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**Greco Eval III Rep (2009) 7E**  
**Theme I**

## **Third Evaluation Round**

### **Evaluation Report on Bulgaria Incriminations (ETS 173 and 191, GPC 2)**

(Theme I)

Adopted by GRECO  
at its 48<sup>th</sup> Plenary Meeting  
(Strasbourg, 27 September-1 October 2010)

## I. INTRODUCTION

1. Bulgaria joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 14E Final) in respect of Bulgaria at its 9<sup>th</sup> Plenary Meeting (12 May 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 13E) at its 24<sup>th</sup> Plenary Meeting (1 July 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **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).
3. The GRECO Evaluation Team for Theme I (hereafter referred to as the "GET"), which carried out an on-site visit to Bulgaria on 19 and 20 October 2009, was composed of Ms Cornelia GÄDIGK, Senior public prosecutor, Head of Division 57 "Corruption Crimes", Prosecution office Hamburg (Germany) and Ms Aleksandra KAPISOVSKA, Legal Adviser, Ministry of Justice (Slovakia). The GET was supported by Ms Aleksandra KURNIK and Mr Christophe SPECKBACHER from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2009) 7E, Theme I) as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: Ministry of Justice (Council on Legislation Directorate; International Legal Cooperation and European Affairs Directorate; International Cooperation and Legal Assistance in Criminal Matters Department); prosecution services (anti-corruption Department of the Supreme Prosecution Office of Cassation; Sofia City Prosecution Office); Supreme Court of Cassation; Ministry of Internal Affairs – General Directorate "Pre-Trial Proceedings"; National Investigating Service; The GET also met with representatives of one NGO (Open Society Sofia).
5. The present report on Theme I of GRECO's Third Evaluation Round on Incriminations was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Bulgarian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Bulgaria in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme II - Transparency of Party Funding is set out in Greco Eval III Rep (2009) 7E - Theme II.

## II. INCRIMINATIONS

### Description of the situation

7. Bulgaria ratified without reservations the Criminal Law Convention on Corruption (ETS 173) on 7 November 2001 (it entered into force in respect of Bulgaria on 1 July 2002) and its Additional Protocol (ETS 191) on 4 February 2004 (it entered into force in respect of Bulgaria on 1 February 2005). In 2003, Bulgaria withdrew the reservations it had initially made not to establish as a criminal offence under its domestic law the conduct referred to in Articles 6, 7, 8, 10 and 12 and the passive bribery offences defined in Article 5.
8. The Criminal Code of Bulgaria (hereafter: CC) entered into force on 1 May 1968 and was further subject to numerous amendments, the most recent ones adopted in June 2009 and – after the visit – in April 2010 (State Gazette 26 of 6 April 2010).
9. The national currency is the Bulgarian Lev (BGN). For the purposes of the present report, 1 Lev = 0,50 Euro.

### Bribery of domestic public officials (Articles 1-3 and 19 of ETS 173)

10. Articles 301- 303 CC establish the offence of *passive bribery* and Articles 304-304a CC that of *active bribery*.

**Chapter 8 “Crimes against the Activity of the Public Authorities and Public Organisations”; Section IV “Bribery”**

**Article 301 CC**

(1) *An official who requests or receives a gift or any other undue advantage, or accepts an offer or a promise of gift or advantage, in order to perform or to fail to perform an act connected with his/her service, or because he has performed or failed to perform such an act, shall be punished for bribery by deprivation of liberty for up to six years and fine of up to 5 000 Leva.*

(2) *If the official has perpetrated any action under paragraph 1 in order to break, or for having broken his/her service, where this breach does not constitute a crime, the punishment shall be deprivation of liberty for up to eight years and fine of up to 10 000 Leva.*

(3) *If the official has perpetrated any action under paragraph 1 in order to commit or because of having committed another crime in connection with his/her service, the punishment shall be deprivation of liberty for up to ten years and fine of up to 15 000 Leva.*

(4) *In the cases of the preceding paragraphs, the court shall rule deprivation of the rights under Article 37, paragraph 1, sub-paragraphs 6 and 7.*

(5) *The punishment provided in paragraph 1 shall be imposed also on foreign public official who requests or receives bribe, or accepts an offer or a promise of bribe.*

**Article 302 CC**

*For bribery committed:*

1. *by a person holding a responsible official position, including judge, juror, public prosecutor or investigating magistrate, or by a police officer or an investigating policeman;*

2. *through blackmail in abusing the official position;*

3. *for a second time, and*

4. *on a large scale,*

*the punishment shall be:*

a) *in the cases of Article 301, paragraphs 1 and 2 - deprivation of liberty from three to ten years, fine of up to 20 000 Leva and deprivation of rights under Article 37, paragraph 1, sub-paragraphs 6 and 7.*

b) *in the cases of Article 301, paragraph 3 - deprivation of liberty from three to fifteen years, fine of up to 25 000 Leva and confiscation of up to one half of the culprit's property, and the court shall rule deprivation of rights under Article 37, paragraph 1, sub-paragraphs 6 and 7.*

**Article 302 a CC**

*For bribery in particularly large amounts, representing a particularly grave case, the punishment shall be deprivation of liberty from ten to thirty years, fine of up to 30 000 Leva, confiscation of the whole or part of the culprit's property and deprivation of rights under Article 37, sub-paragraphs 6 and 7.*

**Article 303 CC**

*In accordance with the differences under the preceding articles, the official and the foreign public official shall also be punished where, with their consent, the gift or advantage has been offered, promised or given to another person.*

**Article 304 CC**

*(1) A person who offers, promises or gives a gift or any other kind of advantage to an official in order that the official perform or not perform an act connected with his/her service, or because he/she has performed or has not performed such an act, shall be punished by deprivation of liberty for up to six years and fine of up to 5 000 Leva.*

*(2) If in connection with the bribe the official has broken his official duties, the punishment shall be deprivation of liberty for up to eight years and fine of up to 7 000 Leva, where this breach does not constitute a graver punishable crime.*

*(3) The punishment provided in paragraph 1 shall be imposed also on a person who offers, promises or gives a bribe to a foreign public official.*

**Article 304 a CC**

*A person who offers, promises or gives a bribe to an official holding a responsible official position, including judge, juror, public prosecutor or investigating magistrate, or to a police officer or an investigating policeman, shall be punished by deprivation of liberty for up to ten years and fine of up to 15 000 Leva.*

Elements of the offence

*"Domestic public official"*

11. The Bulgarian bribery provisions employ the term "official" which is defined in the General Part of the Criminal Code, in Article 93.

**General Part of the Criminal Code**

**Article 93 CC Use of terms**

*The words and expressions below have been used in this Code with the following meaning:*

*1. "Official" is a person assigned to perform against salary or without payment, temporarily or permanently:*

*a) duties of an office in a public institution, with exception of persons who perform activities relevant solely to material functions;*

*b) management work and work related to safeguarding or managing property belonging to others in a public enterprise, cooperative, public organisation, another legal entity or sole proprietor, as well as private notary and assistant notary, private bailiff and assistant private bailiff.*

12. The authorities indicated that this definition covers all categories of persons mentioned in Article 1(a) and (b) of the Criminal Law Convention on Corruption.

