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First Evaluation Round

Compliance Report on Bulgaria

Adopted by GRECO
at its 18th Plenary Meeting
(Strasbourg, 10-14 May 2004)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Bulgaria at its 9th Plenary Meeting (13-17 May 2002). This Report (Greco Eval I Rep (2001) 14E) was made public by GRECO, following authorisation by the authorities of Bulgaria on 5 July 2002.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Bulgaria submitted their Situation Report (RS-report) on 30 December 2003 on the measures taken to follow the recommendations.
3. At its 13th Plenary Meeting (24-28 March 2003), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Greece and Romania to provide Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Gerassimos FOURLANOS on behalf of Greece and Mr Octavian LUPESCU on behalf of Romania. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of the Rules of Procedure, at its 18th Plenary Meeting (10-14 May 2004).
5. Under Article 15 para. 6 of the GRECO Statute and Rule 30.2 of the Rules of Procedure, the objective of the RC-Report is to assess the measures taken by the authorities of Bulgaria and, wherever possible, their effectiveness in order to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

6. It was recalled that GRECO in its Evaluation Report addressed 14 recommendations to Bulgaria. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to establish a system of collection and processing of data with regard to the investigation, prosecution and adjudication of corruption offences as well as with regard to mutual assistance in cases of corruption.*
8. The authorities of Bulgaria have reported that they have addressed this Recommendation in four ways. Firstly by legislative amendment to the Law on the Judiciary (adopted on the 17 July 2002), they established a "Unified Information System for Counteracting Crime" (UISCC) which entails the Judiciary, the Ministry of Interior, the Ministry of Justice and the Ministry of Finance adopting a standardised system of data collection at all stages of the criminal investigation and proceedings, including in corruption cases. The system is automated and provides an interdepartmental database. The UISCC information stream is maintained by the Ministry of Justice and the National Institute of Statistics. Funding is provided by the Ministry of Justice. Secondly, on 22 April 2003, the Bulgarian Government adopted a Regulation "on the Activity of the Interdepartmental Council for Methodological Supervision of the Unified Information System for Counteracting Crime" and "on the Order and Way of Interaction of the Bodies of the Judiciary, Ministry of Interior, Ministry of Justice and Ministry of Finance in Order to Ensure the Functioning of the System". The Interdepartmental Council started its work in 2003. It is composed of the Presidents of the Supreme Cassation Court and of the Supreme Administrative Court, the Prosecutor General, the Director of the National Investigation Service, the Ministers of the

Interior, Defence, Justice and Finance and the President of the National Institute of Statistics. It is chaired by the Minister of Justice. Thirdly, in June 2002, an Electronic Information System within the Department of International Legal Assistance for collecting details on all aspects of mutual legal assistance has been set up. Fourthly, a new methodology for collecting and processing statistical information on corruption cases has been in place within the courts since January 2003.

9. GRECO took note of the information provided by the Bulgarian authorities and concluded that Recommendation i. has been implemented satisfactorily.

Recommendation ii.

10. *GRECO recommended to promote objective research on corruption with a view to developing a precise picture of the situation in the country and in particular institutions.*
11. The authorities of Bulgaria have reported that in parallel to the setting up of the UISCC, the Criminological Research Council (CRC) was established. It became operational in April 2003, operating under the aegis of the Ministry of Justice from which it receives material, technical and financial support. A pivotal part of its role is dealing with corruption-specific research. The CRC is fully regulated and various executive institutions and the judiciary are required to supply statistical information to the CRC. The Plenary Council and Expert Council of the CRC is composed of a wide base of experts, researchers and NGOs.
12. GRECO took note of the information provided by the Bulgarian authorities and in particular of the creation of the CRC which, together with the UISCC (see above), ensures an effective system for developing a precise picture of the corruption situation in Bulgaria. The First Round Evaluation Report (paragraph 104) specifically refers to objective research as an “indispensable tool for putting in place efficient measures against corruption”. The CRC is under the aegis of the Ministry of Justice, nevertheless, its legal standing guarantees a positive flow of information, and its composition of external bodies provides for independent input and assessment.
13. GRECO concluded that Recommendation ii. has been implemented satisfactorily.

Recommendation iii.

