Groupe d'Etats contre la corruption
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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

**DIRECTORATE GENERAL I – LEGAL AFFAIRS**
**DEPARTMENT OF CRIME PROBLEMS**

Strasbourg, 1 July 2005

**Public**
**GrecoEval II Rep (2004) 13E**

# Second Evaluation Round

# Evaluation Report on Bulgaria

Adopted by GRECO
at its 24th Plenary Meeting
(Strasbourg, 27 June – 1 July 2005)

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## I. INTRODUCTION

1. Bulgaria was the twentieth GRECO member to be examined in the Second Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Håkan ÖBERG, Director, Division of International Affairs, Economic Crimes Bureau, Stockholm (Sweden); Mr Joseph E. GANGLOFF, Senior Counsel, Office of International Affairs, U.S. Department of Justice, Washington, D.C. (United States of America); and Mr Robert FREMR, Presiding Judge, High Court in Prague (Czech Republic). This GET, accompanied by a member of the Council of Europe Secretariat, visited Sofia from 13 to 17 December 2004. Prior to the visit the GET was provided with a reply to the Evaluation questionnaire (document Greco Eval II (2004) 7E).

2. The GET met representatives of the following authorities: Ministry of Justice (Directorate of International Legal Co-operation and International Legal Assistance, Directorate of Legislation, Directorate of Judicial Affairs, Inspectorate), Ministry of Finance (Financial Intelligence Agency, Public Internal Financial Control Agency, General Tax Directorate, Inspectorate), the Prosecutor's Office, Ministry of Interior (National Service on Combating Organised Crime/Department on Combating Corruption, National Police Service/Economic Crimes Department), Minister of State Administration, Commission on Co-ordination of the Activities in the Fight against Corruption, National Investigative Service (investigating magistrates), National Audit Office, Ministry of Economics (Public Procurement Agency), Supreme Administrative Court and Sophia City Court. The GET also met representatives of the Institute of Certified Experts-Accountants and PricewaterhouseCoopers, Bar Association, Transparency International, "Coalition 2000" and the media.

3. The 2nd Evaluation Round runs from 1st January 2003 to 31 December 2005. In accordance with Article 10.3 of its Statute, the evaluation procedure deals with the following themes:

   - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173[1]), by Articles 19 paragraph 3, 13 and 23 of the Convention;
   - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
   - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Bulgarian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Bulgaria in order to improve its level of compliance with the provisions under consideration.

[1] Bulgaria ratified the Criminal Law Convention on Corruption on 7 November 2001. The Convention entered into force on 1 July 2002.

## II. THEME I – PROCEEDS OF CORRUPTION

### a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

5. In Bulgarian legal theory, confiscation and forfeiture are two distinct mechanisms used for the deprivation of instrumentalities and proceeds of crime. Confiscation is a sanction, the imposition of which depends on the criminal responsibility of the offender with respect to some offences. As far as corruption offences are concerned, confiscation is provided as a mandatory sanction for aggravated cases of passive bribery (Penal Code, hereinafter PC, Article 302 (b) and Article 302a). Confiscation may be imposed only in respect of the current assets of the perpetrator, i.e. assets possessed at the time the sentence is pronounced. It does not apply to objects essential for the convicted person's everyday family life, objects necessary for exercising his/her vocation,[2] as well as subsistence expenses necessary for supporting the convicted person's family during a one-year period (PC, Article 45, par. 2). Forfeiture is a deprivation measure applied notwithstanding penal responsibility (PC, Article 307a). It is mandatory in respect of instrumentalities and proceeds of crime. Both confiscation and forfeiture are applicable only in respect of natural persons.

6. Proceeds of crime (i.e. *"the assets acquired through the crime"*) shall be subject to forfeiture unless they need *"to be returned or restored*". In case they are not available or have been disposed of, the value of such proceeds shall be adjudged (PC, Article 53, par. 2b). The PC does not generally differentiate between primary and secondary proceeds. However in case of money laundering offences, it provides for the expropriation of the object of the crime or property into which it has been transformed, and if it is not available or has been alienated, for adjudication of an equivalent amount (Article 253, par. 6). If there is no evidence as to the amount of proceeds of crime, they shall be estimated by the court.

7. Where an offence has been committed with intent, instrumentalities of crime shall be subject to forfeiture (PC, Article 53, par. 1a). Certain other objects, which have been the subject or the means of the crime and the possession of which is forbidden by law, shall also be forfeited (Article 53, par. 2a). Moreover, mandatory forfeiture of objects which have been the subject of intentional crime, or value thereof, is envisaged in cases expressly provided for by the Special Part of the Penal Code, i.e. passive and active bribery and trading in influence, including active bribery of foreign public officials (PC, Articles 307a).

8. The PC does not contain any provisions relating to the forfeiture of proceeds and instrumentalities of crime from natural persons in their capacity as third parties. Nevertheless, according to the Bulgarian experts met by the GET, the wording of the PC could be interpreted as allowing for such a possibility[3]. Moreover, in case the perpetrator, in order to avoid confiscation, has transmitted the acquired property to a third party, such property should be forfeited under the aforementioned provision on money laundering (PC, Article 253, par. 6).

[2] In accordance with a list approved by the Council of Ministers.

[3] After the GET's visit, the Bulgarian authorities had submitted additional information on this matter, stating that the above interpretation of the law is also supported by Decision No. 355/29.07.1987 of the Supreme Court, according to which "under Article 53, par. 2, point (b) of the PC should be forfeited not only the proceeds which are kept by the perpetrator but also all the proceeds of his/her criminal activity, for instance money acquired from crime which have been transferred to other persons."

9. According to the Bulgarian authorities, *in rem* forfeiture is possible where criminal proceedings have been initiated. The authorities have furthermore stated that forfeiture could take place also in cases where conviction cannot be obtained due to death, mental illness or other circumstances relating to the perpetrator.

10. In cases of forfeiture of the proceeds of crime, including corruption, the burden of proof may be reversed pursuant to the Law on Citizens' Property. Thus, property and income that clearly exceed the legal income of a person are presumed illegal (Article 34). Civil confiscation is also available where the owner of property is unable to prove its origin (see par. 12 below). The possibility to reverse the burden of proof is further provided in the draft Law on Forfeiture of Proceeds of Crime (see par. 154 below).[4]

11. Confiscated and forfeited property accrues to the State. The State shall be responsible up to the value of the confiscated property for restoring the damages caused by the crime and also for the obligations of the sentenced person which arose before the initiation of criminal proceedings when the remaining property of the person in question is not sufficient to restore the damages and cover the obligations.

