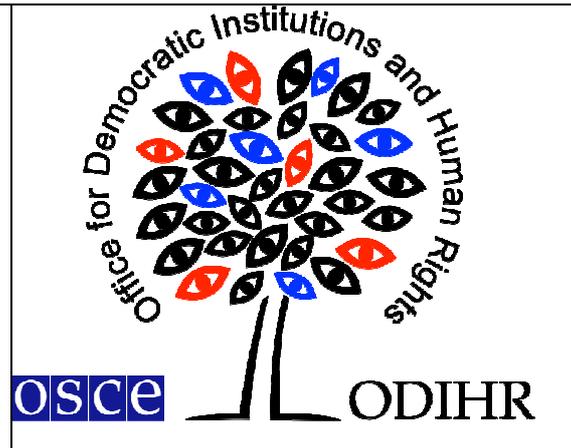


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OPINION

On the Law on the Bureau on Prevention and Combating of Corruption of Latvia

based on unofficial English translations of the Law

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I. INTRODUCTION

1. *On 6 August 2014, the Deputy Speaker of the Saeima (parliament) of Latvia sent a request to review the Law on the Bureau on Prevention and Combating of Corruption of Latvia to the Director of the OSCE/ODIHR.*
2. *By letter of 7 August 2014, the First Deputy Director of the OSCE/ODIHR confirmed the OSCE/ODIHR's readiness to review this Law for compliance with OSCE commitments and international standards.*
3. *This Opinion has been prepared in response to the above-mentioned request.*

II. SCOPE OF REVIEW

4. The scope of the Opinion covers only the *Law on the Bureau on Prevention and Combating of Corruption of Latvia* (hereinafter 'the Law'), and, in individual cases, related legislation. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the fight against corruption in the Republic of Latvia.
5. The Opinion raises key issues and provides indications of areas of concern. In the interests of conciseness, the Opinion focuses more on areas that require amendments or improvements rather than on the positive aspects of the Law. The ensuing recommendations are based on international anti-corruption standards, as well as on relevant OSCE commitments.
6. This Opinion is based on an official English translation of the Law; errors may nevertheless result.
7. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the Law or related legislation that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

8. At the outset, the OSCE/ODIHR notes that the Law generally complies with international anti-corruption standards. The Law creates a broad mandate for the Bureau in the areas of both investigation and prevention of corruption, and has provided the Bureau with a wide range of powers to be able to carry out its tasks on the basis of a generally sound institutional framework. Provisions on the Bureau's internal structure and on the protection of its staff from outside interference are also welcome, and overall help strengthen the role of the Bureau.
9. Some improvements may be considered, however. In particular, the nature of the supervisory role of the Cabinet should be clarified in the Law, to the effect that no outside body or actor should control or influence the Bureau. Consideration may be given to limiting the appointment of the Head of Bureau to a single term (if this is possible). The Bureau's accountability could be enhanced through the creation of one or more advisory committees, and in addition, the threshold for investigations should be specified, and the oversight

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mechanisms of the Bureau strengthened where it may interfere with Article 8 of the European Convention on Human Rights in the course of its investigations.

1. Key Recommendations:

- A. To clarify the nature of the supervisory role of the Cabinet, and to provide explicitly that the Bureau should not be under the direction or control of any other person or body [pars 17-20];
- B. To clarify whether the Head of the Bureau is eligible for re-appointment, and if so, to consider limiting the Heads' period of appointment to one term [par 23];
- C. To enhance the Bureau's accountability by creating one or more independent advisory committees [par 32];
- D. To require that in order to initiate a case, the Bureau must have a reasonable suspicion that it is related to corruption, and to introduce, or explicitly refer to, adequate oversight mechanisms in the Law where operational activities are undertaken which may interfere with Article 8 of the ECHR [par 34];

2. Additional Recommendations:

- E. To provide the Bureau with the power to freeze assets in cases of urgency, subject to timely and adequate judicial remedies [par 15];
- F. To amend the definition of corruption to also include corruption in the private sector [par 16];
- G. To reconsider whether those involved in the selection of the Head of the Bureau should be allowed to have others replace them in the process [par 22];
- H. To specify the procedure for the appointment of the Deputy Head of the Bureau [par 24];
- I. To clarify what is meant by the terms 'temporary incapacity' and 'not suitable for the position' in Section 5, subsection 6, and to specify the latter term [par 28];
- J. To enhance the independence, and ensure a sufficiently broad composition, of the Committee established in the dismissal procedure of the Head, and to clarify that the Cabinet should base itself on the recommendation of this Committee when making its recommendation for dismissal to the Saeima [pars 29-30];
- K. To include the principle of the proportionality of the use of force in the Law [par 33];

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- L. To clarify whether, and to what extent, there is a review mechanism for the Bureau's decisions not to pursue certain cases [par 35];
- M. To leave the lifting of immunity to the Saeima, for the Head of the Bureau, and for all other members of staff to the Head of the Bureau, and to extend immunity provisions to include civil and administrative liability as well [par 36];
- N. To require the Bureau to conduct at least an initial investigation into each case of corruption brought to it [pars 38-40];
- O. To institute a system of annual independent audits of the Bureau [par 41];
- P. To consider removing unnecessary limitations to the freedom of peaceful assembly of staff of the Bureau [par 42]
- Q. To consider requiring the Bureau to publish, on its website and in searchable format, reports on political party financing and its analyses thereof, as well as any sanctions imposed in the context of political party financing [par 44];
- R. To consider requiring all electoral contestants to provide reports on their campaign finances before election day, and to require the Bureau to publish those reports [par 45];
- S. To introduce more elaborate protection for whistleblowers into the Law [par 47];
- T. To enhance provisions on the protection of confidentiality of the data handled by the Bureau [par 48];
- U. To increase the independence of the procedure for deciding on the Bureau's budget [pars 49-50]
- V. To ensure that remuneration of officials of the Bureau is commensurate to the special supervisory and investigative nature of their work, and to appoint officials through open competition [par 51];
- W. To specify in more detail which bodies have which duties towards the Bureau regarding the operational activities specified in Section 8, subsection 2 [par 53];
- X. To introduce provisions on joint investigation teams and on the sharing of technical skills and expertise between the Bureau and other governmental agencies [par 54]; and
- Y. To specify more clearly in the Law the relationship between the Bureau and prosecutors [par 55].

IV. ANALYSIS AND RECOMMENDATIONS

1. International Anti-Corruption Standards

10. This Opinion analyses the Law from the viewpoint of its compatibility with international anti-corruption standards and OSCE commitments. Notably, the fight against corruption is an integral part of the commitments undertaken by OSCE participating States, as underlined most recently in the 2012 OSCE Ministerial Council's Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism.¹
11. International anti-corruption standards are found principally in the United Nations Convention against Corruption² as well as the Council of Europe's Criminal Convention on Corruption³, Civil Law Convention against Corruption⁴ and Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.⁵ Latvia recently also became the 41st party to the OECD's Anti Bribery Convention⁶ committing to the anti-corruption principles contained within the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
12. International standards are also contained in a number of soft-law standards, including the United Nations Declaration against Corruption and Bribery in International Commercial Transactions⁷, UN General Assembly Resolution 51/59 on Action against Corruption⁸, Council of Europe Committee of Ministers Recommendation (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption⁹ as well as Council of Europe Recommendation (2000)10E on Codes of Conduct for Public Officials.¹⁰ Standards specific to

¹ Available at <http://www.osce.org/cio/97968?download=true>

² United Nations Convention Against Corruption, adopted on 31 October 2003, ratified by Latvia on 4 January 2006 2009, available at

http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

³ Criminal Law Convention on Corruption, adopted on 27 January 1999, ratified by Latvia on 9 February 2001, available at

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=173&CM=8&DF=2/20/2008&CL=ENG>; see also the Additional Protocol to the Criminal Law Convention on Corruption, adopted on 15 May 2003, ratified by Latvia on 27 July 2006, available at <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=191&CM=8&DF=2/20/2008&CL=ENG>

⁴ Civil Law Convention Against Corruption, adopted on 4 November 1999, ratified by Latvia on 12 April 2005, available at

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=174&CM=8&DF=2/20/2008&CL=ENG>

⁵ Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, adopted on 8 November 1990, ratified by Latvia on 1 December 1998, available at

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=141&CM=8&DF=2/20/2008&CL=ENG>

⁶ Available at <http://www.oecd.org/corruption/ocedantibriberyconvention.htm>

⁷ A/RES/51/191, 86th plenary meeting 16 December 1996, available at <http://www.un.org/documents/ga/res/51/a51r191.htm>

⁸ A/RES/51/59, adopted on 12 December 1996, available at <http://www.un.org/documents/ga/res/51/a51r059.htm>

⁹ Council of Europe Committee of Minister Resolution (97) 24 of 6 November 1997, available at <https://wcd.coe.int/ViewDoc.jsp?id=593789>