*"Promising, offering or giving" (active bribery)*

13. The elements of "offering", "promising" and "giving" are expressly contained in the penal provisions concerning active bribery ('Article 304, paragraph 1 CC).

*“Request or receipt, acceptance of an offer or promise” (passive bribery)*

14. The provisions of Article 301, paragraph 1 CC use the words “request or receipt, acceptance of an offer or promise”.

*“Any undue advantage”*

15. The provisions on active and passive bribery use expressly the wording “gift or any undue advantage” which, according to the authorities, cover material as well non-material advantages.

*“Directly or indirectly”*

16. The relevant provisions on active and passive bribery do not expressly specify whether the offence could be committed directly or indirectly. However, the authorities affirmed that those provisions may apply also to the situation of bribery through intermediaries. Furthermore, intermediaries are subject to specific provisions pursuant to Article 305a CC.

**Article 305 a**

*A person who mediates for perpetrating any action under the preceding articles, if the perpetrated action does not constitute a graver crime, shall be punished by deprivation of liberty for up to three years and a fine of up to 5 000 Leva.*

*“For himself or herself or for anyone else”*

17. Pursuant to Article 303 CC “an official or a foreign public official shall also be punished where, with their consent, the gift or advantage has been offered, promised or given to another person”. Thus, the Criminal Code provides explicitly for punishment of passive bribery where the advantage is not for the official himself/herself. The authorities affirmed that, contrary to the passive bribery provision, there is no specific reference to a third-party beneficiary in the active bribery provision. However, in view of the common approach under which the offence of active bribery is mirrored by a passive bribery offence (one perpetrator offers, promises or gives an advantage and the other perpetrator accepts the offer, promise or gift), Article 303 CC would also apply in the case where the beneficiary is a third party in active bribery.

*“To act or refrain from acting in the exercise of his or her functions”*

18. The Bulgarian provisions on passive bribery (Article 301, paragraph 1) and active bribery expressly use the wording “in order to perform or not perform an act connected with the official’s service”. According to the Interpretative Ruling n° 8 of 30 November 1981 of the Plenary of the Supreme Court<sup>1</sup>, “the action connected with the service” is implemented through action or

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<sup>1</sup> Ruling № 8 of 30.11.1981 on criminal case № 10/1981, Plenum of the Supreme Court (in Collection “Rulings and interpretative decisions of the Supreme Court of the Republic of Bulgaria on criminal cases 1953-1990”, page 340, No. 116); concerning the court practice in certain issues of bribery offences

(...)

1. Subject of bribery under art. 301 of the Criminal Code and art. 302 of the Criminal Code is an official within the meaning of art. 93, paragraph 1, letters “a” and “b” of the Criminal Code who can personally perform or fail to perform a respective action or inaction connected with his/her service which arises from his/her official competence or work assigned, for which he/she obtains a gift or another advantage. The official is a subject of bribery also where he/she is a member of a collective body or where in virtue of his/her official position he/she can assign the carrying out of the “the action connected with the service” to another person who is under his/her authority.

inaction. The action or inaction of the official involves taking advantage of his/her official position. This could be in itself lawful and imply that the official acts within his/her competence or be unlawful, thus implying a breach of his/her duties. Moreover, the official may be subject to bribery where he/she is a member of a collective body or where, taking advantage of his/her official position, assigns 'the action connected with the service' to be carried out by another person who is under his/her authority.

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2. "The action connected with the service" is implemented through action or inaction. It could be in compliance with the official requirements of the official, constitute a violation of the same or malfeasance (crime connected with service). The words "accept" and "obtain" used in art. 301, paragraphs 1 and 2 of the Criminal Code have identical content. ... An attempt to bribery under art. 301 – 303 of the Criminal Code is possible.

(...)

4. The bribery is committed with direct intent for a venal goal.

5. For corpus delicti of the bribery under art. 301, paragraph 1 of the Criminal Code it is sufficient that the official has accepted or obtained the undue gift or other advantage without violating his/her official duties.

6. The official violates his/her duties within the meaning of art. 301, paragraph 2 of the Criminal Code where he/she carries out actions which are not in compliance with his/her rights and duties established by law, regulation, ordinance, order or another act.

7. Under "another crime connected with the service" under art. 310, paragraph 3 of the Criminal Code it is understood each crime which the official can commit during discharging his/her official duties regardless of whether it is less seriously, equally or more seriously punishable than the bribery. In the bribery under art. 301, paragraph 3 of the Criminal Code there is present a real aggregate of crimes – aggravated bribery and another crime in relation to the service. The other crime could be under art. 282 of the Criminal Code (misuse of official duties) as well, where the offence or failure to discharge the official duties or abuse of power or rights has been expressed in another act of the official outside of obtaining of the bribe itself.

8. When establishing whether the official holds a responsible official position within the meaning of art. 302, sub-paragraph 1 of the Criminal Code, the nature, content and volume of the position or work performed by him/her, the functions and powers granted to him/her, the position he/she holds in the official hierarchy and the nature of the institution, the economic or public organization in which he/she works should be taken into consideration.

9. Blackmail through abuse of the official position within the meaning of art. 302, sub-paragraph 2 of the Criminal Code is present where the official for the purpose of acquiring an advantage puts another person in conditions which compel him/her to give an undue gift or another advantage in order to prevent performing of such actions or inactions connected with the service which would endanger or infringe his/her legitimate rights and interests. The blackmail through abuse of the official position can be made in different ways including by using force and threatening as well.

10. The bribery under art. 302, sub-paragraph 1 of the Criminal Code is made for a second time where the perpetrator receives a gift or another advantage after he/she has been convicted for bribery with a sentence that had entered into force.

11. The only criterion when determining whether the bribe under art. 302, sub-paragraph 4 of the Criminal Code is of large amount is only the money equivalent to the benefit which has been received.

12. Subject of bribery under art. 303 of the Criminal Code is an official within the meaning of art. 93, paragraph 1, letters "a" and "b" of the Criminal Code who does not receive for himself/herself the gift or another advantage for the actions or inactions performed by him/her in connection with the service under the conditions of art. 301 and art. 302 of the Criminal Code but agrees that the gift or the advantage be given to another person.

(...)

14. Subject of bribery under art. 304 of the Criminal Code can be an official and a non-official person. Direct intent is necessary for the subjective part.

15. Bribery under art. 304, paragraph 2 of the Criminal Code is present where the perpetrator gives a gift or another advantage to an official and the latter violates his/her official duties or commits a crime connected with the service for which punishment of up to five years deprivation of liberty is provided for in the law. The bribery is completed where the official violates his/her official duties or commits or makes attempt to commit another crime connected with the service which is not more seriously punishable. Where the crime connected with the service committed by the official in connection with the bribery is punishable with deprivation of liberty for more than five years, the person who has given the bribe will be responsible for bribery under art. 304, paragraph 1 of the Criminal Code and for abetment to the other more serious crime.

*“Committed intentionally”*

19. Pursuant to Article 11 CC (general provision in Section 1 Crime), only intentional acts are punishable as criminal offences unless a punishment for a negligent act is explicitly provided for by law. The authorities indicated to the GET that according to paragraph 14 of the Interpretative Ruling N° 8 of 30 November 1981 of the Plenary of the Supreme Court, bribery can only be committed with direct intention. For example, in the case of active bribery, if the perpetrator gives, promises or offers an advantage to an official in order that [underlined by the Bulgarian authorities] the official performs or refrains from performing an act connected with his/her function, or because he/she has performed or has not performed such an act (paragraph 14 of the Interpretative Ruling № 8 of 30.11.1981 of the Plenary of the Supreme Court on the court practice related to the issues of bribery offence).

