



**DIRECTORATE GENERAL OF HUMAN RIGHTS
AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING**

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Second Evaluation Round

Compliance Report on Bulgaria

Adopted by GRECO
at its 33rd Plenary Meeting
(Strasbourg, 29 May-1st June 2007)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Bulgaria at its 24th Plenary Meeting (1st July). 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. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Bulgaria submitted their Situation Report (RS-report) on the measures taken to implement the recommendations on 13 April 2007. Additional information was submitted on 25 April 2007.
3. At its 26th Plenary Meeting (5-9 December 2005), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, "the former Yugoslav Republic of Macedonia" and the United States of America to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Slagjana TASEVA on behalf of "the former Yugoslav Republic of Macedonia" and Ms Jane LEY on behalf of the United States of America. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of Bulgaria, to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

5. It was recalled that GRECO in its evaluation report addressed eleven recommendations to Bulgaria. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended to extend the scope of application of the provisions on forfeiture in order to cover the proceeds of crime held by legal persons.*
7. The authorities of Bulgaria report that, in March 2005, the Law on Forfeiture of Proceeds of Crime entered into force. On the basis of this law proceeds of crime can be forfeited when it has been established that a natural person has acquired property of significant value, which is suspected to derive - directly or indirectly - from crime¹, and this person has been charged with certain crimes, including corruption, money laundering and organised crime. Pursuant to Articles 4-10 of this law, the proceeds of the crime can be forfeited not only from the offender but also from third parties, including legal persons. Articles 6 and 7 of the law provide explicitly that proceeds of crime held by a legal person are to be forfeited to the state, when the perpetrator of the crime in question exercises control within the legal person or when the proceeds have been transferred to the legal person.
8. Furthermore, the Bulgarian authorities report that on 25 September 2006 a joint Instruction on Interaction between the Competent Authorities in the Field of Forfeiture of Proceeds of Crime was issued by the Prosecutor General, the Minister of the Interior, the Minister of Finance, the Director of the National Investigation Service and the President of the Commission for Establishing Property Acquired from Criminal Activity. This instruction aims to improve co-operation between the various authorities involved with investigating and forfeiting property suspected to derive from crime.

¹ Article 4 of the Law on Forfeiture of Proceeds of Crime provides that there should be "grounded supposition that the acquired is connected with the criminal activity of the persons as far as a lawful source has not been established".

9. Finally, it is reported that the amendments to the Law on Administrative Offences and Sanctions, which entered into force in October 2005, provide for the possibility to forfeit from the legal person the advantage (or its equivalent value) which was obtained through certain offences committed on its behalf, if this advantage is not already subject to forfeiture under the Criminal Code (see also below as regards recommendation x).
10. GRECO takes note of the information provided. GRECO welcomes the adoption of new legislation in this area. It appears that in appropriate cases the proceeds of crime held by legal persons can now be forfeited.
11. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

12. *GRECO recommended to provide appropriate training to prosecutors and judges on the forfeiture of proceeds of crime held by third parties.*
13. The authorities of Bulgaria report that the topic of forfeiture of proceeds of crime held by third parties was included in a number of training activities held since the adoption of GRECO's Evaluation Report in 2005. From July 2005 to March 2007 8 training seminars were organised by the National Institute of Justice within the framework of the training course "Judicial Co-operation on Penal Matters in the European Union", which also dealt with the topic of forfeiture of proceeds of crime in relation to the application of European instruments in criminal matters, including the Criminal Law Convention on Corruption (ETS 173). The 8 seminars were attended by 216 magistrates in total (165 judges, 25 prosecutors, 23 investigating magistrates and 3 experts of the Ministry of Justice).
14. Moreover, the topic of forfeiture of proceeds of crime and money laundering was considered in the framework of 2 training seminars organised by the National Institute of Justice in July 2006, in which 55 prosecutors participated.
15. Furthermore, from September to December 2006 the National Institute of Justice and the Ministry of Justice organised 12 seminars for 175 judges on the implementation of the new administrative legislation, which includes provisions of the Law on Administrative Offences and Sanctions on liability of legal persons and forfeiture of proceeds held by legal persons. A further 266 newly appointed administrative judges took part in a training programme of the National Institute of Justice on the same topic from February to May 2007.
16. In addition, the new legislation in the field of forfeiture of proceeds of crime is also included in the training programme of the National Institute of Justice for 2007. It is foreseen that ten training seminars on forfeiture of proceeds of crime will be provided in 2007 to 350 judges, prosecutors and investigating magistrates.
17. Finally, the Bulgarian authorities recall that forfeiture of the instrumentalities and proceeds of crime is mandatory on the basis of the Criminal Code. A forfeiture order is not dependent on an application by the prosecutor but can be ordered by the judge *ex officio*. For this reason it was decided to focus the training on judges rather than prosecutors.