¹⁰ Council of Europe Committee of Ministers Resolution (2000)10 E of 11 May 2000, available at <https://wcd.coe.int/ViewDoc.jsp?id=353945&Site=CM&BackColorInternet=9999CC&BackColorIntra>

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anti-corruption agencies or authorities can be found in the Jakarta Statement on Principles for Anti-Corruption Agencies¹¹ (hereinafter the ‘Jakarta Principles’) and the Anti-Corruption Authority Standards of the European Partners against Corruption (EPAC) (hereinafter the ‘EPAC Principles’), an independent network of anti-corruption authorities and police oversight bodies from Council of Europe Member Countries, which provides a forum for practitioners aiming to prevent and combat corruption.¹²

13. Moreover, the recommendations of the Council of Europe’s Group of States against Corruption (hereinafter ‘GRECO’), a body which monitors compliance of Member States with anti-corruption standards, are also of relevance here. In particular, GRECO’s compliance reports on Latvia, and its anti-corruption body, have been reviewed in the context of preparing this Opinion.¹³

2. Legal Framework and Mandate

14. The legal framework for national anti-corruption bodies should be designed to ensure that their existence, powers and independent functioning have a clear basis in national law.¹⁴ The Jakarta Principles specify that anti-corruption agencies “shall, in accordance with the basic legal principles of their countries, be established by a proper and stable legal framework, such as the Constitution or a special law to ensure continuity”.¹⁵ Anti-corruption bodies should also have clear mandates to tackle corruption through prevention, education, awareness raising, investigation and prosecution, either through one agency or multiple coordinated agencies.¹⁶
15. It is welcome that the current Law provides a clear and continuous legal basis for the Bureau to function on. Section 7 of the Law outlines the powers of the Bureau, which involve, among others, drawing up an anti-discrimination

[net=FFBB55&BackColorLogged=FFAC75](#); see also its Explanatory Memorandum, available at [https://wcd.coe.int/ViewDoc.jsp?Ref=ExpRec\(00\)10&Sector=CM&Lang=en](https://wcd.coe.int/ViewDoc.jsp?Ref=ExpRec(00)10&Sector=CM&Lang=en)

¹¹ Available at https://www.iaca.int/images/sub/activities/EPAC/Jakarta_Statement.pdf. These principles were developed at a conference organized in Jakarta, Indonesia on 26-27 November 2012 for this purpose, which was attended by current and former heads of anti-corruption agencies, anti-corruption practitioners and experts from around the world. The event was organized by the Corruption Eradication Commission of Indonesia, the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC).

¹² Available at http://www.epac.at/downloads/recommendations/doc_view/1-anti-corruption-authority-standards.

¹³ For such reports in general, please see

http://www.coe.int/t/dghl/monitoring/greco/documents/index_en.asp; for the most recent reports on Latvia, please see the Evaluation Report for the fourth evaluation round:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)3_Latvia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)3_Latvia_EN.pdf);

the Evaluation Report for the third evaluation round:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)1_Latvia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)1_Latvia_Two_EN.pdf);

the compliance report for the third evaluation round:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2010\)6_Latvia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2010)6_Latvia_EN.pdf);

and the addendum thereto:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2014\)3_Second_ADD_Latvia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2014)3_Second_ADD_Latvia_EN.pdf)

¹⁴ EPAC Principles, Principle 1 (‘the Rule of Law’).

¹⁵ Jakarta Principles, p. 2 (‘Permanence’).

¹⁶ Jakarta Principles, p. 2 (‘Mandate’).

strategy, coordinating other institutions involved in anti-corruption measures, reviewing complaints and submissions, and data compilation and analysis. One task that could be added here is the power to freeze assets where there is a reasonable suspicion that they are being held as a result of the commission of a crime, including the power to order immediate asset freezes in case of urgency. In both cases, decisions ordering the freezing of assets should be subject to adequate and timely judicial remedies. In order to enhance the Bureau's powers of investigation, it is recommended to introduce such additional powers to Section 7 of the Law.

16. Under Article 1, subsection 1 of the Law, corruption is defined as “bribery or any other action by a public official intended to gain an unmerited benefit for himself or herself or other persons through the use of his or her position, powers thereof exceeding them”. It is noted that this definition may be somewhat broad, as it does not include reference to corruption in the private sector. To reflect this, it is recommended to amend the definition so that it covers not only public officials, but also other persons.¹⁷

3. Independence

3.1 International Standards on Independence of Anti-Corruption Bodies

17. In accordance with Article 6 par 2 and Article 36 of the UN Convention against Corruption, Latvia is obliged to grant the body or bodies dealing with the prevention of corruption, as well as the body or bodies specialized in combating corruption through law enforcement [...] “the necessary independence, in accordance with the fundamental principles of its legal system”, to enable the body or bodies “to carry out its or their functions effectively and free from any undue influence.”¹⁸ This refers both to political independence –freedom from undue interference by political factions - as well as operational independence, which involves the ability to take decisions within one's sphere of competence without undue interference from other actors.¹⁹ Anti-corruption agencies should be free to take decisions without excessive external influence or reporting obligations²⁰ that would unduly limit their activities and independence.
18. It is noted here that the Bureau also monitors the implementation of key legislation on the financing of political parties, and of electoral campaigns, and may, in relation to this, also conduct investigations, handle complaints, impose administrative sanctions, and compile and analyze financial reports (see Sections 9 and 9¹ of the Law). In this respect, Article 14 of Council of Europe Recommendation 2003 (4) on the importance of independent monitoring of

¹⁷ The 2004 UN Handbook on Practical Corruption Measures for Prosecutors and Investigators notes that there is no comprehensive and universally accepted definition of corruption, but may provide relatively comprehensive guidance on various types of corruption (including by private individuals). It may be found under: <http://www.unodc.org/pdf/crime/corruption/Handbook.pdf>.

¹⁸ Cf. also Article 20 of the Council of Europe Criminal Law Convention on Corruption, and OSCE MC Decision 2/2012, Declaration on Strengthening Good Governance and Combating Corruption, Money-laundering and the Financing of Terrorism (hereinafter ‘OSCE MC Decision 2/2012’), par II: “those in charge of the prevention, identification, investigation, prosecution and adjudication of corruption offences should be free from improper influence”.

¹⁹ EPAC Principles, Principle 2 (independence).

²⁰ Ibid.

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funding of political parties and election campaigns is of particular relevance.

19. Another important aspect of ensuring independence is the appointment, suspension and dismissal procedure for the leadership of anti-corruption agencies. The Jakarta Principles specify that the head of an anti-corruption agency “shall be appointed through a process that ensures his or her apolitical stance, impartiality, neutrality, integrity and competence”.²¹ They also state that the heads of anti-corruption agencies “shall have security of tenure and shall be removed only through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice)”.²²
20. When looking at how these standards are reflected in the Law in general, it is noted that Section 2 of the Law provides that the Bureau is an institution of the State Administration under the supervision of the Cabinet. The Law does not, however, explicitly specify what such supervision implies. In particular, in order to ensure independence of the Bureau, it is essential that the Head of the Bureau is not under the direction or control of any other person or body. Any attempts to instruct the Head of the Bureau should be illegal. It is recommended to clarify the supervisory role of the Cabinet, while specifying that its supervision should not jeopardize the independence of the Bureau.

3.2 Appointment of the Head of the Bureau

21. The appointment process is a vital component to ensuring the necessary independence to anti-corruption agencies “to carry out [...] their functions effectively and free from any undue influence.”²³ The selection procedure in the Law has in the past been criticized by GRECO, which has called on the authorities to take measures to strengthen the independence of the Bureau, including as regards the procedure for appointing and dismissing its Head, to ensure that it can exercise its functions in an independent and impartial manner.²⁴
22. It is noted here that, under Section 4, subsection 1¹ of the Law, the appointment system currently foreseen is in the hands of the Cabinet of Ministers, which shall announce an open competition for this position, determine the application and selection conditions and procedures, and establish a commission for the evaluation of applicants. This commission shall be run by the Director of the State Chancellery, and shall be composed of the Chief Justice of the Supreme Court, the Prosecutor General, the Director of the Constitution Protection Bureau, and the Chief of the Security Police, or their authorized officials. Since it is their personal involvement which ensures the independence and legitimacy of the appointment, it is recommended to reconsider whether the officials

²¹ Jakarta Principles, p. 2, (‘Appointment’).

²² Jakarta Principles, p. 2 (‘Removal’).

²³ Cf. also Article 20 of the Council of Europe Criminal Law Convention on Corruption, and OSCE MC Decision 2/2012, Declaration on Strengthening Good Governance and Combating Corruption, Money-laundering and the Financing of Terrorism (hereinafter ‘OSCE MC Decision 2/2012’), par II: “those in charge of the prevention, identification, investigation, prosecution and adjudication of corruption offences should be free from improper influence”.

²⁴ GRECO 2012 Compliance Report in respect of Latvia, par. 22.

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involved in the appointment of the Head should be allowed to have others replace them in this process.