12. In addition to criminal law deprivation measures, a *civil deprivation mechanism* is available under the aforementioned Law on Citizens' Property. As stated above, property and expenses, which obviously exceed the legal income of the person concerned, are presumed illegal and are forfeited in favour of the State (Article 34 and 36). The Law is implemented through territorial commissions composed of representatives of local authorities, investigating magistrates and representatives of the state financial control appointed by the Minister of Finance (Article 38). After relevant procedural actions have been completed, the commission shall submit the case to the public prosecutor (Article 41). Based on the commission's proposal, the public prosecutor shall bring the action to a regional court in order to forfeit the relevant property. Where there is evidence of criminal actions, the public prosecutor should institute criminal proceedings under Article 47 of the Code of Criminal Procedure. In case of sufficient evidence, the public prosecutor may also bring forfeiture action to the regional court without the commission's proposal (Article 42). The respective regional court, acting as a panel of three judges, shall consider the case under the rules of the Civil Procedure Code (Article 43).

Interim measures: seizure

13. Seizure of property is a procedural measure provided for by the Code of Criminal Procedure (hereinafter CCP) designed to secure a fine, confiscation/forfeiture, or a civil claim (Article 156 and 156a). Provisions concerning seizure apply to proceeds of crime, instrumentalities and certain other objects subject to either forfeiture or confiscation. The communication, freezing or seizure of bank, financial and commercial records in relation to the proceeds of crime, including corruption offences, may be effected by virtue of Article 133 of the CCP, which contains a general obligation to surrender any objects and documents presumed important to a criminal investigation.

14. The court and investigating authorities are obliged to inform persons about the right to bring a civil claim for damages caused by the crime. Upon the request of the person concerned in pre-trial proceedings, the respective first instance court, acting as a single judge *in camera,* shall take measures within 24 hours to secure the claim, pursuant to the Civil Procedure Code. In cases

[4] The Law on Forfeiture of Proceeds of Crime was adopted by Parliament on 16 February 2005 (published in "State Gazette" No. 19 of 1 March 2005). This Law repealed the Law on Citizens' Property. Proceedings pending under the Law on Citizen's Property will be conducted and completed under the former procedure.

where the State and the municipal authorities are concerned, the securing measures shall be taken upon the prosecutor's request (CCP, Articles 156 and 156a). In urgent cases, where this is the only possibility for the gathering and preservation of evidence, investigating authorities may carry out search and seizure without permission of a judge. The record of the investigation procedure shall be presented for approval to the judge without delay and no later than within 24 hours (CCP, Article 135, par. 2).

15. In order to facilitate future civil forfeiture (see par. 12 above), the public prosecutor or the court may impose appropriate provisional measures (freezing of property) by virtue of Article 44 of the Law on Citizen's Property. In March 2004, the draft Law on the Forfeiture of Proceeds of Crime was submitted to Parliament for adoption. The draft is of a *civil law nature* and provides for the seizure of criminal assets before a sentence has been pronounced. Procedures for imposing security measures and seizure of property obtained directly or indirectly from crime shall be carried out when the following two prerequisites are in place: a) it has been established that the person owns property of high value; and b) criminal proceedings have been initiated against that person for a specific crime. The measures envisaged in the draft law are to be carried out by specialised structural units of the tax administration.

16. No specific regulations have been adopted with regard to the management of seized property as in such cases relevant provisions of the Civil Procedure Code apply (CCP, Article 156a, para. 1). In addition, under Article 375, para. 3 of the CCP, where confiscation or forfeiture has been ordered, the court should submit a copy of its decision to the Agency for the Collection of Public Takings (ACPT). The ACPT informs the court about the collection of the forfeited and confiscated property within a 7 day period. The ACPT was established in 1999 with amendments to the Law on Collection of Public Takings. Pursuant to this law (Article 85, para. 1, point 6), the ACPT is authorised to receive, keep, manage and sell all confiscated and forfeited property. The public collectors are public servants of the ACPT. They carry out their functions for securing and enforcing collection of public takings under the Tax Procedure Code.

Statistics

17. No statistics exist on the number of cases in which confiscation and forfeiture have been adjudicated, including in corruption cases. Similarly, there is no information on the number of corruption cases in which interim measures have been applied or on the value of property seized under either criminal or civil law procedures.

Money laundering

18. Article 253 of the Penal Code criminalises money laundering. This crime, namely the carrying out of a financial operation or a property transaction, hiding the origin, location, movement or actual rights on property that is known or supposed to have been acquired through a crime, shall be sanctioned by imprisonment of up to six years and a fine of 3,000 to 5,000 Levs (from 1,500 to 2,500 Euros). All corruption offences are predicate offences to money laundering, even if committed outside the Bulgarian jurisdiction.

19. The Law on Measures against Money Laundering (hereinafter LMML) contains a list of institutions that are obliged to transmit suspicious transaction reports (STRs) to the Financial Intelligence Agency (hereinafter FIA). They include banks and non-banking financial institutions (such as exchange offices), insurers, investment companies and intermediaries, persons organising games of chance, notaries, stock exchanges and stockbrokers, auditors and certified

accountants. During the period between 2001 and 2005, the number of STRs received by the FIA was as follows:

| | Number of STRs received | Number of operational files opened | Sent to the prosecutor's office with confirmed suspicion of money laundering |
|---|---|---|---|
| 2001 | - | 140 | 16 |
| 2002 | - | 170 | 50 |
| 2003 | 275 | 236 | 69 |
| 2004 | 432 | 425 | 109 |
| 2005[5] | 195 | 192 | |

20. Upon receipt of information on suspicious deals or operations, or upon establishing sufficient evidence that a criminal activity may be related to the transaction, the FIA shall immediately notify the prosecutor's office (LMML, Article 12). Exchange of information, use of information databases and provision of operational and technical assistance through coordination activities between the Ministry of the Interior and the Financial Intelligence Agency within the Ministry of Finance, the customs administration and tax administration, are managed on the basis of Joint Instructions issued by the Ministry of the Interior and the Ministry of Finance[6]. The FIA issues methodological guidelines on the application of anti-money laundering legislation. Banking secrecy does not constitute an obstacle for the transmission of confidential information to the FIA.

21. The Bulgarian authorities also reported that FIA representatives attended seminars organised by various commercial banks for their officers to discuss the enforcement of anti-money laundering measures in the banking sector. The Agency also pursued its traditional meetings with commercial bank compliance officers. In a few instances, omissions were found and instructions were given to rectify the situation.

22. FIA's controlling activities also comprise inspections of reporting entities under Article 3(2) and (3) of the LMML. In 2004, 3760 such inspections took place, out of which 41 were "comprehensive" inspections (compared to 7 in 2003). The on-site inspections affected primarily banks, exchange offices, insurance companies, public notaries, gambling providers and investment brokers. On-site inspections were also conducted in post offices, with 31 such inspections resulting in the drawing up of statements of findings and recommendations, and 10 inspections – in the issuing of penalty warrants imposing fines or property sanctions. As of 31 December 2004, 22,900 Bulgarian Levs collected from fines and property sanctions were credited to FIA's budget.

23. According to statistics from the General Prosecutor's Office, preliminary criminal proceedings under Article 253 have been launched in respect of 40 cases. Three accusation acts have to date been submitted to the court.

