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Third Evaluation Round

Addendum to the Second Compliance Report on Bulgaria

"Incriminations (ETS 173 and 191, GPC 2)"

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"Transparency of Party Funding"

Adopted by GRECO
at its 70th Plenary Meeting
(Strasbourg, 30 November – 4 December 2015)

I. INTRODUCTION

1. The Addendum to the Second Compliance Report assesses further measures taken by the authorities of Bulgaria, since the adoption of the First and Second Compliance Reports, in response to the recommendations issued by GRECO in its Third Round Evaluation Report on Bulgaria. It is recalled that the Third Evaluation Round covers two distinct themes, namely:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 48th Plenary Meeting (1 October 2010) and made public on 10 November 2010, following the authorisation by Bulgaria (Greco Eval III Rep (2009) 7E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 57th Plenary Meeting (19 October 2012) and was made public on 8 January 2013, following authorisation by Bulgaria ([Greco RC-III \(2012\) 14E](#)). The Second Compliance Report ([Greco RC-III \(2014\) 12E](#)) was adopted at GRECO's 65th Plenary Meeting (10 October 2014) and made public on 17 November 2014, following authorisation by the Bulgarian authorities.
3. In accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure, GRECO's Second Compliance Report invited the Head of the Bulgarian delegation to submit additional information regarding the implementation of the six recommendations that had been partly, or not implemented. The information was provided on 23 July 2015 and served as a basis for the Addendum to the Second Compliance Report.
4. GRECO selected Ukraine and Sweden to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Oleksiy SVIATUN, on behalf of Ukraine, and Mr Walo von GREYERZ, on behalf of Sweden. The Rapporteurs were assisted by GRECO's Secretariat in drawing up the Addendum.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that in its Evaluation Report GRECO addressed four recommendations to Bulgaria in respect of Theme I. The Second Compliance Report concluded that recommendation ii had been implemented satisfactorily, recommendations i and iii had been partly implemented and recommendation iv remained not implemented. The pending recommendations are dealt with below.

Recommendations i and iii.

6. GRECO recommended:

- *to ensure that the offences of active bribery in the public sector, as well as trading in influence, are construed in such a way as to unambiguously cover instances where the advantage is not intended for the official him/herself but for a third party. (recommendation i)*
- *to spell out clearly that bribery of foreign arbitrators is a criminal offence also when the arbitrator performs his/her functions under the national law on arbitration of any other State. (recommendation iii)*

7. GRECO recalls that according to the Second Compliance Report, on 19 December 2013, the Bulgarian government submitted to the National Assembly draft amendments to the Criminal Code (CC) which provided for the explicit criminalisation of both passive and active bribery and trading in influence where the advantage is intended for a third party (recommendation i) and criminalisation of bribery of foreign arbitrators (recommendation iii). A first reading took place in the National Assembly on 30 January 2014. The amendments were approved by the Legislative Committee then submitted, on 27 June 2014, to the Plenary for second reading and final adoption. However, the Bulgarian government resigned on 24 July 2014 and on 6 August the National Assembly was dissolved with early elections set for 5 October. Therefore, the above pending draft amendments could not be adopted.

8. According to the Second Compliance Report, the above draft legislative amendments would appear to have met the objectives of recommendations i and iii, had they been adopted in time before the dissolution of the parliament. Should these draft amendments be kept in their current wording, according to the established parliamentary practice, they would again require a political endorsement by the future government before subsequent introduction and adoption by the newly elected Assembly. Under the circumstances that it was only due to general political and institutional factors that the legislative process could not be completed, GRECO concluded that recommendations i and iii had been partly implemented.

9. The authorities now report that, on 9 December 2014, the Bulgarian government again submitted to the National Assembly draft amendments to the CC which – like the previous draft – provide for explicit criminalisation of both passive and active bribery and trading in influence where the advantage is intended for a third party (recommendation i) and criminalisation of bribery of foreign arbitrators (recommendation iii). A first reading took place in the National Assembly on 25 June 2015, and the amendments were finally adopted on 17 September 2015. The Law amending the Criminal Code was published in the State Gazette of 26 September 2015 (supplemental edition N74) and entered into force on 30 September 2015.