23. In addition, it is unclear whether the Head of the Bureau is eligible for re-appointment. Section 4, subsection 1 speaks of the Head being ‘appointed for five years’ but nothing in this provision appears to preclude further appointments. It is recommended to specify in Section 4 whether further appointments are possible or not. In this context, consideration may be given to limiting the appointment to one term, to preclude any possible outside influence on the independence and impartiality of the Head of the Bureau, given his/her important role in the Bureau.
24. According to Section 4, subsection 4, the Head of the Bureau shall be replaced by the Deputy Head in times of absence. Given the potentially important role played by the Deputy Head, it would be advisable to specify how he/she is appointed in the Law as well.

3.3 Dismissal of the Head of the Bureau

25. Based on Section 4, subsection 1 of the Law, the Head of the Bureau shall be dismissed by the Saeima upon recommendation of the Cabinet. While this provision does not go into greater detail in this regard, Section 5 regulating the appointment and dismissal procedures for officials of the Bureau would appear to be applicable here, given that under Section 5, subsection 1, the Head of the Bureau is also an ‘official’ of the Bureau. Section 5 subsection 6 then goes on to list the grounds for dismissal of Bureau officials.
26. Generally speaking, one can distinguish between the substantive grounds for dismissal of the Head of the Bureau and the procedures to be followed for such dismissal. In order to guarantee the independence of the Bureau, the number of substantive grounds should not be excessive, and the procedure for dismissal should contain sufficient safeguards against arbitrary dismissal. At the same time, when the Head of the Bureau is not performing his or her tasks properly (either through gross mismanagement, violations of the Law, or both) it should be possible to dismiss him or her, both in substantive and procedural terms.
27. Section 5, subsection 6 lists various grounds for the dismissal of officials, including voluntary dismissal, end of contract or of probationary period, appointment/election to other positions, joining a political party, retirement, temporary incapacity for more than 4 months, criminal conviction or dismissal as a disciplinary sanction, unsuitability for the position, or death.
28. In this context, it is noted that certain grounds for dismissal could benefit from clarification; for instance, in relation to temporary incapacity (item 8), it is presumed that this relates to medical incapacity. Should this be the case, then dismissal should only be possible following a medical attestation confirming such incapacity. Moreover, it is not clear what is meant exactly by the term ‘not suitable for the position’ (item 12), which seems more appropriate to an appointment than to a dismissal procedure. This term is overly broad in nature, and should be clarified, for example by stating that dismissal shall be possible in cases of “gross negligence” in fulfilling the tasks of the Head of the Bureau.
29. In the procedure for dismissal of the Head of the Bureau, Section 5, subsection

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7 states that in order to assess the need for dismissal in the cases mentioned under par 27 *supra*, as well as in cases where the Head has allegedly joined a political party or association of political parties (item 5), the Cabinet shall establish a committee. This committee shall be headed by the Prosecutor General, or a duly authorized prosecutor.

30. It is recalled here that in its 2012 report, GRECO called for improvements in the dismissal procedure of the Head of the Bureau.²⁵ In this context, a number of recommendations may be made. The Law does not appear to provide explicitly for a broad and independent composition of the Committee and merely mentions who heads it. In this context, it would be advisable to provide for the appointment of independent officials, such as members of the judiciary, to the Committee, and in addition, to consider appointing civil society representatives to it. In the interest of the transparency, and to enhance public confidence in the decisions of the Committee, it is also recommended to specify the composition of the Committee in the Law itself. The Law should make it clear that the Cabinet should base itself on the recommendation of the Committee, when, in turn, making its recommendation to the *Saeima* (this is not fully clear from section 4 par 1).

4. Accountability and Immunity

31. Both the Bureau and its staff should be accountable for their actions and decisions.²⁶ This means that appropriate mechanisms should be set up to monitor the proper governance of the Bureau.²⁷ This includes mechanisms to deal with allegations of misconduct of staff swiftly and adequately—both to exonerate those not guilty of violations of the law or other misconduct, and to ensure that those guilty of such conduct are adequately punished.²⁸ To ensure their ability to fulfil their tasks in what are often adverse political circumstances, the Jakarta Principles specify that the heads and employees of anti-corruption agencies should be protected from malicious civil and criminal proceedings and should have immunity from civil and criminal proceedings for acts committed within the performance of their mandate.²⁹ Anti-corruption bodies should also report regularly on their activities, for example through annual reports to parliament or governmental bodies.³⁰
32. There are a number of ways of ensuring the Bureau's accountability. There are a number of ways of ensuring the Bureau's accountability. These include its accountability to prosecutors and the courts, in the sense that the Bureau's officers are answerable for their conduct in carrying out investigations, as well

²⁵ GRECO 2012 Compliance Report in respect of Latvia, par. 22; it is noted in the 3rd Evaluation Report, GRECO pointed out that although certain measures to improve the recruitment procedures for the staff and eliminate political interference in the selection process of the Director were taken, GRECO regretted that other complementary measures had not been taken; see [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2014\)3_Second_ADD_Latvia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2014)3_Second_ADD_Latvia_EN.pdf)

²⁶ EPAC Principles, Principle 3 ('Accountability').

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Jakarta Principles, p. 2 ('Immunity').

³⁰ *Ibid.*

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as its accountability to the public through the media. There may also be an added value in creating a more institutionalized form of accountability through the creation of one or more advisory committees to the Bureau. Such committees could be composed of independent civil society representatives or other individuals with expertise in the anti-corruption area, and their members should be selected through a transparent procedure that would ensure their independence, integrity and competence; for example, they could be selected following the same procedure as that for the selection of the Head of the Bureau foreseen in Section 4. Consideration could be given to giving such committees the power to publish advisory, non-binding reports, based on access to information in the possession of the Bureau, including its case-files (and in this regard, subject to the requirement that they observe confidentiality where necessary). The committees would, on an advisory basis, review the Bureau's operations in the area of preventing corruption and its overall compliance with national legislation. This would provide a safeguard to ensure that the Bureau is conducting its tasks properly and could serve to increase the public's confidence in its operations. It is recommended to give consideration to appointing one or more such advisory committees (for example to each of the operational divisions of the Bureau); the appointments should be publicized officially.

33. The Bureau is given very significant powers by the Law, which is welcome and necessary in principle, in order to allow it to fulfill its tasks in an adequate manner. In this context, however, more could be done to protect members of the public against arbitrary actions of the Bureau in the performance of its mandate. First, the Law does not make any reference to the proportionality of the use of force, even though officials are permitted to carry and use fire arms, and otherwise use force according to the Law on Police (Section 10, par 1 (12)). It is recommended to specify in this provision that the use of force during investigations, and in particular the use of fire arms, shall only be permitted in exceptional circumstances, if all other attempts to resolve a situation peacefully have failed.
34. Second, and more generally, the Law does not appear to require reasonable suspicion as a basis for initiating an investigation (see Section 8). This could potentially lead to excessive and or arbitrary investigative actions by the Bureau. In particular, it is noted that the Bureau may, under Section 10, subsection 1(15), ask for personal documents of identification while conducting its investigations, and may also under Section 10, subsection 1 (4) "request and receive free of charge information, documents and other material from the State administration and local government institutions, companies (undertakings), organisations, officials and other persons, regardless of the secrecy regime thereof". Equally, Section subsection 1(9) of this provision states that upon presenting a service certificate of identity, the Bureau's officials may "freely visit State administration and local government institutions, as well as manufacturing premises, warehouses, trade and other commercial premises located in the territory of Latvia owned or used by legal or natural persons". It is recommended to introduce the requirement that in order to initiate an investigation under the Law, the Bureau must suspect that crimes which are brought to its attention are related to corruption. It is also recommended that adequate oversight mechanisms, such as court orders (*ex ante* or *ex post facto*) are introduced or referred to in the Law where operational activities, such as

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search and seizure, are undertaken which may constitute interferences with private life under Article 8 of the ECHR.

35. Another aspect which may reduce the accountability of the Bureau in the eye of the public is that it is unclear in the Law what happens if there is a decision by the Bureau that there is not enough evidence to pursue a complaint of corruption. In particular, it is not clear whether there is an internal, or external review mechanism (e.g. to a prosecutor) in this case, and whether victims have the possibility to initiate such review mechanisms, if they are not in agreement with the Bureau's decision on their complaint. It is recommended to articulate clearly in the Law what happens to a complaint of corruption once it is made, and to specify possible legal remedies against decisions to discontinue investigations. This would help provide for clarity and, as a result, accountability.
36. It is also noted here that the Law introduces some form of immunity from arbitrary prosecution and related actions for officials (see Section 12 on legal defence and guarantees of independence of bureau officials, in particular subsection 3). However, this immunity may be waived by the Prosecutor-General. This essentially means that the same body conducting (criminal) investigations against staff of the Bureau shall also decide on their immunity from liability, which reduces the effect of the immunity clause under Section 12. Given that the Head of the Bureau also decides on suspension from office of officials detained under Section 5, subsection 8, it may be preferable to leave the lifting of immunity up to him/her, in matters concerning his/her staff (unless they are caught in committing the act). In cases involving the Head of the Bureau him/herself, it may be preferable to leave the lifting of immunity to the Saeima, following a similar procedure as that for his/her dismissal under Section 5, subsection 7 (see pars 29-30 *supra*). At the same time, it may be advisable to enhance the immunity provisions under the Law to ensure that it protects staff (including the Head) of the Bureau from not only criminal prosecution, but also administrative and civil liability, for actions conducted in the execution of their duties.
37. Such additional immunity clauses should at the same time of course not limit the accountability of the Bureau itself to the courts with respect to the investigations that it conducts.