[5] From January to April 2005.

[6] Pursuant to the Ministry of the Interior Act (Article 23, par. 1), the Act on Measures against Money Laundering (Article 10, par. 4), the Customs Act (Article 15, par. 3) and the Taxation and Procedural Code (Article 233, par. 3).

Mutual legal assistance: interim measures and confiscation

24. The CCP (Article 461, par. 2) as well as international treaties ratified by Bulgaria provide a framework for international legal assistance, including in corruption cases involving property confiscation and seizure. The international treaties applied in cases of provisional measures and confiscation/forfeiture are the European Convention on Mutual Assistance in Criminal Matters (ETS 030), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Transnational Organised Crime. When Bulgaria is the requesting state, the courts and the prosecutor's office transmit their requests abroad via the Ministry of Justice, which is the central authority as regards the enforcement of such measures by means of requests for mutual legal assistance. In urgent cases, as well as where provided for by the international treaties, the courts and the prosecutor's office may send their requests directly to the institutions of the foreign states concerned. When Bulgaria is the requested state, the requests are also received and replies are communicated via the Ministry of Justice. In 2003, the Bulgarian authorities made 28 requests for legal assistance concerning money laundering cases. Of those, five were granted. Six requests, also concerning money laundering, were received, of which three were granted.

25. In January 2004, Bulgaria ratified the European Convention on the International Validity of Criminal Judgements (ETS 070). The Convention entered into force in respect of Bulgaria on 1 July 2004. The internal mechanism elaborated to execute foreign judgements shall apply *inter alia* to foreign confiscation orders. Moreover, in September 2004 Bulgaria acceded to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 182), which allows for establishing direct communication with prosecutors and judges in the contracting parties to the Convention.

**b. Analysis**

26. The Bulgarian legal framework provides two mechanisms for the deprivation of crime-related property, namely confiscation and forfeiture. As confiscation in the Bulgarian legal system is a criminal sanction which is not linked particularly to either proceeds or instrumentalities of crime and is applicable with respect to certain crimes only, further analysis will concentrate on "forfeiture".

27. The existing legal framework generally provides for effective tools to enable the competent authorities to forfeit proceeds and instrumentalities of criminal offences in conformity with requirements of the provisions under evaluation. In particular, Article 53 of the Criminal Code regulates forfeiture, which allows for depriving a defendant of property obtained as the result of criminal activities. The legislation prescribes the forfeiture of an equivalent amount in cases when "*the assets acquired through the crime*" are not available or have been alienated. The burden of proof is on the prosecutor but may be reversed in certain cases prescribed in the Law on Citizens' Property providing for civil forfeiture. Investigation in respect of property and other benefits obtained from crime is part of the general investigative work in the context of the criminal procedure and, consequently, is not considered a separate investigative activity. The number of cases involving a motion for forfeiture in corruption cases, however, remains limited.

28. Notwithstanding this generally positive consideration, the GET is of the opinion that the present regime can be further improved in order to provide for greater efficiency in the fight against serious forms of corruption. One important way to combat economic/financial crime, as well as corruption, is to eliminate the proceeds generated and thereby the motivation for the crime itself.

In order to do so, it is essential that the forfeiture of proceeds of crime be exacted not only from the perpetrator but also from third parties, including both natural and legal persons. It was clearly stated by the Bulgarian authorities that the provisions on forfeiture of the proceeds of crime are not applicable to legal persons. This condition creates a significant lacuna in the legal framework and must be considered as a major shortcoming. Proceeds of crime can be forfeited neither when a criminal act has been committed in favour of a legal person, nor when the proceeds of crime have been transferred to it. The GET recommends, therefore, **to extend the scope of application of the provisions on forfeiture in order to cover the proceeds of crime held by legal persons.**

29. During the on-site visit, lengthy discussions took place on the possibility of forfeiting the proceeds of crime held by third parties with divergent views being expressed by various Bulgarian authorities on this matter. As a result, the GET understood that even if it was legally possible to use forfeiture with regard to property held by third parties, the Bulgarian authorities did not have any practical experience in doing so. The discussions revealed a need for specialised training of prosecutors and judges on this matter. Consequently, the GET recommends **to provide appropriate training to prosecutors and judges on the forfeiture of proceeds of crime held by third parties.**

30. No explanation was provided to the GET as regards the low number of cases involving a motion for forfeiture in connection with corruption offences. Difficulties in establishing evidence were cited as the reason for a lack of practical experience in forfeiture in relation to third parties. The GET furthermore noted that the absence of statistics on the number of corruption cases in which confiscation and forfeiture have been adjudicated made it difficult to ascertain to what extent perpetrators of such offences are in fact deprived of their illicit benefits. Statistics were also lacking with regard to sanctions imposed for failure to notify cases of corruption or laundering by institutions which are under a legal obligation to do so. Consequently, the GET **recommends to analyse the practical application of the provisions on forfeiture of proceeds of crime with a view to its enhancement and to focus attention on forfeiture as an integral and equally important part of the criminal procedure.**

## III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

### a. Description of the situation

Definitions and legal framework

31. There is no legal definition of public administration, which is commonly understood to comprise the administration of the authorities of state, regional and local power. The scope and principles of the functioning of public administration are contained in the Constitution, the Law on Public Administration, the Law on Self-Management and Local Administration, and the Law on Civil Service. The Constitution stipulates that public officials shall follow the nation's will and interests, and that, in the performance of their duties, they shall be guided solely by law and shall be politically neutral (Article 116, par. 1). The main principles of the functioning of public administration are legality, openness, accessibility, responsibility and co-ordination (Law on Public Administration, Article 2). The general management of the public administration is entrusted to the Council of Ministers.

32. The Law on Public Officials contains a definition of a public official. A public official is a person who, by force of administrative act for appointment, takes up a paid position in public administration and assists a body of state power in implementing its functions (Article 2, par. 1).

Anti-corruption policy

33. In 2001, the Government adopted a comprehensive National Strategy on Combating Corruption. Its objectives include *inter alia* the modernisation of public administration; introduction of anti-corruption measures within the judicial system; improvement of tax and financial control; strengthening of anti-corruption co-operation among the public institutions and of international co-operation. In pursuance of the National Strategy on Combating Corruption, an Action Plan was approved setting up a precise schedule and designating bodies responsible for the Strategy's implementation. A Commission on Coordination of the Activities in the Field of the Fight against Corruption was established as a supervising and co-ordinating authority[7] tasked with analysing and summarising the information on anti-corruption measures and making proposals to improve their effectiveness. The last update of the Action Plan was effected in September 2003 and covered the period 2004-2005.[8]

Transparency

34. The Constitution stipulates that "*citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others*" (Article 41, par. 2). The Law on Access to Public Information (hereinafter LAPI) ensures the right of access to information. This right may be exercised by Bulgarian nationals, foreign nationals, persons without citizenship, and legal entities (LAPI, Article 4). There is a positive obligation on the public administration to provide information to citizens, legal persons and agencies of state power, in compliance with law, as well as the obligation to respond to requests, claims, complaints, proposals and reports concerning the matters of their legal interest (Law on Public Administration, Article 2, par. 3-4). Access to information is provided on the grounds of a written application or verbal request and is free of charge (LAPI, Article 24, par. 1). Certain pieces of information may, however, be provided at a fee in accordance with the price lists approved by the Ministry of Finance (LAPI, Article 20). The decisions on providing or refusing access to information may be appealed before a district court or before the Supreme Administrative Court depending on the body which issued the decision (LAPI, Article 40, par.1).

