, articles 34 and 34a of the 1989 Police Act provide for additional investigative techniques not mentioned in the CPC: covert electronic observation, undercover operations including with the involvement of persons who are not police officers, use of informants etc.; these measures are applicable in the circumstances of article 103 CPC and thus also in relation to corruption-related offences. The amended Police Act also gives the police a legal basis for intelligence work, the hearing and interviewing of persons, collection and analysis of information for preventive and operational purposes etc. Liechtenstein may also employ controlled cross-border deliveries, cross-border observation and surveillance of communications in cooperation with neighbouring countries (Switzerland, Austria)[26].

Access to financial and other information

37. Access to financial information is regulated by article 98a CPC: banks and investment firms (*Banken und Wertpapierfirmen*) – following a judicial order and to the extent it appears necessary to solve cases of money laundering, predicate offences for money laundering, or organised crime – have to disclose information on persons concerned (customer, beneficial owner etc.), provide all necessary data pertaining to the business and financial relationships as well as all documents and other relevant records concerning accounts and transactions.

38. In principle, exchanging information between public authorities is not subject to restrictions since the Constitution (article 25 LC) provides for the general principle that administrative authorities, state and municipal bodies, and the courts of the country are required to assist each other. As from 1 January 2011, police and prosecutors, in the context of criminal investigations, have access to tax files without tax secrecy limitation applying and without the need of a court order anymore. Under article 106, civil servants cannot be brought to testify if this would affect their duty of confidentiality, unless they are authorised by their supervisor.

Reporting of corruption and other criminal offences, and protective measures (for whistleblowers)

39. In accordance with article 53 CPC, every public authority which, in the course of its activities, gains knowledge of a suspicion of an act subject to *ex officio* prosecution (see paragraph 32), is required to report the matter to the prosecution authorities or to the police. The reporting obligation does not apply if it would adversely affect an official activity whose effectiveness requires a personal relationship of trust. The GET's attention was also drawn on site to the possibility for any public or other employee to report knowledge of an offence directly to the police, the prosecution services or an investigating judge, in accordance with article 55 CPC (including when his/her employer/institution takes no adequate measure once s/he has reported the matter internally).

[25] The surveillance of electronic communications including the recording of the content thereof is only permissible if it is to be expected that such surveillance would be conducive to solving a case of a wilfully committed punishable act subject to more than one year imprisonment and a) if the owner of the communication device is himself urgently suspected of having committed the act, or b) if there are grounds to believe that a suspect is located at the premises of the owner of the device or will enter into contact with the owner by using the device or c) the owner of the device expressly consents to surveillance.

[26] Further cooperation tools are expected to become available with Liechtenstein's accession to the Schengen/Dublin protocol.

40. The replies to the questionnaire indicate that general protection from unjustified dismissal applies for civil servants under the State Personnel Act (SPA) since article 22 SPA provides for a limitative list of grounds for dismissal (violation of legal obligations or obligations under employment law, underperformance, significant operational or economic grounds etc.); the dismissal of a public official reporting a case of corruption is not foreseen and it would be considered abusive; if the employment relationship was not restored, s/he would be paid compensation.

41. The GET noted that, at the same time, under the anti-money laundering preventive legislation (article 17 of Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organised Crime, and Terrorist Financing - Due Diligence Act; DDA), the duty to report suspicions of money laundering extends also to the predicate offences themselves (i.e. corruption-related offences under articles 304 to 308CC – see paragraphs 69 et seq. on money laundering hereinafter), and that this duty is applicable not just to the private sector entities listed in the DDA, but also to all public administration offices.

Special measures to encourage cooperation; protection of collaborators and witnesses

42. Liechtenstein has no special measures for encouraging persons to cooperate with the justice authorities, and no protection measures whatsoever applicable to such collaborators or to witnesses. Likewise, neither the Office of the Public Prosecutor nor the judges are protected by special measures. Under the general rules, intimidation may be punishable as threat (article 105 CC), duress (article 106 CC) or serious threat (article 107 CC).

Statute of limitation

43. In accordance with article 57 CC, the statute of limitation applicable to the prosecution of criminal offences is determined by the level of punishment applicable: a) one year if the sanction is only a fine or the offence is punishable with no more than 6 months imprisonment; b) 3 years if the offence is punishable with more than 6 months but no more than 1 year imprisonment; c) 5 years if the offence is punishable with more than 1 year but no more than 5 years' imprisonment; d) 10 years if the offence is punishable with more than 5 years but no more than 10 years' imprisonment etc. As a result, the offences described in paragraphs 10-11 are subject to statutes varying between 1 year (for various active bribery offences of article 307 CC and article 4 of the Unfair Competition Act) and 5 years, except for offences of abuse of authority committed in connection with a foreign State or international body (article 302 paragraph 2 CC) where the time limit for prosecution is 10 years. Time limits are calculated from the day when the offence is committed (they can be extended under certain circumstances, in particular in case of repeated offences); the duration of court proceedings is not to be taken into account.

International cooperation

44. As indicated in paragraph 15, Liechtenstein has ratified in July 2010 the United Nations Convention against Corruption, but not yet the Criminal Law Convention on Corruption, nor the Civil Law Convention on Corruption. The country is a Party to a series of further multilateral instruments important for international cooperation in the fight against corruption, in particular a) the 1957 European Convention on Extradition and its first additional protocol (but not the second); b) the 1959 European Convention on Mutual Assistance in Criminal matters (but not its two additional protocols); c) the 1990 Convention on Laundering, Search, Seizure and

Confiscation of the Proceeds from Crime (the revised text, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism has not been ratified or signed yet); d) the 2000 United Nations Convention against Transnational Organised Crime (and its two additional protocols on trafficking in persons and on smuggling of migrants). Liechtenstein has also concluded an Anti-Fraud Agreement with the European Union, adoption of which is however still pending in the Council of Ministers of the European Union. Bilateral treaties on extradition, criminal and police cooperation have been signed with a few countries (Austria, Belgium, Germany, Netherlands, Switzerland, United Kingdom, United States).

45. In the absence of international agreements, the provisions of the Mutual Legal Assistance Act (MLAA) (*Rechtshilfegesetz - RHG*; LGBl. 2000 No. 215) apply, allowing Liechtenstein to provide assistance under certain conditions: reciprocity, dual incrimination, protection of public order or other essential interests of the Principality of Liechtenstein etc.[27]

46. The replies to the questionnaire indicate that no specific factors are known that might hinder mutual legal assistance in corruption cases. In individual cases, delays may arise due to appeals lodged by the suspects against the decision to grant assistance (and the information requested); however, this is reportedly a general phenomenon, not specific to corruption. Moreover, Liechtenstein's possibilities in the area of legal assistance have been improved with the above amendments. The table below gives a partial overview[28] of incoming and outgoing requests.

Requests for mutual legal assistance in connection with bribery and other offences (2005 – 2009):					
	2005	**2006**	**2007**	**2008**	**2009**
Received by Liechtenstein	15	16	10	17	31
Submitted by Liechtenstein	4	4	5 (plus 2 requests for transfer of criminal prosecution by the Office of the Public Prosecutor to a foreign country)	4	1

47. Liechtenstein does not extradite its nationals, except pursuant to the Law on Cooperation with the International Criminal Court and Other International Courts (Liechtenstein citizenship does not prevent surrender to such a court).

b. Analysis

48. Liechtenstein has taken several measures in recent years to improve the statutory situation of judges and prosecutors and the level of specialisation of law enforcement authorities: the new Prosecution Service Act (PSA) of 2010 provides for safeguards against undue interference in the course of proceedings, a specialised police unit was created in 2007 and possibilities are provided to allow judges and prosecutors to make a career and to enjoy lifelong tenure. This positive picture is altered by the persistence of certain particularities which reflect the pre-

[27] The MLAA was amended last in 2009 in particular with the addition of new mechanisms (e.g. possibilities for the courts to provide spontaneous information to foreign authorities and to enforce civil confiscation orders) and a streamlining of appeal procedures (e.g. the execution of foreign request for documents and information can only be appealed by the prosecutor and persons who have a specific interest, the decisions of the Ministry of Justice as regards outgoing requests are not subject to appeals).

[28] Liechtenstein requests submitted to foreign countries with which direct official communications have been agreed are not included in this table (i.e. all urgent MLA requests as well as those transmitted to Austria, Germany and Switzerland).

eminence of the Executive, including the Prince[29], and this concerns also the situation of the judiciary and prosecution system.

49. In a legal system driven by the principle of mandatory prosecution, the possibility for the government to issue under the PSA both general/policy and case-specific instructions to the public prosecution could well be seen, in theory, as problem. Despite the safeguards introduced in 2010 against instructions, the GET is concerned by the situation generated by article 12 of the Constitution, according to which "*The Prince Regnant has the right of pardon, of mitigating and commuting legally awarded penalties, and of quashing initiated investigations"*. The current powers of the Liechtenstein Executive go beyond the purpose of pardons, amnesties and similar measures (also known in other countries) as they include the faculty to alter the course of investigations and criminal proceedings at any stage[30]. The authorities of Liechtenstein point out that in the last 10 years, no proceedings have been terminated at the Prince's request. Notwithstanding this now seemingly continuous practice, the GET wishes to draw attention to *Recommendation CM/Rec(2010)12 of the Committee of ministers to members states on judges: independence, efficiency and responsibilities*, in particular principle 17[31]. The upholding of such broad powers in the constitution and other pieces of legislation leads to an overweight of the Executive branch of power, which also has exclusive competence for the recruitment of prosecutors, the designation of the Chief Prosecutor and the general supervision over his Office's activity; it can represent in itself a threat for the independence and impartiality of the criminal justice system, which are essential prerequisites of the fight against corruption in its various forms, including when members of the Executive, their relatives or their political supporters are involved[32]. The GET recommends **to review the powers of the Prince, as enshrined in article 12 of the Constitution and other pieces of legislation, to block or discontinue criminal investigations and proceedings.**

50. As indicated above, the Executive has exclusive competence for the recruitment of prosecutors since it is only judges who are selected by a special commission (see paragraph 22 / footnote 18). Furthermore, the latter is composed of representatives of the Executive and of the Legislature: beyond the fact that this is not an independent body, in the process for the selection of judges the Executive plays also a key role since the Prince not only appoints the judges but also presides the commission and no candidate can be proposed without his assent. After the visit, the authorities of Liechtenstein stressed that the current system constitutes an improvement compared to the situation before 2003, when candidate judges were nominated by the political parties; the involvement of the Prince in the selection stage would now be a guarantee of impartiality; besides, he has to appoint judges to the selection commission. The GET further noted that the judiciary makes use of (temporary) *ad hoc* judges (besides lay judges) who are hired not to provide support services, but to perform judicial functions in the various courts and court levels, including those dealing with criminal matters. In practice they are hired because of the limited case-load (which is the case in the highest courts), or to replace a person on leave or

[29] For instance, the Prince can veto laws even when approved by referendum, the government is not accountable to Parliament but only to the Prince etc.

[30] In addition to article 12 of the Constitution, and as indicated in the descriptive part, article 8 paragraph 5 PSA provides that "*the constitutional right of the Prince to quash initiated proceedings remains unaffected*" and article 2 paragraph 6 of the Criminal Procedure Code (CPC) further provides that "*the public accusation shall cease as soon as the Prince orders that against an offence entailing criminal liability, no criminal proceedings are to be initiated or that already initiated proceedings must be terminated*."

[31] With the exception of decisions on amnesty, pardon or similar measures, the executive and legislative powers should not take decisions which invalidate judicial decisions.

[32] The Prince's family itself owns and controls the largest financial institution of Liechtenstein (LGT Bank) and various other commercial and other entities both domestically and abroad.

to deal with a backlog of cases – which seems to be often the case in recent times; the authorities of Liechtenstein indicated that it is not possible to appoint a judge for a specific case or group of cases. It also appears that the recruitment of *ad hoc* judges is subject to even lesser guarantees of transparency and impartiality in the hiring process (they are chosen by the commission and appointed by the Prince, but calls for candidatures do not need to be published). In the GET's view, the above leads to a questionable situation from the perspective of Guiding Principle 3 of Resolution (97)24 on the twenty guiding principles for the fight against corruption. The argument that the Prince would constitute a safeguard against risks of nepotism and political influence in the justice system (bearing in mind that judges and prosecutors retain their fundamental right of political affiliation) was turned down by the Venice Commission in an opinion of December 2002 since the Prince himself may be tempted to misuse his powers[33]: serious concerns were expressed as regards the situation of the judiciary, the risks connected with temporary judges, the need for the appointment of judges for life etc. The GET fully shares these views and considers that with the case-load and quality management policies which are now supposedly in place in Liechtenstein at the level of the courts (and also of the prosecutorial authorities), the needs in terms of personnel can (and should) be anticipated; the existence of an independent mechanism (based on the existence of a judicial council, for instance) would at the same time allow to limit the role of the Prince to the formal appointment of judges. The need for changes in the judiciary is obvious and Liechtenstein could draw inspiration from the standards adopted by the Council of Europe in this field[34]. The GET recommends **to ensure that the selection of judges, including temporary ad hoc judges, is effected in an impartial manner.**

51. The GET has noted that the ability to investigate complex cases has been improved with the creation of a new specialised unit within the law enforcement department, even though for the time being, the concrete results are modest and there has not been a single bribery or trading in influence case as such so far. At the same time, members of the prosecution services and the FIU occasionally pointed to the fact that the current resources in terms of staffing hardly allow to do more. Although Liechtenstein is a small country, the judicial case-load in criminal matters seems relatively important and economic crime cases are particularly time consuming. The number of mutual legal assistance requests in practice (which varies between 250 and 360 per year since 2004) adds to the workload. The Liechtenstein authorities may wish to bear in mind the apparent importance of staffing.