5. Integrity and Impartiality

38. As public servants, staff of anti-corruption agencies should discharge their duties in an honest and trustworthy manner.³¹ They should act independently of any partisanship.³² Decisions should be taken based on the merits and circumstances of the particular case without undue influence or prejudice.³³ Adequate systems should also be in place to ensure the integrity and impartiality of anti-corruption agencies and their staff.³⁴ This includes appropriate and

³¹ EPAC Principles, Principle 4 ('Integrity and Impartiality').

³² *Ibid.*

³³ *Ibid.*

³⁴ Jakarta Principles, p. 3 ('Internal Accountability').

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effective disciplinary measures³⁵ and auditing procedures³⁶ as well as training on integrity issues. These principles may also be further elaborated in codes of conduct for staff and/or mission statements for the body in question.³⁷

39. The most crucial factor affecting an anti-corruption agency's effectiveness is the impartiality of its investigating policy, which should be that the body investigates every corruption allegation that is brought to it. There are a number of reasons for this. First, what seems like a minor matter can turn out to be a more serious case. Second, citizens will feel that an allegation which is important to them is being taken seriously, which makes it more likely they will return to the body with other allegations. Third, picking and choosing cases gives the impression of improper influence or even corruption having affected the decision in the investigating unit. Fourth, ignoring certain complaints may also lead to the impression that some corruption is tolerated, i.e. that double standards apply. Fifth and finally, because widespread small-scale corruption can do serious damage to the well-being of the country: a single small act of corruption can have disastrous results.
40. If a policy is instituted which makes it mandatory for the Bureau to investigate every case brought to it, then this would ensure that the investigating arm of the Bureau is demand-driven and that the Bureau is seen to be responsive to the complaints that the public wishes to make. This impression could be further strengthened by ensuring that investigations are not initiated by the Bureau itself (which could imply lack of impartiality in certain cases), but that it instead waits for, and acts promptly on any complaint made to it. It is thus recommended to specify in the Law that the Bureau should initially act on all complaints made to it, and shall only then, after an initial investigation, determine whether or not a complaint has merit.
41. Additionally, the Law does not appear to foresee any external audits of the Bureau. External auditing can be an important tool to ensure the integrity of the Bureau and to increase public confidence in its functioning. It is recommended to introduce into the Law a system of annual independent audits of the Bureau's accounts, to be delivered to the Cabinet concurrently with the annual report.
42. In relation to the staff itself, it is noted that under Section 13 on restrictions regarding officials of the Bureau, subsection 2 prohibits not only participation in the activities of political parties and associations thereof, but also the organization and participation in strikes, demonstrations, or pickets. In this context, it is noted that the right to freedom of peaceful assembly is granted to everyone, and should not be unduly limited; while officials should no doubt be seen as impartial when performing their tasks, the Law should not prohibit them from exercising this right in their personal capacity. It is thus recommended to reconsider, and qualify this provision accordingly.

6. Accessibility

³⁵ CoE Committee of Ministers Recommendation (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption, Principle 10.

³⁶ *Ibid.*, Principle 11.

³⁷ Jakarta Principles, p. 2 ('Ethical Conduct'); EPAC Principles, Principle 4 ('Integrity and Impartiality').

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43. The principle of accessibility means that the public should be able to report instances of corruption to the Bureau easily and, if necessary, anonymously.³⁸ Anti-corruption agencies should also be open to engagement with victims, complainants and witnesses of corruption, as well as with civil society and academia.³⁹ States are required to take appropriate measures to ensure that their independent anti-corruption body or bodies are known to the public and to enable public access to them.⁴⁰
44. Section 9, subsection 9 of the Law specifies that the Bureau is to inform the public of any violations of financing regulations by political parties and associations, as well as of measures taken to prevent these. Although the Law makes a general reference to the Bureau's task to 'educate the public' in the area of financing of political parties, it does not specify how or when the Bureau is to inform the public of the content of the financial reports of political parties, or its analysis thereof. Publication of 'violations' appears to be foreseen in Section 9, subsection 9, but the public has the right to be informed not just of violations of the Law, but also about the sources and amounts of funding received by political parties and how political parties have spent these resources. Article 7(3) of the United Nations Convention against Corruption obliges signatory states to make good-faith efforts to improve transparency in election-candidate and political party financing. It is recommended to consider introducing provisions stating that the Bureau shall publish, within a reasonable deadline, reports on political party financing, as well as its analysis of such reports. Further, to ensure public accountability, both the reports and their analysis should be published on the Bureau's website in a standardized and searchable format. Any sanctions imposed in this context should likewise be made public.
45. Similarly, when it comes to election campaigns, Section 9¹ of the Law merely specifies that the Bureau shall control the fulfillment of the restrictions for the pre-election campaign (subsection 1) and inform society of detected violations (subsection 6). There is no obligation for interim reporting as such prior to elections, but all electoral contestants are due to disclose to the Bureau their contributions and expenses incurred throughout the election campaign 30 days after elections. As a transparency mechanism, the Law on Financing Political Organizations obliges the Bureau to publish on its website information on income and expenses incurred by each electoral contestant during the campaign. In this context, in order to improve transparency and accountability of the process, consideration could be given to requiring all electoral contestants to provide reports on their campaign income and expenses before election day, following a standardized template and within an acceptable time limit; such reports should likewise be made public in a timely manner.

³⁸ EPAC Principles, Principle 5 ('Accessibility').

³⁹ *Ibid.*; Jakarta Principles, p. 3 ('Public Communication and Engagement'). Cf. also OSCE MC Decision 2/2012, par III: "[w]e recognize that it is important to include the private sector in efforts to counter corruption and enhance good governance and to engage it in favour of a fair and transparent business environment."

⁴⁰ United Nations Office on Drugs and Crime (UNODC), Legislative guide for the implementation of the United Nations Convention against Corruption (2nd revised edition 2012), available at https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf, par 64.

7. Transparency and Confidentiality

46. As the EPAC Principles specify, anti-corruption authorities “should operate transparently in order to ensure public confidence in [their] independence, fairness and effectiveness. Transparency should only be subject to limitations or restrictions which are necessary in a democratic society.”⁴¹ However, a careful balancing act needs to be achieved by anti-corruption agencies to ensure, on the one hand, that they operate in a fully transparent manner, and on the other hand, that they protect the confidentiality of sources, tactics and methodology.⁴² The UN Anti-Corruption Convention requires special measures to be taken for the protection of witnesses, experts and victims (Article 32) and the consideration of appropriate measures to protect persons reporting corruption cases (Article 33).⁴³ Reference is also made here to the “G20 Compendium of Best Practices and Guiding Principles for Legislation on the Protection of Whistleblowers”.⁴⁴ The Compendium underlines that “anonymity can provide a strong incentive for a whistleblower to come forward”. The Law does not contain any provision on the protection of witnesses and informants, which could involve, for example, protection from dismissal or other retaliatory measures. In this context, section 18 of the Council of Europe’s Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistleblowers⁴⁵ should be noted, which provides that whistleblowers should be entitled to have the confidentiality of their identity maintained, subject to fair trial guarantees.
47. It is thus recommended to introduce more elaborate protection mechanisms for witnesses and informants into the Law. This could be done by adding provisions aimed at punishing any person who intimidates, retaliates or discriminates against any witness in corruption proceedings or any person who assists or takes steps to assist the Bureau in its investigate functions. Similar sanctions could be introduced for persons who, without lawful authorization or otherwise reasonable excuse, disclose information on ongoing anti-corruption investigations, either to the suspect, or potential suspect, or reveal his/her identity to others. Consideration may also be given to sanctioning actions where individuals prevent others from testifying or otherwise assisting the Bureau, or for cases of knowingly false reporting or otherwise misleading the Bureau during an investigation or related procedures.
48. Also in relation to confidentiality, it is noted that Section 4, subsection 3 (12) and Section 10, subsection 1 (7) talk about the obtaining, receipt, registration, processing, compilation, analysis and storing of information necessary for performing the functions of the Bureau, based on procedures determined by the Head of Bureau. Consideration may be given to stressing, either in these provisions, or elsewhere, the need for maintaining confidentiality of such data, in particular as regards its processing and storage. The failure to process and

⁴¹ EPAC Principles, Principle 6 (‘Transparency and Confidentiality’).

⁴² Ibid.

⁴³ On the issue of whistleblower protection, see Transparency International, *Whistleblower Protection and the UN Convention Against Corruption*, available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/ti_report/_ti_report_en.pdf

⁴⁴ Available at, www.oecd.org/g20/topics/anti-corruption/48972967.pdf.