10. As far as recommendation i is concerned, the amendments to the CC introduce a new article 304c under the section entitled “Bribery”. It provides that the punishments for the offences under this chapter (passive and active bribery and trading in influence) are also imposed when the advantage is promised, offered or given to another person with the consent of the domestic or foreign bribe-taker (in the case of bribery) or the influence peddler (in the case of trading in influence). At the same time, article 303 CC (dealing with the punishment of passive bribery in the public sector where the advantage is intended for a third party) was abolished. Thus, a single specific provision on third party beneficiaries covers, consistently and explicitly, active and passive bribery in the public sector, as well as active and passive trading in influence.

11. Regarding recommendation iii, the amendments add a new letter d) to section 15 of article 93 CC providing that the expression “foreign public official” also encompasses any person exercising “functions of arbitrator assigned under the national law of a foreign state”. Thus the definition of foreign public official was extended in line with the Additional Protocol to the Criminal Law Convention.
12. GRECO acknowledges that following the political changes, namely the constitution of a new government and parliament, a new legislative initiative has been taken and that amendments to the CC have been adopted which are identical to those contained in the previous draft law as described and assessed in the Second Compliance Report. GRECO notes that the amendments explicitly include the concept of third party beneficiaries in the provisions on active and passive bribery in the public sector and on active and passive trading in influence, in line with the requirements of recommendation i, and that they clearly extend the definition of a “foreign official” to also capture persons exercising “functions of arbitrator assigned under the national law of a foreign state”, in line with the requirements of recommendation iii.
13. GRECO concludes that recommendations i and iii have been implemented satisfactorily.

Recommendation iv.

14. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery in the public sector in cases of effective regret (article 306 of the Criminal Code).*
15. GRECO recalls that the First and Second Compliance Reports had considered this recommendation as not implemented due to the absence of meaningful follow-up measures¹.
16. The authorities, for the purposes of the present report, do not refer to any new development. It would appear that following the adoption of the Second Compliance Report, no further action has been taken by Bulgaria to address this recommendation.
17. GRECO very much regrets the absence of any further progress and concludes that recommendation iv remains not implemented.

Theme II: Transparency of Party Funding

18. It is recalled that in its Evaluation Report GRECO addressed 16 recommendations to Bulgaria in respect of Theme II. The Second Compliance Report concluded that recommendations i, ii, iii, iv, v, vi, vii, ix, xi, xii, xiii, xv and xvi had been implemented satisfactorily or dealt with in a satisfactory manner, recommendations viii and xiv had been partly implemented, and recommendation x remained not implemented. The pending recommendations are dealt with below.

¹ Paragraph 20 of the First Compliance Report stated: “The issue of “effective regret” was given some consideration in the context of the Interpretative Decision of the Supreme Court of Cassation. However, only some specific aspects of the forfeiture of the bribe were addressed therein. Possible amendments to the [Criminal] Code are also being considered in order to give effect to this recommendation. GRECO recalls that, in paragraph 74 of the Evaluation Report, it had expressed concerns that the ‘effective regret’ provision represented an automatic and total exemption from punishment and that the validity of application of this provision was not subject to judicial review. GRECO regrets that so far no concrete measures have been taken to thoroughly examine this matter in order to ensure a positive outcome of any eventual revision process.”

Recommendation viii.

19. *GRECO recommended to provide for clear criteria concerning the use of public facilities for party activity and election campaign purposes.*
20. GRECO recalls that this recommendation had been categorised as partly implemented in the Second Compliance Report. GRECO noted that Bulgaria had clearly made some improvements, by establishing an explicit prohibition in article 168, paragraph 3 of the Electoral Code (EC) to “use free-of-charge” any public administrative resources in relation to an election campaign and by providing a special administrative sanction by article 474 EC in case of violation of the above prohibition in the form of a fine. That said, GRECO noted that the safeguards against the misuse of public resources for political activities only partly addressed the present recommendation: in particular, they were not broad enough to clearly apply outside the election campaign context. It would also be desirable to ensure that the prohibitions clearly cover the human resources usually associated with public facilities.
21. The authorities, for the purposes of the present report, do not refer to any new development. It would appear that following the adoption of the Second Compliance Report, no further action has been taken by Bulgaria to address this recommendation.
22. GRECO regrets the absence of any further progress and concludes that recommendation viii remains partly implemented.