### Sanctions

20. Since the amendments to the Criminal Code adopted on 13 September 2002, fines can be imposed together with imprisonment. Active bribery is punishable with imprisonment of up to 6 years and a fine of up to 5 000 Leva [2500 EUR] or, in cases implying an illegal act or omission by the public official (where there is a breach of duties but where this breach does not constitute a crime) of up to 8 years and a fine of up to 7000 Leva [3500 €]. Active bribery involving an “official holding a responsible official position, including a judge, juror, prosecutor or investigating judge” entail a higher sanction in accordance with Article 304aCC: up to 10 years’ imprisonment and a fine of up to 15 000 Leva [7500 EUR]. Passive bribery is punishable with imprisonment of up to 6 years and a fine of up to 5 000 Leva [2500 EUR] or, in cases implying an illegal act or omission by the public official, up to 8 years’ imprisonment and a fine of up to 10 000 Leva [5000 EUR]. If the official has perpetrated an act “in order to commit or because of having committed another crime in connection with his/her service, the sanctions are up to 10 years’ imprisonment and a fine of up to 15 000 Leva [7 500 EUR]. Under the special provisions of Article 302a CC, higher penalties are provided “for bribery in particularly large amounts or representing a particularly grave case”: a fine of up to 30 000 Leva [12 500 EUR], imprisonment of 10 to 30 years, deprivation of rights to take an official position or to exercise a specific profession and confiscation of the whole or part of the property. Further aggravating circumstances for passive bribery are provided under Section 302 paragraphs 1 to 4 CC in case a) the offender belongs to the specific group of persons is a “person holding a responsible official position, including a judge, juror, prosecutor, investigating judge or police officer”; or b) the offence was committed through blackmail, or c) of repeated offence; or d) it was committed on a large scale: depending on the type of situation, the penalty provided for is imprisonment from a term of 3 to 10 (or 15 years), a fine of up to 20 000 (or 25 000 Leva) [10 000 (12 500 EUR)], confiscation of half of the culprit’s property (only for an offence under Article 301 paragraph 3 CC) and deprivation of rights under Article 37 paragraph 1, subparagraph 6 and 7 CC.

### **Bribery of members of domestic public assemblies (Article 4 of ETS 173)**

21. Bribery of members of domestic public assemblies is criminalised under articles 302 paragraph 1 and 304a CC which deal with passive and active corruption involving any “person holding a responsible official position”, and should be punished as an aggravated case of bribery.
22. The sanctions for bribery of domestic assembly members are higher and also different from the general ones. For passive bribery, in the cases contemplated under Article 301, paragraphs 1 and 2 CC, the sanctions are deprivation of liberty from three to ten years, a fine of up to 20 000

Leva [10 000 EUR] and deprivation of rights (under Article 37, paragraph 1, sub-paragraphs 6 and 7 CC). In the cases of Article 301, paragraph 3 CC, the penalties are imprisonment from three to fifteen years, a fine of up to 25 000 Leva [12 500 EUR] and confiscation of up to one half of the culprit's property, and the court shall rule deprivation of rights under Article 37, paragraph 1, sub-paragraphs 6 and 7 CC. For active bribery, the sanctions foreseen by Article 304a CC are up to ten years' imprisonment and a fine of up to 15 000 Leva [7 500 EUR].

### **Bribery of foreign public officials (Article 5 of ETS 173)**

23. Foreign public officials are expressly covered by specific paragraphs in the provisions on active and passive bribery of public officials (Articles 301 paragraph 5 and Article 304 paragraph 3 CC):

**Article 301 CC**

(...)  
(5) *The punishment provided in paragraph 1 shall be imposed also on foreign public official who requests or receives bribe, or accepts an offer or a promise of bribe.*

**Article 304 CC**

(3) *The punishment provided in paragraph 1 shall be imposed also on a person who offers, promises or gives a bribe to a foreign public official.*

24. Article 93 CC provides for the definition of a “foreign public official” as a “person exercising duties of an office in an institution of a foreign state; functions assigned by a foreign state, including by a foreign public enterprise or organisation; duties of an office or mission assigned by international organisation, as well as duties of an office in international parliamentary assembly or international court.

**General Part of the Criminal Code**  
**Use of terms - Article 93 CC**

*The words and expressions below have been used in this Code with the following meaning:*

15. *“Foreign public official” is a person exercising:*

- a) duties of an office in an institution of a foreign state;*
- b) functions assigned by a foreign state, including by a foreign public enterprise or organisation;*
- c) duties of an office or mission assigned by international organisation, as well as duties of an office in international parliamentary assembly or international court.*

25. According to Articles 301 paragraph 5 and 304 paragraph 3 CC, passive and active bribery of foreign public official are punishable with imprisonment for up to six years and a fine of up to 5000 Leva [2500 EUR].

### **Bribery of members of foreign public assemblies (Article 6 of ETS 173)**

26. Members of foreign public assemblies are to be considered “foreign officials” for the purpose of the bribery offences. The sanctions are thus the same as those applicable in case of bribery of foreign officials (see above: imprisonment for up to six years and a fine of up to 5 000 Leva [2500 EUR]).



## **Bribery in the private sector (Articles 7 and 8 of ETS 173)**

### Definition of the offence

27. Active and passive bribery in the private sector are criminal offences under Bulgarian law.

<p style="text-align: center;"><i>Chapter Six "Crimes against the Economy"</i> <b>Section "Common business crimes"</b></p> <p style="text-align: center;"><b>Article 225c CC</b></p> <p>(1) A person who, where working for legal entity or sole proprietor, requests or receives a gift or any undue advantage, or accepts an offer or a promise of such gift or advantage, in order to perform or to fail to perform an act in breach of his/her duties in the course of business activity, shall be punished by deprivation of liberty for up to five years or a fine of up to 20 000 Leva.</p> <p>(2) A person who, in the course of business activity, offers, promises or gives a gift or any kind of advantage to a person who works for legal entity or sole proprietor in order to perform or to fail to perform an act in breach of his/her duties, shall be punished by deprivation of liberty for up to three years or a fine of up to 15 000 Leva.</p> <p>(3) The punishments provided in the preceding paragraphs shall be imposed also where, with the consent of the person mentioned in paragraph 1, the gift or advantage have been offered, promised or given to another person.</p> <p>(4) A person who mediates for perpetrating any action under the preceding paragraphs, if the perpetrated action does not represent a graver crime, shall be punished by deprivation of liberty for up to one year or a fine of up to 5 000 Leva.</p> <p>(5) The object of the crime shall be forfeited in favour of the state or, where it is missing, a sum equal to its value shall be adjudged.</p>
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### Elements of the offence

*"Persons who direct or work for, in any capacity, private sector entities"*

28. Article 225c CC use the words "a person who, where working for a legal entity or sole proprietor". According to the authorities, persons who direct or work for, in any capacity, private sector entities are covered by the above mentioned provision.