⁴⁵ Available at <https://wcd.coe.int/ViewDoc.jsp?id=2188855&Site=CM>.

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store such information properly, in a way that guarantees its confidentiality, should also lead to liability under Section 25 of the Law, which already foresees disciplinary liability for the disclosure of state secret or restricted access information.

8. Adequacy of Resources, Staffing and Training

49. The UN Convention against Corruption provides that appropriate training should be provided to staff of both preventive and law enforcement bodies dealing with corruption.⁴⁶ Anti-corruption agencies should be able to attract and retain highly skilled and qualified staff of high integrity.⁴⁷ Recruitment should be based on objective criteria such as merit, equity and aptitude.⁴⁸ Credible specialist training incorporating strategic and academic analysis as well as practical skills and experience is crucial to provide and maintain the necessary level of qualification.⁴⁹ Mechanisms should be provided with regard to reasonable terms of office, protection against undue dismissal and undue displacement as well as subsequent career development.⁵⁰ The UN Convention against Corruption also provides that both preventive and law enforcement bodies dealing with corruption should be provided with adequate resources.⁵¹ This includes financial, human, material and technical resources.⁵² Also, such bodies should receive their budgets in a timely and reliable manner.⁵³ Since they fulfill a public function, funding should come primarily from public sources.⁵⁴
50. As has been noted by GRECO in the past⁵⁵, more needs to be done to increase the independence of the procedure deciding on the Bureau's budget. Section 4 subsection 3 (15) currently states that the Head of the Bureau shall draft and submit to the Cabinet a project for requesting necessary funding from the State budget. As mentioned earlier in par 32 *supra*, it may be useful to introduce an advisory committee (or committees) composed of civil society members and independent individuals with expertise in the anti-corruption area, which would advise the Bureau on a range of issues. The endorsement of the Bureau's budgetary estimates by that advisory committee could be seen as a somewhat independent endorsement. Consideration may also be given to the possibility of having the Head of the Bureau submit the Bureau's budget directly to the Saeima, or to use a budgetary procedure similar to the one used for the judiciary (which is consulted during discussions on its budget before the Committee of Ministers, may defend its budget and has its opinion on the budget forwarded to the Saeima after that).

⁴⁶ UN Convention Against Corruption, Article 6 par 2 and Article 36.

⁴⁷ EPAC Principles, Principle 8 ('Recruitment, Career and Training'); Jakarta Principles, p. 2 ('Remuneration').

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ UN Convention Against Corruption, Article 6 par 2 and Article 36.

⁵² EPAC Principles, Principle 7 ('Resources'); Jakarta Principles, p. 3 ('Adequate and Reliable Resources').

⁵³ *Ibid.*; Jakarta Principles, p. 3 ('Adequate and Reliable Resources').

⁵⁴ EPAC Principles, Principle 7 ('Resources').

⁵⁵ GRECO 2012 Compliance Report in respect of Latvia, par. 22.

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51. Regarding the recruitment of staff, open competitions may be a useful tool in ensuring the independence of human resources policy. It is recommended to prescribe this type of open competitions in the Law for staff recruitment, as a general rule (while noting that there may need to be exceptions in some cases, e.g. where temporary staff fill in for short periods). Moreover, officials of the Bureau should receive remuneration to a degree that takes into consideration the special supervisory and investigative nature of their work.

9. National and International Co-operation

52. Since the success of anti-corruption agencies largely depends on the degree and quality of their co-operation with other stakeholders, they should cooperate with the latter in a cross-sector, interagency, interdisciplinary and transnational manner.⁵⁶ Through such cooperation, anti-corruption agencies can obtain quality information and data; access operational support and joint investigative activities; and gather intelligence and evidence related to corruption offences including, where appropriate, the identification and recovery of the proceeds of corruption.⁵⁷ Co-operation should facilitate the exchange of best practice, standards, experiences and lessons learned.⁵⁸ It also represents a safety net and a mutual support network for the anti-corruption agency in the face of difficulties.⁵⁹
53. Although Section 8, subsection 2 mentions the “duty of persons performing operational activities specified by the law” for the Bureau, it may be worth specifying more clearly which bodies have such duties, and what these duties would entail.
54. In addition, it is recommended to consider introducing provisions on the secondment of staff from other investigative agencies, and on the creation of joint investigating teams. Such joint investigative teams (JITs) are a relatively new tool in the armoury of modern and internationally thinking law enforcement agencies; the JITs’ structure can add value to investigations, and help develop international cooperation in criminal matters in general. In addition, it is also recommended to consider introducing specific provisions on the sharing of relevant skills and technical capacities (e.g. on forensic investigations) between the Bureau and other government agencies such as the police.
55. Finally, it is noted that cooperation with prosecutors is not mentioned in any great detail in the Law. Although the Bureau, as an investigative agency, does not have the power to prosecute cases of corruption before the courts itself, it is recommended to provide more information in the Law as to how the Bureau shall cooperate with prosecutorial bodies, for example by specifying how and when investigations are handed over to prosecutors and what are the thresholds for doing so; this relationship could be outlined in a separate section of the Law.

[END OF TEXT]

⁵⁶ EPAC Principles, Principle 9 (‘Cooperation’).

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

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Annex1:

Text consolidated by Valsts valodas centrs (State Language Centre) with amending laws of:

- 27 December 2002 [shall come into force from 29 December 2002];
- 6 March 2003 [shall come into force from 1 April 2003];
- 12 June 2003 [shall come into force from 28 June 2003];
- 16 December 2004 [shall come into force from 25 December 2004];
- 27 January 2005 [shall come into force from 1 March 2005];
- 16 June 2005 [shall come into force from 1 October 2005];
- 26 October 2006 [shall come into force from 23 November 2006];
- 14 November 2008 [shall come into force from 8 December 2008];
- 12 December 2008 [shall come into force from 1 January 2008];
- 11 June 2009 [shall come into force from 14 July 2009];
- 1 December 2009 [shall come into force from 1 January 2010];
- 13 October 2011 [shall come into force from 27 October 2011].

If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

*The Saeima⁶⁰ has adopted
and the President has proclaimed the following Law:*

Law On Corruption Prevention and Combating Bureau Chapter I General Provisions

Section 1. Concept of Corruption and Purpose of this Law

(1) Within the meaning of this Law, corruption is bribery or any other action by a public official intended to gain an unmerited benefit for himself or herself or other persons through the use of his or her position, powers thereof or by exceeding them.

(2) The purpose of this Law is to prescribe the legal status and functioning of the Corruption Prevention and Combating Bureau (hereafter – Bureau) in order to pursue corruption prevention and combating with a complex approach, as well as to control fulfilment of the financing provisions of political organisations (parties) and associations thereof.

Section 2. Status of the Bureau

(1) The Bureau is an institution of the State Administration under the supervision of the Cabinet, which performs the functions determined in this Law in corruption prevention and combating, as well as in controlling fulfilment of financing provisions of political organisations (parties) and associations thereof.

(2) The Bureau has an account at the Treasury, its own seal bearing the image of the small enhanced coat-of-arms of Latvia and the full name of the Bureau.

(3) The Bureau is a body performing investigative field work.

[6 March 2003]

⁶⁰ The Parliament of the Republic of Latvia Translation © 2012 Valsts valodas centrs (State Language Centre)

Chapter II Structure, Officials and Staff of the Bureau

Section 3. The Structure and Board of the Bureau

(1) The Bureau is made up of the central headquarters and territorial branches; these branches do not have the status of a legal person. The structure of the Bureau is governed by the rules of procedure of the Bureau.

(2) The Head of the Bureau, his or her deputies and Heads of Departments of the central headquarters are included in the composition of the Board. The activities of the Board of the Bureau have a consultative nature. The tasks of the Board of the Bureau shall be the following:

- 1) review priorities of the Bureau's activities;
- 2) review the draft budget of the Bureau;
- 3) review the draft co-operation agreements between the Bureau and the relevant foreign counterparts;
- 4) review other issues related to the fulfilment of functions of the Bureau if so requested by the Head of the Bureau or any member of the Board of the Bureau.

(3) The meetings of the Board of the Bureau shall be convened upon recommendation of the Head of the Bureau or a member of the Board of the Bureau. The Board shall accept recommendations by a majority of votes of all the members of the Board.

[27 January 2005]

Section 4. Head of the Bureau

(1) The Bureau is managed by the Head of the Bureau. The Head of the Bureau is appointed for a term of five years and may be dismissed by the *Saeima* upon the recommendation of the Cabinet.

(1) The Cabinet shall announce an open competition for the position of the Head of the Bureau. The Cabinet shall determine the conditions and procedures, by which applicants for the position of the Head of the Bureau shall apply, as well as the procedures for the selection and evaluation of the applicants. The Cabinet shall establish a commission for the evaluation of applicants for the position of the Head of the Bureau, and such commission shall be managed by the Director of the State Chancellery and the composition thereof shall include the Chief Justice of the Supreme Court, the Prosecutor General, the Director of the Constitution Protection Bureau, the Chief of the Security Police or their authorised officials.