52. Under the CPC, police and prosecutors have limited investigative powers and most steps require the involvement and/or approval of the investigating judge or the court: nevertheless, according to practitioners met on site, a reliable system of all-day-service is in place and warrants are delivered at any time. Moreover, the 2007 amendments to the Police Act have provided additional investigative tools and techniques to investigators which go beyond what is provided in article 103 CPC, which for the time being, allows for surveillance of communications and searches in the context of corruption-related investigations where offenders are liable to more than one year imprisonment. Although this threshold is reasonably low and covers the most serious corruption-related offences (according to the table in paragraph 10), all those private sector bribery offences which are prosecutable under article 4 of the Unfair Competition Act (UCA) are excluded from the scope of investigative measures; this is partly compensated by the fact there is no such limitation

[33] Opinion on the Amendments to the Constitution of Liechtenstein proposed by the Princely House of Liechtenstein, adopted by the Venice Commission at its 53rd plenary session (Venice, 13-14 December 2002); the text refers to the ECHR case Wille vs Liechtenstein of 28 October 1999 which was triggered by a letter in which the Prince threatened a judge with not renewing his appointment should the latter persist in his interpretation of the Constitution.

[34] Especially Recommendation CM/Rec(2010)12 of the Committee of ministers to members states on judges: independence, efficiency and responsibilities

when such offences are prosecuted as Criminal Breach of Trust (article 153 CC) but Liechtenstein may wish to bear this matter in mind when ratifying the Criminal Law Convention on Corruption. Although in the Police Act undercover operations and the use of "persons of confidence" are regulated and may be applied during an investigation of suspected corruption-related offences (and thus possibly also for a controlled delivery of a bribe for instance), an appropriate link with the criminal procedure (other than by forcing a confession) is missing to ensure that the elements of proof gathered can be used as evidence in Court. For the sake of legal security, clarification is thus needed. The authorities of Liechtenstein informed the GET after the visit that a draft bill amending the CPC to the effect that evidence gathered can be used in Court has been prepared and sent to Parliament (it was adopted in first reading by the Diet in June this year). The GET welcomes this positive development. It therefore recommends **to ensure, as planned, that information gathered through the relevant investigative tools provided in the Police Act can be used as evidence in court in the context of cases of bribery and trading in influence.**

53. Professional and financial secrecy is strongly protected in Liechtenstein and apparently a recurring issue in parliamentary legislative debates and in court practice. Criminal investigators dealing with a possible corruption case would only have at their disposal article 98a CPC. The latter allows – with a court order – to obtain information from banks and investment firms (the German designation for the latter, after an amendment of September 2007[35], is *Wertpapierfirmen*). There are thus several categories of entities providing financial services in Liechtenstein which are not captured by the expression "banks and investment firms"[36]; not to mention economic agents acting as their intermediaries or other businesses who could also be relevant sources of information (see also the list of entities subjected to the Due Diligence Act in paragraph 72). In addition, access to information in accordance with article 98a CPC is granted in respect of investigations concerning money laundering, organised crime, terrorist financing, and predicate offences of money laundering: the latter do not include, as yet, the current offences incriminating / used for the prosecution of private sector bribery (criminal breach of trust – article 153 CC and inducement to breach or cancel a contract – article 4 UCA). The restrictive conditions of article 98a CPC can be overcome to some extent, by using another provision: documents containing information and any other piece of evidence can, as a rule, be obtained from any person on the basis of article 96 CPC (see paragraph 65) by means of a forced delivery liable to a coercive measure in case of non-compliance. The authorities of Liechtenstein assured the GET that this mechanism is applicable whether or not the person/entity in question is him/herself suspected of being involved in a crime as long as the investigation concerns an offence punishable by more than 6 months' imprisonment (in accordance with article 322 CPC); otherwise, information can only be obtained if the information holder is him/herself a suspect. In the opinion of the GET, this situation is not entirely satisfactory since there are some public and private sector bribery offences for which it appears that access to information in the course of investigations is unduly limited as a result of levels of punishment lower than the above (see the table in paragraph 10: acts criminalised / prosecutable under article 307 CC and under article 4 UCA). The GET recommends **to ensure that adequate access to information and evidence is granted for the investigation of the various corruption-related offences.**

54. The level of punishment for corruption-related offences is quite low from the point of view of the Criminal Law Convention on Corruption (sanctions should be effective, proportionate and dissuasive) and this has a detrimental effect in particular for the prosecution time limit which is

[35] English translations of the previous version of article 98a CPC use the expression "finance company"

[36] For instance electronic money institutions, asset management companies, life insurance companies, pension funds, the Postal Service Limited (which is an agent of Post Finance of Switzerland)

determined on the basis of the level of punishment: various corruption-related offences are subject to statutes of limitation which are quite low compared to most other GRECO member states; they can be as low as one year (for instance for various bribery offences under article 307 CC and article 4 of the Unfair Competition Act) and offences of taking of gifts are often time-barred after three years (under article 304, 305 and 306a CC). This may hinder the effective prosecution of corruption in Liechtenstein and GRECO will have to examine the above matters in greater detail in the context of the Third Round Evaluation of Liechtenstein.

55. The CPC (articles 53 and 55) provides for a duty for public institutions to report suspicions of offences to any criminal justice body as well as for the possibility for anyone to report knowledge of offences directly to the same. For the time being, it would appear that the difference between these two mechanisms is not well known in Liechtenstein and greater consistency would certainly be desirable so that both public and private sector employees can report suspicions directly (for instance when management has not reacted following an internal report for instance or where the management is itself suspected of a criminal act). More ambitious whistleblower policies have not been adopted to explain the use of the above mechanisms and their implications, to facilitate their use (for instance by providing reporting channels such as hotlines, and a guarantee of anonymity - which can be crucial in a country the size of Liechtenstein) and/or to ensure professional protection against possible retaliation measures, especially if the whistleblower has complied with the above legal requirement and has reported in good faith. The GET believes that clear and ambitious whistleblower policies would contribute significantly in Liechtenstein to the prevention and uncovering of corruption in its various forms, especially given the strict professional secrecy duty (and therefore the risks that a person reporting in good faith could be sanctioned for not complying with this duty). Furthermore, article 106 CPC (see paragraph 38 of this report) does not allow "civil servants" to serve as witnesses – except in certain circumstances and when they are authorised by their supervisor (the investigative body can challenge a denial with the hierarchical administrative authority). A similar provision, concerning "civil servants and other public employees" exists in article 46 CPC. The GET was assured that so far, articles 46 and 106 CPC had not constituted an obstacle to the prosecution of suspects employed in public administration, nor to taking witness statements from public officials in a possible corruption case[37]. However, the lack of consistency of the provisions suggests that article 46 CPC provides for no exception. Above all, there appears to be no possibility to challenge the supervisor's possible denial before an independent authority, for instance if he/she is him/herself involved in a corruption scheme. The GET considers that under the present circumstances, these provisions constitute an unjustified obstacle to effective whistleblower policies and the taking of witness statements from public officials. As for witness protection, the GET noted with satisfaction that an amendment to the CC is about to be discussed; although the country is reportedly little affected by organised crime, the GET encourages Liechtenstein to go ahead with this proposal since it would offer important additional tools (for instance protection of identity etc.) to further encourage persons to collaborate with the criminal justice system. In the light of the above considerations, the GET recommends **i) to introduce whistleblower policies that would encourage public sector employees to report suspicions of corruption directly to criminal law bodies, including the setting up of hotlines and protective measures against unjustified retaliation; ii) to provide for adequate possibilities to appeal a decision where a public official is not allowed by his supervisors to serve as a witness; and c) to introduce, as planned, measures for the protection of witnesses.**

[37] One exception was made, for the head of the financial intelligence unit (FIU), to protect confidentiality agreements between FIUs.

III. EXTENT AND SCOPE OF IMMUNITIES FROM PROSECUTION

a. Description of the situation

56. Leaving aside diplomatic immunities which do not present major particularities (as these are regulated by the Vienna Convention of 1961), there are only two groups of persons who enjoy immunity from penal prosecution in accordance with the Liechtenstein Constitution (hereinafter, the LC): a) the Reigning Prince and, where applicable, his representative (as referred to in article 13bis LC) enjoy perpetual and absolute immunity since "*The person of the Reigning Prince shall not be subject to jurisdiction and shall not be legally responsible*" (article 7 para. 2 LC)[38]; b) members of Parliament enjoy non-liability immunity that protects their freedom of speech and vote, as well as immunity from prosecution (article 56 LC) since they may not be arrested for the duration of the session without the consent of Parliament; if a parliamentarian is apprehended *in flagrante delicto*, the Parliament decides whether the arrest is to be upheld. If Parliament is not in session, the National Committee – which is composed of members of Parliament and exercises the rights of Parliament during its recesses – only needs to be notified of the arrest.

b. Analysis

57. The GET is pleased to see that very few categories of persons enjoy immunities and those granted to members of Parliament are limited to the protection of freedom of speech and *habeas corpus* rules during meeting periods; criminal action is free outside those periods and immunity does not constitute an obstacle to the effective prosecution of possible corruption offences involving parliamentarians. As for the Prince, he enjoys absolute and perpetual immunity as in other European principalities/monarchies, but unlike most of these, there is no alternative way to hold the Executive accountable for decisions of the Prince; in the opinion of the Venice Commission cited earlier, concern was expressed about the situation but this matter goes beyond the scope of the present evaluation.

IV. PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other forms of deprivation of the instruments and proceeds of crime

58. The Criminal Code of Liechtenstein provides for three mechanisms for the deprivation of criminal benefits: "Deprivation of enrichment" (*Abschöpfung der Bereicherung*) under article 20 CC, forfeiture (*Verfall*) under article 20b CC and "confiscation" (*Einziehung*) under article 26 CC.

59. "Deprivation of enrichment" under article 20 CC is applicable to property benefits (the German expression is *Vermögensvorteil* which refers to the concept of material and financial property benefits) which result from a crime as well as those received for the commission of a crime. It consists in imposing the payment of an amount of money equivalent to the benefit. The court shall determine discretionarily the amount in question in case it cannot be valuated or only with disproportionate effort (paragraph 1).

[38] Nevertheless, article 13ter allows at least 1,500 Liechtenstein citizens to submit a justified motion of no-confidence, which must be approved in a popular vote.

Article 20 CC - "Deprivation of enrichment" (Abschöpfung der Bereicherung)

1) Anyone who:
1. has committed an act entailing a sanction and has thereby gained property benefits, or
2. has received property benefits for the commission of an act entailing a sanction
shall be sentenced to pay an amount of money equal to the unjust enrichment obtained thereby. To the extent that the amount of enrichment cannot be determined or only with disproportionate effort, the court shall specify at its discretion the amount to be subjected to deprivation.
2) If
1. the perpetrator has continually or repeatedly committed felonies (article 17) and obtained benefits through or for their commission, and
2. the perpetrator has received other benefits in the time span when the felony was committed, and it is reasonable to assume that such benefits originate from other similar felonies, and their lawful origin cannot be demonstrated in a credible manner,
then these benefits shall also be taken into account when specifying the amount to be subjected to deprivation.
3) A perpetrator who has gained pecuniary benefits during the time connected with his membership in a criminal organisation (article 278a) or a terrorist group (article 278b) shall be sentenced to pay an amount of money specified at the court's discretion to be equal to the enrichment obtained, if it is reasonable to assume that such pecuniary benefits originate from punishable acts and their lawful origin cannot be demonstrated in a credible manner.
4) Anyone who has been enriched directly and unjustly through the punishable act of another person or through a benefit paid for the commission of such act shall be sentenced to pay an amount of money equal to the enrichment. If the enrichment concerns a legal person or partnership, then the latter shall be sentenced to pay this amount.
5) If a directly enriched party is deceased or if a directly enriched legal person or partnership no longer exists, then the deprivation of the enrichment shall be applied to the legal successor, to the extent that the enrichment still existed at the time of legal succession.
6) Several enriched parties shall be sentenced according to their share in the enrichment. If this share cannot be determined, then the court shall specify it at its discretion.

60. The measures are applicable to assets held by third persons (paragraph 4) or the legal successor in case the offender is deceased and following a legal succession between legal persons or partnerships (paragraph 5). On-site, practitioners indicated that article 20 paragraph 4 CC gives broad powers to target proceeds held by third parties other than co-authors and accomplices since there is no requirement to substantiate any criminal intent nor even negligence from their part. The measures are also applicable in case of multiple beneficiaries of offences, in proportion to their share in the enrichment (paragraph 6). Under certain conditions, article 20 (paragraphs 2 and 3) also provides for an apportionment of the burden of proof in case the proceeds are the result of a felony (see paragraph 10) or in the specific case where the offender is involved in a criminal organisation or terrorist group.

61. Article 20a CC excludes the applicability of deprivation in a series of situations including when civil claims arising from the offence have been (or will be) satisfied, when the execution of the measure would require disproportionate procedural steps when considering the amounts to be confiscated, when the measure would affect the subsistence of the offender etc.

62. Forfeiture under article 20b CC is a mechanism of extended confiscation involving a reversal of the burden of proof in connection with a) assets of organised crime or used for terrorist financing; b) assets involved in a money laundering scheme; c) assets resulting from any criminal offence committed abroad (subject to the condition of dual criminality and the act not constituting a tax

offence other than one affecting a VAT resource of the EU). Certain limits to the applicability of article 20b are contained in article 20c CC, which protects in particular the civil claims of *bona fide* third parties.