18. GRECO takes note of the information provided and concludes that recommendation ii has been dealt with in a satisfactory manner.

Recommendation iii.

19. *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.*
20. The authorities of Bulgaria report that, in 2006, the Criminological Research Council at the Ministry of Justice prepared an analysis of sentences and sanctions imposed from 1989 to 2003 for bribery offences, which covered 52,7% of court cases involving bribery. The conclusions of this analysis were considered by the Bulgarian Association of Criminology. In November 2006 the analytical report on the application of the bribery provisions of the Criminal Code, as prepared by the Criminological Research Council, was discussed in a public round table. Following the adoption of the new legislation in the field of forfeiture of proceeds of crime, the Criminological Research Council included in its programme of activities for 2007 an analysis of the application of the provisions of the Law on Administrative Offences and Sanctions, which provides for liability of legal persons for criminal offences, and the Law on Forfeiture of Proceeds of Crime. In addition, in 2006 the Prosecutor General's Office prepared an analysis of the practical application of the provisions of the Criminal Code on forfeiture of proceeds of laundering offences. The Bulgarian authorities report that these analyses are aimed at enhancing the capacity of the judiciary (prosecutors and judges) to implement criminal legislation, including cases in which proceeds of corruption and money laundering are to be forfeited.
21. GRECO takes note of the information provided. GRECO welcomes the fact that an analysis of sentences and sanctions in bribery cases appears to have been carried out, but without further information on the outcomes, conclusions and/or possible recommendations deriving from this analysis, it cannot conclude that this recommendation has been fully complied with.
22. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

23. *GRECO recommended to establish anti-corruption programmes for public administration at local and regional levels, as a complement to programmes/reforms implemented at national level.*
24. The authorities of Bulgaria report that problems of prevention of corruption were discussed in the framework of several meetings organised by the Ministry of Public Administration with representatives of the National Association of Secretaries of Municipalities, the National Association of Municipalities and the Foundation on Reform of Local Governance.
25. Furthermore, in 2006 the Institute for Public Administration and European Integration developed a training programme "Prevention of Corruption" for public administration. The training programme started in July 2006 and by the end of the year 5916 officials from municipal administrations, 937 officials from regional administrations and 29,860 officials from the central administration had been trained.
26. Moreover, by the end of 2006, in all 28 regions, Regional Public Councils on Counteracting Corruption, composed of representatives of regional administrations, law enforcement authorities,

tax authorities, prosecution service, courts, customs, health sector, media and non-governmental organisations, had been set up. These Regional Public Councils are advisory and monitoring bodies, which act as a liaison between central and local authorities and the public as regards the identification and prevention of corruption, provide a forum for exchange of information and good practices on the fight against corruption and exercise a form of supervision over the anti-corruption activities of the various institutions represented. The Councils also discuss concrete indications of corruption and the steps taken by the institutions represented to investigate and address these indications. All Regional Public Councils on Counteracting Corruption have adopted programmes of activity for the implementation of the measures set out in the National Strategy for Transparent Governance, Preventing and Counteracting Corruption and for the prevention of and fight against corruption at regional level. Annual action plans have been developed for the implementation of these programmes.

27. Finally, 150,000 information leaflets on “Transparent Administrative Activities”, “Control in the Public Administration” and “Sign Electronically” have been distributed within the framework of the Project “Initiatives on the implementation of the measures set out in the Strategy for Transparent Governance, Preventing and Counteracting Corruption” in all regional and municipal administrations; in 2006 the Ministry of Public Administration and Administrative Reform developed Standards of Ethics of which 100,000 copies had been printed and distributed in all administrative structures at central, regional and local levels.
28. GRECO takes note of the information provided. It commends the Bulgarian authorities for the training that has been provided to public officials at all administrative levels as well as the development and wide-spread distribution of ethical standards, the establishment of Regional Public Councils and – although it would have welcomed more precise information on this – the elaboration of programmes for the implementation of the National Anti-Corruption Strategy by these councils. What has not been made particularly clear from the information provided is whether any assessments were made in order to develop and administer the programmes, strategic goals or annual action plans targeted at the local, as opposed to regional levels. However, GRECO notes that in addition to the training of officials from municipal administrations, the Ministry of Public Administration has met with organisations with ties to or an interest in municipal governance and that part of the anti-corruption campaign pamphlets were distributed in both the regional and municipal administrations. In order to enhance anti-corruption programmes in general, but in particular at the local level, GRECO encourages the continued assessment of vulnerable areas of public administration, the sharing of good practices and the adaptation of the annual action plans accordingly.
29. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

Recommendation v.