(2) A person who complies with the following mandatory requirements may be nominated for the position of the Head of the Bureau:

- 1) is a citizen of Latvia with an impeccable reputation;
- 2) is fluent in Latvian and at least two foreign languages;
- 3) has obtained a higher vocational education or academic education (except first level vocational education) and the qualification of lawyer and accumulated the work experience appropriate for the position, from which at least three years of experience in a managing position in the State administration or in the field of protection of the rights;
- 4) has not reached the retirement age specified in the Law;
- 5) has not been punished for a criminal offence (regardless of the criminal record having been set aside or extinguished);
- 6) has not been convicted for a criminal offence, releasing from a punishment;
- 7) has not been held criminally liable except for the case when a person has been held criminally liable but the criminal proceedings had been terminated on a vindicatory basis;
- 8) is not and has not been a staff employee or a freelance employee of the Ministry of Defence of the USSR or State Security Committee of the USSR or Latvian SSR or the state security service, intelligence or counterintelligence service of the states other than

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the Member States of the European Union or North Atlantic Treaty Organisation, or an agent, resident or safe-house keeper;

9) is not and has not been a member of an organization prohibited by law or by court adjudication; and

10) complies with the requirements of this Law to receive the special permission for access to a State secret.

(3) The Head of the Bureau shall:

1) manage operation of the Bureau;

2) approve the work schedule of the Bureau for fulfilment of the functions provided for in this Law and be responsible for the performance of the functions specified for the Bureau;

3) convene and chair meetings of the Board of the Bureau;

4) be the treasurer of financial resources of the Bureau and be responsible for the use thereof;

5) approve the list of employees (the staff list) of the central headquarters and territorial branches of the Bureau in accordance with the available funding and determine remuneration thereof in accordance with regulatory enactments;

6) determine the duties, rights and tasks of the officials and staff of the central headquarters of the Bureau, as well as the duties, rights and tasks of the Heads of the territorial branches;

7) review complaints received from natural and legal persons regarding the actions of the officials or employees of the Bureau;

8) award officials and employees of the Bureau, as well as impose disciplinary punishment;

9) in accordance with the competence thereof, enter into co-operation agreements with the relevant foreign services;

10) approve internal regulatory enactments governing the activities of the Bureau;

11) carry out appropriate administrative, technical and organisational measures in order to ensure the confidentiality of information, prevent unauthorised access to information and unauthorised change, dissemination or destruction thereof;

12) determine the procedures for registration, processing, storage and destruction of information received by the Bureau;

13) without special authorisation, represent the Bureau, issue direct orders to officials and employees of central headquarters of the Bureau and Heads of the territorial branches;

14) report to the Cabinet and Saeima regarding activities of the Bureau not less than once every six months;

15) draft and submit to the Cabinet a project for requesting necessary funding from the State budget; and

16) decide on the issues related to the jurisdiction of adjudication of a matter and the taking of decisions.

(4) In the absence of the Head of the Bureau his or her duties shall be performed by the Deputy Head of the Bureau.

[12 June 2003; 27 January 2005; 16 June 2005; 13 October 2011]

Section 5. Appointing and Dismissal of Bureau Officials

(1) Officials of the Bureau, who ensure fulfilment of the functions of the Bureau and are responsible thereof, are the Head of the Bureau, his or her deputies, Heads of Departments of the central headquarters and the Heads of territorial branches, investigators and experts.

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(2) The employment legal relations of Bureau officials shall be subject to the regulatory enactments governing employment legal relations insofar as this Law does not provide otherwise.

(3) A person can be a Bureau official if he or she complies with the following mandatory requirements:

- 1) is a citizen of Latvia;
- 2) is fluent in Latvian and at least one foreign language;
- 3) has acquired higher education and accumulated the work experience appropriate for the position;
- 4) has not reached the retirement age specified in the Law;
- 5) has not been punished for a criminal offence (regardless of the criminal record having been set aside or extinguished);
- 6) has not been convicted for a criminal offence, releasing from a punishment;
- 7) has not been held criminally liable except for the case when a person has been held criminally liable but the criminal proceedings had been terminated on a vindictory basis;
- 8) is not and has not been a staff employee or a freelance employee of the Ministry of Defence of the USSR or State Security Committee of the USSR or Latvian SSR or the state security service, intelligence or counterintelligence service of the states other than the Member States of the European Union or North Atlantic Treaty Organisation, or an agent, resident or safe-house keeper;
- 9) is not and has not been a member of an organization prohibited by law or by court adjudication;
- 10) complies with the requirements of this Law to receive the special permission for access to a State secret.

(4) Officials of the central headquarters and Heads of the territorial branches of the Bureau shall be appointed and dismissed by the Head of the Bureau.

(5) Officials of the territorial branches of the Bureau shall be appointed and dismissed by the Head of the Bureau upon the recommendation of the Head of the relevant territorial branch.

(6) Officials of the Bureau may be dismissed in the following cases:

- 1) on their own will;
- 2) due to failure to pass probation;
- 3) due to termination of a labour contract;
- 4) a person is appointed or elected to another position;
- 5) a person has joined a political organisation (party) or an association of political organisations (parties);
- 6) the retirement age specified by law has been reached, except in the cases where a reasoned decision has been taken regarding leaving a respective official of the Bureau in his or her position;
- 7) due to a liquidation of the Bureau or a position or due to reduction in the number of officials of the Bureau;
- 8) if a person has not been able to fulfil its duties due to a temporary incapacity for more than four consecutive months;
- 9) due to the coming into effect of a judgment of conviction;
- 10) if a dismissal is applied as a disciplinary sanction;
- 11) due to conscription into mandatory military service;
- 12) a person is unsuitable for the position; or
- 13) due to a person's death.

(7) In order to assess the reasons referred to in Paragraph six, Clauses 5, 8 and 12 of this Section for dismissal of the Head of the Bureau, a committee shall be established in accordance with the procedures specified by the Cabinet, which is headed by the Prosecutor General or a chief prosecutor duly authorised by him or her.

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(8) If detention is applied as a detention order or criminal prosecution has been initiated against a Bureau official, the Head of the Bureau (in the case of the Head of the Bureau, the Prosecutor General) shall suspend him or her from performing of his or her duties of office and stop disbursement of salary from the date of suspension onward.

(9) If a Bureau official so suspended is found guilty by a court in committing a criminal offence, salary for the period of suspension shall not be paid and the official shall be considered dismissed as of the date of suspension. If the Bureau official is acquitted, his or her salary shall be disbursed for the period of time of the suspension, unless the release has another reason specified in this Law.

[6 March 2003; 27 January 2005; 16 June 2005]

Section 6. Hiring and Dismissal of Bureau Employees

(1) The employment legal relations of Bureau employees shall be subject to the regulatory enactments governing employment legal relations insofar as this Law does not provide otherwise.

(2) A person can be a Bureau employee if he or she complies with the following mandatory requirements:

- 1) is a citizen of Latvia;
- 2) is fluent in Latvian;
- 3) has acquired at least a secondary education and accumulated the work experience appropriate for the position;
- 4) has not reached the retirement age specified in the Law;
- 5) has not been punished for criminal offence (regardless of the criminal record having been set aside or extinguished);
- 6) has not been convicted for a criminal offence, releasing from a punishment;
- 7) has not been held criminally liable except for the case when a person has been held criminally liable but the criminal proceedings had been terminated on a vindictory basis;
- 8) is not and has not been a staff employee or a freelance employee of the Ministry of Defence of the USSR or State Security Committee of the USSR or Latvian SSR or the state security service, intelligence or counterintelligence service of the states other than the Member States of the European Union or North Atlantic Treaty Organisation, or an agent, resident or safe-house keeper;
- 9) is not and has not been a member of an organization prohibited by law or by court adjudication;
- 10) complies with the requirements of this Law to receive the special permission for access to a State secret.

(3) Employees of the central headquarters of the Bureau are hired and dismissed by the Head of the Bureau.

(4) Employees of the territorial branches of the Bureau shall be hired and dismissed by the Head of the Bureau upon the recommendation of the Head of the relevant territorial branch.

(5) Bureau employees may be dismissed in the following cases:

- 1) on their own will;
- 2) due to failure to pass probation;
- 3) due to termination of a labour contract;
- 4) a person is appointed or elected to another position;
- 5) a person has joined a political organisation (party) or an association of political organisations (parties);
- 6) the retirement age specified by law has been reached, except in the cases where a reasoned order by the Head of the Bureau has been taken regarding leaving a respective employee of the Bureau in his or her position;

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- 7) due to liquidation of the Bureau or a position or due to a reduction in the number of employees of the Bureau;
- 8) if a person has not been able to fulfil his or her duties due to a temporary incapacity for more than four consecutive months;
- 9) due to the coming into effect of a judgment of conviction;
- 10) if a dismissal is applied as a disciplinary sanction;
- 11) due to conscription into mandatory military service;
- 12) a person is unsuitable for the position; or
- 13) due to a person's death.