> ***Article 20b – Forfeiture (Verfall)***
>
> *1) Assets which are under the control of a criminal organisation (article 278a) or of a terrorist group (article 278b) or which have been made available or collected for the financing of terrorism (article 278d), are to be forfeited.*
> *2) Assets which result from an act entailing a sanction are to be forfeited insofar as*
> *1. they are involved in a money laundering process, or*
> *2. the acts which generated such proceeds*
> *a) entail criminal liability under the law of the place where they were committed, but would be subject to Liechtenstein jurisdiction in accordance with articles 62 to 65 and*
> *b) they do not constitute a tax offence, safe in case of a misdemeanour in the meaning of Art. 88 of the Value-Added Tax Act, in connection with a damage to the detriment of the budget of the European Communities.*

63. Confiscation under article 26 CC is applicable to instruments of crime which represent a threat for the safety of people, for moral values or for the public order; therefore, it also applies in the absence of an identifiable offender or of criminal proceedings :

> ***Article 26 CC – Confiscation***
>
> *1) Objects which the perpetrator used to commit the act entailing a sanction, or which he designated for use in the commission of the act, or which have arisen from this act shall be confiscated, should these objects constitute a threat for the safety of people, for moral values or for the public order.*
> *2) Confiscation shall be refrained from if the entitled party eliminates the particular nature of the objects, especially by removing components or markings that facilitate the commission of acts entailing a sanction or by rendering them unusable. Objects subject to legal claims of a person not involved in the punishable act may only be confiscated if the person concerned does not guarantee that the objects will not be used for the commission of further acts.*
> *3) If the preconditions for confiscation are met, then the objects shall also be confiscated if no particular person can be prosecuted or sentenced for the act entailing a sanction.*

Provisional measures: seizure of material evidence and preventive attachment of assets

64. Seizure and other temporary measures are provided for in the Criminal Procedure Code under articles 96, 97 and 97a: article 97 deals basically with the seizure of evidence in the context of a house or personal search, whereas the other two articles provide for mechanisms mirroring the various confiscation modalities of articles 20, 20b and 26 CC discussed above.

> ***Article 96 CPC***
>
> *1) If objects are found that might be of importance to the investigation or that are subject to forfeiture or confiscation, they shall be listed in a register and taken under judicial custody or care or shall be seized (article 60).*

2) Every person shall be obliged to surrender such objects on demand, especially also documents. If a person refuses to surrender an object the possession of which has been admitted or has been otherwise proven, and if such surrender cannot be effected by a house search, the possessor may, unless he is suspected of having committed the punishable act himself or is dispensed from his duty to testify as a witness, be forced to effect such surrender by a coercive penalty of up to 1,000 francs and, if the refusal continues and in important cases, also by coercive detention for a term of up to six weeks.
3) The person required to surrender the object, unless he is suspected of having committed the offense himself, shall on application be reimbursed for reasonable costs necessarily incurred by separation from documents or other evidentiary objects by others or by issuing photocopies (copies, reproductions).

Article 97 CPC

If objects are found during a house or personal search that indicate the commission of a punishable act other than the act for which the search was conducted, then such object shall be seized if the act is subject to prosecution ex officio; however, a separate record must be compiled on such seizure and immediately communicated to the Public Prosecutor. If the Public Prosecutor does not apply for initiation of criminal proceedings, the seized objects shall be returned immediately.

Article 97a CPC

1) If the suspicion of unjust enrichment arises and it must be assumed that this enrichment will be subject to deprivation of enrichment under article 20 CC, or if the suspicion arises that assets are subject to the disposal of a criminal organisation or terrorist group (articles 278a and 278b CC), are made available or have been collected as means of financing of terrorism (article 278d), or originate from an act entailing a sanction, and if it must be assumed that these assets will be subject to forfeiture under article 20b CC, then the Court shall, on application of the Public Prosecutor, order the following measures in particular, for purposes of securing the deprivation of the enrichment or the forfeiture, if it must be feared that collection would otherwise be endangered or significantly hampered:
1) the distraint, custody, and legal administration of moveable physical objects, including the deposit of money,
2) the judicial prohibition of selling or pledging moveable physical objects,
3) the judicial prohibition of disposing of credit balances or of other assets,
4) the judicial prohibition of selling, mortgaging, or pledging real estate or rights entered in the Land Registry.
Through the prohibition under point 3, the State shall acquire a lien on the credit balances and other assets.
2) The order may also be issued if the amount of the sum to be secured under paragraph 1 has not yet been determined precisely.
3) The order may specify an amount of money, the deposit of which prevents execution of the order. Once the deposit has been made, the order shall be lifted in this respect on application of the affected person. The amount of money shall be determined so that it covers the expected deprivation of enrichment or the expected forfeiture.
4) The Court shall limit the duration for which the order is issued. This deadline may be extended upon application. If two years have passed since the order was first issued, without an indictment being made or an application submitted in the independent objective proceedings under article 356, then further extensions of the deadline for one additional year each shall only be permissible with the approval of the Court of Appeal.
5) The order shall be lifted as soon as the conditions for its issue have lapsed, especially also if it must be assumed that the absorption of enrichment or the forfeiture will not occur or if the deadline under paragraph 4 has expired.
6) A ruling on the issuing or lifting of the order may be appealed to the Court of Appeal by the Office of the Public Prosecutor, the accused, and other persons affected by the order (article 354).

65. Thus, evidence but also objects subject to forfeiture (article 20b CC) and confiscation (article 26 CC) may be seized by judicial order in accordance with article 96 CPC. If it is feared that collection of assets subject to "deprivation of enrichment" (article 20 CC) or forfeiture (article 20b CC) would be impossible or made more difficult, the court may, upon application by the Office of the Public Prosecutor, issue the following orders pursuant to article 97a paragraph 1 CPC: a) the distraint, custody, and legal administration of moveable physical objects, including the deposit of money, b) the judicial prohibition of selling or pledging moveable physical objects, c) the judicial prohibition of disposing of credit balances or of other assets, d) the judicial prohibition of selling, mortgaging, or pledging real estate or rights entered in the Land Registry. These orders may also be issued if the amount of the assets to be secured has not yet been determined precisely. Such temporary measures can be imposed for a period of two years following the initial order; a formal indictment should take place during that period and the person whose assets have been affected by temporary measures (or any other person who has civil or other claims that could be ultimately affected by confiscation) may challenge the imposition of measures. Otherwise, a special order from the Appeal Court is necessary to prolong temporary measures for an additional period of one year.

66. According to articles 13 paragraph 1 and 14 CPC, orders and decisions concerning searches, the seizure of evidence or the imposition of temporary measures for the securing of assets, and other measures during investigation procedures belong to the jurisdiction of a single judge at the Court of Justice, acting as investigative judge. As the GET was told on site, there is no possibility, even not temporarily, to replace such judicial decisions on provisional measures by orders of the prosecution service or police in cases of imminent danger by delay. There are no specific regulations in place for the management of proceeds of crime which have been seized or frozen. The replies to the questionnaire do not indicate whether investigation steps are systematically initiated to identify, trace and secure proceeds of crime when certain serious crimes, notably corruption, are suspected.

Other mechanisms

67. Under civil law, a contract concluded pursuant to a corruption offence may in principle be contested on grounds of mistake or deceit. Such a contract would be declared null and void, with the consequence that the party in error may apply for compensation (claim arising from unwarranted enrichment, article 877 of the General Civil Code[39]).

Money laundering

68. Article 165 CC criminalises money laundering; in accordance with paragraph 1, predicate offences[40] are all felonies, as well as a series of misdemeanours including those of article 304 to 308 CC (see also the table in paragraph 10); the GET noted that under article 165a CC, Liechtenstein law also provides for a mechanism of effective regret in relation to money laundering offences:

[39] *Allgemeines bürgerliches Gesetzbuch*

[40] This article was amended last on 1 July 2010, with an enlarged catalogue of predicate offences (para 1 and 2) including at present, in particular, falsification of documents, environmental crimes and market manipulation.

Article 165 - Money laundering (version applicable as from 1 July 2011)

1) Anyone who hides (or conceals the origin of) assets that come from a felony, from a misdemeanour pursuant to §§ 180, 182, 223, 224, 278, 278d or 304 through 308, from a misdemeanour under Art. 83 through 85 of the Aliens Act, from a misdemeanour under the Narcotics Act, or from an infringement under Art. 24 of the Act on Market Misuse, in particular by making misrepresentations in legal transactions on the origin or the true nature of such assets, on their ownership or other rights in them, on the power to dispose of them, on their transfer, or on their location, shall be punished by up to three years of imprisonment or by a fine of up to 360 daily rates.
2) Anyone who acquires assets coming from a felony, from a misdemeanour pursuant to §§ 180, 182, 223, 224, 278, 278d or 304 through 308, from a misdemeanour under Art. 83 through 85 of the Aliens Act, from a misdemeanour under the Narcotics Act, or from an infringement under Art. 24 of the Act on Market Misuse committed by another person, takes such assets into safekeeping - be it merely to keep them safe, to invest them, or to manage them - , or who converts, utilizes, or transfers such assets to a third party, shall be punished by up to two years of imprisonment or by a fine of up to 360 daily rates.
3) Anyone who commits the offence in terms of para. 1) or 2) with regard to an amount exceeding 75,000 Swiss francs or as a member of a criminal association that has formed for continuous money-laundering shall be punished by imprisonment between six months and five years.
3a) Anyone who commits an offence in terms of para. 1) or 2) with regard to assets that originate from a misdemeanour in terms of Art. 88 of the Value Added Tax Act, which misdemeanour is in connection with damage to the budget of the European Communities, shall also be punished as laid down in para. 1) and 2) provided that the fraudulently concealed tax amount or the unlawful benefit exceeds 75,000 Swiss francs.
4) An asset comes from an offence if the perpetrator of the offence has obtained the asset by way of the offence or for committing it, or if the asset incorporates the value of the asset originally obtained or received.
5) (abrogated)
6) Anyone who acquires assets of a criminal organisation (§ 278a) or a terrorist association (§ 278b) at their request or in their interests, takes such assets into safekeeping - be it merely to keep them safe, to invest them, or to manage them - , or who converts, utilizes, or transfers such assets to a third party, shall be punished by up to three years of imprisonment, and if the offence is committed with regard to a value exceeding 75,000 Swiss Francs, by imprisonment between six months and five years.

Article 165a – Effective regret

1) Shall not be punished for money laundering the person who – voluntarily and before the authority (article 151 para.3) has learned about his/her responsibility – has reported the matter to the said authority or has otherwise allowed to secure a significant amount of assets that constituted the object of the laundering process.
2) The offender shall not be liable either, if without him/her having contributed to it, a significant amount of assets that constituted the object of the laundering process has been secured, and s/he has contributed voluntarily and effectively to this without knowledge of the crime.

69. As can be taken from the wording of the offence, the provisions incriminating (or used for prosecuting) private sector bribery offences (criminal breach of trust - article 153 paragraph 1 CC, and Inducement to breach or cancel a contract - article 4 of the Unfair Competition Act – UCA) are no predicate offences for the time being; only qualified breach of trust according to article 153 paragraph 2 constitutes such a predicate offence.

70. The Liechtenstein authorities underline that although the law does not explicitly state that Liechtenstein has jurisdiction for money laundering cases even where the predicate offence was committed abroad, this is broadly accepted in jurisprudence and legal theory.

Money laundering prevention mechanism

71. The first anti-money laundering preventive legislation dates back to 1996, when the Due Diligence Act of 22 May 1996 and a related Executive Order of 18 February 1997 have established a suspicious transactions reporting mechanism and introduced a number of «due diligence» obligations; the Financial Intelligence Unit (FIU) was created in 2001 as a separate agency not subordinated to any other body. Under the current legislation (article 3 of Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing – Due Diligence Act, DDA),the current list of entities required to file a "suspicious activity report" (on money laundering, predicate offences, organised crime and terrorist financing) to the FIU includes in particular a) banks and investment firms, b) e-money institutions, c) insurance undertakings, d) the Liechtenstein Postal Service, e) exchange offices, f) insurance brokers, g) payment service providers, h) casinos, i) asset management companies, j) professional trustees and trust companies, k) lawyers and law firms, l) legal agents, m) auditors and auditing companies, n) as well as other persons who trade in goods on a professional basis, to the extent payment is made in cash and the amount totals at least CHF 25,000, or persons who perform special functions on a professional basis, such as partners on the account of a third party. Certain natural and/or legal persons are subject to the reporting requirement only with respect to certain activities, such as insurance undertakings (to the extent they offer direct life insurance), lawyers, legal agents, auditing companies and audit offices[41].

72. The FIU also receives notifications under other pieces of legislation[42]. Where a suspicion (of money laundering, predicate offences of money laundering, organised crime or terrorist financing) is substantiated, the FIU must notify the Office of the Public Prosecutor. The primary responsibility for implementing the DDA is the Financial Market Authority. The FIU publishes every year an annual report available in both German and English which contains an overview of new developments, typologies and trends of money laundering, the FIU's workload and activities etc.

73. The Financial Market Authority (FMA) is an independent and integrated supervisory authority; its structures reflect its area of competence: Banking Division, Securities Division, Insurance and Pension Funds Division and Other Financial Intermediaries Division (professional trustees, trust companies, holders of a certification under article 180a PGR, auditors, lawyers, law firms, patent lawyers, real estate brokers, dealers in goods and other persons subject to due diligence). The FMA is responsible for granting and withdrawing licences for activities subject to authorisation by the FMA. Furthermore, the FMA supervises the financial market and the financial market participants listed in the Financial Market Authority Act. The supervision in the Other Financial Intermediaries Division is organised as follows: a) Ordinary inspections with respect to the Law on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist

[41] Lawyers and legal agents as well as auditors, auditing companies, and audit offices under specialized legislation shall not be required to report to the FIU if they have received the information concerned: a) from or on a client in the course of ascertaining the legal position for their client; or b) performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received before, during, or after such proceedings.