Recommendation x.

23. *GRECO recommended i) to examine the advisability of raising the standards and the quality of audit certification of financial statements submitted in the context of party financing and of increasing coordination with the profession; ii) to strengthen the independence of the political parties' external audit of accounts.*
24. GRECO recalls that this recommendation had been considered not implemented. It was merely reported that the profession had been applying the International Standards of Auditing (ISA) for 10 years and that these provide for adequate guarantees of independence of auditors (by means of a policy on conflicts of interest). GRECO pointed to the concerns expressed in the Evaluation Report (paragraphs 110-112), in particular as a result of indications that a margin of accuracy as high as 50-70% is reportedly applied in practice concerning financial statements of political parties. The report also noted that although political financing is allegedly exposed to risks of money laundering and auditors and political parties are required by the anti-money laundering legislation to file suspicious transaction reports with the financial intelligence unit, there had never been such reports in practice. Leaving the effectiveness of the AML system aside as it is assessed in other fora, GRECO expected concrete measures to narrow the margin of accuracy and to increase the independence of auditors (e.g. reasonable rotation, appointment of a second auditor).
25. The authorities now report, with regard to the first part of the recommendation, that following the conclusion of a Cooperation Agreement between the National Audit Office (NAO), the Institute of Certified Expert Accountants and the Institute of Internal Auditors, on 1 November 2011, the coordination between the NAO and certified auditors in the control of political financing has been further increased and ensured at institutional level through the adoption of legislative amendments in 2015. Namely, on 29 January 2015, the National Assembly adopted a new Law

on the National Audit Office² according to which the NAO consists of a president, two deputy presidents and two members to be elected by the National Assembly upon proposal of the NAO's president: one member is proposed by the Institute of Certified Expert Accountants and the other member is proposed by the Institute of Internal Auditors.³ Both NAO members are certified auditors and were elected on 9 April 2015.

26. In relation to the second part of the recommendation, the authorities indicate that the feasibility of rotation of the auditors who examine the annual financial statements of political parties is currently being considered by a working group at the Institute of Certified Expert Accountants within the preparation of proposals for a new Law on Independent Financial Audit. The appointment of a second auditor ("joint audit") has also been considered by the working group but was not accepted. In the view of the working group, the introduction of a joint audit for political parties – which appears to be rare in Europe – would lead to a number of administrative implications for their activities, including the election and functioning of the auditing committee. Finally, the Institute of Certified Expert Accountants confirms that, currently, the Institute's auditors strictly apply the common levels of reliability and reasonable audit risk to the financial statements of political parties (as well as of the other entities), in conformity with the International Standards of Auditing (ISA), in particular ISA 315 and ISA 320.
27. GRECO takes note of the information provided. It would appear that the new institutional set-up of the NAO favours coordination with the profession; however, GRECO considers that more needs to be done to address the concerns underlying the first part of the recommendation, such as the high margin of accuracy and tolerance accepted by auditors in practice concerning financial statements of political parties. The renewed reference to the international auditing standards does not adequately address those concerns. Regarding the second part of the recommendation, GRECO acknowledges that possible measures to strengthen the independence of the political parties' external audit of accounts are currently being considered in the frame of preparatory legislative works. GRECO urges the authorities to continue these reflections and to take determined action.
28. GRECO concludes that recommendation x has been partly implemented.

Recommendation xiv.