30. *GRECO recommended to raise the awareness of anti-corruption reforms in public administration in so far as it affects ordinary citizens.*
31. The authorities of Bulgaria report that in the period 2005-2007 the government carried out a number of initiatives aimed at increasing public awareness of anti-corruption reforms in public administration in as far as they affect ordinary citizens. In June 2006, the Ministry of the Interior launched a broad anti-corruption campaign under the slogans “No to Corruption” and “Corruption causes damage”. This campaign aims to raise public awareness of the anti-corruption policy pursued by the government and of the negative effects of corruption on the social and economic

development of the country, seeks to engage the public in the fight against corruption and strives to increase intolerance to all forms of corruption. The campaign was carried out with the involvement of the media, including three national television programmes, and also included billboard advertising and the widespread distribution of leaflets on possibilities to report suspicions of corruption. Different channels for reporting suspicions of corruption (including telephone hot-lines, information boards and postal boxes) have been established: as of April 2007, 22 central administrations and 16 regional administrations have established telephone hot-lines, in addition to possibilities to report corruption by post or email.

32. In addition, the following initiatives have been carried out:

- the Ministry of Finance launched special initiatives - within the framework of the Government's anti-corruption campaign - to promote greater public awareness of the budgetary process in so far as it affects ordinary citizens;
- 150,000 information leaflets on "Transparent Administrative Activities", "Control in the Public Administration" and "Sign Electronically" have been distributed within the framework of the Project "Initiatives on the implementation of the measures set out in the Strategy for Transparent Governance, Preventing and Counteracting Corruption" in all regional and municipal administrations;
- the Ministry of Public Administration has distributed 100,000 'evaluation cards' for assessment of the administrative services to all administrative units throughout the country, which allows citizens to give their opinion on and suggestions for further improvements of the service provided by the administration;
- in January 2007, within the framework of the campaign "Suspicions of corruption? React!", the National Revenue Agency distributed 300,000 anti-corruption brochures in all regions through public administration, non-governmental organisations and business associations. The brochures include information on an anti-corruption hot-line and describe the procedures for reporting suspicions of corruption;
- the National Customs Agency has set up anti-corruption boards and provided stickers at appropriate places in various customs premises, with the aim of informing citizens about their rights and obligations in relation to customs legislation and procedures;
- the web-sites of several ministries (including the Ministry of Finance and the Ministry of Economy) now include a section entitled "Forum". Under a sub-section called "Anti-corruption practices", citizens can share opinions, statements and examples of corruption and anti-corruption practices in the central and local administrations.

33. GRECO takes note of the information provided. It recalls that it expressed concern in the Second Round Evaluation Report that "efforts to prevent and fight corruption are not being perceived as important for improving everyday lives of ordinary citizens". The recommendation was therefore aimed at measures to explain to the public the damage caused by corruption in public administration, the need for reforms and, in this regard, the importance of an efficient and effective revenue collection service - so that less budgetary resources are needed - and ultimately why and how the public should support these reforms. In this light, it would have welcomed more precise information on how the various initiatives, other than the anti-corruption campaign launched by the Ministry of the Interior, have sought to achieve this and whether the effectiveness of these initiatives has ever been assessed. Nevertheless, it commends the Bulgarian authorities for, in particular, the anti-corruption campaign launched by the Ministry of the Interior and considers that this will have raised the public's awareness of anti-corruption reforms in public administration.

34. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

35. *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.*

36. The authorities of Bulgaria report that the Strategy for Transparent Governance, Preventing and Counteracting Corruption for the period 2006-2008 provides that guidelines for situations where civil servants move to the private sector will be introduced in the Code of Ethics for Public Officials. It has also been included in the Action Plan for the implementation of the Anti-Corruption Strategy for 2007.

37. GRECO takes note of the information provided. It would appear that rules or guidelines for situations where civil servants move to the private sector are yet to be introduced.

38. GRECO concludes that recommendation vi has not been implemented.

Recommendation vii.

