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Addendum

Second Evaluation Round

Addendum
to the Compliance Report on Bulgaria

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I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Bulgaria at its 24th Plenary Meeting (1st July 2005). This report (Greco Eval II Rep (2004) 13E) was made public by GRECO, following authorisation by the authorities of Bulgaria, on 17 October 2005.

2. Bulgaria submitted the Situation Report required under the GRECO compliance procedure on 13 April 2007. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on Bulgaria at its 33rd Plenary Meeting (1 June 2007). This last report was made public on 19 June 2007. The Compliance Report (Greco RC-II (2007) 4E) concluded that recommendations i, v, vii, x and xi had been implemented satisfactorily and recommendations ii and iv had been dealt with in a satisfactory manner. Recommendations iii, viii and ix had been partly implemented and recommendation vi had not been implemented; GRECO requested additional information on their implementation. This information was provided on 28 November 2008.

3. The purpose of this Addendum to the Second Round Compliance Report is, in accordance with Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, to appraise the implementation of recommendations iii, vi, viii and ix in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation iii.

4. *GRECO recommended 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.*

5. GRECO recalls that in the Second Round Compliance Report on Bulgaria note was taken, *inter alia*, of an analysis of sentences and sanctions imposed from 1989 to 2003 for bribery offences, prepared in 2006 by the Criminological Research Council at the Ministry of Justice. However, as no further information on the outcomes, conclusions and/or possible recommendations deriving from this analysis had been submitted, GRECO concluded that the recommendation iii had only been partly implemented.

6. The Bulgarian authorities now submit statistical data on the practical application of forfeiture under article 53 of the Criminal Code (in 2007, this tool had been applied with respect to 89 persons convicted for corruption and financial crimes). Furthermore, they indicate that the "Commission for Establishing Property Acquired from Criminal Activity" analysed 10 forfeiture procedures under the Law on Forfeiture of Proceeds of Crime initiated against 10 persons who had committed bribery offences (articles 301-306 of the Criminal Code) during the period 2006 to 2008, and that on this basis the Commission prepared, in 2008, proposals for amendments to the Law on Forfeiture of Proceeds of Crime aimed at decreasing the amount defining the term "assets of substantial value" and at including other corruption offences in the scope of the law (articles 282 and 283 of the Criminal Code, i.e. abuse of official duty). The authorities add that at the beginning of 2008, the offences of misuse of European funds (article 254b of the Criminal Code) and documentary fraud affecting the State budget (article 256 of the Criminal Code) were included in the scope of the Law on Forfeiture of Proceeds of Crime.

7. GRECO takes note of the statistics on the application of forfeiture of proceeds of crime and of the reported analysis of a number of forfeiture procedures by the "Commission for Establishing Property Acquired from Criminal Activity" which has led to proposals for several amendments to the Law on Forfeiture of Proceeds of Crime. GRECO encourages the authorities to take due account of these proposals in order to enhance the practical application of the forfeiture regulations.

8. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation vi.

9. *GRECO recommended to introduce clear rules/guidelines for situations where civil servants move to the private sector, in order to avoid situations of conflicting interests.*

10. GRECO concluded in the Compliance Report that the recommendation had not been implemented because rules or guidelines for situations where civil servants move to the private sector were yet to be introduced.

11. The authorities now indicate that rules for situations where civil servants move to the private sector were introduced by Chapter Five ("Restrictions after the Public Office") of the Law on Prevention and Disclosure of Conflict of Interest, which was adopted on 16 October 2008, published in the State Gazette No. 94 of 31 October 2008 and entered into force on 1 January 2009. They specify that under article 21, paragraph 1 of this law "any public official (with the exception of the President, members of Parliament, the Ombudsman and his/her deputies, members of the Court of Auditors and magistrates) shall not have the right, within one year after leaving office, to conclude employment contracts or other contracts with any commercial entity or co-operatives in respect of which s/he has performed any actions of management or control or has concluded any contracts therewith during the last year of execution of the official powers or duties thereof, nor to be a partner, to hold interests or shares, to be a managing director or member of a management or supervisory body of any such commercial entity or co-operatives." Pursuant to article 21, paragraph 2, these limitations also apply to any commercial entity having close links with the above-mentioned entities. Furthermore, under article 22, paragraph 1 of the same law, "the public official who, in the last year of execution of the official powers or duties, has participated in any public procurement procedures or any procedure related to the provision of resources from funds belonging to the European Union or made available by the European Union to the Bulgarian State, shall not have the right, within one year after leaving office, to participate or to represent any natural or legal person in any such procedures before the institution wherein s/he held office." Pursuant to article 22, paragraph 2, this restriction also applies to any legal person wherein the person referred to in article 22, paragraph 1, after leaving office, has become a partner, holds interests, or is a managing director or member of a management or supervisory body.