35. The practice of public consultation is regulated by the Constitution and the Law on Referendum. These legal acts determine the forms of public participation (i.e. national and local referendums, general assemblies of the population, public subscription) and the range of issues that may be solved through these mechanisms. Moreover, according to the Law on the Normative Acts, a person, for whom obligations or restrictions occur pursuant to a new normative act, shall be notified before the adoption of such an act. (Article 2a). The notification is implemented through transmission of the draft to representative organisations of such persons, by publishing it in the media, on the Internet, or by announcing it in another appropriate way, in order to enable the affected persons to present proposals and objections to the respective competent body within a one month period.

[7] The Commission counts as its members the Deputy Minister of the Interior, the Deputy Minister of Justice, a member of the Court of Audits, the Director of the Agency for State Internal Financial Control, the Director of the Bureau for Financial Investigation, the Deputy Director of the Customs Administration, and the Director of the Inspectorate at the General Tax Directorate.

[8] In February 2005, amendments were adopted to the National Strategy on Combating Corruption and Action Plan containing measures against high-level corruption.

Control of public administration

36. The activities of public administration are subject to administrative control exercised by a higher-level administrative authority concerning their precision and legality, and judicial control concerning their legality. Having received a complaint, the administrative authority may reconsider the matter/case and withdraw the act; amend it; or issue the respective act or document if its issuing has been previously rejected. If the administrative authority does not alter its decision, it submits the case to the competent administrative authority at a higher level (Law on the Administrative Procedure, Article 19). This authority shall render a motivated decision, which cancels, entirely or partially, the administrative act as either unlawful or incorrect, or rejects the complaint. The court may annul the administrative act, either entirely or partially, amend it, or reject the complaint. If the case/matter has not been submitted to an administrative authority before, the court shall take a decision on the substance of the case. In other cases, and also when the nature of the act does not allow for any essential court rulings, the court shall cancel the administrative act and submit the file to the relevant authority, accompanied by mandatory instructions on the interpretation and implementation of the legislation. The court ruling is subject to cassation appeal and cancellation pursuant to the Law on the Supreme Administrative Court.

37. Complaints concerning abuses by public administration institutions can be lodged with the Ombudsman's Office. According to the Law on Ombudsman, which entered into force in January 2004, the Ombudsman shall accept, consider and investigate complaints and reports concerning violation of rights and freedoms filed by individuals without discrimination with regard to citizenship, sex, political affiliation or religious conviction (Articles 19 and 24). The Ombudsman can also issue proposals and recommendations for restoring violated rights and freedoms-, and notify the authorities subordinated to the Prosecutor's Office about crimes committed, including corruption (Article 19). Although the legislative framework is already in place, the election of the first parliamentary Ombudsman has failed twice (in May and October 2004) as none of the candidates nominated succeeded in obtaining the required simple majority of votes[9]. The establishment of local public mediators (municipal ombudsmen) has been far more successful: as of October 2004, they are operating in seven municipalities (including the municipality of Sofia), while in several others the election procedure is underway.

38. Other checks are carried out on public authorities. The National Audit Office (hereinafter NAO) is an independent body accountable to Parliament that performs external audit of the budgetary and other public funds as provided by law. Over the past three years, the NAO's audit mandate has broadened significantly. It includes *inter alia* the state budget, the budget and the deficit of municipalities, the budget and the deficit of state-owned enterprises by decision of Parliament, and the formation and management of state-guaranteed deficit. Out of 185 audits carried out in 2003, 110 were financial audits, and 75 were performance audits. Horizontal audits on specific themes, as well as government-wide and municipality-wide audits are conducted periodically. The NAO co-operates with authorities of the public internal financial control, the tax and customs administration, law enforcement bodies and the FIA (National Audit Office Act, Article 7, par. 1).

Recruitment, career and preventive measures

39. The requirements for appointing public officials are defined in the Law on Public Officials (hereinafter LPO). In 2003, the LPO was amended to the effect that appointment to any position within the public administration is based upon the results of an obligatory competition (Article 10).

[9] The Bulgarian authorities informed the GET after the visit that the first Ombudsman was finally elected by Parliament on 13 April 2005.

A person accepted for the position of a public official must meet the general requirements laid down in Article 7 (i.e. be a Bulgarian citizen, be of full age, not be under legal disability, etc.), as well as specific requirements provided in the normative acts for taking the corresponding position. The recruitment system is decentralised.

40. The screening of criminal records is a standard procedure in the selection and recruitment of public officials. In all cases, the existence of a conviction for an intentional crime entailing deprivation of liberty is incompatible with taking up duties in the public administration. Furthermore, a person cannot take up a position in public administration if s/he has been deprived of the right to hold certain positions (LPO, Article 7, par. 1). The latter is a penal sanction imposed for the offence of passive bribery (PC, Article 37, par.6).

Training

41. Under the LPO, the Institute for Public Administration and European Integration was established with the status of an executive agency subordinated to the Minister of State Administration to provide training and improve public officials' professional skills (Article 35a). Newly recruited public officials, as well as those who have been promoted to managerial positions for the first time, undergo mandatory training, including on ethical matters.

Conflicts of interest

42. The measures to prevent conflicts of interest and incompatibilities are provided for in the LPO. The main principle is that, in exercising their duties, public officials are obliged to behave in a manner that does not impair the civil service's prestige and which complies with the Code of Conduct for the Officials of Public Administration (Article 28, par. 1). According to the LPO (Article 7, par. 2), a person may not be appointed a public official:

- in cases of hierarchical connection of management and control with a spouse, relative or direct line without limitation, or lateral line up to fourth degree inclusive, or of marriage line up to fourth degree inclusive;
- if s/he is a sole entrepreneur, unlimited liable partner in a company, manager or executive member of a commercial company, commercial proxy, commercial representative, liquidator or receiver, Member of Parliament or member of municipal council; or
- if s/he holds a managerial or control position in a political party or has other legal employment, with the exception of lecturing in an educational establishment.