[42] Reports under the Law of 24 November 2006 against Market Abuse in the Trading of Financial Instruments (Market Abuse Act; MAA) and reports under the Law of 10 December 2008 on the Enforcement of International Sanctions (International Sanctions Act; ISA).

Financing are being carried out on a regular spot-check basis by licensed auditing companies/auditors. Part of these inspections is being accompanied by the FMA. The auditing companies/auditors submit a report to the FMA; b) extraordinary inspections may be carried out by the FMA or by auditing companies/auditors mandated by the FMA, if there are doubts as to the fulfilment of due diligence requirements or if circumstances exist that appear to endanger the reputation of the financial centre.

Mutual assistance, statistical information on provisional measures and confiscation

74. Requests for incoming and outgoing mutual legal assistance requests are examined by the Court of Justice. In certain cases, the law enforcement authorities may communicate directly with each other. The GET was not provided with consolidated and detailed information on the importance of mutual assistance in this area, the types of assets concerned, average times for responding to a request or enforcing measures etc. as relevant data is not kept on an ongoing basis. The table below summarises some of the data provided in the questionnaire as regards temporary and final measures handled by investigative/prosecution bodies, and the overall number of suspicious activity reports received by the FIU:

	Temporary measures	**Confiscation measures**
2009	1 case (§ 307 StGB), meanwhile terminated	1 forfeiture (not due to corruption)
2008	2 cases (§ 307 StGB), 1 account blocked	1 forfeiture (not due to corruption)
2007	No cases	1 forfeiture (corruption abroad)

	Suspicions of money laundering and terrorism financing reported to the FIU	**Suspicions of corruption (not including possible corruption cases falling under provisions other than under articles 304 to 308 CC)**
2009	235	17 (article 307) + 1 (article 305)
2008	189	16 (article 307) + 2 (article 304)
2007	205	10 (article 307) + 7 (article 304)

75. The record kept by the FIU does not detail further the number of suspicions of corruption-related money laundering received which have led to a notification by the FIU to the prosecution services. The latter, following a research in recent files during the visit, managed to collect manually the following figures concerning forfeiture decisions (article 20b CC) with the understanding that these are not the final official figures concerning corruption figures and that these may not give the full picture of reality:

Non official data on forfeiture decisions applied (according to information held by the prosecution services)		
Year	**Number of orders issued by the courts**	**Amounts concerned**
2010	1	approx. CHF 120.000 (EUR 102.000)
2009	3 (two of which concerned assets of former dictator Sani Abacha and proceeds retrieved in cooperation with the UN)	approx. CHF 2.500.000 (EUR 2.125.000) approx. CHF 900.000 (EUR 765.000) approx. CHF 30.000.000 (EUR 25.500.000)
2008	0	0
2007	1	approx. CHF 1.000.000 (EUR 850.000)

b. Analysis

76. Liechtenstein has undergone three evaluations of the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) in the years 1999, 2002 and (together with the International Monetary Fund) in 2007, with progress reports adopted in 2008 and 2010. The legal provisions for the targeting of proceeds from crime as well as the anti-money laundering legislation, among many other areas, have been analysed in detail and

following these reports, Liechtenstein has made noticeable efforts over the last decade to improve its legislation and policies. Liechtenstein has legal tools to confiscate proceeds from crime and to impose temporary measures in order to secure at an early stage of criminal proceedings a possible future confiscation. The legislation also takes into account the specific situation of Liechtenstein as a financial centre. Generally, these legal instruments are applicable to corruption-related offences, including those which are "public order infringements" according to the classification of offences in Liechtenstein (see paragraph 10).

77. Of the three Criminal Code (CC) mechanisms cited by Liechtenstein for the deprivation of assets and instruments of crime in corruption cases, "deprivation of enrichment" under article 20 CC clearly provides for the most important legal tools: the provisions on forfeiture under article 20b CC are applicable mainly in the context of laundering of proceeds or where an organised crime group is involved in the corruption offence and article 26 CC, which deals with the confiscation of instruments, seems hardly applicable in the context of corruption offences since the spirit of the provision (especially in the light of its paragraph 2) is clearly to remove *objects which constitute a threat for the safety of people, for moral values or for the public order*[43] whereas it is well known that bribes can take various forms of financial and in-kind rewards without presenting intrinsically a threat for the society. This matter will need to be re-examined by Liechtenstein when ratifying the Criminal Law Convention on Corruption since article 23 CC requires both the confiscation of proceeds and instrumentalities of corruption. The main mechanism, "Deprivation of enrichment" (article 20 CC), consists of imposing on a person a fine of an amount which corresponds to the property benefit (or patrimonial advantage) obtained through the offence: this means any benefit which can be valued in an amount of money, thus excluding only non-material advantages. The judge has the possibility to determine discretionarily the amount of the benefit in case difficulties arise for the valuation of the proceeds and in principle, article 20 CC allows targeting of the proceeds from corruption even if they have been converted or intermingled with legitimate assets. Deprivation can explicitly be applied in respect of assets held by a third person insofar as s/he benefited directly from the crime (for instance when the bribe was meant for a third person such as a relative) but was not involved in the crime and the GET was confirmed that neither his/her criminal intent nor negligence has to be substantiated. However, the on-site discussions confirmed that the valuation of the benefit subject to deprivation is based on the "net profit", which means that expenses incurred to achieve the benefit is deducted from the amount of the fine, unless these expenses are also covered by criminal proceeds. Bearing in mind also that corruption-related expenditures are still tax deductible to some extent under Liechtenstein law, this does not deliver the strong signal that crime should not pay. Theoretically, it may be possible under article 20 paragraph 2 to apply "deprivation" with respect to the entire assets of the bribe-taker (or third party beneficiary) where s/he has repeatedly committed similar offences but cannot demonstrate the legitimate origin of his/her wealth; however, this is only applicable in case of felonies (as opposed to misdemeanours) and this concerns only a small number of corruption offences (article 153 paragraph 2 CC: breach of trust in especially serious cases; article 302: abuse of authority; article 304 paragraph 3 CC: acceptance of gifts by civil servants in especially serious cases). The GET considers that the effectiveness of confiscation measures needs to be strengthened. It recommends **to consider i) providing that the valuation of "property benefits" must be based on the "gross" benefit; and ii) extending deprivation under article 20 paragraph 2 of the Criminal Code to proceeds from corruption-related offences committed repeatedly, whether they are felonies or misdemeanours.**

[43] Even if bribes were to be considered as objects meeting the criteria of article 26CC, the only conceivable case of application would involve the bribe-giver being caught in the act of handing over bribe money, so that the latter would qualify as instrument.

78. Provisional measures provided for in the Criminal Procedure Code mirror to a large extent the confiscation measures discussed above: articles 96 and 97 CPC deal with the securing of elements of proof found (incidentally or not) during a search. Article 97a CPC provides for securing of means subject to a possible future deprivation under article 20 CC or forfeiture under article 20b CC and it gives broad powers to apply a variety of measures (distraint, custody, judicial prohibition of disposing of assets) to movable and immovable property including deposits, credit balances and other assets; this shows the ambition of the legislator also as regards article 26 CC.

79. Article 97 is exclusively applicable for the seizure of evidence and objects found incidentally in the context of an investigation concerning offences subject to ex-officio-prosecution, and is therefore not applicable in cases of bribery in the private sector under article 4 UCA (since offences under article 4 UCA are prosecutable only upon a complaint from a potential victim). As indicated in paragraph 15, the incrimination of private sector bribery through specific provisions in the CC is one of the various options currently under discussion to remedy the various negative consequences of the current lack of appropriate incriminations. In any event, Liechtenstein may wish to keep the above matter under review.

80. The GET welcomes that the definition of money laundering is quite broad and reportedly covers also self-laundering, which is an important element for the fight against corruption. In accordance with the definition of money laundering (article 165 CC), all corruption offences which are felonies, as well as misdemeanours under articles 304 to 308 CC are predicate offences. The Due Diligence Act refers to the criminal law definition so that both the repressive and preventive anti-money laundering arrangements contribute, consistently, to the fight against corruption. Liechtenstein has not yet ratified the Criminal Law Convention on Corruption and various categories of incriminations are missing and thus not predicate offences, in particular bribery and trading in influence involving domestic or foreign public officials, as well as assembly members. One should remind that despite its small size, Liechtenstein does export technical equipment and other goods to many countries abroad; it is also a place of domiciliation for a number of legal entities from abroad. Notwithstanding Liechtenstein's rights to make reservations, these matters will in principle be addressed when steps are taken to implement the Convention (and if private sector bribery is criminalised accordingly), but the current status of incriminations has other negative consequences which Liechtenstein needs to bear in mind, especially for the usefulness of special customer due diligence policies on "politically exposed persons", which Liechtenstein has adopted in accordance with FATF recommendation 6. The situation is different as regards acts of private sector bribery, which are actually criminalised / prosecutable under article 4 UCA mentioned earlier, as well as under breach of trust (article 153 CC): these are no predicate offences under article 165 CC except when breach of trust involves a particularly great damage (and thus constitutes a felony), and Liechtenstein hereby excludes bribery in the private sector from important rules and measures against corruption. This is a clear lacuna that needs to be addressed in the context of the present evaluation. As indicated earlier, incriminating private sector bribery through specific provisions in the CC is one of the various options currently under discussion to remedy the various negative consequences of the current lack of appropriate incriminations. Whatever solution is adopted, the GET recommends **to consider ensuring that the various private sector bribery offences are predicate offences of money laundering under article 165 of the Criminal Code.**

81. As already indicated, the international image of the country is a major concern in Liechtenstein. Efforts are being made in this context to improve international assistance; for instance: a) the Mutual Legal Assistance Act was amended in 2009 notably with a simplification and streamlining

of appeal possibilities, b) during the on-site visit, the Financial Intelligence Unit expressed its readiness to respond positively to foreign information requests made through the FIU to FIU channel even if the lack of details in the request implied more time-consuming inquiries domestically; c) measures are being taken to increase the ability of the Financial Market Authority (FMA) to respond (in the context of administrative cooperation) to requests from foreign counterparts as regards the supervision of security markets: the formalities and control mechanisms have been streamlined and with effect from 1 January 2011, a single control stage by the administrative judge is taking place, after which the FMA can execute the foreign request. Of course, this kind of change needs to be tested. As to judicial cooperation for the enforcement of a foreign request, especially concerning information and temporary freezing / seizure measures, the average processing time – taking into account all appeal proceedings and not requests concerning the service of documents which are dealt with in less than a week's time – has constantly decreased in recent years following efforts made to this effect by the central justice authorities: 4,3 months in 2006; 3,8 months in 2007; 3,6 months in 2008; 3,0 in 2009; 2,3 months in 2010 and 1,5 months in 2011 (situation as of 18 October). At the same time, the number of pending cases is rather low (4 in 2008; 9 in 2009 and 19 in 2010) as compared to the total number of incoming requests ranging from 215 in 2006 to 368 in 2010. The GET welcomes these positive developments.

82. Liechtenstein legislation provides for the principle of mandatory confiscation (under article 20 CC and the other relevant provisions). The GET could not determine to what extent criminal justice bodies have policies and working practices in place to give effect to this and to ensure in particular a financial investigation is always conducted to assess at an early stage the amount of criminal assets which is involved in a case (besides the gathering of evidence). The replies to the questionnaire and the on-site discussions did not allow the GET to gain a clear view of this matter and although it makes no doubt that such measures are actually used in Liechtenstein, the prosecution services keep no on-going, consolidated statistics that would give a reliable picture of deprivation measures applied in cases of bribery or similar offences (whether or not with a money laundering component or in the context of international asset repatriation), bearing in mind that corruption is also prosecutable/prosecuted under other criminal offences such as abuse of authority or breach of trust (see paragraph 10). Police data, which is published in an annual activity report, also appears to be insufficiently reliable or detailed (see paragraph 8). For the time being, it would appear that the relatively high volume of economic crime committed in Liechtenstein and of suspicions of corruption-related money laundering recorded by the FIU, does not translate into corresponding temporary or final (confiscation) measures. Therefore, the collection and consolidation of data would be an important instrument to evaluate the effectiveness of the existing legal and practical measures, and of the activity of law enforcement bodies concerning the targeting of proceeds from crime, including corruption. It would also help identify additional measures to be taken to further encourage the use of confiscation and temporary measures (administrative guidance, additional measures for the management of seized assets, training etc.). The GET recommends **to put in place appropriate tools to evaluate the effectiveness, in practice, of measures to target proceeds of corruption, corruption-related money laundering and other relevant serious offences, including at the domestic level.**

V. PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework - anti-corruption programme

83. According to the replies to the questionnaire, there is no legal definition of the term "public administration". In administrative practice, the public administration is generally defined in terms of the employment relationship. It includes persons who are in an employment relationship with one of the political subdivisions (State, municipality). The State personnel is subject to the State Personnel Act (SPA)[44] and its implementing text – the State Personnel Ordinance (SPO)[45]. The SPA (article 1) applies to personnel employed with the Government and the offices of the National Public Administration, non-judicial personnel of the courts, and various establishments under public law (e.g. the Liechtenstein Bus Service, the Liechtenstein National Museum).