12. GRECO takes note of the information provided and welcomes the introduction of statutory rules for situations where civil servants move to the private sector, in the framework of the new Law on Prevention and Disclosure of Conflict of Interest.

13. GRECO concludes that recommendation vi has been implemented satisfactorily.

Recommendation viii.

14. *GRECO recommended 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.*

15. GRECO recalls that in the Compliance Report it took note of the introduction, by the 2006 Administrative Procedure Code, of the rule that no one may be prosecuted or mistreated for reporting suspicions of corruption, but it considered that the introduction of such a provision fell short of the establishment of an actual whistleblower protection system and that no training on reporting requirements had been reported. Therefore, GRECO concluded that the recommendation had only been partly implemented.

16. The authorities now report, with regard to the first part of the recommendation, that rules for the protection of whistleblowers were introduced by Chapter Seven of the above-mentioned Law on Prevention and Disclosure of Conflict of Interest of 16 October 2008 (see paragraph 11 above). Under article 32 of this law, those who report suspicions of corruption within the public administration may not be persecuted solely for this reason and the persons assigned to examine such reports are obliged not to disclose the identity of the whistleblower; not to make public any facts and data that have come to their knowledge in connection with the examination of the report; and to safeguard the written documents entrusted thereto from unauthorised access of third parties. Furthermore, these persons have to propose to the competent administrative heads concrete measures to preserve the dignity of the whistleblower, including measures to prevent any actions whereby the whistleblower would be subject to mental or physical harassment. Finally, a person who has been discharged, persecuted or in respect of whom any actions leading to mental or physical harassment have been taken because s/he submitted a report, is entitled to compensation of the damages incurred following relevant court procedure.

17. As regards the second part of the recommendation, the authorities report on several training activities organised by the Ministry of State Administration and Administrative Reform, in particular training in the framework of the project "The efficient control – a guarantee for a 'smart', competent and professional administration" on the topic of conflicts of interest and corruption, which also covered the legal basis, practical aspects and the procedure for reporting suspicions of corruption by public officials (such training was provided to 790 experts and inspectors of the State administration in September 2008 and to a further 300 public officials in the first half of 2009); and training aiming to effectively implement the new Law on Prevention and Disclosure of Conflict of Interest and to encourage public officials to report suspicions of corruption, as part of the Ministry's annual training curriculum (such training was provided to 106 public officials in the first half of 2009 and it is planned to continue it until the end of the year).

18. GRECO acknowledges the reported introduction of rules for the protection of whistleblowers, in the framework of the new Law on Prevention and Disclosure of Conflict of Interest, as well as the reported organisation of training for public officials regarding their reporting duties.

19. GRECO concludes that recommendation viii has been implemented satisfactorily.

Recommendation ix.

20. *GRECO recommended to introduce a centralised register of legal persons that is able to provide information in a reliable and timely manner.*

21. GRECO recalls that this recommendation was only partly implemented because the 2006 Law on the Commercial Register – establishing a centralised register of commercial legal persons in the form of a unified electronic data base containing the relevant data and acts – had not entered into force and the register was not yet operational.

22. The authorities now indicate that the Law on the Commercial Register entered into force on 1 January 2008 and that the centralised electronic register is operational. They add that the register is maintained by the Registry Agency at the Ministry of Justice which ensures its technical functioning, including free access via the internet to the register and to the electronic version of relevant documents.

23. GRECO is pleased to note that the Law on the Commercial Register has entered into force and that the centralised electronic register of commercial legal persons has become operational.

24. GRECO concludes that recommendation ix has been implemented satisfactorily.

III. CONCLUSION

25. In addition to the conclusions contained in the Second Round Compliance Report on Bulgaria and in view of the above, GRECO concludes that recommendations iii, vi, viii and ix have been implemented satisfactorily. With the adoption of this Addendum to the Second Round Compliance Report, GRECO concludes that all the 11 recommendations addressed to Bulgaria have now been implemented satisfactorily or dealt with in a satisfactory manner.

26. The adoption of the present Addendum to the Compliance Report terminates the Second Evaluation Round compliance procedure in respect of Bulgaria.

27. Finally, GRECO invites the Bulgarian authorities to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.