*"In the course of business activity"; "...in breach of duties"*

29. According to Article 225c (1) CC, bribery in the private sector occurs if the offence has been committed "in the course of business activity".
30. The provisions of Article 225c CC concerning passive bribery in the private sector (paragraph 1) and active bribery in the private sector (paragraph 2) expressly require that the private sector bribe recipient should act or fail to act "in breach of duty".

### Other elements

31. Acting and refraining from acting, as well as third party beneficiaries are explicitly mentioned under Article 225c paragraph 3. The provisions do not expressly specify whether the offence could be committed directly or indirectly but paragraph 4 of Article 225c incriminates the conduct

of intermediaries, similarly to the provisions on bribery of public officials (see paragraph 16). The bribe can take the form of a gift or of an undue advantage.

32. The replies to the questionnaire mentioned – but without further details – two relevant decisions (Decision N 347/25.09.2008 on criminal case N 302/2008, 3<sup>rd</sup> penal section of the Supreme Court of Cassation; Decision N 568/11.09.2007 on criminal case N 272/2007, 1<sup>st</sup> penal section of the Supreme Court of cassation).

#### Sanctions

33. Active bribery in the private sector is punishable with imprisonment of up to 3 years or a fine of up to 15 000 Leva [7 500 EUR]. Passive bribery in the private sector is punishable with imprisonment of up to 5 years or a fine of up to 20 000 Leva [10 000 EUR].

#### **Bribery of officials of international organisations (Article 9 of ETS 173)**

34. According to the authorities, bribery of officials of international organisations is covered by the relevant provisions on active and passive bribery (Articles 301-304 CC). Article 93 paragraph 15c CC, provides that the definition of “foreign public official” includes a person who exercises “*c) duties of an office or mission assigned by an international organisation, as well as duties of an office in international parliamentary assembly or international court.*” Therefore, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of officials of international organisations.

#### **Bribery of members of international parliamentary assemblies (Article 10 of ETS 173)**

35. Bribery of members of international parliamentary assemblies is covered by the Bulgarian bribery provisions, as the definition of a “foreign public official” of Article 93 paragraph 15c CC expressly includes, as seen above, a person who exercises “*c) duties of an office or mission assigned by an international organisation, as well as duties of an office in international parliamentary assembly or international court.*” The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of officials of international parliamentary assemblies.

#### **Bribery of judges and officials of international courts (Article 11 of ETS 173)**

36. Active and passive bribery of judges and officials of international courts are criminal offences under Bulgarian legislation. The persons concerned are covered by the notion of “foreign public official” in Article 93 CC paragraph 15 c which includes, as indicated earlier, person who exercise “*c) duties of an office or mission assigned by an international organisation, as well as duties of an office in international parliamentary assembly or international court.*” The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of judges and officials of international courts.

#### **Trading in influence (Article 12 of ETS 173)**

37. Trading in influence is criminalised in Article 304b CC both in its active (paragraph 2) and passive form (paragraph 1). Besides, Article 305a incriminates mediation in the commission of a trading in influence offence.

**Article 304 b**

(1) A person who requests or receives a gift or any undue advantage, or accepts an offer or a promise of such gift or advantage, in order to exert influence over the decision-making of an official or a foreign public official connected with his/her service, shall be punished by deprivation of liberty for up to six years or a fine of up to 5000 Leva.

(2) A person who offers, promises or gives a gift or any undue advantage to another person, who asserts that he/she is able to exert influence under paragraph 1, shall be punished by deprivation of liberty for up to three years or a fine of up to 3 000 Leva.

**Article 305 a**

A person who mediates for perpetrating any action under the preceding articles, if the perpetrated action does not constitute a graver crime, shall be punished by deprivation of liberty for up to three years and a fine of up to 5 000 Leva.

Elements of the offence

*“Asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]”*

38. The authorities affirmed that this concept is implemented in Article 304b CC by use of the words “asserts that she/he is able to exert influence over the decision-making of an official or a foreign public official”. The term “improper” is not explicitly transposed. The authorities affirmed that it is not relevant whether the influence was actually exerted or if it led to the intended result.

*Other constitutive elements*

39. The constitutive elements of bribery offences largely apply with regard to active and passive trading in influence.

Sanctions

40. Active trading in influence is punishable with imprisonment of up to 3 years or a fine of up to 3 000 Leva [1 500€]. The sanctions applicable to passive trading in influence are imprisonment for up to 6 years or a fine of up to 5 000 Leva [2 500 €].

**Bribery of domestic arbitrators (Article 1, paragraphs 1 and 2 and Articles 2 and 3 of ETS 191) and bribery of foreign arbitrators (Article 4 of ETS 191)**

41. Pursuant to Article 305 CC, arbitrators are covered by both active and passive bribery offences.

**Article 305 CC**

(1) The punishments for bribery under the preceding articles shall also be imposed on an arbitrator or an expert, appointed by a court, institution, enterprise or organisation, where they perpetrate such actions in connection with their activity, as well as on the person who offers, promises or gives such a bribe.

2. The punishments for bribery under the preceding articles shall also be imposed on a defence counsel, where he/she perpetrates such actions in order to help in ruling criminal or civil case in favour of the adverse party or to client’s prejudice, as well as on the person who offers, promises or gives such a bribe.

42. The Bulgarian Criminal Code does not provide for the definition of an “arbitrator”. This notion should be interpreted in accordance with the relevant provisions of the Law on International

Commercial Arbitration and with the international conventions in the field of arbitration. Thus, both domestic and foreign arbitrators are covered by the Article 305 CC. Concerning bribery of domestic arbitrators, the elements of the offence are assessed in the same way as for bribery of domestic public officials and the sanctions are the ones specified in articles 301, 302, 302a and 304 CC. Concerning bribery of foreign arbitrators, the elements of the offence, including the sanctions, described under bribery of foreign public officials (Articles 301 and 304 CC) are equally applicable.

#### **Bribery of domestic jurors (Article 1, paragraph 3 and Article 5 of ETS 191)**

43. Domestic jurors are covered by the definition of “official” in the meaning of the Bulgarian bribery provisions and the definition in Article 93, paragraph 1a CC. They also fall under the category of “person holding a responsible official position, including judge, juror, public prosecutor or investigating magistrate”, which is contained in Article 302 paragraph 1 CC and Article 304a CC and which cover passive and active bribery of domestic jurors respectively.
44. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of domestic jurors.

#### **Bribery of foreign jurors (Article 6 of ETS 191)**

45. The authorities indicated that the definition of “foreign public official” covers also foreign jurors, but, in the present case, under Article 93 paragraph 15 CC; *as a consequence*, the relevant provisions on active and passive bribery of foreign public officials are applicable.
46. The elements of the offence and the applicable sanctions detailed under bribery of foreign public officials also apply to bribery of foreign jurors.

#### **Other questions**

##### **Participatory acts**

47. Articles 20-22 CC contain general provisions on participation in criminal offences (aiding and abetting) which are applicable in respect of any offence, including the above-mentioned bribery offences.