84. The replies to the questionnaire indicate that for the purposes of criminal law, the term "civil servant" ("*Beamter*") is defined broadly in article 74 CC (see paragraph 11 and the corresponding footnote). The National Public Administration is governed by the basic principles of the rule of law in accordance with article 92 para. 2 and article 78 para. 1 of the Liechtenstein Constitution [LV] and article 81 para. 3 of the National Public Administration Act (NPAA or *LVG* in German) of 1922, as well as by the principles of equality, proportionality, and good faith. Every activity of the State requires a legal basis and must be justified by a sufficient, predominantly public interest.

85. The principles of organisation of the National Public Administration are governed by the Law on the Administrative Organisation of the State (VOG). The VOG contains administrative legal principles that must be observed in administrative proceedings, such as when issuing decrees, as well as the provisions governing legal remedies against such decrees. Finally, the Information Act governs the general obligation of the Administration to provide information to the public about its activities (see below). Also relevant is the Law on the Procedures of Parliament and Oversight of the State Administration, which in particular provides for oversight of the National Public Administration by Parliament and its Control Committee. Finally, the independent National Audit Office plays an important role, whose organisation and competences are governed by the Financial Budget Act and in particular the National Audit Act (see Questionnaire I, Part I question 5.3). The functioning of the communes is determined by the Act on Communes of 20 March 1996[46].

86. Liechtenstein does not have a special anti-corruption strategy or policy for employees of the public administration. A document called "Mission statement" (*Leitbild*) provides an orientation framework for employees of the National Public Administration, emphasising quality criteria such as customer-orientation, competence, effectiveness and partnership, and general principles of lawfulness, equal treatment, objectivity, transparency and integrity. Additionally, article 37 of the SPA sets out general official duties. Civil servants are called upon to carry out the responsibilities delegated to them in person and in a conscientious, careful, economical, customer-friendly and impartial manner. Article 39 of the same law prohibits employees from demanding, accepting, or obtaining promises for gifts or other advantages in connection with official matters either on their own behalf or on behalf of third parties; small, customary courtesy gifts are not deemed gifts or advantages. As indicated in paragraph 8, according to a survey of 2004 on administrative offices'

[44] *Staatspersonalgesetz (StPG)*
[45] *Staatspersonalverordnung (StPV)*
[46] *Gemeindegesetz - GemG*

vulnerability to corruption, the risk of corruption was considered to be low. Employees of the public administration generally receive wages comparable to the private sector. The attractiveness contributes to minimising vulnerabilities to corruption of public sector employees.

Transparency, access to information

87. Information is available publicly through the Internet access to the Liechtenstein Portal (www.liechtenstein.li), including a database of legislation where all legal texts are available in a constantly consolidated format (www.gesetze.li). Further information is available on the website of the National Administration (www.llv.li) as well as on the website of the Government (www.regierung.li).

88. Public information is governed by the Public Information Act (PIA) of 29 May 1999, which reversed the former "confidentiality principle subject to publicity", turning it into a "publicity principle subject to confidentiality". Article 3 PIA establishes the principle that State actions are disclosed to the extent not opposed by preponderant public or private interests[47] and certain principles applicable to public information policies (timeliness, completeness, appropriateness, clarity etc.). Information *ex officio* is provided in the form of press releases in the media, via official promulgation, via the national television channel and the municipal channels, or via the Administration's own publications (article 13 PIA). By virtue of the PIA, every person who can assert a justified interest has a right to access official documents, to the extent not opposed by preponderant public or private interests and as long as the files are still being processed by the competent office and have not yet been archived[48] (article 29 PIA). Requests for access to files must be submitted in writing and with reasons (article 32). The authority may charge a fee for extraordinary efforts. Inquiries regarding the scope of activities of the Administration may be made without a form and in general free of charge at the authorities of the State and the municipalities (article 33 Information Act).

Oversight of public administration and other measures

89. Liechtenstein has no ombudsman institution as such[49] but various bodies reportedly perform similar functions. In particular, the Office of Advice and Complaints within the Chancellery of the Government can explain to citizens decisions of the authorities and, if needed, refer issues back to an authority concerned. Formal complaints regarding the administration can be lodged primarily with the authority which has issued the act, decision or regulation concerned; the complaint will be examined by an administrative office, a commission with decision-making powers, or the municipal council of a municipality. In second instance, these decisions may be appealed to the Government or a special complaints commission (National Real Property Commission, National Taxation Commission, Complaints Commission for Administrative Matters). The latter deals with complaints concerning construction and housing, road traffic, electronic

[47] In particular, according to article 31: a) the premature publication of internal working papers, applications, drafts and the like would have a significant adverse impact on the decision-making process; b) the population would otherwise suffer damage, especially through endangerment of public security; c) disclosure would result in disproportionate effort for the authority; d) the protection of the personal confidential sphere, e) the protection of personality in pending administrative and judicial proceedings, f) business secrets, g) professional secrecy etc.

[48] After archiving of the documents, the right to access is governed by the Archives Act. Files may be accessed under the Archives Act as long as a justified interest in use can be credibly asserted and no waiting periods apply. A justified interest exists in particular if the use is for the purpose of exercising legitimate personal concerns. In special cases, the waiting period can be reduced.

[49] In 2005, the Commissioner for Human Rights had recommended (link to the report) the establishment of such an institution.

communication and electronic signatures, advanced education, public tenders, register of real estate property, public register and supervision of foundations, enforcement of judicial decisions, agriculture and environment protection. The Commission is composed of 5 members (and two substitute members), elected for a 5 year term by the Parliament. The decisions of the Commission and the Government may be appealed to the Administrative Court. The complaint to the Administrative Court may only concern unlawful conduct and processing or determinations of fact that are incomplete or contradict the files. Decisions in the last instance may be appealed on grounds of violation of constitutionally guaranteed rights to the State Court.

90. According to article 28 and 29 of the Financial Budget Act, the Government is responsible for financial supervision, especially the minister responsible under the procedural rules. Parliament exercises supreme supervision of finances. The Government is required by the Constitution to submit an annual report on the implementation of the state budget and the use of public finances. The new National Audit Act[50] entered into force on 1 January 2010. The goal of the reform was in particular to strengthen the National Audit Office by attaching it organically to the Parliament (as opposed to the government until then). The Office reportedly carries out its duties autonomously and independently. It defines an annual audit plan and communicates it to the Government after consulting the Control Committee. The responsibilities of the Office include: a) auditing the national accounts; b) auditing the financial conduct and accounting of the offices of the National Administration, the Data Protection Office, the Secretariat of Parliament, the courts, to the extent financial supervision extends solely to the administration of justice, public enterprises, to the extent provided by special laws; c) auditing State financial support (subsidies) and payments, including service agreements; d) auditing public procurement; e) auditing the internal control system with respect to cost-efficiency and effectiveness; f) auditing IT systems with respect to security, cost-efficiency and functionality. Audits carried out by the Office are to take into account both legality checks and cost-effectiveness assessments. The Parliament and the Government may both mandate the Office to carry out special audits and inquiries. The Office decides in accordance with its regular programme of activities whether to accept or reject the mandate.

91. According to the Act, the Head of the body is appointed for a term of 8 years (renewable once) by the Parliament, on the basis of a list of candidates proposed by a special selection committee composed of 3 specialists. The Head of the Office decides on the recruitment of new employees after a hearing of the control committee. The head can be dismissed before the end of the term by the Parliament (upon a proposal from the control committee) in case of a serious breach of duties or for "any other significant reason". The Head may not be former members of the government (for at least 4 years), the Parliament, an administration or a municipal council (articles 4 et seq.). The National Audit Office reports to the Parliament and government on their annual activity. The annual activity report is to be published.

92. In accordance with the Act on Communes of March 1996[51], articles 56 and 57), municipalities are required to appoint an audit committee within 6 months following the communal elections, which a) shall comprise 3 or 5 members, appointed for a 4 years' term; b) is responsible for the continued supervision over the communal administration and finances; c) controls the final report of each exercise and reports therefore to the municipal council; d) has access to the files including through on-site verifications in all municipal activities and all municipal authorities and employees are required to provide the information it may request; e) is entitled to hire the services and assistance of an audit business among those approved by the government.

[50] *Finanzkontrollgesetz- FinKG*
[51] *Gemeindegesetz – GemG*

Recruitment, careers and preventive measures

93. There is no general screening of employees in the public administration. An extract from the criminal register is only demanded for certain professions, such as police officers. There is no rotation policy in place: because of the limited personnel resources of the National Public Administration and small size of Liechtenstein's territory, such a rotation principle would hardly have an effective preventive effect.

Training

94. The Liechtenstein National Public Administration places emphasis on systematic in-service training taking into account both the general needs of the service and individual needs of employees.

Incompatibilities, conflicts of interest

95. The SPA (article 40), stipulates that the exercise of secondary employment is only permissible if it does not interfere with the fulfilment of official duties and is compatible with the official position. Employees must in any event notify assumption of secondary employment in advance to the director of their office (article 40 paragraph 2). According to the SPO (article 33), the approval by the Government is required for the following: a) activities carried out wholly or partly during regular working hours; b) activities that might lead to conflicts of interest; c) acting as executive or exerting a mandate in the board of directors of significant national or regional companies; d) lectures exceeding a total of 4 weeks; e) paid or honorary secondary employment during working days with an off-duty weekly workload of more than ten hours; f) activities implying health risks. The supervisor is required to check whether the declared activity is subject to authorisation and if so, s/he shall inform the government (the President of the court is making the decision in the case of staff other than judges). The SPA (article 41) also provides for similar limits when it comes to a secondary employment in the public sector. Article 49 et seq. SPA provide for sanctions in case of non-compliance with the rules, including a warning, reduction of pay, demotion, revocation. The current regulations of Vaduz (*Arbeitsreglement*, article 3.11) stipulate that secondary employment is subject to the written approval of the Mayor and must be refused in case of inference with the duties of the employee or of higher risk of accident or illness or in case of collision with the reputation of the municipality etc.

96. The National Public Administration Act (NPAA)[52] of 1922 contains a list of grounds for exclusion (from a given decision or act) and disqualification. According to article 6 NPAA, a ground for exclusion applies to an official: a) in matters in which the official is himself a party or in consideration of which the official stands to one of the parties in a relationship of joint beneficiary, jointly liable party, or liable to recourse; b) in matters pertaining to the official's fiancée, spouse or other such persons with whom the official is related by blood or by marriage or in a direct line or with whom the official is related by blood in a collateral line up to the fourth degree or by marriage in the second degree; c) in matters pertaining to the official's adoptive or foster parents, adoptive or foster children, wards or persons under their care; d) in matters in which the official was or still is appointed as an authorised party, administrator or manager of a party or in a similar way; e) in matters in which the official has participated in a subordinate municipal or national administrative authority in the issuing of the contested decree or decision or serves as a witness or expert. According to article 7 NPAA, disqualification applies: a) if the employee is in the case under

[52] *Gesetz vom 21. April 1922 über die allgemeine Landesverwaltungspflege (die Verwaltungsbehörden und ihre Hilfsorgane, das Verfahren in Verwaltungssachen, das Verwaltungszwangs- und Verwaltungsstrafverfahren)* (LVG)

consideration excluded by law from exercising official duties; b) if the employee himself or a related person expects a considerable advantage or disadvantage from the outcome of the administrative matter; c) if the official is himself participating as a member of a company or legal person to which the administrative matter pertains; d) if another sufficient reason exists to doubt the impartiality of the employee, especially if s/he is engaged in a legal or administrative dispute with one of the parties or a relationship of close friendship etc.

Codes of conduct, regulations on gifts

97. As indicated earlier, there is no specific set of rules on the integrity and conduct expected from public officials. Basic principles are contained in the SPA, as indicated earlier under "Definitions and legal framework - anti-corruption programme". As regards gifts in particular, public employees are prohibited from demanding, accepting or obtaining promises of gifts or other advantages in connection with official matters, including for the benefit of third persons (article 39 SPA). Small, customary courtesy gifts are not deemed gifts or advantages[53]. Article 32 of the SPO further specifies that gifts may only be accepted if: a) they are commonly regarded as unobjectionable courtesies of minor value, the acceptance of which is called for by politeness (e.g. mass advertising articles such as calendars, pens, or notepads); b) customary and appropriate hospitality is provided at general events at which participation is made necessary as a result of one's official duties or mandate or with respect to social obligations connected with the office (e.g. official receptions, social events serving the cultivation of official interests, anniversaries, topping-out ceremonies, inaugurations etc.); c) the participation in hospitality takes place within the context of official acts, talks, tours or the like, and the hospitality is customary and appropriate, or if the hospitality is provided according to the rules of social interaction and politeness which the employee is not able to refuse without violating social norms; d) the advantage accelerates or facilitates the performance of official business (e.g. picking-up of employees from the train station by car). The acceptance of exceptionally permitted gifts (situations a. to d. above) required the approval of the supervisor. Employees must exercise extreme restraint when accepting invitations and employees should avoid that the acceptance of invitations be seen as interfering with official interests or influencing administrative decisions (principle of objective impartiality of article 32 paragraph 3 of the SPA. Moreover, the acceptance of gifts by civil servants is punishable under criminal law (see paragraph 10 of this report).

Other measures

98. There are no specific detailed regulations to limit possible risks connected with revolving doors. However, employees are required to maintain confidentiality concerning official matters which, in light of their nature or according to specific provisions, must be kept secret (article 38 StPG). This obligation is maintained even after termination of the employment relationship and subject to criminal liability (up to three years imprisonment according to article 310 CC). An employment contract may, where needed, include a competition clause in accordance with § 1173a arts. 65 ff. ABGB in conjunction with article 3 StPG. Other relevant legal provisions do not exist.