29. *GRECO recommended i) to complement the existing arsenal of sanctions available under the Political Parties Act by further sanctions which can be imposed also on natural persons, including persons in charge of party accounts; ii) to provide for a broader range of penalties that would be more proportionate and dissuasive, and would address further important requirements of the Act such as accepting an illegal donation, the improper identification of donors, the inadequate or non-registration of elements of income and expenditure.*
30. GRECO recalls that this recommendation had been categorised as partly implemented in the Second Compliance Report. With regard to the first part of the recommendation, Bulgaria had taken measures to address it by re-introducing, in the Political Parties Act (PPA), provisions on certain violations committed by party officials entrusted with financial and/or representative functions. As for the second part of the recommendation, some additional important requirements of the PPA had been made subject to sanctions. There was, however, still room for improvement;

² Published in State Gazette N12 of 13 February 2015. See <http://www.bulnao.government.bg/en/articles/national-audit-office-act-1035>

³ Article 15, paragraph 1 of the Law on the National Audit Office.

for instance, the improper identification of donors and the inadequate or non-registration of elements of income and expenditure had still not been adequately addressed. In addition, in GRECO's view, the PPA would need at least to make explicit reference to relevant general provisions on sanctions contained in the Law on Accountancy, the Law on Measures against Money Laundering, the Law on Administrative offences and criminal sanctions for documentary offences, for the sake of legal security. Moreover, GRECO considered that the range of sanctions did not meet the requirements of the recommendation ("effective, proportionate, dissuasive") and that the level of the fines remained globally low and inadequate to sanction significant financial violations and illegal dealings. In conclusion, Bulgaria clearly needed to pursue the implementation of the second part of this recommendation.

31. The authorities, for the purposes of the present report, do not refer to any new development. It would appear that following the adoption of the Second Compliance Report, no further action has been taken by Bulgaria to address this recommendation.
32. GRECO regrets the absence of any further progress and concludes that recommendation xiv remains partly implemented.

III. CONCLUSIONS

33. **With the adoption of this Addendum to the Second Compliance Report on Bulgaria, GRECO concludes that Bulgaria has implemented satisfactorily or dealt with in a satisfactory manner in total sixteen of the twenty recommendations contained in the Third Round Evaluation Report.** Of the remaining recommendations three have been partly implemented and one has not been implemented.
34. More specifically, with respect to Theme I – Incriminations, recommendations i, ii and iii have been implemented satisfactorily and recommendation iv remains not implemented. With respect to Theme II – Transparency of Party Funding, recommendations i, ii, iii, iv, v, vi, vii, ix, xi, xii, xiii, xv and xvi have been implemented satisfactorily or dealt with in a satisfactory manner and recommendations viii, x and xiv have been partly implemented.
35. In so far as incriminations are concerned, Bulgaria has used the additional time since the Second Compliance Report to adopt amendments to the Criminal Code to cover third party beneficiaries of undue advantages, and bribery of foreign arbitrators where these operate under the law of another jurisdiction. The amendments, already in force, adequately address two pending recommendations. The only recommendation which remains to be implemented concerns the automatic and mandatorily total nature of the exemption from criminal liability in cases of "effective regret". GRECO urges the authorities to take meaningful action to review this mechanism.
36. As regards transparency of political financing, GRECO recalls that the Second Compliance Report had concluded that looking back at the situation at the time of the Evaluation visit in October 2009, Bulgaria had come a long way in improving its regulatory framework, encouraging greater self-discipline of the political parties in this area and improving the supervision, first and foremost by the National Audit Office (NAO). That said, GRECO stressed that the new arrangements for the transparency of political financing needed some stability and serenity to become progressively effective, and should be spared the overhauls which the legislation and institutions (their management) underwent only too often. GRECO furthermore urged Bulgaria to implement the outstanding recommendations on Theme II. GRECO now notes that little further

progress has been achieved since the adoption of the Second Compliance Report. New developments have been reported only with respect to one of the three pending recommendations, with respect to the external audit of political parties' accounts, and full implementation of this recommendation would clearly require further action and finalisation of the legal reforms initiated. GRECO once again urges Bulgaria to fully implement the pending recommendations on Theme II.

37. The adoption of this Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Bulgaria.
38. GRECO invites the authorities of Bulgaria to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.