##### **Article 20 CC**

- (1) *Accomplices in a deliberate crime are: the perpetrators, the abettors and the accessories.*
- (2) *Perpetrator is the one who participates in the very commitment of the crime.*
- (3) *Abettor is the one who has deliberately persuaded somebody else to commit the crime.*
- (4) *Accessory is the one who has deliberately facilitated the commitment of the crime through advice, explanations, promise to provide assistance after the act, removal of obstacles, providing resources or in any other way.*

##### **Article 21 CC**

- (1) *All accomplices shall be punished by the penalty stipulated for the committed crime, taking into consideration the nature and the degree of their participation.*
- (2) *The abettor and the accessory shall be responsible only for what they have deliberately abetted or helped the perpetrator.*
- (3) *When due to a definite personal quality or relation of the perpetrator the law proclaims the act as a crime responsible for this crime shall also be the abettor and the accessory for whom these circumstances are not present.*

*(4) The particular circumstances due to which the law excludes, reduces or increases the punishment for some of the accomplices shall not be taken into consideration regarding the rest of the accomplices with respect of whom these circumstances are not present.*

**Article 22 CC**

*(1) The abettor and the accessory shall not be punished if, by their own motives, they give up further participation and impede the commitment of the act or prevent the occurrence of the criminal consequences.  
(2) Applied in these cases shall be the provision of art. 19 respectively.*

Jurisdiction

48. The rules of Bulgarian criminal jurisdiction are laid down in the general part of the Criminal Code; they apply to all bribery and trading in influence offences. Jurisdiction is established over acts committed within the territory of Bulgaria (principle of territoriality, Article 3, paragraph 1), acts committed by Bulgarian nationals (nationality principle, Article 4 paragraph 1) as well as acts committed abroad by foreigners affecting the interests of the Republic of Bulgaria or of a Bulgarian citizen (Article 5 CC) and acts committed abroad by foreigners wherever stipulated by an international agreement to which the Republic of Bulgaria is a party. According to the authorities, under the criminal doctrine, the jurisdiction is also established over offences committed only partly in Bulgaria.

**Article 3**

*(1) The Criminal code shall apply to all crimes committed on the territory of the Republic of Bulgaria.  
(2) The issue of liability of foreign citizens who enjoy immunity with respect to the penal jurisdiction of the Republic of Bulgaria shall be decided in compliance with the norms of international law adopted thereby.*

**Article 4**

*(1) The Criminal code shall apply to the Bulgarian citizens also for crimes committed by them abroad.  
(2) (Amended, SG No. 75/2006) No citizen of the Republic of Bulgaria can be transferred to another state or an international court of justice for the purposes of prosecution, unless this has been provided for in an international agreement, which has been ratified, published and entered into force in respect to the Republic of Bulgaria.*

**Article 5**

*The Criminal code shall also apply to foreign citizens who have committed crimes of general nature abroad, whereby the interests of the Republic of Bulgaria or of Bulgarian citizens have been affected.*

Statute of limitations

49. According to Articles 80 and 81 CC, the statute of limitation for the prosecution of criminal offences is determined by the severity of sanctions applicable and it varies from 3 years (since the last amendments of April 2010) to 35 years:

**Article 80**

*(1) Penal prosecution shall be excluded by prescription where it has not been instigated in the course of:*  
*1. (amended, SG No. 31/1990, SG No. 153/1998) twenty years in respect of acts punishable by life imprisonment without substitution or life imprisonment, and 35 years in respect of a murder of two or more persons;*  
*2. fifteen years with respect to acts punishable by deprivation of liberty for more than ten years;*  
*3. ten years with respect to acts punishable by deprivation of liberty for more than three years;*  
*4. (amended, SG No. 62/1997) five years in respect of acts punishable by deprivation of liberty for more than one year, and*

5. three years in respect of all remaining cases.

(...)

(3) Prescription of prosecution shall commence as from the completion of the crime, in the case of attempt and preparation - as from the day of completion of the last action, and for continuous crimes as well as for crimes in progress - as from the moment of their termination.

**Article 81**

(1) Prescription shall be interrupted where the beginning or continuation of the penal prosecution depends upon the solution of some preliminary issues with judicial act that has entered into force.

(2) Prescription shall be interrupted by every act of the respective bodies undertaken for the purposes of prosecution, and only in respect of the person against whom the prosecution is directed. After completion of the act, whereby prescription was interrupted, a new prescription term shall commence.

(3) Notwithstanding the termination or interruption of prescription, penal proceedings shall be excluded provided a term has expired which exceeds by one half the term provided under the preceding Article.

50. As a result, all bribery and trading in influence offences discussed in the present report (Articles 225c and Articles 301 to 307 CC are subject to a prosecution time limit of 5 to 15 years, except for mediation in the context of private sector bribery for which it is 3 years. The statute is interrupted by every procedural act of the prosecution, and it is therefore extendable by up to 50% (article 81 paragraphs 2 and 3). The authorities have not provided elements of relevant case law or court decisions.

### Defences

51. A special defence is provided (for active bribery offences) which, according to the authorities, is aimed at encouraging the reporting of bribery. Article 306 CC stipulates that “a person who has offered, promised or given a bribe shall not be punished if she/he has been “blackmailed” by the official, arbitrator or court expert to do so and if she/he has informed the authorities without delay and voluntarily”. One court decision was quoted in the replies to the questionnaire<sup>2</sup>.

**Article 306**

*A person who has offered, promised or given a bribe shall not be punished if he/she has been blackmailed by the official, the arbitrator or the court expert to do so and if he/she has informed the authorities without delay and voluntarily.*

### Other aspects

52. The GET noted that Article 305 paragraph 2 CC incriminates specifically bribery of defence counsels: “2. The punishments for bribery under the preceding articles shall also be imposed on a defence counsel, where he/she perpetrates such actions in order to help in ruling criminal or civil case in favour of the adverse party or to client’s prejudice, as well as on the person who offers,

<sup>2</sup> Decision № 599 of 25.12.1978 on criminal case № 631/78. Second Criminal Division of the Supreme Court

- Under the provision of Article 306 of the Criminal Code a person who has given a bribe is not punished:

A) if he has been blackmailed by the official of by the expert to do so and

B) if of his own accord he has immediately informed the authorities.

- There is no blackmail by an official where the defendant has given the bribe to the same not in view of achieving a lawful result but in order not to be sanctioned for violation of the road traffic act and the regulations for the application of the road traffic act actually committed by him.

- Immediate and by one’s own accord communication to the authorities about the bribe given is not present where the information is provided far after the person who has given the bribe has had the opportunity to enter in contact with the bodies of the authorities and not with the awareness that thus he/she will contribute to successfully combating the corruption amongst officials but just to satisfy his/her feeling of revenge against the official who accepted the bribe.

promises or gives such a bribe.” Moreover, Section IV of the Criminal Code, entitled “bribery”, comprises an Article 307 which provides for the following: “A person who with premeditation creates a situation or conditions conducive to the offering, giving or receiving of a bribe for the purpose of causing harm to a person who gives or receives the bribe, shall be punished for provocation to give or take bribe by deprivation of liberty for up to three years.” The Ministry of justice of Bulgaria explained that the aim of this provision is to prohibit a provocation intended to cause a deliberate damage to a person; court practice has, reportedly, made it clear that it does not apply to police operations.