14. *GRECO recommended to develop a national programme for the fight against corruption, including preventive and repressive perspectives and to assign the overall co-ordination of its implementation to a body especially tasked for that purpose.*
15. The authorities of Bulgaria have reported that the Ministry of Justice has played a central role in setting up such a programme. The foundations were laid by the Bulgarian Government with the adoption on 1 October 2001 of a National Strategy on Combating Corruption, implemented by the Action Plan on the Implementation of the National Strategy on Combating Corruption. On 11 February 2002, the Minister of Justice became Head of the Commission on the Coordination of the Activities in the Field of the Fight against Corruption (the Commission) and thus responsible for both the National Strategy and Action Plan. As Chairman, the Minister of Justice is responsible for the Action Plan which sets out a schedule and assigns departmental responsibilities. Specific responsibilities are also given to the Deputy Chairman (the Minister of State for Administration) and to other members (including the Deputy Ministers of the Interior and Justice, a Member of the Court of Audits, the Director of the Agency for State Internal Financial Control, 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). The Action Plan is ambitious and multi-faceted. It covers the entire institutional spectrum, for example, the judiciary, tax and financial control, customs and public institutions, NGO's, the media and international cooperation. In September 2003, the Commission adopted its Report on the National Strategy for 2002 to 2003, the Action Plan has been updated to cover 2004 to 2005.

16. GRECO took note of the information provided by the Bulgarian authorities. In its First Round Evaluation Report (paragraph 105), Greco raised particular concerns about a strategic approach, identifying coordination, repressive and preventative measures, homogenous policies and recommending one controlling body. GRECO considered that those concerns have been properly addressed by Bulgaria, in particular through the establishment of an appropriate system of planning and coordination under the responsibility of the Anti Corruption Commission.
17. GRECO concluded that Recommendation iii. has been implemented satisfactorily.

Recommendation iv.

18. *GRECO recommended to continue the efforts in developing an efficient anti-corruption legal framework, in order to avoid, to the extent possible, "legal lacunas" which may be used for corruption purposes.*
19. The authorities of Bulgaria have reported that they have extended three main areas of the anti-corruption regime. Firstly by widening the offence regime under the Criminal Code to include: non-material (non-valuable) advantages within the scope of the definition of a bribe; criminalisation of bribery in the private sector, trading in influence, passive bribery of foreign public officials, bribery of arbitrators and, in some specific cases, bribery of lawyers; enlargement of the scope of the definition of a foreign public official; restriction of the existing defences concerning the punishment of active bribery; introducing a fine as an additional sanction for bribery; and more severe sanctions for active and passive bribery of judges, jurors, prosecutors and investigating magistrates. Following the above amendments to the Criminal Code, in December 2003, the National Assembly ratified the Additional Protocol to the Criminal Law Convention on Corruption and withdrew the reservations made by Bulgaria in 2001 on ratification of the Criminal Law Convention on Corruption. Secondly, in April 2003, the reporting regime was extended by the Law on the Measures against Money Laundering which now obliges legal consultants and real estate agents to report offences, imposes reporting by their supervisory bodies, clearer identification of clients and an enhanced regime for submitting evidence of crime both to the prosecutors office and to the relevant services of the Ministry of the Interior. Thirdly, transparency of information in respect of the public is provided for by the Law on the Restriction of the Administrative Regulation and Administrative Control over the Economic Activity providing access to information concerning current licence holders, registration regimes, and of various relevant regulations. As yet there is no regime for covering the acts of legal persons committed via natural persons, although the authorities have reported that this will come into force in 2004.
20. GRECO took note of the considerable efforts made by the Bulgarian authorities with a view to developing the national anti-corruption legal framework. It also noted with satisfaction that since the 2001 evaluation visit, Bulgaria has ratified the Criminal and Civil Law Conventions on Corruption (which are both in force) as well as the Additional Protocol to the Criminal Law Convention on Corruption and that national legislation has been amended to comply with the main international standards in the field of preventing and fighting corruption. Nevertheless, and

even though active consideration has been given to the issue of liability of legal persons, corporate liability is not yet covered by law. This matter will be dealt with during the Second Evaluation Round.

21. GRECO concluded that Recommendation iv. has been dealt with in a satisfactory manner.

Recommendation v.