[27 January 2005; 16 June 2005]

Section 6.1 Evaluation of the Activities of an Official and Employee of the Bureau and Results Thereof

(1) The Evaluation committee established by the Head of the Bureau shall evaluate the activities of an official and employee of the Bureau and results thereof not less than every other year.

(2) The procedures for evaluation of the activities of an official and employee of the Bureau and results thereof, as well as the Evaluation committee's establishment shall be determined by the Head of the Bureau.

(3) Evaluation of the activities of an official and employee of the Bureau and results thereof may be used as a basis for the decision regarding unsuitability for the position of the Bureau official and employee, regarding transfer to another position, as well as the basis for the determination of a salary.

[27 January 2005]

Chapter III

Competence of the Bureau

Section 7. Functions of the Bureau to Prevent Corruption

(1) In order to prevent corruption, the Bureau shall perform the following functions:

- 1) develop a corruption prevention and combating strategy and draw up a national programme, which is approved by the Cabinet;
- 2) co-ordinate co-operation among the institutions referred to in the national programme in order to ensure implementation of the programme;
- 3) control implementation of the Law On Prevention of Conflict of Interest in Actions of Public Officials, as well as observance of additional limitations specified for public officials in other regulatory enactments;
- 4) prepare and co-ordinate projects of financial assistance by foreign countries and international authorities;
- 5) review complaints and submissions in accordance with the competence thereof, as well as carry out inspections proposed by the President of Latvia, the *Saeima*, the Cabinet and the Prosecutor General;
- 6) compile and analyse the information regarding carried out inspections, declarations submitted by public officials, any violations detected in the submission thereof and failure to observe the restrictions provided by law;
- 7) analyse the practice of State authorities in preventing corruption and the resolved cases of corruption, submit recommendations to the relevant Ministry and the State Chancellery for the rectification of discrepancies found;
- 8) develop a methodology for corruption prevention and combating in the State and local government institutions and in the private sector;

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- 9) compile and analyse the experience of other countries in corruption prevention and combating;
 - 10) analyse regulatory enactments and draft regulatory enactments, as well as propose to make amendments therein, submit recommendations for drafting new regulatory enactments;
 - 11) carry out public opinion surveys and analysis;
 - 12) educate the public in the area of the law and ethics;
 - 13) inform the public regarding corruption development tendencies and cases of corruption resolved, as well as the measures taken in corruption prevention and combating;
 - 14) develop and introduce a public relations strategy;
 - 15) in accordance with the competence thereof evaluate the content and results of inspections performed by other institutions; and
 - 16) examine the declarations of public officials within the scope specified by the Law On Prevention of Conflict of Interest in Actions of Public Officials.
- (2) Provide information and recommendations regarding corruption prevention issues upon the request of the Crime and Corruption Prevention Council.
- [6 March 2003; 14 November 2008]*

Section 8. Functions of the Bureau in Combating Corruption

- (1) In order to combat corruption, the Bureau shall perform the following functions:
- 1) hold public officials administratively liable and apply sanctions for administrative violations in the field of corruption prevention in the cases provided by the law;
 - 2) carry out investigative and operational actions to discover criminal offences provided in the Criminal Law in the service of State authorities, if they are related to corruption.
- (2) Other persons performing operational activities specified by the law have a duty, upon the request of the Bureau, to provide performance of measures of operational activities in a particular manner necessary for fulfilment of the functions of the Bureau.
- [16 June 2005]*

Section 9. Functions of the Bureau in Controlling Fulfilment of Financing Regulations by Political Organisations (Parties) and Associations Thereof

- The Bureau in controlling the fulfilment of financing regulations by political organisations (parties) and associations thereof shall perform the following functions:
- 1) control the fulfilment of the Law On Financing of Political Organisations (Parties);
 - 2) in cases provided by the law, charge persons at fault with administrative liability and impose appropriate sanctions;
 - 3) perform investigation and operational activities in order to discover criminal offences as provided in the Criminal Law, if they are linked to violations of financing regulations of political organisations (parties) and associations thereof and if, in accordance with the Law, such violations are not under the jurisdiction of national security authorities;
 - 4) review complaints and submissions in accordance with the competence thereof, as well as carry out inspections proposed by the President of Latvia, the *Saeima*, the Cabinet and the Prosecutor General;
 - 5) compile and analyse the prepared information regarding declarations of financial activities submitted by political organisations (parties) and associations thereof, any violations determined in the submission thereof and failure to observe the restrictions provided by the law;

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- 6) analyse regulatory enactments and draft regulatory enactments, as well as propose to make amendments therein, submit recommendations for drafting new regulatory enactments;
- 7) carry out public opinion surveys and analysis;
- 8) educate the public in the field of financing of political organisations (parties) and associations thereof; and
- 9) inform the public of any violations of financing regulations of political organisations (parties) and associations thereof, as well as of measures taken in prevention thereof.

[16 June 2005]

Section 9.1 Functions of the Bureau in Controlling a Pre-election Campaign

Before the *Saeima* elections, elections to the European Parliament and local government elections, the Bureau, in controlling the fulfilment of the restrictions for a pre-election campaign, shall perform the following functions:

- 1) in accordance with the competence specified in laws on pre-election campaign, control the conformity with the restrictions for the pre-election campaign;
- 2) draw up protocols on administrative violations committed by persons not related to political organisations and associations thereof;
- 3) in accordance with the competence thereof examine submissions;
- 4) compile and analyse information regarding the violations detected;
- 5) inform the society regarding the rules of the pre-election campaign to be complied with by persons not related to political organisations and associations thereof;
- 6) inform the society regarding the detected violations of the pre-election campaign, as well as regarding measures taken for elimination thereof.

[11 June 2009]

Section 10. Rights of Officials of the Bureau

(1) A Bureau official has the right, within the competence thereof:

- 1) to conduct investigations as provided in the Criminal Procedure Law;
- 2) to perform operational activities in order to resolve and prevent criminal offences in the field of corruption and financing of political organisations (parties) and associations thereof;
- 3) to draw up administrative statements regarding resolved violations, review cases of administrative violations and impose administrative sanctions for violations the review of which in accordance with the Administrative Violations Code of Latvia is under the jurisdiction of the Bureau;
- 4) to request and receive free of charge information, documents and other material from the State administration and local government institutions, companies (undertakings), organisations, officials and other persons, regardless of the secrecy regime thereof;
- 5) to request and receive free of charge information from credit institutions in cases and in accordance with the procedures specified in the Law On Credit Institutions;
- 6) to have free access to all information stored in registered data bases, the registration of which is specified in regulatory enactments, regardless of the ownership thereof;
- 7) to obtain, receive, register, process, compile, analyse and store information necessary for the performance of the functions of the Bureau, the procedures for use of which shall be determined by the Head of the Bureau;
- 8) if certain features have been ascertained in the actions of a person evidencing to the possibility of wrongful act, to warn a person that violations of the law are unacceptable;

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9) upon presenting a service certificate of identity, freely visit State administration and local government institutions, as well as manufacturing premises, warehouses, trade and other commercial premises located in the territory of Latvia owned or used by legal or natural persons;

10) if necessary in the fulfilment of corruption combating functions and financing control functions of political organisations (parties) and associations thereof, to use free of charge communication and public information facilities of State institutions, State companies (undertakings) and State organisations, but in exceptional cases also the facilities owned by other persons. The costs of the use of communication and public information facilities owned by other persons shall be paid if so requested by the owner;

11) in emergency cases and with the consent of the vehicle driver, to use vehicles owned by companies (undertakings), institutions, organisations or private persons (except vehicles of foreign diplomatic and consular representations and representations of international organisations, as well as vehicles of special services) for proceeding to a scene of event or transportation of persons to medical treatment institution if urgent medical assistance is needed, as well as for the pursuit of persons who have committed criminal offence, and for immediate transportation of detained persons to a police department;

12) to keep and carry service or personal firearms; use firearms, as well as physical force and special means in accordance with the Law On Police;

13) to summon to the Bureau any person linked to the investigation of a case or materials, and in the event a person fails to appear without a justifiable reason after receiving such summons, bring him or her by force;

14) to demand that a person cease to violate the law and other actions interfering with the performance of their powers by officials and employees of the Bureau, as well as to use compulsory measures against such offenders;

15) to check personal documents of identification while performing corruption combating functions and control functions of financing of political organisations (parties) and associations thereof;

16) to announce and reimburse remuneration for assistance in resolution of a criminal offence and in detention of persons who have committed a criminal offence;

17) with mediation of the Prosecutor General or his or her authorised prosecutor, to pass materials of commenced criminal proceedings to another investigative institution or to take over materials of commenced criminal proceedings falling within the competence of the Bureau from another investigative institution for continuing of investigation; and

18) to arrest and convoy persons suspected or accused of committing a criminal offence in accordance with the procedures specified in regulatory enactments.