### Statistics

53. The authorities have submitted the following statistics for the year 2006 on the number of a) investigations initiated; b) indictments; c) judgements and d) convictions, and for the years 2007 and 2008 on the number of a) investigations; b) charges submitted; c) convictions; d) acquittals:

YEAR 2006				
Provision concerned	Investigations	Charges submitted	Judgments	Convictions
Art. 225b	1	1	1	1
Art. 301	73	21	20	18
Art. 302	41	26	18	16
Art. 302a	1	0	0	0
Art. 303	0	0	0	0
Art. 304	125	110	65	61
Art. 304a	1	0	0	0
Art. 304b	15	6	0	0
Art. 305	2	1	1	1
Art. 305a	1	0	0	0
<b>Total</b>	<b>261</b>	<b>166</b>	<b>105</b>	<b>97</b>
YEAR 2007				
Provision concerned	Investigations	Charges submitted	Convicted persons	Acquitted persons
Art. 225b	1	0	0	0
Art. 301	86	22	23	4
Art. 302	21	11	7	4
Art. 302a	0	0	0	0
Art. 303	1	1	0	0
Art. 304	128	60	49	12
Art. 304a	3	2	0	0
Art. 304b	15	5	2	0
Art. 305	1	0	0	0
Art. 305a	2	0	0	0
Art. 307	0	0	0	0
<b>Total</b>	<b>258</b>	<b>101</b>	<b>81</b>	<b>20</b>
YEAR 2008				
Provision concerned	Investigations	Charges submitted	Convicted persons	Acquitted persons
Art. 225b	3	1	0	0
Art. 301	81	14	13	5
Art. 302	21	9	7	0
Art. 302a	1	0	0	0
Art. 303	0	0	0	0
Art. 304	137	79	55	7
Art. 304a	5	2	0	0
Art. 304b	11	4	0	0
Art. 305	2	0	0	0
Art. 305a	0	0	0	0
Art. 307	0	0	0	0
<b>Total</b>	<b>261</b>	<b>109</b>	<b>75</b>	<b>12</b>

#### IV. ANALYSIS

54. The incriminations of corruption-related offences contained in the Bulgarian Criminal Code of 1968 have been amended on several occasions (in 1999, 2000, 2002 and 2010), following the ratification of the Criminal Law Convention on Corruption (ETS 173) and the Additional Protocol to this Convention (ETS 191) (hereinafter: “the Convention” and “the Protocol”), the OECD Convention on combating bribery of foreign public officials in the framework of international business transactions, and the more recent United Nations Convention against Corruption. When depositing its instrument of ratification pertaining to the Convention, Bulgaria initially made reservations not to establish as a criminal offence under its domestic law the conduct referred to in Articles 6, 7, 8, 10 and 12 or the passive bribery offences defined in Article 5. However, in 2003 Bulgaria withdrew its reservations. Obvious efforts have been made to keep the framework consistent, for instance by extending part of the incrimination of bribery of domestic public officials to their foreign counterparts and then extending the concept of foreign public officials to also include various categories of persons employed i.a. at international level. In the opinion of the GRECO evaluation team (hereinafter, the GET), the current incriminations of bribery and trading in influence provide for a fairly sound basis for the prosecution of various corruption offences, and the officials interviewed during the on-site visit generally expressed satisfaction in this regard. At the time of the visit, Bulgaria planned to introduce amendments to improve and simplify the criminal proceedings<sup>3</sup> in response to concerns expressed in recent years by the European Commission in various pre-accession and (more recently) post-accession reports which have criticised the lack of effectiveness and results of the criminal justice system in connection with serious forms of crime, including organised crime and corruption; this led to the suspension of EU funding in July 2008 (this measure has since been repealed). Relevant amendments were adopted and entered into force in May 2010. The adoption of a new Criminal Code is also among the projects of the government but discussions are at a very early stage and there was no information available at the time of the on-site visit as to any possible repercussions the new Code might have on the incrimination of corruption.
55. Practitioners met on site were generally open to all questions and accepted to share their experience. However, the GET regrets the cancellation of two meetings - with first instance court judges (City Court of Sofia) and a professor in criminal law.
56. The Bulgarian Criminal Code (CC) incriminates passive bribery of domestic (and foreign) public officials under articles 301, 302, 302a and 303 CC, and active bribery of domestic (and foreign) public officials under articles 304 and 304a CC. The definition of the concept of domestic official contained in article 93 paragraph 1 CC is very broad. The Bulgarian authorities explained that a compromise had to be found to accommodate the various requirements of domestic definitions contained i.a. in administrative law, and those contained in the international conventions. As explained on site, *persons holding a responsible official position* (which are mentioned under the aggravating circumstances of article 302 CC and 304 a CC) are in fact a subcategory of domestic officials. The GET noted that this category is not precisely defined, apart from the fact that it includes judges, jurors, public prosecutors, investigating magistrates and police officers in the above articles. The Bulgarian authorities indicate that paragraph 8 of the Supreme Court Ruling of 1981 (see footnote 1) provides for criteria; other criteria are provided in administrative law (for

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<sup>3</sup> For instance, by avoiding repeating all the steps of the pre-trial proceedings during the trial phase, by introducing the possibility to change the legal basis for the indictment in the trial phase, by increasing interaction between the law enforcement bodies in the pre-trial phase (creation of joint investigative teams). First steps have already been taken (e.g. the institution of the investigating judge has become an investigating prosecutor) and agreements between Heads of various authorities have been signed.



instance the categories of officials subject to the legislation on conflicts of interests); the combination of these criteria and indicators would therefore constitute some kind of “*de facto*” list. The Bulgarian authorities also stress that ministers, mayors, deputy mayors, managers of companies, chief accountants, heads of customs services and heads of departments are just some examples of *persons holding a responsible official position* according to case law.

57. The CC dissociates the active and passive bribery offences using a wording for the basic bribery offence elements which is the same as in the Convention. It covers the *requesting or receiving of a gift or any other undue advantage, or the acceptance of such an offer or a promise* (article 301 CC on passive bribery of domestic as well as foreign public officials) and the *offering, promising or giving of a gift or any other kind of advantage* (active bribery of domestic public official under article 304 CC). In both cases, the objective is for the official *to perform or to fail to perform an act* (positive and negative acts), including an act that *s/he has performed or failed to perform*. Such mechanisms go beyond the Convention insofar as they cover also gifts and acts which have already been received / accomplished. However, since they are not used systematically in all bribery provisions<sup>4</sup>, this leads to some minor inconsistencies.
58. As the GET was told on site, the concept of “gift” under criminal law is different from the one used in administrative law since it is to be understood in the context of the accomplishment of an official act; it was included to make it clear that the practice of giving small material advantages in order to obtain favours, as existed under the former political regime, had to be ended. Besides, the discussions held during the visit have shown that the value of the gift or advantage does not matter and cases would be taken to court (leading to convictions) even where the value of the bribe is very low (5 € or less). The GET also welcomes the fact that Bulgarian criminal law criminalises bribery of domestic public officials also when acts have already been committed; it believes that this makes the prosecution of bribery offences easier, for instance in case of repeated bribery offences or when agreement has been reached that the bribe would be paid after the (non-) accomplishment of an official act and the prosecution has difficulties proving the existence of such an agreement (formal or informal) between the bribe-giver and the bribe-taker. As regards the references to bribes and undue advantages, the GET noted that the legislation does not seem to be always consistent, at least in the English version available; for instance, although the various provisions usually refer to a “gift or another undue advantage”, there are some exceptions where the word “undue” is missing (for instance in article 304 CC), or where a provision only refers to a “bribe” (article 304a CC). The Bulgarian authorities take the view that this is only a matter of legal technique aimed at avoiding repetitions in the law; in the opinion of the GET, however, they may wish to ensure that these divergences do not raise unnecessary doubts in practice as regards the substance of the incriminations.
59. Aggravating circumstances are provided for under articles 301 paragraphs 2 and 3, and article 304 paragraph 2 CC (bribery connected with a breach of duties by the official). Aggravating circumstances are also provided for under articles 302, 302a and 304a CC: in case of repeated offences, offences involving bribe-takers who are senior officials (the expression used is persons holding a “responsible official position”, which includes those working in judicial functions), the use of blackmail, as well as offences “committed on a large scale” or involving “particularly large amounts” (thus constituting “particularly grave cases”). These concepts are defined partly under article 93 CC by reference to qualitative criteria, and partly in case law: a ruling of 1999 apparently states that “large amounts” refers to sums or damages worth 70 minimum wages and “particularly large amounts” to sums in excess of 140 minimum wages, which represented at the time of the visit approximately 8400€ and 16,800€ respectively (1 minimum wage = 120€).