43. Public officials are obliged to notify any of the above incompatibilities within a seven-day period (Article 27). The law furthermore establishes the obligation on every public official to declare his/her property upon appointment and on an annual basis during the entire time of service (Article 29). Submission of false statements in declarations established by law or decree is criminalised by Article 313, par. 1 of the Penal Code and sanctioned by deprivation of liberty of up to three years or a fine. Moreover, Article 89 of th0e LPO provides for disciplinary liability (up to dismissal) for non-fulfilment or delay in fulfilling official duties, including the above obligations.

44. In 2003, the Parliament amended the LPO to widen the scope of regulation of conflicts of interest. Public officials are now placed under the express obligation to disclose and avoid conflicts of interest while in the civil service and to follow the conduct prescribed by the Code of Conduct (see par. 48). Also, a public officialis prohibited from taking part in the consideration, preparation and taking of decisions where s/he or persons connected with him/her are interested in the respective decision or if s/he has relations with such persons that give rise to doubts about

the public official's impartiality (Article 29a, par. 2). Declarations of the circumstances creating pre-conditions for the conflicts of interest shall be made on an annual basis. In cases of non-compliance, the law provides for dismissal as a disciplinary sanction.

45. The issue of conflicts of interest is included in the training programme of the Institute for Public Administration and European Integration. Specific training on conflicts of interest is provided in the framework of the joint project supported by OECD-SIGMA.

Rotation and "Pantouflage"

46. No system of regular, periodic rotation of staff employed within the public administration and considered susceptible to corruption has been established. No measures have been taken to address the phenomenon of public officials moving to the private sector. Only with respect to the officials of the Ministry of the Interior has an obligation of non-disclosure of information or circumstances acquired in the process of work been provided for.

Gifts

47. The basic rule on gifts is the provision of the Penal Code on passive bribery (Article 301, par. 1). The Code of Conduct of the Officials of Public Administration also contains restrictions on the acceptance of gifts and services by public officials. It provides, in particular, that the official may not request or receive gifts, services, money, benefits or other advantages that could influence the exercise of his/her duties or decision-making or could affect his/her professional attitude (Article 8). It also prohibits the receiving of gifts or advantages that could be considered as a reward for work that forms part of the official's duties. Regulations with similar content are provided in the Rules on the Organisation and Work of the National Assembly (Article 8) and the Rules on the Organisation and Work of the Metropolitan Municipal Council (Article 163). They impose limitations on acceptance of expensive gifts through declaring or giving up the gift.

Code of ethics

48. In June 2004, in pursuance of the LPO (Article 28, par. 2), the Council of Ministers adopted the Code of Conduct for the Officials of Public Administration. The Code stipulates that immediate superiors must familiarise newly appointed staff with the Code's content (Article 23). In case of breach of the Code, a disciplinary liability shall be established in accordance with the LPO and the Labour Code (Article 22), including in cases where an official, holding a leading position, ignores a complaint about the Code's violation on behalf of a subordinate official (LPO, Article 89, par. 3). The Code does not apply to judges, prosecutors, customs officials and the NAO's employees as those categories have elaborated their own codes of conduct/ethics.

49. Matters related to ethics are also dealt with to a certain extent by the LPO.

Reporting corruption

50. Every public official is under the obligation to immediately report criminal offences to investigating authorities, as well as to take the necessary measures to preserve the evidence of a crime (CCP, Article 174, par. 2). State inspectors who are entrusted with exercising control over the implementation of legislation in the field of civil service, are also obliged to notify the public prosecutor about any violations that have been revealed during their inspections (LPO, Article 132). No statistical information, however, was provided to the GET regarding cases in which the reporting of corruption offences by public officials has actually taken place.

51. At present, no whistle-blower protection is afforded to public officials reporting on corruption, except for the public officials of law enforcement agencies. Thus, within the Ministry of the Interior, protection measures have been introduced to guarantee the anonymity of officials providing information on cases of corruption. The director of the respective service normally signs such "signalling" documents.

Disciplinary proceedings

52. Specifically designated disciplinary councils deal with disciplinary proceedings against public officials within the respective agencies. The composition and functions of such councils are defined by the LPO (Articles 95-96). The existing disciplinary sanctions (which are also imposed for a breach of the Code of Conduct) are remark, reproach, postponement of promotion in rank for a period of up to one year, demotion to a lower rank for a period of 6 months to 1 year and dismissal (LPO, Article 90). For one and the same disciplinary breach, only one sanction may be imposed.

53. The imposition of disciplinary sanctions does not preclude the establishment of any other kind of liability, including criminal liability (LPO, Article 89, par. 4). In all cases where criminal proceedings are instituted against a public official for criminal offences committed while exercising his/her duties, s/he must be temporarily removed from office (LPO, Article 100, par. 2). If a disciplinary breach also constitutes a criminal or administrative offence which has been sanctioned by a sentence or an administrative punitive ruling, the terms of imposing a disciplinary sanction (two months from the date when the breach had been discovered and not later than one year following the commitment of the breach) shall start from the moment when the sentence or the punitive ruling entered into force (LPO, Article 94). A special Commission within the Ministry of State Administration keeps the register of public officials who have been subject to disciplinary sanctions, including the breaches of the Code of Conduct. This information is forwarded to the Register by Inspectorates within respective Ministries.

**b. Analysis**

54. The GET commends the efforts made by the Bulgarian authorities to introduce and implement an ambitious and multi-faceted National Anti-Corruption Programme covering the entire institutional spectrum, such as the judiciary, tax and financial control, customs, public institutions, etc. The GET also recognises that an appropriate system of planning and coordination of various activities envisaged by the Programme was established under the responsibility of the Anti-Corruption Commission headed by the Minister of Justice.

55. Notwithstanding the above, the GET noted that to date anti-corruption reforms in Bulgaria have been directed almost exclusively at national level to the effect that the need for reforms at regional and municipal levels remained somewhat neglected. The GET recognises that initial reform efforts within a country are often most meaningfully directed at national level and that reforms at a central level are the most efficient means of launching a specific programme of action. However, the GET considers that, given the present state of reforms at national level, Bulgaria must be encouraged to focus increasingly on anti-corruption measures at regional and municipal levels. This purpose could be served by conducting assessments of vulnerable areas within regional/municipal administration, establishing priorities, developing strategies, implementing specific reforms and examining the results achieved. The GET recommends, therefore, **to establish anti-corruption programmes for public administration at local and regional levels, as a complement to programmes/reforms implemented at national level.**

56. A significant problem facing Bulgaria seems to be that efforts to prevent and fight corruption are not being perceived as important for improving the everyday lives of ordinary citizens. The GET considered that an effective method of drawing attention to and underlining the importance of the damage caused by corruption within public administration would be to explicitly promote greater public awareness of the budgetary process in so far as it affects ordinary citizens. For example, Bulgaria might consider launching a public awareness initiative to highlight the direct relationship between the government's need for efficient revenue collection (e.g. taxes, customs duties, fines and fees) and the government's need to control expenditure. Similarly, it would be useful to develop assessment tools to measure whether specific reform efforts relating to public administration have a positive benefit in promoting the fight against corruption. Meaningful benchmarks could be established and the scope, method and results of such assessments could be made public. The GET, therefore, recommends **to raise the awareness of anti-corruption reforms in public administration in so far as it affects ordinary citizens.**