22. *GRECO recommended that the organisational structures of the police and other specialised services involved in the fight against corruption be reconsidered with a view to establishing a higher degree of organisational autonomy of these bodies.*
23. The authorities of Bulgaria have reported that organisational autonomy of the police and other services of the Ministry of the Interior has been addressed both logistically and legally. Legislative reform of the Ministry of the Interior on 6 February 2003 has enhanced the role of two of its investigative divisions, the National Service on Combating Organised Crime (NSCOC) and the National Service of Security. In particular, the NSCOC includes the renewed Anti Corruption Unit, now called the Department on Combating Corruption, where staff has been increased from 9 to 22, and - at regional level - from 34 to 58. The Law on the Ministry of the Interior was amended in February 2003 providing *inter alia* for a new definition of the functions of the NSCOC; the fight against corruption was placed among the priority tasks of the service and the scope of this activity was enlarged by covering detection of corruption within the public and private sectors and within the Ministry of the Interior. Moreover, undercover activity (controlled purchases and deliveries) and, most importantly, protection for police informants are now regulated. This was followed up on 23 June 2003 by the Regulation on the use of Under Cover Agents.
24. GRECO took note of the information provided. The core concern expressed in Recommendation v. was the "lack of organisational autonomy" of specialised services involved in the fight against corruption. To an extent, this concern is reflected in the relatively large number of investigative bodies. However, having established a system for coordination at the strategic level, the authorities have addressed the issue of autonomy at the investigative interface. In particular, GRECO noted that the NSCOC has been considerably reinforced both in terms of staff and legislative tools in order to carry out its tasks.
25. GRECO concluded that Recommendation v. has been implemented satisfactorily.

Recommendation vi.

26. *GRECO recommended that a specialisation on the problem of corruption be developed within the Police and that it be provided with the necessary tools, including access to information from other authorities, to enable it to perform an efficient work.*
27. The authorities of Bulgaria have reported that Recommendation vi. has been directly addressed through the creation of specialised units at all 28 regional and all 182 district police departments, providing a force of 700 officers dealing with economic crime, including corruption, resulting in an increase in the number of detected bribery cases (from 59 to 67) over 2002/2003. At Ministry of the Interior level, the National Police Service had five new units established within the Economic Police Department dealing with corruption specific offences, ranging from - for example - industry to the customs and tax administration, with corruption offences involving bribery, abuse of function to fraud and embezzlement. As regards access to tax information, it is now possible for

the prosecution, investigative and police authorities to access such information (amendments to the Tax Code). Access is not automatic (an application must be made to the court, with a time limit of 24 hours for a response), but is available where formerly it was not.

28. GRECO took note of the positive steps undertaken by the Bulgarian authorities to address Recommendation vi. and especially the significant strengthening of the specialised police units dealing with corruption and corruption related offences. It is not quite clear from the reply what are the financial resources set aside to support these new units.
29. GRECO concluded that Recommendation vi. has been dealt with in a satisfactory manner.

Recommendation vii.

30. *GRECO recommended that the role of the Investigation Service be better defined and that the relation/co-ordination between the Prosecution and the Investigation Service be reconsidered, also in the light of the tasks of the law enforcement bodies.*
31. The authorities of Bulgaria have stated that the “Directive on the Activity and Coordination between the Preliminary Proceedings Authorities” (signed by the General Prosecutor, the Director of National Investigative Service and the Minister of Interior on 27 February 2004 in the presence of the President of the Republic) was issued on 22 March 2004 and published in State Gazette ? 30 of 13 April 2004. The Directive regulates in a very detailed manner (nine chapters, 330 Articles) the “team” relations and co-ordination at national, regional and district level between the Police, Investigation and Prosecuting Authorities for the implementation of the Criminal Procedure Code, Criminal Code, Law on the Judiciary, Law on the Ministry of Interior and Law on the Special Investigative Techniques. Moreover, according to significant amendments to the Law on the Judiciary, the National Investigation Service (NIS) was reintegrated into the judiciary, and there is a new provision for the creation of specialised sub-departments for specific cases, such as complex factual or legal issues, crime committed abroad and requests for legal assistance. The Director of the NIS was given a degree of autonomy in deciding *inter alia* management issues between the investigating magistrates, officials of the NIS and regional investigation services. Default jurisdiction is given in all preliminary proceedings to the regional service except for those within the jurisdiction of the NIS.
32. GRECO took note with satisfaction of the steps undertaken by the Bulgarian authorities in order to meet the requirements of Recommendation vii. and considered, in particular, that amendments to the Law on the Judiciary (and to the Code of Criminal Procedure) have redefined in an adequate manner the role and the tasks of the NIS and the “Directive on the Activity and Coordination between the Preliminary Proceedings Authorities” has regulated the relations and the coordination between the Prosecution and other investigative bodies.
33. GRECO concluded that Recommendation vii. has been implemented satisfactorily.