(2) The procedures for possession and carrying of firearms and special implements owned (possessed) by the Bureau shall be determined by the Head of the Bureau.

[6 March 2003; 16 December 2004; 27 January 2005; 16 June 2005]

Section 10.1 Issuance and Contestation of Administrative Acts of the Bureau

(1) The Bureau shall, in implementing the functions prescribed by the law in accordance with the procedures specified in the regulatory enactments governing administrative proceedings, issue administrative acts, including administrative acts directed towards monetary payments.

(2) Administrative acts issued by the Bureau officials or actual action of the Bureau official or employee may be contested to the Head of the Bureau, but the administrative act and actual action of the Head of the Bureau – appealed to a court if it is not otherwise specified in regulatory enactments.

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(3) Compulsory execution of administrative acts issued by the Bureau shall be performed by bailiffs in accordance with the procedures specified in the Civil Procedure Law and the Administrative Procedure Law. [27 January 2005]

Section 11. Duty of Bureau Officials and Employees

(1) The duty of Bureau official and employee is to perform the office or work duties, showing personal initiative and acting in the public interests, in order to ensure proper performance of the functions of the Bureau as provided in this Law, to be responsible for his or her actions in accordance with the procedures specified in regulatory enactments and to observe the basic principles of professional ethics and behaviour specified in the Bureau's Ethics Code.

(2) In the performance of the functions referred to in Sections 7, 8 and 9 of this Law, the Bureau shall co-operate with other State and local government institutions, public organisations and foreign authorities.

[27 January 2005]

Chapter IV

Legal Defence, Social Guarantees and Liability of Bureau Officials and Employees

Section 12. Legal Defence and Guarantees of Independence of Bureau Officials

(1) A Bureau official is a representative of the State authority, and any legal requests and orders he or she makes or issues in the performance of his or her office duties are mandatory for all persons. Defamation of a Bureau official, resisting a Bureau official, endangering the life or health of a Bureau official, or any action interfering with his or her performance of Office duties shall be punished in accordance with the law. A service identification document and a special badge for verification of his or her powers shall be issued to Bureau officials.

(2) A Bureau official shall not be liable for any material or physical harm caused in accordance with the powers of the Bureau to an offender failing to surrender or resisting arrest.

(3) A Bureau official shall not be charged with criminal liability in the territory of Latvia without the consent of the Prosecutor General, he or she shall not be subject to arrest (including administrative arrest), search, conveyance by force; his or her residential or office premises or personal or official vehicles shall not be subject to search or inspection. Such criminal procedural restrictions shall not apply to officials of the Bureau if they are caught committing a criminal offence, of which the Prosecutor General and Head of the Bureau shall be notified within 24 hours thereon.

[27 January 2005]

Section 13. Restrictions Regarding Officials of the Bureau

(1) Restrictions on earning of income, multiple office holding and fulfilment of work, as well as other associated restrictions and duties are prescribed by the Law On Prevention of Conflict of Interest in the Actions of Public Officials.

(2) Along with the restrictions specified in Paragraph one of this Section, the following additional restrictions shall apply to officials of the Bureau:

- 1) it is prohibited to take part in the activities of political organisations (parties) and associations thereof; and
- 2) it is prohibited to organise strikes, demonstrations, pickets or take part therein.

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Section 14. Remuneration of Bureau Officials

Remuneration of Bureau officials shall be determined in accordance with the Law On Remuneration of Officials and Employees of State and Local Government Authorities.

[1 December 2009]

Section 15. Social Guarantees of Bureau Officials and Employees

[1 December 2009]

Section 15.1 Retirement Pensions of Bureau Officials

The retirement pensions shall be granted to Bureau officials in accordance with the regulatory enactments which determine the procedures for granting, calculation and disbursement of retirement pensions for Bureau officials.

[27 January 2005]

Section 16. Benefit Payable in Case of Injury of a Bureau Official or Employee or in Case of a Death of a Bureau Official or Employee or a Member of Their Families

[1 December 2009]

Section 17. Childbirth Benefit

[1 December 2009]

Section 18. Benefit in Case of Removal from Office or Layoff Benefit

[1 December 2009]

Section 19. Supplement for Performance of Additional Duties

[1 December 2009]

Section 20. Supplement for Performance of Office or Work Duties in Conditions of Increased Work Intensity and Supplement for Length of Service

[1 December 2009]

Section 21. Further Training and Coverage of Training Expenses

[1 December 2009]

Section 22. Annual Leave

[1 December 2009]

Section 23. Study Leave

[1 December 2009]

Section 24. Leave Without Pay

[1 December 2009]

Section 25. Disciplinary Liability of Officials and Employees of the Bureau

(1) The Bureau official and employee shall be held disciplinary liable for misuse of position, exceeding of official powers, disclosure of a State secret or restricted access information, violation of a contract of employment and working procedures, failure to fulfil the professional duties or neglectful fulfilment of these duties, damage or loss of the Bureau's property, as well as for violation of the basic principles of behaviour and ethics specified in the Bureau's code of ethics, for a shameful act not compatible with the status of official or employee, and for violation of other regulatory enactments during the fulfilment of duties.

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(2) The following disciplinary sanctions may be applied to the Bureau official and employee for a disciplinary offence:

- 1) a reproof;
- 2) a reprimand;
- 3) reduction of the monthly salary for a period of time of up to one year deducting up to 20 per cent from the monthly salary;
- 4) demotion in position for a period of time up to three years; or
- 5) removal from office.

(3) The Head of the Bureau shall initiate a disciplinary matter not later than one month after detection of a disciplinary offence. A disciplinary matter shall not be initiated, but the disciplinary proceedings initiated shall be terminated, if one year has passed from the day of committing the disciplinary offence.

(4) The procedures for initiation, examination and application of the disciplinary sanction shall be determined by the Head of the Bureau.

(5) The Head of the Bureau shall impose a disciplinary sanction within 10 days from the date of termination of the disciplinary inspection. A decision regarding the application of the disciplinary sanction may be appealed in court within a month from the date of the coming into effect of a decision.

(6) Holding of a Bureau official or employee as disciplinary liable shall not give a discharge from the possible civil, administrative or criminal liability.

[27 January 2005]

Transitional Provisions

1. This Law shall come into force on 1 May 2002.

2. As of 1 May 2002 the organisational measures shall be taken for commencement of the activities of the Bureau.

3. As of 1 July 2002 the Bureau shall perform the following functions:

- 1) in corruption prevention – the functions specified in Section 7 of this Law except those provided for in Paragraph one, Clauses 3 and 6;
- 2) in corruption combating – investigation and investigatory operations in accordance with the competence thereof; and
- 3) controlling the fulfilment of financing regulations of political organisations (parties) and associations thereof.

4. As of 1 February 2003 the Bureau shall perform the functions specified in this Law in the full amount.

[6 March 2003]

5. Authorities, within the competence of which the functions of corruption prevention and combating, as well as the functions of controlling of fulfilment of financing regulations of political organisations (parties) and associations thereof were included up to the date of coming into effect of this Law, shall continue to perform the referred to functions until the time when they are taken over by the Bureau.

6. The Cabinet shall, within three months, issue the Cabinet Regulation referred to in this Law.

7. The requirement referred to in Section 5, Paragraph three, Clause 3 of this Law regarding higher education in respect to a Bureau official, who is appointed to the position before the date of coming into effect of this rule, shall be applicable starting from 1 January 2009. A Bureau official, who has not commenced studies at a higher educational establishment before the date of coming into effect of this rule, shall commence the studies at the higher educational establishment up to 1 October 2005 and submit a statement from the higher educational establishment regarding the commencement of studies to the Head of the Bureau. A Bureau official studying at a higher educational establishment shall submit a statement issued by the higher

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educational establishment regarding continuation of studies to the Head of the Bureau each year until 15 October. A Bureau official failing to commence studies at a higher educational establishment within the period of time specified in this Clause or failing to continue studies shall be dismissed from the Bureau due to non-compliance with the position held. A Bureau official is allowed to hold the position of an official of the Bureau also without a higher education if four years or less are left until reaching the retirement age specified in the law on the date of coming into effect of this rule.

[27 January 2005]

8. Section 15.1 of this Law shall come into effect concurrently with the Law On Retirement Pensions of the Officials of Corruption Prevention and Combating Bureau.

[27 January 2005]

9. In 2009 the remuneration (salary, benefits, etc.) specified in accordance with this Law shall be determined in accordance with the Law On Remuneration of Officials and Employees of State and Local Government Authorities in 2009.

[12 December 2008]

10. The Cabinet shall issue the regulations provided for in Section 4, Paragraph 1.1 of this Law until 1 January 2012.

[13 October 2011]

11. Amendments to Section 4, Paragraph two of this Law, which provide for additional requirements for applicants for the position of the Head of the Bureau, shall not apply to persons, which have applied in competition for the position of the Head of the Bureau, announced until the day of coming into force of these requirements.

[13 October 2011]

This Law has been adopted by the *Saeima* on 18 April 2002.

President V. Vīķe-Freiberga

Riga, 30 April 2002