57. The GET considers that the role of the Ombudsman institution could be important for the detection of and fight against corruption as a component of maladministration by public authorities. In this respect, the GET was concerned to learn that, while Bulgaria had enacted the legislation necessary to establish the Ombudsman's Office, attempts to elect the first parliamentary Ombudsman have failed twice.[10] In the GET's opinion, this may well be indicative of flaws in the design of this new institution, which have to remedied. The GET's concern, is that an office fulfilling the functions foreseen by the legislative framework for an Ombudsman be implemented. Consequently, the GET *observes that the Bulgarian authorities should take all necessary measures to ensure that the Ombudsman institution is in the position to effectively accomplish the objectives set out in the 2004 Ombudsman Act.*

58. The GET understood that public management reforms are a high priority in Bulgaria. The GET was repeatedly reminded that there is broad acceptance of the notion that efforts to accomplish the objective of assuring good governance have appropriately focused on management and administrative issues and on developing structurally sound working relationships between managers and employees. The GET was of the opinion that greater progress could be made in bringing the hiring and job conditions of public employees into line with those generally prevailing in the private sector. These efforts could include *inter alia* publicising job vacancies in public administration, identifying necessary job qualifications describing job salaries and benefits, noting opportunities and requirements for further advancement, and explaining, in practical terms, procedures and timetables relevant to obtaining employment in the public sector.

59. Bulgaria is currently experiencing pronounced emphasis on governmental reform and privatisation of formerly governmental functions. Opportunities to accumulate wealth are growing as the complexity of the economy increases. The GET noted that it is a well established practice in a number of countries to use periodic declarations of assets, income and liabilities by public officials as an effective tool for deterring corruption, as well as a means by which to promote public confidence in public officials and government decision-making. The GET noted in this respect that the LPO appears to provide a basis for an appropriate financial disclosure system and a conflicts of interest control mechanism, both of which are accompanied by sanctions in cases of non-compliance. The GET also welcomed measures taken by the Bulgarian authorities to promote awareness in the field of conflicts of interest by organising training.

[10] Cf. footnote 9.

60. As is already mentioned in the descriptive part of the report, he GET understood that there are no specific rules or guidelines in place for situations in which public officials move from the public to the private sector and was informed that such situations had occurred on a number of occasions. Rules on secrecy relating to public officials and the criminalisation of insider trading may have a preventive effect on situations of conflicts of interest, but the ethical aspects of such situations may not necessarily be covered (it may be legal but not ethically correct). The GET considers this an area of concern, in particular in times when public functions come closer to the private sector. Consequently, the GET recommends **to introduce clear rules/guidelines for situations where public officials move to the private sector, in order to avoid situations of conflicting interests.**

61. The GET further noted that rotation of certain staff particularly exposed to opportunities for corruption has not been considered by the Bulgarian authorities. A possibility of periodic rotation, however, would appear appropriate in sectors of public administration particularly vulnerable to corruption, such as in the customs. Consequently, the GET recommends **to consider the possibility of introducing the principle of rotation of staff who are most exposed to risks of corruption.**

62. In the GET's view a relatively small government bureaucracy may have the unintended consequence of discouraging the reporting of possible wrongdoing, particularly in the absence of rules or practices to assure appropriate confidentiality and protection for whistle blowers. The GET noted that despite the obligation for public officials to report suspicions of corruption offences, no instances were cited in which such reporting had actually taken place. Similarly, there was no information on any sanctions having been imposed for failure to report. The GET considers that providing a framework for the protection of whistle blowers would significantly enhance efforts to prevent and detect corruption. It recommends, therefore, **to establish an adequate system of protection for those who, in good faith, report suspicions of corruption within the public administration, as well as to introduce training for public officials to report such suspicions.**

## IV. THEME III – LEGAL PERSONS AND CORRUPTION

### a. Description of the situation

General definition

63. There are three different types of legal persons: commercial companies, public enterprises and non-profit organisations. Some public institutions also have the status of legal persons. The Commercial Law (hereinafter CL) regulates the activity of the following categories of commercial companies: general partnerships, limited partnerships, limited liability companies, joint stock companies, and partnerships limited by shares. Definitions of the most important types of commercial companies are as follows:

- General partnership is a company formed by two or more persons for the purpose of effecting commercial transactions by occupation under a joint trade name, in which partners are liable jointly and severally and their liability is unlimited (CL, Article 76);

- Limited partnership is a company formed with articles of partnership between two or more persons for carrying out commercial activities under a common trade name, in which one or more partners are liable jointly and severally and their liability is unlimited, and the

remaining partners' liability does not exceed the amount agreed upon as a contribution (CL, Article 99);

- Limited liability company may be formed by one or more persons who shall be liable for the company's obligation with their contribution to the company's registered capital (CL, Article 113). The registered capital of a limited liability company is not less than 5,000 Levs (2,500 Euros), and it consists of the interests of the company's partners, with no interest share below 10 Levs (5 Euros); and

- Joint stock company is a company whose capital stock is divided into shares. The company is liable with its assets before its creditors (CL, Article 158). A joint stock company can be founded by one or more individuals or corporate bodies (persons declared bankrupt may not be founders). The minimum value of a joint stock company's capital is 50,000 Levs (25,000 Euros). The minimum amount of the capital stock required for performing banking, insurance or voluntary health insurance activities is determined by separate legislation (CL, Article 161)

In cases provided by law, companies may be engaged in a certain type of commercial activity only after having been granted a permission by a state body (e.g. in order to exercise the activity of an investment broker (CL, Article 119, par. 4.3)).

Establishment

64. Requirements for establishing legal persons depend on the form of legal entity. A commercial company normally has to sign the document of incorporation or partnership, pay subscribed shares (at least minimum), and elect managerial bodies. Commercial companies may be established by Bulgarian or foreign natural or legal persons (CL, Article 65). They acquire the status of a legal person upon entry in the commercial register held by the district court of law at the location of the company's headquarters (CL, Article 67).

Registration and transparency measures

65. Registration of commercial companies is performed by a single judge who verifies the documents submitted and who decides to register or to refuse registration within a 30-day time limit. Both registers and files are generally accessible to the public, so anyone can make inquiries or request the issue of a document that has been entered in the register (Civil Procedure Code, Article 492). The fact that registers are paper-based and the system is not centralised creates substantial delays. NGO representatives met by the GET, criticised the situation, whereby, in order to obtain information on the status of a specific legal person, numerous long-distance journeys were required to present the application for information and to collect such information when it became available.