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<sup>4</sup> For instance, the offence of active and passive bribery in the private sector (article 225c) is limited to future acts.

Practitioners met by the GET were all aware of these values and they expressed no particular concerns in respect of these concepts.

60. From the GET's standpoint, a particular feature of the Bulgarian provisions is that instead of incriminating bribery whether it is committed "directly or indirectly" (i.e. through an intermediary), as required by the various provisions of the Convention under review, there is a specific incrimination, under article 305a CC, for mediation in a bribery offence involving a public official and the other categories of persons who are not private sector employees under articles 301 to 305 CC (a similar provision exists under the private sector bribery offence of article 225c paragraph 4 CC). It appears that this kind of incrimination has a concrete dissuasive but also practical function in the context of Bulgaria (persons sometimes take the initiative to spontaneously offer their services as intermediary or facilitator). Furthermore, the Bulgarian authorities explained after the visit that article 305a CC (and article 225c paragraph 4) was introduced in 1982 in order to fill a gap since unsuccessful intermediation was not covered by the mechanism of complicity under article 20 CC before 2002. Discussions held on site showed that the intermediary would be prosecuted as accessory under articles 20 to 22 (see paragraph 47 in the descriptive part) if s/he was successful; otherwise, or where the main offender (briber or bribee) cannot be identified, article 305a would be applied. The GET was concerned that the mechanism of article 305a CC, despite its merits, could risk shifting the focus away from the real culprit when the initiative lies with the bribe-taker or with the bribe-giver (which are the cases contemplated in the expression "directly or indirectly" used in the Convention). Case law provided after the visit in relation to offences falling under article 305a CC<sup>5</sup> showed that articles 301 to 303 CC (passive bribery) and article 304 CC (active bribery) are still applicable. Corruption offences committed through an intermediary thus appear to be implicitly covered although GRECO would have preferred to see a clear confirmation in court practice related to the offences of active and passive bribery, and trading in influence.
61. The CC contains a specific article (article 303) on third party beneficiaries. It provides that "*the domestic and the foreign public official shall also be punished where, with their consent, the gift or advantage has been offered, promised or given to another person*". After the visit, the Bulgarian authorities reassured the GET that the concept of "consent" should be understood broadly<sup>6</sup>

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<sup>5</sup> - Decision N 34 of the Supreme Court of 14 May 1984: "*The intermediary in offering, receiving, requesting or giving a bribe is an accomplice of the perpetrator who gives or receives the bribe. When the intermediation is successful, the intermediary shall be criminally responsible for abetting or/and aiding the criminal offence committed by the person who accepts or receives the bribe (i.e. bribe-taker under Art.301-303 CC passive bribery) or the criminal offence of the person who gives a bribe (i.e. briber under Art.304 CC active bribery). Article 305a CC (intermediation) shall be applied only if the intermediation in offering, receiving, requesting or giving a bribe has not been successful, for whatever reason. In such a case, the intermediary shall be responsible separately under Art.305a.*"

- Decision N 111 of the Supreme Court of 28 December 1987: "*During the court proceedings it was indisputably proven that the convicted person A. has given to the convicted person G. a bribe of 200 BGN. The regional court has reasonably accepted that the transfer of part of the amount-100 BGN, has taken place with the participation of the convicted I. who has received the money from A. and delivered it to G., and I. has been aware that G. receives the money in his quality of public official in order to violate his duties. The crime is committed under Art.305a CC if the person intentionally abets another in receiving or giving a bribe, as well as intentionally participates in receiving or giving a bribe. If the intermediation is successful and the gift is given or received, there shall be complicity in active or passive bribery according Art.20 CC (complicity).*"

- Decision N 439 of the Supreme Court of 6 September 1984: "*The crime under Art.305a is committed if there is intermediation between the person who offers the bribe (briber) and the person who receives the bribe (bribe-taker), but only in case where the final objective is not achieved. In case where the actions of bribery are committed (i.e. the bribery takes place), the intermediary shall be considered accomplice under the meaning of Art.20, para.4 CC (complicity/aiding).*"

<sup>6</sup> According to a court Decision no. 527 of 28 October 1976, in the case of article 303 CC, the corrupt official "*negotiates for the bribe, acts or refrains from acting in relation to his duties and gives consent or points out / designates the person who should receive the bribe*".

(similarly to the element of knowledge referred to in the explanatory report to the Convention). This being said, the GET had misgivings about the current legal arrangements on third party beneficiaries since no reference is made to them in relation to the incrimination of active bribery under articles 304 and 304a CC, nor in the active and passive trading in influence offence of article 304b CC. As indicated in the descriptive part (see paragraph 17), the Bulgarian authorities take the view that by virtue of a theory of mirroring provisions, article 304 and 304a CC would implicitly contain the element of third party beneficiaries and after the visit, they referred to case-law from 1969 and 1976<sup>7</sup>. Besides the fact that the pertinence of this earlier jurisprudence is not entirely clear in the current context, the on-site discussions with practitioners showed that there were different views as to whether the element of third party beneficiaries was provided for in all corruption-related offences. Besides, the incrimination of private sector bribery (article 225c paragraph 3) refers explicitly to both the active and the passive bribery offence. The GET therefore recommends **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.**