99. There is no asset or financial disclosure system/obligation for elected or public officials.

[53] Art. 39 StPG – Gifts and other advantages
1) In relation with professional matters, employees are prohibited, from soliciting, accepting or letting others promise gifts or other advantages for themselves or a third person.
2) Gifts of minor importance which are a sign of courtesy are not considered to be gifts or other advantages. This matter shall be regulated in greater detail in an Ordinance of the Government.

Disciplinary procedures, sanctions

100. If legal obligations or obligations under employment law are violated, article 49 StPG provides for measures to secure proper fulfilment of responsibilities, which may include: a) a warning or a written reprimand; these are issued by decision of the supervisor or responsible member of the Government; b) reduction of wages (up to 30% for a maximum period of three years), assignment of other duties, transfer, demotion, or termination of the employment relationship: such measures are ordered by Government decree after hearing the supervisor and the employee concerned. Decisions and decrees may be appealed to the Government within 14 days, or by filing a complaint with the Administrative Court (article 55 StPG). If the violation concerns official duties or other related punishable acts as referred to in articles 302 et seq. CC (acceptance of gifts, bribery, abuse of authority, violation of official secrecy), the Office of the Public Prosecutor must be informed and the usual criminal procedural provisions apply.

101. The disciplinary and the criminal procedures are carried out independently of each other. The disciplinary procedure may refer to the outcome of the criminal procedure. No central register is maintained of disciplinary proceedings and sanctions applied for breach of duties, except for the criminal register. Disciplinary measures are contained in the personnel files of the employee in question. The replies to the questionnaire provide no statistics on relevant disciplinary cases.

b. Analysis

102. Liechtenstein makes broad use of new technologies and state and legal information is broadly available on-line. Access to public information does not seem to be a source of particular concerns. The GET also noted that Article 3 of the Information Act establishes the principle that State actions are disclosed to the extent where they do not undermine the preponderant public and private interests. Such damaging situations, among others, would include (Article 31(a) of the Information Act) a premature publication of internal working papers, applications, drafts and the like would have a significant adverse impact on the decision-making process. All major draft legislation is subject to a public consultation mechanism. The draft legislation is published by the Government together with an explanatory report for this purpose.

103. Traditionally, the Prince plays a leading role in the country. Political life is not marked by strong oppositions and for many years, the two main political formations have largely shared the power in parliamentary coalitions despite their strongly differentiated political colours. The two major dailies are closely linked to these parties and there seems to be a broad consensus on what certain interlocutors described as “keeping the nest peaceful”: the newspapers tend to avoid controversies on the functioning of institutions in their articles and those who have something to debate on those matters usually do it via the editor’s column. A citizen movement has based its activity on the reform of the Constitution and publishes on the Internet.

104. As noted in the descriptive part, formal complaints about the administration should be lodged primarily with the authority (whether national or municipal) which issued the respective act, made the decision or passed a regulation. In second instance, the decisions may be appealed to the Complaints Commission for Administrative Matters (if the matter falls within its jurisdiction, i.e. issues related to road traffic regulations, building law, residential housing, university, land register, public procurement, control of foundations; some parts of penitentiary matters, agriculture, public health, energy and social security) or to the Administrative Court. The most sensitive area in this respect is public procurement, yet the complaints are said to be mostly

associated with procedural matters and that after the relevant know-how was gained by the public administration the overall situation would have improved.

105. The National Audit Office seems to have become a central institution for the supervision of state administration and it seems to enjoy certain guarantees of independence (in particular the head is appointed for 8 years, renewable). Its powers do not seem to be unduly restricted either and its working methods include both legality checks and efficiency audits. According to the new National Audit Act which entered into force on 1 January 2010, the Office has become accountable to the Parliament and it submits its annual reports both to the Government and the Parliament. The Office is headed by Swiss nationals who have no family ties in the country and they believe this contributes to the independence of the Office. The GET concurs that the appointment of other nationals to both high and mid-level positions in public administration can be considered a natural form of rotation, especially when new candidates are difficult to find. The GET welcomes the adoption of the new Act and it supports the decision to have the audit reports published in future on the website of the National Audit Office to contribute to the overall transparency of public finance and increase financial discipline.

106. As to the situation on communal level, under the 1996 law the municipalities are required to appoint audit committees which are responsible for the continued supervision over communal administration and finances. These bodies are sometimes seen as being too close to the municipal political power and in this context, any measure to increase their accountability would certainly be welcome; for the time being, it remains unclear if these local audit committees are required to publish any activity report. The Liechtenstein authorities may wish to keep this matter under consideration.

107. The State Personnel Act (SPA) and the corresponding Ordinance (SPO) regulate the employment and status of "State personnel" (*Staatspersonal*). The definition of "public official" communicated in the replies to the questionnaire and to which various persons referred to during the on-site visit to determine the scope of the SPA and SPO and other texts reportedly applicable to "public officials" is the one of "civil servant" under article 74 paragraph 4 of the Criminal Code (CC), which is indeed fairly broad (see also paragraph 11 and the corresponding footnote). In reality, article 1 paragraph 3 of the SPA excludes from its scope persons who are in a contractual/working relationship with the state, through which they perform tasks of public law; this expression seems to designate contractual employees and if so, the SPA and SPO thus cover only part of state employees. At the same time, there were clear doubts and hesitations as to the category of persons that members of the Government, and members appointed *ad hoc* to run institutions such as the Complaints Commission for Administrative Matters, would belong to. This has some practical consequences since the main regulations on incompatibilities of functions and gifts are regulated by the SPA and SPO. As things stand, public officials employed on a contractual basis are not subject to any such rules and this constitutes an obvious gap. The GET recommends **to clarify the scope of the State Personnel Act and the State Personnel Ordinance and to ensure that contractual personnel as well as other specific categories of public officials are subject to requirements concerning gifts, incompatibilities and other possible corruption preventive measures similar to those contained in these Acts.**

108. With the exception of members of the police force, state and municipal employees (whether civil servants or not) are not subject to screening and there is no general requirement for a clean criminal record in order to work in the service of the State or a municipality. This is partly compensated by the fact that the Office of Human and Administrative Resources keeps a personal file for every recruited state employee and it keeps track of disciplinary and other

measures imposed by the Government or a court as the information is forwarded automatically to the Office and recorded in the personal file accordingly; this information is, logically, not available for foreigners, bearing in mind that one third of the government and municipal employees are commuters from Austria, Switzerland and Germany. In the GET's view, this lack of verification constitutes a potential vulnerability of the public administration/communes with regard to newly recruited staff. Moreover, the GET noted that article 27(1) CC lays down that a civil servant who is sentenced to more than one year of imprisonment as a result of a wilful criminal act is barred automatically from holding a public office. However, this automatic dismissal from holding a public office would not be applied with respect to various bribery offences. In view of the above, the GET recommends **to introduce appropriate screening procedures which would ensure that relevant positions in the public sector are filled by persons with a high degree of integrity.**

109. Liechtenstein has adopted a document called Mission statement of the State administration which provides for guiding principles for administrative action. For the time being, this document cannot be seen as a Code of conduct on integrity-related matters (it puts emphasis on such qualities as customer-orientation, competence, effectiveness etc.) and the main provisions are therefore those contained in the SPA and SPO; Liechtenstein has thus no specific set of rules on the integrity and conduct expected in this context from public officials or municipal employees. Upon employment every newly recruited state or municipal employee receives a one-day general training. Given the short time, it does not come as a surprise that this does not include a course or introduction on ethics and integrity-related matters. With respect to the issue of gifts, the matter seems to be well regulated for public employees where only courtesy gifts of minor importance are acceptable. Similar provisions exist on communal level. However, the interlocutors met on-site where not always clear about the value of gifts and how one is to behave if s/he was offered a gift and other gratuities. The GET therefore recommends **to develop ethical rules and codes of conduct for public administrations at central and local level and to provide adequate training on the use of these rules, including the conduct to be adopted vis-a-vis the offering of gifts and other gratuities.**

110. Secondary employment is regulated by the SPA and SPO, and sometimes under sector specific provisions, including at the level of municipalities (at least as far as Vaduz is concerned). The GET found on-site that both public officials and municipal staff lacked knowledge and awareness about the kind of secondary employment that would be allowed and this matter is very much left to supervisors' discretion. Little information on the practical application of these mechanisms (denials of secondary employment or sanctions applied for violation of these rules) was available during the visit. Conflicts of interest are currently regulated under the National Public Administration Act (NPAA) of 1922, as amended in 2004; it contains a list of grounds for the exclusion and disqualification of officials from decisions. The GET was initially pleased to see these rules but on-site, there was no evidence at all of the knowledge of public officials of these rules and how these should be applied. In the light of the discussions, the GET could not conclude to the existence of a system for the management of conflicts of interest (including declarations, checks, sanctions etc.). The reason for this might be that the NPAA mixes up a variety of provisions with different purposes, and that it is mainly aimed at the highest state authorities: articles 6 and 7 NPAA which are cited by the authorities as the core provisions regulating conflicts of interest refer in fact to obligations of the Head of government, members of government, members of the Administrative Court or any other office holder. It is probably illusory to expect that these last few words have ever converted this piece of legislation into a reference document for regular consultation by all state employees on the matter of conflicts of interest. Moreover, it does not provide for provisions on ways to manage these. Clear and comprehensive rules are thus missing in Liechtenstein in this area, that could also deal with declaration of

financial and other assets for categories of officials mostly exposed to risks of unjustified enrichment (including elected representatives); for the time being, there is no such mechanism in place at state or municipal level. Finally, as regards the matter of "revolving doors", there are no restrictions applicable to public officials moving to the private sector. The GET wishes to remind that restricting over a certain period of time the possibility for certain officials to work for companies or business sectors with which s/he has professional dealings contributes to limit risks of corruption in the public sector. In view of the above, Liechtenstein clearly needs to strengthen its legal arsenal of preventive anti-corruption measures; as it was repeatedly pointed out during the visit, the size of the country implies the existence of close social ties and conflicts of interest are thus a particularly important issue. The GET recommends **i) to introduce an effective system for the management of conflicts of interest and secondary activities that would be applicable to all public officials at central and local level, including elected representatives; and ii) to introduce rules / guidelines for situations where public officials move to the private sector.**

VI. LEGAL PERSONS AND CORRUPTION

a. Description of the situation

General definition and constitution

111. Legal persons are regulated by the Law on Persons and Companies (Personen und Gesellschaftsrecht - PGR) of 19 February 1926, art. 106 et seq., which provides for the possibility to establish a variety of legal persons, as well as legal arrangements which do not entail creation of a legal person.

Main forms of legal persons

112. The main ones are commercial and non-commercial associations (*Verein*, articles 246-260 PGR), foundations (*Stiftung,* article 552 PGR), joint stock companies (*Aktiengesellschaft* or *AG* – articles 261-367 PGR), limited partnership with share capital (*Kommanditaktiengesellschaft* – articles 368-374 PGR), limited liability companies (*Gessellschaft mit beschränkter Haftung – GmbH* – articles 389-427 PGR),co-operatives *(Genossenschaft* – articles 428-495 PGR*)*, establishments under private law (*Anstalt* - articles 534-551 PGR), trust enterprises (*Registriertes Treuunternehmen(Trust reg.), article 932a*), European companies (*Europäische Aktiengesellschaft, SE*) and European co-operative (*Europäische Genossenschaft, SCE*).

113. The GET noted that (notably as a result of pressure of the international community) the 1926 regulations applicable to foundations underwent a total revision, to increase their transparency and supervision under the Foundation Supervisory Authority.[54] The new Foundations Law came into force on 1 April 2009.

[54] The law distinguishes between common-benefit foundations and private-benefit foundations. The founder can choose the purpose of the foundation, including the designation of tangible beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or the category of beneficiaries.
Where foundations are formed through professional trustees, the trustor ("beneficial founder") will continue to be deemed the founder in a legal sense, but in case of this indirect representation of founder, such person is obliged to notify the foundation council of the identity of the founder. Common-benefit foundations are required to be entered into the Public Register, they are subject to the newly established Foundation Supervisory Authority (Stifa). Common-benefit foundations must also establish an auditor responsible for annual verification that the foundation assets are managed with care and in conformity with the foundation purpose. The Stifa was established in April 2009. As from 2011, it will perform audits to make sure there is no commercial activity within the foundations (and require those which do so to register).

Partnerships and legal arrangements (without legal personality)

114. The PGR also provides for other arrangements that do not lead to creating a new legal person, including: basic/general partnership (*Einfache Gesellschaft* or contractual association of two or more legal or physical persons, articles 680 to 688 PGR), unlimited partnership (*Kollektivgesellschaft* or *Offene Gesellschaft* - articles 689-732 PGR), limited partnership (*Kommanditgesellschaft* – involving a partner who assumes full liability and co-partners who assume limited liability – articles 733-755 PGR); particular purpose partnership (*Gelegenheitsgesellschaft* – association of two or more natural or legal persons join according to a contract for particular purpose - articles 756-767 PGR); silent partnership (*stille Gesellschaft- a contract by a natural or legal person who makes an equity contribution into another person's business*– article 768 to 778 PGR), special family partnership (*Gemeinderschaft* – may be established by family members for the joint management of assets - articles 779-793 PGR), trusts (*Treuhänderschaft* - articles 897 ff PGR).

115. Trustee activities (carried out by a natural or legal person) are regulated by art. 897 et seq. PGR, as well as by the Law on trustees[55] of 9 December 1992 for professional trustees. The PGR also refers to other arrangements such as e.g. commercial and non-commercial power of attorney (*Nichtkaufmännische Prokura - § 36 ff SchlT PGR*) and representatives (*Repräsentanten – art. 239 ff PGR*).