66. In 2001, a Task Force was established to elaborate proposals on the reform of the present registration system. Based on recommendations produced by the Task Force, the Council of Ministers adopted two decisions: in March 2004 - on the Plan for the Implementation of E-Government, envisaging a four-stage reform of the registration system,[11] and in April 2004 - on the setting up of an Expert Working Group for Developing a Strategy for Establishing a Central Electronic Register of Legal Persons and of an Electronic Registries Centre. The Expert Group,

[11] Stage 1 – establishment of the Central Register of Non-Profit Persons (deadline May 2004); Stage 2 – establishment of the Central Commercial Register (deadline May 2005); Stage 3 – Establishment of the Central Register of Legal Persons (deadline October 2005); and Stage 4 – establishment of the Electronic Registries Centre (starting from October 2005).

chaired by the Minister of Justice and comprised of representatives of both state institutions and NGOs, prepared a draft strategy on the establishment of a Central Commercial Register and a Central Register of Non-Profit Legal Persons to be merged into a Central Register of Legal Persons. In the long term, it is also planned to set up an Electronic Registries Centre incorporating the aforementioned and various other registries. The Strategy, however, is yet to be included in the Council of Ministers' agenda.

Limitations on exercising functions in legal persons

67. A disqualification system has been established, whereby a natural person may be deprived of the right to hold a certain state or public office or to exercise a certain profession or activity (including to hold a managerial position in a legal person) for a period of up to three years, if the holding of the respective position or the exercise of the activity are incompatible with the nature of the crime committed (PC, Article 37, par. 1, items 6 and 7). This sanction is specifically applied in aggravated cases of bribery (PC Article 302, par. 4a-b).

Legislation on the liability of legal persons

68. At present, only civil liability may be applied to legal persons in cases of corruption (i.e. by bringing an action within civil proceedings using the institute of "non-permitted damage"). Contracts affected by corruption may also be annulled within the civil proceedings. No statistics, however, have been provided to the GET on the application of the above procedure to corruption cases.

69. In June 2003, a Strategy was elaborated on the establishment of administrative liability of legal persons for corruption and some other offences. In pursuance of the Strategy, at the end of 2004, the Ministry of Justice prepared draft amendments to the Code of Administrative Procedure (hereinafter CAP) aimed at introducing the principle of corporate administrative liability. According to the Bulgarian authorities, these draft amendments were to be shortly presented to the Council of Ministers for approval.[12]

70. Corporate liability for administrative offences has been established under a number of specialised laws (e.g. LMML, Law on Measures against Financing Terrorism, and Law on Accountancy). Depending upon the offence and the law infringed, sanctions (fines) range from 100 Levs up to 100,000 Levs (from 50 to 50,000 Euros). The most severe sanction is imposed under the LMML (up to 50,000 Levs or 25,000 Euros) and the Law on Public Procurement (up to 100,000 Levs or 50,000 Euros).

71. None of the aforementioned laws stipulates the sanction of limitation or ban on business activities for legal persons.

Tax deductibility

72. Deductibility of any illegal payment within the meaning of the Penal Code (including bribes and other expenses linked to corruption offences) is not allowed under the current tax legislation. No provision in the legislation, however, contains an explicit prohibition of deducting bribes or small

[12] The Draft Code of Administrative Procedure, including the amendments to the Law on Administrative Offences and Sanctions dealing with liability of legal persons for crimes, was approved by the Council of Ministers on 20 January 2005 and submitted to Parliament on 14 February 2005. The Draft provides for monetary sanctions for legal persons up to 1,000,000 Levs (500,000 Euros).

"facilitation" payments.[13] Discussions held with the Bulgarian authorities and professionals indicated that it was generally understood that an attempt to claim bribes or small facilitation payments as deductible would lead to administrative or criminal responsibility. Therefore, if companies resort to illegal payments, the latter are kept out of the accountancy (as slush funds).

Fiscal authorities

73. The Tax Procedure Code (hereinafter TPC) regulates the structure, bodies and powers of tax administration. It also contains provisions on the collection of information, as well as the detection of persons, incomes, properties and co-operation with other state and municipal authorities. Tax officials are obliged to report suspicions of crime, including corruption offences, to law enforcement bodies (see par. 51 above). This requirement also extends to cases of document falsification (TPC, Article 87, par. 4). Furthermore, the tax authorities are obliged to implement measures aimed at the prevention and detection of actions related to money laundering, pursuant to the aforementioned LMML (Article 3, par. 2). The GET noted that the legal obligation of tax officials to report suspicions of criminal offences to the relevant law enforcement bodies or to the state prosecutor's office, enables them to contribute to combating corruption in an effective and co-ordinated manner. Indeed, in line with that obligation, many cases were reported by the tax authorities to the police and state prosecutor's office.

74. Articles 12 and 12a of the TPC cover the disclosure of facts and evidence representing a tax secret. In 2002, amendments were introduced in the TPC in order to facilitate accelerated access by law enforcement authorities to tax data classified as secret. The revised section stipulates that the respective police authorities may request the court to order the disclosure of tax data classified as secret, where it is necessary for the performance of their functions. In such cases, the court, sitting *in camera*, shall take a decision with regard to disclosure within 24 hours.

Accounting Rules

75. All types of legal persons are under the obligation to keep accounting records/books. The Accounting Law (Articles 42-46) regulates the storing of accounting information. Various periods of time are envisaged for the storage of accounting information depending on the type of accounting document.

76. Administrative responsibility and criminal liability are provided for negligent accounting. Where the rules governing the storage of accounting information are infringed, the law envisages the imposition of a progressive fine from 100 to 5,000 Levs (from 50 to 2,500 Euros) as an administrative sanction (Accounting Law, Article 47, par. 4). Both natural and legal persons may be held liable for the aforementioned acts. The use of invoices or other accounting documents containing false or incomplete information is criminalised as document fraud (PC, Article 212). A person who destroys, hides or damages a document for the purpose of causing harm to somebody or obtaining benefit for himself or for another person, may be punished by deprivation of liberty for up to three years (PC, Article 319).

Role of accountants, auditors and legal professionals

77. Every citizen is under a civic obligation to report crimes to the investigating authorities or other state bodies (CCP, Article 174, par. 1)., In addition, under Article 3 of the LMML, accountants,

[13] The Law on Corporate Income Tax (Article 23, par. 2) provides for a list of deductible payments, in which small "facilitation" payments or bribes are not included.

auditors and legal practitioners are under the obligation to inform the FIA about suspicions of money laundering. Criminal liability is provided for cases of non-compliance with the tax obligation with participation of experts-accountants (PC, Article 257), as well as where certified accountants or auditors certify annual reports of companies containing false information (PC, Article 260, para. 2)

78. Under the Law on Independent Financial Audit, the profession of registered auditor is independent within the framework set out by the law (Article 4). While exercising their activity, external auditors should follow the Code of Ethics adopted by the Institute of Certified Experts-Accountants (Article 7), as well as the International Audit Standards (Article 5, par. 3). A candidate to the post of external auditor may not be a person sentenced for certain economic crimes, including fraud and bribery in the private sector (Article 15). As to audits, failure by an individual auditor to comply with the requirements of the International Auditing Standards or the above-mentioned Professional Code of Ethics can result in a fine of up to 3,000 Levs (1,500 Euros), or the deprivation of the right to execute an independent audit for two years for a first offence, and up to three years for each subsequent offence. Failure by a specialised auditing enterprise to comply with the rules can result in a fine of up to 5,000 Levs (2,500 Euros) or the deprivation of the right to execute an independent audit for two years for the first offence, and three years for each subsequent offence. These administrative offences are established by the Disciplinary Council under the Institute of Certified Experts-Accountants and the sanctions are imposed by the President of the Institute of Certified Experts-Accountants.