39. *GRECO recommended to consider the possibility of introducing the principle of rotation of staff who are most exposed to risks of corruption.*

40. The authorities of Bulgaria report that in 2006 the Law on Public Officials was amended to provide for the possibility of staff rotation in public administration. Two new provisions were introduced to provide for the possibility to move staff permanently or temporarily to another part of the administration (Articles 81a and 81b of the Law on Public Officials) and another provision was amended to provide for the possibility to temporarily move staff within the same part of the administration according to service needs (Article 83 of the Law on Public Officials). In 2006, these new rules on rotation were applied by nine public institutions, including the Ministry of Public Administration and Administrative Reform, Ministry of Finance (National Revenue Agency and National Customs Agency), Ministry of Health and Ministry of Territorial Development and Public Works. In 2006, 160 to 190 customs officers were periodically rotated within the customs administration.

41. GRECO takes note of the information provided. It welcomes the fact that the Bulgarian authorities have gone beyond considering the introduction of the principle of rotation of staff most exposed to risks of corruption. Rotation has been introduced into relevant legislation and subsequently applied in sectors of the administration most vulnerable to corruption.

42. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

43. *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.*

44. The authorities of Bulgaria report that on 12 July 2006 the new Administrative Procedure Code entered into force. Article 107, paragraph 4, of this Administrative Procedure Code stipulates:

“reports [by any citizen, including a public official] may be filed for abuse of functions and corruption, as well as for other unlawful or inappropriate actions of civil servants whereby public interests, rights or legitimate interests of other persons are affected.” Article 108, paragraph 1, of the same law requires administrative authorities to consider these reports. Furthermore, paragraph 2 of this article explicitly provides that “nobody may be prosecuted [mistreated]² only because of reporting under this law”. Administrative sanctions may be imposed upon civil servants for failure to consider or forward signals to the competent authorities (Article 303), as well as for other infringements of the reporting procedure (Article 305). In addition, in October 2006 the Minister of Labour and Social Policy established an interagency working group to consider additional legislative proposals for protection of whistleblowers in both the public and private sector.

45. GRECO takes note of the information provided. GRECO recalls that in the Criminal Procedure Code an obligation already existed for all citizens, including public officials, to report criminal offences to investigating authorities and that by virtue of the Law on Public Officials certain state inspectors were also under an obligation to report violations of the law. GRECO welcomes that the rather general obligation in the Criminal Procedure Code has now been complemented by a more specific obligation to report *inter alia* suspicions of corruption. It also welcomes the introduction of the possibility to impose sanctions in case of non-reporting and the provision stipulating that no one may be prosecuted or mistreated for reporting suspicions of corruption. It considers however that the introduction of such a provision falls short of the establishment of an actual whistleblower protection system, as required by the recommendation. Furthermore, GRECO has not been informed of any training on reporting requirements having taken place.
46. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

47. *GRECO recommended to introduce a centralised register of legal persons that is able to provide information in a reliable and timely manner.*
48. The authorities of Bulgaria report that in April 2006 the Law on the Commercial Register was adopted, which establishes a centralised register of commercial legal persons in the form of a unified electronic data base containing the relevant data and acts (Article 2). Article 11 of this law furthermore provides that this commercial register is publicly accessible and that everyone has a right to free access to all information and documents contained therein. The register will be kept by the Registry Agency at the Ministry of Justice. The law will enter into force on 1 July 2007; the register will be operational from this date.
49. GRECO takes note of the information provided. It would have welcomed further information on the technical and practical arrangements that have been made to ensure that the register will be fully operational as of 1 July 2007. GRECO nevertheless commends the Bulgarian authorities for the adoption of legislation in this area. However, as the new law has not entered into force and the register is not operational yet, GRECO can at this point not conclude that the recommendation has been fully implemented.
50. GRECO concludes that recommendation ix has been partly implemented.

² The Bulgarian authorities explain that the meaning of the word 'prosecuted' used in Administrative Procedure Code covers any actions where the person has been victimised in any way because of reporting corruption under the law and that in the Bulgarian language the same word is used to describe situations of unjustified treatment and to denote criminal prosecution.

Recommendation x.