Registration and measures to ensure transparency

116. A central public registry (hereinafter the PR) is kept for the entire country by the Office of Land and Public Registration (GBOERA). Registration of legal entities is generally performed upon application of the subjects required. Entities which do not have registration obligations are obliged to submit specific information or deposit deeds with the registry.

117. According to data available at the time of the on-site visit, the total number of legal entities at the date of 31 December 2009 was 69,293, of which the vast majority are deposited foundations and trust arrangements, followed for about one fifth by registered establishments under private law. According to legal professionals met on site, the overall number of entities has decreased in recent years considerably. At the date of 31 December 2010 the total number of legal entities was 64'996, of which 37'228 are non registered foundations and 218 non registered trusts (see also "Rechenschaftsbericht 2010").

118. The application consists of the application letter (application for registration) and records required by law or ordinance, depending on the legal form. The Office of Land and Public Registration then reviews whether the legal requirements for entry in the register are met.

119. Entries in the PR are in principle open to (on-line) public access[56]. For a fee, everyone is entitled to access a full extract from the registry concerning a specific legal person. The records and documents underlying the entries can be accessed with a legitimate interest. In the case of certain companies, such as joint stock companies, limited liability companies, limited partnerships with a share capital and European companies registry files can be accessed even without asserting a legitimate interest. As the GET was informed, information on beneficiaries is not entered into the PR (common-benefit foundations seem to be an exception, as indicated earlier).

[55] Treuhändergesetz (TrHG)
[56] http://www.oera.li/hrweb/ger/firmensuche.htm

120. In Liechtenstein, there are no restrictions on participations (e.g. entities can themselves hold assets in another entity and so on) or the number of accounts a legal person can hold. With respect to bank accounts, however, financial service providers are required by the Due Diligence Act (DDA) to determine and verify the identity of the contracting party and any beneficial owners (such as of foundations), to prepare business profiles, and to ensure risk-adequate monitoring of the business relationships entered into. Furthermore, the Disclosure Act, in accordance with the EU Transparency Directive (2004/109/EC), governs the transparency obligations of issuers whose securities are admitted to a regulated market in the EEA as well as the disclosure of controlling interests in these issuers. The law covers publications of financial reports and interim reports, information provided to securities holders in order to exercise their rights, and the disclosure of the acquisition and sale of controlling interests. The GET understood that, as a rule, all policies concerning beneficial ownership identification are now based on the concept of major beneficiaries i.e. those who hold 25% or more of interest and rights, in line with the respective EU anti money laundering Directive (2005/60/EC).

Restrictions on the performance of duties by individuals and legal persons

121. There is no direct possibility to disqualify persons found guilty of offences from acting in a leading position in legal persons. But a person is not allowed to carry on a trade and therefore act as director of a legal entity which does business, if he or she was found guilty of deceptive insolvency practices or other related offences (article 9 of the Commercial Act). Also, the Financial Market Authority has in general the possibility of opposing the appointment of a convicted person to the board of directors or general management of a financial intermediary under its supervision, since such persons are required by law to offer sound and proper business activities.

Legislation on the liability of legal persons, penalties and other measures

122. Before the entering into force of a general amendment to the Criminal Code (CC) and Criminal Procedure Code (CPC), the liability of legal entities was limited to certain specific offences. With the new articles 74a to 74g CC, a legal person can be held liable for any felony or misdemeanour contained in the CC and other laws. The core elements of the new liability mechanism are provided for in article 74a[57]:

> ***Article 74a CC***
>
> *1) Insofar as they do not deal with the enforcement of legislation, legal persons are liable for felonies and misdemeanours when these are committed deliberately and in breach of the law, in the performance of business activities and in the framework of the legal person's purpose, by managers.*

[57] According to the new provisions, combined with the general criminal procedure rules: a) a benefit does not have to be realised. It suffices for a corruption offence to have been committed in the course of business activities, i.e. that a functional connection exists between the punishable act and the business activities of the legal person; b) the prosecution or punishment of legal persons does not depend on whether the immediate perpetrator can actually be identified, prosecuted or convicted. The legal person would be held liable if it can be shown that one or more managing persons brought about the immediate offence unlawfully and satisfying the elements of the offence, even if it remains uncertain who this concrete person is; c) in principle the general rules of the Criminal Procedure Code apply: the competence of a court to consider the offence would also provide the basis of competence for the proceedings against suspected legal persons. The proceedings against the natural person concerned and against the legal entity would, as a rule, be conducted together. On an exceptional basis, proceedings against natural persons and against legal persons could also be conducted separately, however.

2) Legal persons are
1. legal persons recorded in the Public Registry as well as legal persons which neither have their seat nor a place of operation or establishment in the country, insofar as these would have been registered had they fulfilled the requirements of domestic law for doing so, and
2. foundations and associations not recorded in the Public Registry as well as foundations and associations which neither have their seat nor a place of operation or establishment in the country.
3) Manager means any person
1. entitled to represent the legal person in external relations,
2. who performs control duties in a leading position or
3. who otherwise exerts meaningful influence over the direction of the legal person's business.
4) Where the said offences have been committed by employees of the legal person, even when this was not deliberate, the legal person is liable only under the condition that the accomplishment of acts was made possible or was significantly facilitated by the inaction of managers, in the meaning of paragraph 3, who failed to take the necessary and reasonable measures to prevent the offences from occurring.
5) The liability of the legal person for the said offences and the liability of managers or employees, are not exclusive of each other in the case of a given offence.

123. The fines are calculated according to a system of daily rates which vary according to the gravity of the offence and the economic performance of the legal person[58], for instance, the range of the fine applicable would thus be 3,000 to 1,050,000 euro in case a business entity was found responsible of bribing a public official (article 307 CC) and 6,375 to 1;275,000 euro in case of trading in influence (article 308 CC). For money laundering offences, the fine would be 5,250 and 1,500,000 euro (article 165 CC). To ensure the effectiveness of sanctions, the new provisions provide that punishments imposed on a legal person in accordance with the CC and CPC as well as other legal consequences are transferred to the legal successor (including in case of multiple successors), by way of legal succession. The amendments of January 2011 have not provided for the creation of a record of companies found liable for criminal acts.

124. Further measures to protect the general interest are provided in the PGR only (article 124 et seq. or article 971 PGR); in particular, where the actual activity of a legal entity (irrespective of the legal form of the legal entity, whether an association, a foundation or a company) is unlawful or immoral, the public authority may apply to the Administrative Court (including in the context of ordinary court proceedings) for the withdrawal of the legal capacity and the dissolution of the entity. In case of concurrent proceedings, the final decision remains with the administrative court. The PR shall be informed of any dissolution by the judge; it may also be informed at an early stage by the authority or an interested party about the initiation of such proceedings. Other measures (closure of the business, appointment of a legal administrator, seizure of books / documents / assets) can be ordered by the government deciding collegially in the context of a special administrative execution procedure.

[58] a) the maximum penalty varies between 40 and 180 daily rates (DR) depending on the level of punishment provided for a natural person: If the offence is punishable with life long or more than 20 years imprisonment: 180 DR; up to 15 years imprisonment: 155 daily rates; up to 10 years imprisonment: 130; up to 5 years imprisonment: 100 daily rates; up to 3 years imprisonment: 85 daily rates; up to 2 years imprisonment: 70 daily rates; up to 1 year imprisonment: 55 daily rates; in all other cases: 40 daily rates; b) depending on the economic performance, the rate varies between a minimum amount of CHF 100 [about EUR 75] and a maximum amount of CHF 20,000 [about EUR 15,000].

Tax relief

125. The Liechtenstein Tax Act was amended with effect as from 1 January 2011; it now expressly provides that inducements under article 307 CC cannot be claimed as commercially justified expenses.

Tax authorities

126. As regards the involvement of tax authorities in the detection and reporting of criminal offences (such as corruption and money laundering), the tax authorities are subject to the general reporting obligation under article 53 CPC (applicable to authorities which, within their legal scope of activities, gain knowledge of a suspicion of an act subject to *ex officio* prosecution. As indicated earlier in this report (see paragraph 32), private sector bribery offences under article 4 of the Unfair Competition Act cannot be prosecuted without complaint from an aggrieved party.

127. Fiscal information about tax payers is confidential, but can be requested by the government, the courts and public social security institutions to the extent necessary for official purposes. The new Tax Act which entered into force has extended access to other authorities if a legal basis exists therefore (article 84 paragraph 4).

Accounting and auditing rules

128. In principle, all legal persons are required to keep books. Besides, all commercial entities that are obliged to register with the Public Registry and which operate according to commercial principles must undertake proper accounting. Joint-stock companies, limited partnerships with share capital, companies with limited liability, European companies and some unlimited and limited partnerships (even if they do not conduct any commercial business) must undertake proper accounting. The GET also noted that article 107 PGR does not define directly what "a commercial business" is; instead, it excludes from this concept the activities consisting of a) investment and management of assets, and b) the holding of assets, participation and other interests. For associations, a general bookkeeping obligation arises under article 251a PGR. Foundations running a commercial business are subject to the general accounting rules. For all other foundations, the foundation council must keep appropriate records regarding the management and use of the foundation assets, taking account of the principles of proper accounting, in a manner appropriate to the financial situation of the foundation and to keep records that allow the business performance and development of the foundation assets to be reconstructed (article 552 paragraph 26 PGR). Legal entities which are subject to the proper accounting rules are required, pursuant to article 1059 PGR, to maintain account books and records for a period of ten years. The obligations of art. 1059 also apply to all foundations. Additionally, the annual accounts, the consolidated financial statements, annual report and other business books, accounting documents and business correspondence, guaranteeing underlying transactions must be maintained and preserved for ten years.

129. According to article 66 of the Final Part of the Law on Persons and Companies (PGR), violations of the accounting and bookkeeping provisions and disclosure duties under articles 1045 et seq. PGR are punished upon application with a fine of up to CHF 10,000 [EUR 7,500]. Acts or omissions in connection with bookkeeping are punishable – depending on the case – as falsification of documents (articles 223 et seq. CC), fraud (articles 246 et seq. CC) or other offences relating to assets and bankruptcy or enforcement of debts.

Role of auditors, accountants and other professionals

130. According to art. 195 para. 1 PGR annual account and the annual report shall be audited by the auditors if they comply with law and articles. According to article 196 para. 2a PGR, the auditor is required to notify in writing the board of directors of violations of laws and articles of association; the general meeting is also to be notified in case of major concerns. The replies to the questionnaire stress that under the Due Diligence Act (the money laundering prevention legislation), financial institutions and various designated non-financial businesses and professions are required to report to the Financial Intelligence Unit[59] not just suspicions of money laundering but also suspicions of a predicate offence of money laundering (including i.a. various corruption-related offences, as indicated in section IV of the present report and organised crime); the list of businesses and professions concerned includes lawyers and legal agents as well as auditors (individual auditors, auditing companies and audit offices under special legislation).

b. Analysis

131. The joint IMF/MONEYVAL report adopted in September 2007 has dealt with legal persons in Liechtenstein. The present Section will thus focus on a series of specific issues. The Law on Persons and Companies of 1927 provides for the possibility to establish a variety of legal persons, as well as partnerships and legal arrangements which do not entail legal personality as such. As pinpointed regularly by the FIU in its annual report (for instance for the year 2010): "As in previous years, the frequent appearance of economic offenses such as fraud and criminal breach of trust as potential types of offenses is due to the fact that Liechtenstein companies and foundations are abused in attempts to conceal criminal activities." As it appeared from the on-site discussions, the Public Register has to secure the enforcement of the legal rules to ensure proper registration and the discharge of reporting obligations. There is no obligation for the Register to check, for instance, the background of the manager of a newly founded company. In Liechtenstein, this is taken care of by the trustees under the respective due diligence rules. Recent improvements concerning the transparency and supervision of foundations other than family foundations are to be welcomed and in the opinion of the GET, this should inspire further changes as regards the other forms of legal entities and arrangements in Liechtenstein. The GET has formulated some recommendations for improvement hereinafter that would contribute to improve the situation, especially through additional measures concerning the supervision of trustees, which appears to be a particularly crucial issue.