79. As far as the reporting obligation under the anti money-laundering legislation is concerned, according to statistics available to the GET, neither certified accountants nor specialised auditing enterprises were among those who reported suspicious transactions over the past few years. The GET received information from auditors representing private companies indicating cases of intimidation by clients when illegal practices were disclosed during audits. For this reason, instead of complying with the reporting obligation, certified accountants and auditing agencies would normally drop such clients.

**b. Analysis**

80. The definition of legal persons with economic purposes, their various forms, their functioning, as well as the rules governing transactions with them, are properly laid down in the Bulgarian Commercial Law. Requirements for establishing legal persons depend on the form of legal entity; however, all legal persons are subject to registration.

81. The current system of registration of commercial companies, however, was not considered by the GET as satisfactory. The fact that the commercial register is decentralised and paper-based, causes problems with regard to transparency and legal certainty. One of the problems involved is the need to visit appropriate district courts in person when applying for an entry, or requesting an extract from the registry. Moreover, the relatively long delays for handling the applications create potential for corruption by those who need decisions promptly. Furthermore, papers containing records from the register can only be verified in a very complicated manner and could easily be abused to commit a crime. The GET understood that the present commercial register is widely considered ineffective, unreliable, lacking in transparency, as well as a possible source of corruption within the judiciary. The GET, therefore, welcomes the initiatives emanating from state authorities, the private sector and non-governmental organisations to reform the existing commercial register. Recognising that the existence of a transparent and accessible register of legal persons is an essential preventive measure against the use of legal persons to shield

corruption offences, the GET recommends **to introduce a centralised register of legal persons that is able to provide information in a reliable and timely manner.**

82. At the time of the GET's visit, Bulgaria had not yet introduced an adequate system of liability of legal persons for corruption offences and, therefore, could not be considered to be in compliance with Article 18 of the Criminal Law Convention on Corruption. The GET was informed, however, that draft legislation introducing administrative liability for crimes, including corruption, and envisaging sanctions for legal persons had been prepared and submitted to the Council of Ministers. The draft law was presented to the GET and discussed on the spot with various interlocutors. In this connection, the representatives of the judiciary and the prosecutor's office expressed doubts with regard to the efficiency of this new legislation since it represents a combination of criminal and administrative law with a potential for causing considerable procedural delays. The GET welcomes the steps taken by the Bulgarian authorities to introduce the principle of corporate administrative liability for criminal offences. Nevertheless, the GET recommends **to establish liability of legal persons in accordance with the Criminal Law Convention on Corruption and to provide for effective, proportionate and dissuasive sanctions.**

83. With regard to the role of various professionals in combating corruption, the GET was concerned that, in spite of the fact that certified private auditors seem to detect a number of suspicious transactions when making audits, they rarely proceed with reporting their findings to law enforcement authorities as required by the money laundering legislation. The GET realised that there was a lack of understanding among certain categories of professionals with reporting obligations under the LMML and a need for training in reporting suspicions of money laundering, including where corruption is a predicate offence. Consequently, the GET recommends **that measures be taken to raise awareness among professionals about their reporting obligations in respect of the laundering of proceeds of corruption and to improve conditions with a view to enabling certified accountants to effectively comply with this obligation.**

## V. CONCLUSIONS

84. In Bulgaria, the existing legal framework on freezing and forfeiture of proceeds and instrumentalities of crime, including corruption, still suffers from a number of serious shortcomings, namely the lack of clarity in the legislation with regard to the possibility of imposing provisional freezing and forfeiture of the proceeds of crime when those proceeds are in the possession of legal persons or other third parties. Improvements to the present regime can be made by clarifying the relevant legislation, as well as by carrying out a thorough analysis of and ensuring an effective follow-up to the practical implementation of the provisions on forfeiture of proceeds of crime in general. Bulgaria has implemented adequate reforms to prevent corruption within public administration at central level. Similar efforts should now be pursued at regional and municipal level. The full establishment of the Ombudsman institute is another important issue to be pursued. With regard to legal persons, there remains a pressing need to modernise the system of registration of legal entities, as well as to establish liability of legal persons in accordance with the Criminal Law Convention, accompanied by sanctions that are effective, proportionate and dissuasive.

85. In view of the above, GRECO addresses the following recommendations to Bulgaria:

i. **to extend the scope of application of the provisions on forfeiture in order to cover the proceeds of crime held by legal persons** (paragraph 28);

ii. **to provide appropriate training to prosecutors and judges on the forfeiture of proceeds of crime held by third parties** (paragraph 29);

iii. **to analyse the practical application of the provisions on forfeiture of proceeds of crime with a view to its enhancement and to focus attention on forfeiture as an integral and equally important part of the criminal procedure** (paragraph 30);

iv. **to establish anti-corruption programmes for public administration at local and regional levels, as a complement to programmes/reforms implemented at national level** (paragraph 55);

v. **to raise the awareness of anti-corruption reforms in public administration in so far as it affects ordinary citizens** (paragraph 56);

vi. **to introduce clear rules/guidelines for situations where civil servants move to the private sector, in order to avoid situations of conflicting interests** (paragraph 60);

vii. **to consider the possibility of introducing the principle of rotation of staff who are most exposed to risks of corruption** (paragraph 61);

viii. **to establish an adequate system of protection for those who, in good faith, report suspicions of corruption within the public administration, as well as to introduce training for public officials to report such suspicions** (paragraph 62);

ix. **to introduce a centralised register of legal persons that is able to provide information in a reliable and timely manner** (paragraph 81);

x. **to establish liability of legal persons in accordance with the Criminal Law Convention on Corruption and to provide for effective, proportionate and dissuasive sanctions** (paragraph 82);

xi. **that measures be taken to raise awareness among professionals about their reporting obligations in respect of the laundering of proceeds of corruption and to improve conditions with a view to enabling certified accountants to effectively comply with this obligation** (paragraph 83).

86. Moreover, GRECO invites the Bulgarian authorities to take account of the *observation* (paragraph 57) made in the analytical part of this report.

87. Finally, in conformity with Rule 30.2 of the Rules of procedure, GRECO invites the Bulgarian authorities to present a report on the implementation of the above-mentioned recommendations by 31 December 2006.