Recommendation viii.

34. *GRECO recommended that the training of judges, prosecutors and investigating magistrates be institutionalised and that programmes concerning corruption with regard to the specific needs of each professional category be established.*

35. The authorities of Bulgaria have reported that the creation of the National Institute of Justice (NIJ), responsible for initial and in-service training of Judges, Prosecutors, Investigating Magistrates, Court Clerks and Inspectors was delayed because its establishment under the auspices of the Minister of Justice was challenged before the Constitutional Court. Following the Constitutional Court Ruling, the NIJ was established in October 2003 at the Supreme Judicial Council. Since 1 of January 2004 the NIJ has started its work: the initial and continuing training of judges, prosecutors, investigating magistrates is carried out, including on the problems of corruption. The programme includes a special training course dealing with the issues of investigation and prosecution of corruption and, in particular, with the issues of definition of corruption offences, methods of their detection and models of their counteraction. This project is named "Anticorruption Academy". The participants - judges and prosecutors from Regional and Appeal Courts and investigating magistrates (about 90 magistrates) - will be divided in groups and each group will be trained during the period of five days.
36. GRECO took note of the considerable effort undertaken to institute a widespread training programme for all members of the judiciary in the National Institute of Justice which has been given a high degree of (financial and managerial) autonomy.
37. GRECO concluded that Recommendation viii. has been implemented satisfactorily.

Recommendation ix.

38. *GRECO recommended to provide the Prosecution Service and the Courts with an adequate number of staff.*
39. The authorities of Bulgaria have reported that amendments to the Law on Judiciary have established a competition procedure for judges and prosecutors, and two competitions were held in 2002 and 2003 leading to the appointment of 43 Judges and 33 prosecutors in 2002, and 14 judges and 8 prosecutors in 2003. These appointments have reportedly filled vacancies in "relevant courts and prosecution offices" and increased the total number of staff.
40. GRECO took note of the information provided by the Bulgarian authorities. Recruitment of properly qualified staff is a significant undertaking from both a financial and logistical point of view.
41. GRECO concluded that Recommendation ix. has been implemented satisfactorily.

Recommendations x. and xi.

42. *GRECO recommended that corruption cases throughout the investigation be dealt with by departments specialised in such cases in order to increase the quality and the speed of the pre-trial investigation and thus provide for speedier court proceedings and adjudication. GRECO also recommended to establish specialised departments for corruption cases at the regional levels of the Investigation Service and the prosecution offices.*
43. In accordance with paragraph 118 of the First Round Evaluation Report, these two recommendations are closely interlinked; their implementation should therefore be examined jointly.

44. The authorities of Bulgaria have reported that they have addressed these two Recommendations in the following way: firstly, in October 2002, the Supreme Court of Cassation adopted an "Interpretative Decision concerning the circumstances in which it would be appropriate for judges to refer cases back to the pre-trial authorities". According to the Bulgarian authorities, since this Decision was issued, "the trend of referring back cases significantly decreased". Secondly, by requiring a higher degree of professional experience within the investigating authorities (amendments to the Law on Judiciary, adopted on the 17 July 2002): for example, staff of the National Investigation Service (NIS) must have 12 years experience in the legal field, including 8 years as a prosecutor, lawyer, investigating magistrate or judge. Thirdly, by setting up (at the beginning of 2003) specialised departments within the General Prosecutor's Office dealing with corruption cases¹, with an intention to form specialised units within the regional and appeal prosecutors' offices in 2004. As regards the NIS, specialised units dealing with money laundering and corruption have been created in the Sofia District and in some regional investigation services.
45. GRECO took note of the reforms mentioned by the Bulgarian authorities. In particular, it considered that the Interpretative Decision issued by the Supreme Court, which establishes guidelines on when cases should be returned to pre-trial authorities for further investigation, is a useful tool for judges and will positively contribute to speeding up court proceedings and adjudication. The measures taken meet one of the concerns expressed in particular in Recommendation x. As regards the second concern raised in both Recommendations x. and xi. (specialised departments to deal with corruption cases), GRECO took note of the information provided by the Bulgarian authorities and of the changes made in this regard. It acknowledged that wide-scale reforms to target corruption – and make Investigation Service staff and prosecutors more specialised in this field – are being implemented. Nevertheless, it considered that there is room for progress in anti-corruption specialisation of the Investigation Service and prosecution offices, above all at regional and district level.
46. GRECO concluded that Recommendations x. and xi. have been partly implemented.