132. The GET welcomes the introduction, in January 2011, of a system of corporate liability for all felonies and misdemeanours contained in the CC and other laws. Although at first sight article 74a CC seems to reflect most elements of article 18 of the Criminal Law Convention on Corruption, the Liechtenstein authorities may wish to re-consider in the context of the ratification of the Convention some aspects which may be quite important to give full effect to the new mechanism[60]. For the time being, Liechtenstein practitioners do not see the usefulness of the new liability mechanism; this could be due to the above limitations introduced by the legislator, or to a total lack of familiarity with the spirit and purpose of corporate liability. The Liechtenstein authorities may wish to keep the matter under consideration as it could indicate a need for

[59] Unless they have received the information concerned from or on a client in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received before, during, or after such proceedings.
[60] It would appear, in particular, that liability is not provided for acts committed by a person acting on behalf or for the legal person (legal or commercial representative, partner, person with a power of attorney etc.) and this clearly contradicts the requirements of article 18 the Convention.

specific training and guidance on this matter. More importantly, the liability mechanism of article 74a CC does not extend to all private sector bribery offences since article 4 of the Unfair Competition Act (which is used for the criminalisation/prosecution of certain private sector bribery offences) deals with another category of offences which are "infringements" (*Übertretungen*) – see paragraph 10. In order to fill this gap, the GET recommends **to extend the applicability of the new regime of liability of legal persons under article 74a of the Criminal Code to all private sector bribery offences in their active form.**

133. The Liechtenstein authorities informed the GET that after the visit, a register of convicted legal persons was included in the regular register applicable to natural persons. Thus legal persons are treated in the same way as natural persons and thus a useful source of information is now available, notably to those who want to avoid having business relationships with entities that do not hesitate to resort to corruption or other illegitimate methods for doing business. The GET welcomes this development, which meets the expectations of GRECO in the context of the topics dealt with under the second evaluation round. t

134. There is no provision in the Criminal Code that would enable the courts to prohibit a person found guilty of corruption offences to hold a leading position in an entity. Such a possibility would be an effective tool in the context of the fight against corruption and more generally, for preventing criminals from infiltrating the business sector. Moreover, as discussed in the present Section of this report, Liechtenstein is now confronted with the need to expunge criminal activities from the sector of legal persons. At the same time, Liechtenstein is now called upon to take drastic measures as regards company service providers such as trustees and trust service companies. Professional disqualification would constitute a very useful tool in those contexts. Consequently, the GET recommends **to introduce a measure in the Criminal Code which would enable the courts to prohibit a person found guilty of serious corruption offences from holding a leading position in a legal entity for a certain period of time.**

135. The Tax Office has an obligation to report suspicious of corruption to the FIU and accounting offences to the prosecution service. Tax Office employees are reportedly well trained and they use relevant international guidance documentation (OESO, IOTA, OECD handbook for tax authorities on the recognition of corruption offences) to keep up to date. The new Tax law which entered into force in January 2011 provides now explicitly for the non deductibility of corruption-related expenditures, but this only in connection with the offence of active bribery in the public sector (article 307 CC). Expenses generated in the context of other corruption-related offences such as trading in influence or bribery in the private sector would need to be included, bearing in mind that the list could require further extension once Liechtenstein ratifies the Criminal Law Convention on Corruption. The GET recommends **to extend the list of non-tax deductible expenditures to the broadest range of relevant corruption-related offences.**

136. As a consequence of article 180a PGR, the establishment and/or management of any legal entity is to be done by a trustee (in general, a lawyer or person/firm with legal, economic and/or other expertise and providing company formation or management services with a trustee licence). By the end of 2010, there were 392 licensed trustees. Article 180a also provides for a possibility to perform a limited range of trustee activities as holder of a certificate under this article. In contrast to licensed trustees, the holder of a certification under article 180a is only entitled to the management but not to the formation of such entities. The 2010 report of the FMA refers to 546 such operators. Trustees and holders of a certificate under article 180a are subject to the supervision of the FMA and to the Due Diligence Act (DDA) and the corresponding ordinance. The FMA has recently intensified the supervision as regards DDA obligations. Since as a result of

professional and commercial secrecy rules, information entered into the public register never comprises information on beneficiaries / beneficial owners, this kind of information is available from the trustee and the holder of a certificate under article 180a PGR; the latter is indeed required under the DDA to comply with customer due diligence (CDD) requirements, including the identification of beneficiaries of foundations and the ownership of corporations where a given legal or natural person owns more than 25% of the assets. Financial institutions (when they apply their own CDD process on the occasion of business performed by the trustee or holder of a certification under article 180a PGR on behalf of a client) thus rely on the quality of data kept and updated by the holder of a certification under article 180a as well as trustees. The same goes for public authorities, for instance in the context of investigations: if investigators are in possession of information on specific entities involved in a criminal scheme, they would normally apply to the Public Register to obtain the name of the trustee or holder of a certification under article 180a concerned and then, through him, the information on the structure of assets and the identification of ownership. The GET was told by a representative of the profession that in practice, trustees comply to a variable extent with the CDD requirements; for instance, they do not apply on their own a policy of verification of the authenticity/plausibility of information their clients provide on beneficial ownership. Furthermore, major trustee companies in Liechtenstein have reportedly accepted a very large number of customers they cannot manage properly from the point of view of monitoring obligations and they tended to also over-rely on the information transmitted by the foreign banking institutions they often work for (especially Swiss banks). The FMA stressed after the visit that during the supervisory work, it had never been confronted with such situations and that such behaviour would be a reason for taking appropriate measures.

137. In the above context, the supervision of trustees / trustee activities appears to be essential to ensure an adequate level of integrity and professionalism of this sector, and ultimately a higher degree of transparency of legal persons. For the time being, the Trustee Association has limited powers: it can only issue a warning but not withdraw a license. The Trustee Association however can initiate disciplinary proceedings with the Court of Appeal or the Prosecutors Office. The Association has often notified the Court of Appeal of disciplinary cases, but unless there was a concrete criminal act involved (e.g. appropriation of clients' assets), the case was rejected; in any event, it reportedly takes several years before a decision is rendered. Its supervision extends to aspects of Rules of Conduct as stated in the "*Standesrichtlinien*" regarding the work of trustees. The withdrawal of licences of trustees and trust companies lies with the FMA, according to the Trustees Act. As to the holder of a certificate nder article 180a PGR, the FMA may also apply the same measures as for trustees, although some of these – such as the withdrawal of a licence – have not been tested yet. The withdrawal is subject to an appeal to the FMA Court of Appeal (*FMA-Beschwerdekommission*) and last instance to the High Court of Administration (*Verwaltungsgerichtshof*) The on-site discussions confirmed that even if a licence is withdrawn, it does not prevent an individual trustee to continue provide services by joining another associate or group of associate trustees holding a licence; however he /she no longer is entitled to establish legal entities and manage them by taking over organ functions. In the same way, since it is enough for a trust firm to have one of its managers holding a licence, it is always possible for it to hire a new manager in case s/he lost the (firms') licence, or for a trust / law firm to dissolve and re-establish itself with another identity. This calls for stricter professional standards and disqualification rules to avoid that disciplinary measures (reprimand, fines, prohibition of practising the profession of trustee for up to one year or even a permanent prohibition of practising) be circumvented. Above all, there is a clear requirement for increased supervision by the FMA over trustees and holders of a certificate under article 180a PGR and this may require additional means for the FMA since until now, the latter had to outsource to a large extent to auditing companies/auditors the on-site supervision work (see also paragraph 74). Only with the

appropriate tools would the FMA be in a position to assure a strict, systematic, extensive and direct supervision. The GET recommends **to take appropriate measures to enhance the supervision of trustees and holders of certificates under article 180a of the Law on Persons and Companies (*Personen und Gesellschaftsrecht* - PGR).**

138. It would appear that there is no adequate offence to apprehend the deliberate false identification of customers or beneficiaries, be it by themselves or by professionals and financial intermediaries. During a meeting with representatives of the prosecution service and the Ministry of Justice, it was confirmed that the relevant offenses of the Criminal Code (e.g. forgery of documents of article 223 CC, fraud under article 146) are not applicable or have not been tested yet in such cases. Reference was made also to article 293 CC on falsification of evidence, but the applicability of this article in the above situation has not been tested in court either. In any event, the levels of punishment are such that the statute of limitation may be very short (up to one year's imprisonment entails a time limit of 3 years under article 223 and 293 CC, and up to 6 months' imprisonment a time limit of 1 year under article 146 CC) to deal effectively with cross-border cases (customers from abroad etc.) and involving mutual legal assistance requests. An adequate and specific offence in the area of customer identification would also have the general effect of contributing to increasing the level of compliance with the DDA of the professionals concerned. The GET recommends **to ensure adequate offences as well as effective and dissuasive sanctions are in place to deal with false information on customer identification, and to ensure these are known to everyone.**

139. Accounting and audit services are both provided in practice by auditors and audit businesses. The GET noted that in their case, the duty to report suspicions of corruption to the FIU is of little use since suspicions concern financial transactions and even though the DDA defines those in relatively broad terms, it does not necessarily capture the type of activity carried out by auditors when doing assessments of working methods or certifying financial reports; it is therefore unlikely that this mechanism contributes in a meaningful manner to the prevention and detection of corruption and money laundering. The joint IMF/MONEYVAL Third Round evaluation report of 2007 had already pointed at this weakness, but apparently, it has not been addressed up to now. The Liechtenstein authorities may wish to look again into this matter.

CONCLUSIONS

140. The ratification of the United Nations Convention against Corruption in 2010, the setting-up of an anti-corruption interagency coordination group in 2003 and a specialised anti-corruption Police unit in 2007, the continuous improvements to the arrangements for preventing money laundering and providing mutual legal assistance – including as regards repatriation of criminal assets – clearly show that the fight against corruption is on the country's agenda. The on-site discussions, nonetheless, indicated that for the time being, the country is at an early stage when it comes to combating domestic corruption and there is over-reliance on the limited size of the country (which is thought to prevent corruption); in this context, preventive measures need to be improved: for instance, the concept of bribery is broadly understood by reference to financial bribes only (thus excluding other forms of favours and gratuities) and the level of awareness of potential problems posed by conflict of interest situations is clearly too low. As regards criminal legislation, legal arrangements are available to trace, freeze and confiscate proceeds from corruption; however, information is not kept systematically on the application of confiscation and temporary measures for domestic offences, and the country thus lacks a useful tool to assess whether authorities adequately and sufficiently target the proceeds from crime. Important measures have been taken in 2009 to limit the power of the prosecutors' hierarchy to interrupt criminal proceedings, the

Prince retains the power to block and terminate, in principle, any investigation or prosecution even though he has not used this power over the last 10 years. Liechtenstein also lacks an impartial procedure for the appointment of judges. Therefore, measures are clearly needed to improve the situation of criminal justice bodies. Liechtenstein is a relatively important place for financial and legal services; measures were taken in June 2008 to increase the transparency and supervision of foundations, but specialists both from the public and private sector point out that companies and foundations are to a certain extent (still) used for criminal purposes. Further efforts are thus needed, including for instance the issuing of rules on professional disqualifications following a criminal conviction and the strengthening of the supervision of trustees and holders of a certificate under article 180a of the Law on Persons and Companies.

141. In the light of the foregoing, GRECO addresses the following recommendations to Liechtenstein:

i. **to enhance the active role of the Anti-Corruption Working Group i) by extending its composition so as to include agencies/organisations responsible for the prevention of corruption at the level of public administration and business in particular; and ii) by giving it the mandate to initiate further preventive measures as well as awareness-raising initiatives on the various dimensions of corruption in national and local administration, and in the private sector, involving as much as possible the general public and the media** (paragraph 17);

ii. **to review the powers of the Prince, as enshrined in article 12 of the Constitution and other pieces of legislation, to block or discontinue criminal investigations and proceedings** (paragraph 49);

iii. **to ensure that the selection of judges, including temporary ad hoc judges, is effected in an impartial manner** (paragraph 50);

iv. **to ensure, as planned, that information gathered through the relevant investigative tools provided in the Police Act can be used as evidence in court in the context of cases of bribery and trading in influence** (paragraph 52);

v. **to ensure that adequate access to information and evidence is granted for the investigation of the various corruption-related offences** (paragraph 53);

vi. **i) to introduce whistleblower policies that would encourage public sector employees to report suspicions of corruption directly to criminal law bodies, including the setting up of hotlines and protective measures against unjustified retaliation; ii) to provide for adequate possibilities to appeal a decision where a public official is not allowed by his supervisors to serve as a witness; and c) to introduce, as planned, measures for the protection of witnesses** (paragraph 55);

vii. **to consider i) providing that the valuation of "property benefits" must be based on the "gross" benefit; and ii) extending deprivation under article 20 paragraph 2 of the Criminal Code to proceeds from corruption-related offences committed repeatedly, whether they are felonies or misdemeanours** (paragraph 77);

viii. **to consider ensuring that the various private sector bribery offences are predicate offences of money laundering under article 165 of the Criminal Code** (paragraph 80);

ix. **to put in place appropriate tools to evaluate the effectiveness, in practice, of measures to target proceeds of corruption, corruption-related money laundering and other relevant serious offences, including at the domestic level** (paragraph 82);

x. **to clarify the scope of the State Personnel Act and the State Personnel Ordinance and to ensure that contractual personnel as well as other specific categories of public officials are subject to requirements concerning gifts, incompatibilities and other possible corruption preventive measures similar to those contained in these Acts** (paragraph 107);

xi. **to introduce appropriate screening procedures which would ensure that relevant positions in the public sector are filled by persons with a high degree of integrity** (paragraph 108);

xii. **to develop ethical rules and codes of conduct for public administrations at central and local level and to provide adequate training on the use of these rules, including the conduct to be adopted vis-a-vis the offering of gifts and other gratuities** (paragraph 109);

xiii. **i) to introduce an effective system for the management of conflicts of interest and secondary activities that would be applicable to all public officials at central and local level, including elected representatives; and ii) to introduce rules / guidelines for situations where public officials move to the private sector** (paragraph 110);

xiv. **to extend the applicability of the new regime of liability of legal persons under article 74a of the Criminal Code to all private sector bribery offences in their active form** (paragraph 132);

xv. **to introduce a measure in the Criminal Code which would enable the courts to prohibit a person found guilty of serious corruption offences from holding a leading position in a legal entity for a certain period of time** (paragraph 134);

xvi. **to extend the list of non-tax deductible expenditures to the broadest range of relevant corruption-related offences** (paragraph 135);

xvii. **to take appropriate measures to enhance the supervision of trustees and holders of certificates under article 180a of the Law on Persons and Companies (*Personen und Gesellschaftsrecht* - PGR)** (paragraph 137);

xviii. **to ensure adequate offences as well as effective and dissuasive sanctions are in place to deal with false information on customer identification, and to ensure these are known to everyone** (paragraph 138).

142. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Liechtenstein to present a report on the implementation of the above-mentioned recommendations by 30 April 2013 at the latest.

143. Finally, GRECO invites the authorities of Liechtenstein to authorise, as soon as possible, the publication of the report.