51. *GRECO recommended to establish liability of legal persons in accordance with the Criminal Law Convention on Corruption and to provide for effective, proportionate and dissuasive sanctions.*
52. The authorities of Bulgaria report that the Law amending the Law on Administrative Offences and Sanctions, by which liability of legal persons for criminal offences – including active bribery, trading in influence and money laundering – was established, entered into force in October 2005.³ The law provides for a monetary sanction of up to 1 million Leva (approximately €500,000), but not less than the amount of advantage obtained or the advantage that could have been obtained by the criminal offence in question (Article 83a, paragraph 1). The law also provides for the possibility to forfeit the property of a legal person (Article 83a, paragraph 4). The sanctions can be imposed irrespective of the criminal liability of the physical perpetrator (Article 83a, paragraph 3).
53. GRECO takes note of the information provided. It appears that liability of legal persons for criminal offences has now been established and that monetary sanctions have been provided for. GRECO welcomes this and hopes that the new provisions will be applied effectively in future.
54. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

55. *GRECO recommended 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.*
56. The authorities of Bulgaria report that in August 2005 the Minister of Justice addressed a letter to the President of the Institute of Certified Public Accountants (ICPA) to further the development of awareness-raising activities within the community of the accounting/auditing professionals. Subsequently, relevant anti-corruption documents were published on the web-site of the ICPA, discussions were held on the role of certified accountants in the detection of corruption within the framework of the Annual International Conferences of the ICPA and this matter was addressed by the ICPA Bulletin.
57. In addition, from November 2005 to April 2006 10 seminars to train persons required to report on suspicious transactions under the anti-money laundering legislation, were held within the framework of an EU Phare Twinning project on “Improving co-operation of the Financial Intelligence Agency (FIA) with the persons obliged under the Law on Measures against Money Laundering (LMML)”. The seminars were attended by 7 lawyers, 5 notaries and 30 accountants and auditors. Moreover, the FIA published further information on reporting obligations on its web-site to assist reporting entities/professions in complying with their obligations under the LMML. Indicators and typologies of suspicious operations and transactions for high-risk categories of reporting entities/professions, such as lawyers and notaries, were approved by the Minister of Finance in September 2005 and subsequently published.

³ Pursuant to Article 83a of the Law on Administrative Offence and Sanctions, a legal person can be held liable for, *inter alia*, active bribery, trading in influence or money laundering offences, which have been committed for its benefit by a natural person, who has the authority to decide on behalf of the legal person, represents the legal person or forms part of its managing/supervising body or by an employee of the legal person, to whom it has assigned a particular task in the context of which the offence was committed.

58. Furthermore, the Ministry of the Economy has declared its intention to include in its contracts with certified accountants who carry out audits of public enterprises (i.e. those enterprises which are owned for more than 50% by the state) a special clause on the obligation to report suspicions of corruption to the competent authorities.
59. Finally, in April 2006 the new Criminal Procedure Code (CPC) entered into force. The new CPC includes a provision – as was also included in the old Criminal Procedure Code – explicitly stipulating that citizens, including professionals such as accountants and auditors, are obliged to report crimes to investigating authorities or to another state body (Article 205, paragraph 1, CPC). In addition, the new CPC provides that in such cases investigating authorities should immediately initiate criminal proceedings (Article 205, paragraph 3, CPC).
60. GRECO takes note of the information provided. GRECO welcomes the awareness raising activities and – although perhaps attended by relatively few professionals - the training that has been given to professionals about their reporting obligations and, in particular, the elaboration of indicators and typologies, which will enhance possibilities for certified accountants and other relevant professions to comply with their reporting obligations under anti-money laundering legislation. The proposal to include a reporting obligation in the contracts between the Ministry of the Economy and the certified accountants, who carry out audits of public enterprises, if implemented as foreseen, is furthermore commendable. GRECO encourages the Bulgarian authorities to carry out this proposal and to continue with the provision of training and awareness raising activities as regards reporting obligations under anti-money laundering legislation to persons in these professions.
61. GRECO concludes that recommendation xi has been implemented satisfactorily.

III. CONCLUSIONS

62. **In view of the above, GRECO concludes that Bulgaria has implemented satisfactorily or dealt with in a satisfactory manner over half of the recommendations contained in the Second Round Evaluation Report.** Recommendations i, v, vii, x and xi have been implemented satisfactorily and recommendations ii and iv have been dealt with in a satisfactory manner. Recommendations iii, viii and ix have been partly implemented and recommendation vi has not been implemented.
63. GRECO invites the Head of the Bulgarian delegation to submit additional information regarding the implementation of recommendations iii, vi, viii and ix by 30 November 2008.
64. Finally, GRECO invites the authorities of Bulgaria to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.