Recommendation xii.

47. *GRECO recommended to develop ethical codes /guidelines against corruption for all public officials.*
48. The authorities of Bulgaria have reported that the year 2003 had seen the widespread introduction of ethics/guidelines: in May, the Minister of Public Administration approved "Guidelines concerning the Conduct of Civil Servants in order to avoid Conflict of Interest and Corruption"; in October, the National Assembly adopted amendments to the Law on Civil Service which contains new conflicts of interest regulations; in May, the Minister of Finance approved a Code of Conduct for Customs Officials; in February, the National Association of Court Officers adopted a Code of Ethics for Court Officers; in November, the Supreme Judicial Council approved a Code of Ethics for Investigating Magistrates; in December, a Code of Ethics for Judges was adopted by the General Assembly of Judges; in October, a Code of Conduct for Police Officers was approved by the Minister of the Interior.
49. GRECO concluded that Recommendation xii. has been implemented satisfactorily.

¹ Two others deal with organized crime, economic crime and money laundering and crimes against physical persons respectively.

Recommendation xiii.

50. *GRECO recommended to consider a reduction of the list of categories of officials covered by immunity to a minimum.*
51. The authorities of Bulgaria have reported that in 2001, the Prosecutor General challenged, before the Constitutional Court, the constitutionality of Article 53 paragraph 1 of the Law on Election of Members of Parliament, which deals with immunities during election campaigns (30 days) of candidates who have registered for parliamentary elections and their observers. The attempt to abolish these immunities has been unsuccessful. The Bulgarian authorities have also reported that following the amendments to the Constitution of the Republic of Bulgaria, on 25 March 2004 the National Assembly adopted Law amending the Law on Judiciary. The amending law was published on 9 April 2004. The law deals with the restriction of the scope of immunities from criminal proceedings applied to magistrates (judges, prosecutors, investigating magistrates) and facilitating of the procedure for lifting of the immunities of magistrates, but also with the reduction of the categories of judicial officials covered by immunities. In particular, the provisions of Articles 157 and 162 of the Law on Judiciary dealing with the immunities of judge-bailiffs and registering judges were repealed. Thus, the above-mentioned judicial officials were excluded from the list of categories of officials covered by immunities.
52. GRECO took note of the information provided by the Bulgarian authorities and GRECO concluded that Recommendation xiii. has been dealt with in a satisfactory manner.

Recommendation xiv.

53. *GRECO recommended that guidelines for the lifting of immunities be established, with a view to a uniform application of the rules.*
54. The authorities of Bulgaria have reported activity, on a number of fronts, related to immunity for judges, prosecutors and investigating magistrates, which led to amendments of the Constitution: 1) immunity in performance of their official duties ("functional immunity", Article 132 Paragraph 1); 2) procedural immunity (inviolability) not extended to the institution of preliminary criminal proceedings and investigation but to the charging and arrest stages (Article 132 paragraphs 2 and 3); 3) removing immunity upon a request of one fifth of the members of the Supreme Judicial Council (in addition to the possibility of requests for the lifting of immunity by the Prosecutor General); 4) secret vote, by simple majority, by which the decision of the Supreme Judicial Council can lift the immunity of a member of the judiciary. Changes at the constitutional level have been reflected in the Law on Judiciary as amended in March 2004 (see above).
55. GRECO took note of the detailed and complete information provided by the Bulgarian authorities related to changes in legislation (Constitution and Law on Judiciary) establishing rules on immunities in respect of members of the judiciary.
56. GRECO concluded that Recommendation xiv. has been dealt with in a satisfactory manner.

III. CONCLUSIONS

57. GRECO concluded that Bulgaria has implemented the great majority of the recommendations.

58. In view of the above, GRECO concluded that recommendations i, ii, iii, v, vii, viii, ix and xii have been implemented satisfactorily. Recommendations iv, vi, xiii and xiv have been dealt with in a satisfactory manner. Recommendations x and xi have been partly implemented.
59. In accordance with Rule 32.2 (i) of its Rules of Procedure, GRECO invites the Head of the delegation of Bulgaria to provide additional information by 30 November 2005 on the progress of the implementation of recommendations x and xi.