62. Although any evidence can be used in proceedings (principle of the judge's intimate conviction and absence of particular requirement as to the type of evidence required), the vast majority of cases taken to court in Bulgaria that the GET discussed on site seemed to be (minor) cases where, for instance, the offender had tried to bribe a police officer (typically from the traffic police) or where the conviction was based on situations where money had changed (or was changing) hands. This prompted the GET to examine to what extent bribery and trading in influence are prosecutable also without both parties necessarily reaching an illicit agreement. The GET wishes to stress that under the Convention, active and passive bribery and trading in influence should qualify as completed criminal offences (and not as attempted offences) even when the bribe-taker or bribe-giver does not respond positively to a proposition. In fact, the Supreme Court ruling of 1981 mentioned in footnote 1, which still constitutes a reference decision, stresses in its paragraph 3 that attempt remains applicable in connection with the bribery offences of articles 301-303 CC, but without providing further explanations or guidance. The Bulgarian authorities explained after the visit that until 2002, the incriminations of passive and active bribery were limited to "receiving" and "giving" of a bribe and that earlier case law and the above ruling of 1981 should therefore be read in that context. They also indicate that since the other elements of the offence – such as requesting, promising, offering – have been included in 2002, the criminal acts established by the Criminal Code are at present punishable as unilateral acts, i.e. also in the absence of an agreement between the bribe-giver and the bribe-taker. However, the limited information available to the GET did not allow it to ascertain that the provisions on attempt have – in principle – become irrelevant also in court practice, and the Supreme Court has not issued any updated ruling after 1981.
63. The incriminations provided for under articles 301 to 305 CC (which concern active and passive bribery of domestic and foreign public officials and trading in influence), as well as those of article 225c CC (on active and passive bribery in the private sector), refer to "a gift or another undue advantage". There seems to be no unanimity in Bulgaria as to whether non-material advantages are covered and if so, to what extent. As the Ministry of Justice explained, the law referred to "material advantages" until 2002, when the word "property" was suppressed, precisely in order to

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<sup>7</sup> Decision No 847 of the Supreme Court of 4 January 1969 and Decision No 527 of the Supreme Court of 28 October 1976 (on the application of third party beneficiary provisions under art.303); in the first decision (last sentence) it is expressly stated where the bribe-taker is punished under Art.303 (and the benefit was for a third person), the briber commits a criminal offence under Art. 304 and should be punished for active bribery.

cover also non-material advantages. However, it would appear that practice has not yet followed this development and sticks to the traditional approach<sup>8</sup>: whereas some practitioners accepted that advantages are anything which places the bribe-taker in a better position or brings some form of satisfaction (including prostitution services, promotion etc.), the representatives of the Supreme Court and of the Supreme Prosecution Office stressed that the advantage can only be material in practice since it has to be valued and such a value must be based on “legal” market criteria (which would exclude in particular prostitution services); no exception to this practice or interpretation was mentioned. The GET observes that 6 years after the relevant amendments, the situation has not really changed in practice. Bulgaria is confronted with a paradoxical situation where bribery involving material advantages worth the equivalent of a few Euros can trigger criminal proceedings as indicated earlier, but bribery offences involving non-material advantages even when they would ultimately lead to significant material advantages (promotion, passing school or other selection procedures etc.) do not. After the visit, the Bulgarian authorities stressed that legal theory<sup>9</sup> and guidelines issued in 2005 by the National Investigative Service<sup>10</sup> have reportedly confirmed that a bribe or advantage can be non-material. However, the GET considers that the extent of the diverging practice requires that additional measures be taken. It recommends **to continue to clarify the interpretation of the law following the 2002 amendments relating to the criminalisation of both material and non-material advantages.**

64. As indicated in the descriptive part, the Bulgarian Criminal Code does not contain a specific category of bribery offences involving members of public assemblies. Domestic ones are covered by the general provisions applicable to domestic public officials (as indicated in the descriptive part, they fall under the aggravating circumstance applicable to bribery of *persons holding a responsible official position* mentioned earlier). Foreign assembly members, in contrast, are treated as “regular” foreign public officials. It was not entirely clear to the GET to what extent the generic categories above capture both elected and appointed representatives and the concept of assembly at the various territorial levels, irrespective of the type of functions performed (administrative or legislative), in accordance with articles 4 and 6 of the Convention. As indicated earlier, the incrimination of bribery of foreign public officials results from a partial extension of the provisions on bribery of domestic officials (article 301 paragraph 5, and article 304 paragraph 3 CC each refer to the basic offence of paragraph 1); thus, various aggravating circumstances remain specific to bribery of domestic officials. The Bulgarian authorities indicated that the definition of “foreign official” of article 93 paragraph 15a to 15c is autonomous and related to the OECD Convention. It reportedly covers also officials of international organisations, members of foreign and international assemblies, officials and judges of international courts.
65. Overall, the practitioners met on site did not express any concern or difficulties in practice with the above definitions and categorisations, nor did they acknowledge any major issues of consistency, which reassured the GET on these points. This being said, it noted that contrary to the definition of (domestic) public officials of article 93 paragraph 1, article 93 paragraph 15a to c does not mention explicitly that the foreign public official may be a person holding temporary or permanent functions. The Bulgarian authorities may wish to address this (minor) inconsistency.

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<sup>8</sup> The GET noted that the Supreme Court Ruling of 1981 (see footnote 1) states under item 4. that “The bribery is committed with direct intent for a venal goal” and under item 11., it reminds that *The only criterion when determining whether the bribe under art. 302, sub-paragraph 4 of the Criminal Code is of large amount is only the money equivalent to the benefit which has been received.*

<sup>9</sup> In a study entitled “New provisions of the Special Part of the Criminal Code”, 2003, p.196-197, Prof. Dimitar Mihaylov stresses that “[Following the amendments of 2002], the scope of application of bribery provisions with respect to the advantage became extremely broad and unlimited. It is well known now that the term “advantage” under the Bulgarian Criminal Code covers advantages or benefits of any kind that have valuable or non-valuable (moral!) character”.

<sup>10</sup> The document is entitled “Methodological guidelines for the Investigation of Criminal Offences. Investigation Practice”.

66. Active and passive trading in influence is criminalised under the specific provisions of article 304b CC which were introduced in 2002, after Bulgaria had lifted initial reservations made to article 12 of the Convention, which is to be welcomed. Bulgaria has opted not to restrict the incrimination to situations where the influence would be improper. This being said, it is obvious that article 304b misses several specific elements of the trading in influence offence established under article 12 of the Convention, as it does not explicitly incriminate cases where the influence is not exerted or does not lead to the intended result. The Bulgarian authorities, on the basis of a reasoning by analogy with the provisions and case-law on passive bribery<sup>11</sup>, take the view that the expression “**in order to exert influence**” used for passive trading in influence (article 304b paragraph 1), implies that it does not matter whether the influence is exerted or not. Likewise, the provisions on active trading in influence (Art.304b, paragraph 2) provide that the advantage is offered, promised or given to a person who **asserts** (the Bulgarian word also includes the idea of “*pretends*”) *that s/he is able to exert influence*; the Bulgarian authorities explain that this language does not imply any consideration as to whether the influence is exerted or not, and whether the supposed/pretended influence leads to the expected result. The GET accepts the explanations above, although it would have preferred to see a confirmation in court practice related to the offence of trading in influence (two convictions were pronounced in 2006 for trading in influence, but information was not available as to their possible relevance).
67. The incriminations of active and passive bribery in the private sector under article 225c CC are globally in line with the requirements of articles 7 and 8 of the Convention (leaving aside the earlier comments made under paragraph 61 on third party beneficiaries). The GET was repeatedly told that corruption is a phenomenon which is also widespread in the private sector and the Bulgarian authorities have referred after the visit to the existence of case-law on the implementation of article 225c CC<sup>12</sup>.
68. As already indicated, Bulgaria ratified the Protocol in 2004. The incrimination of bribery of domestic jurors (who are assimilated to the subcategory of “persons holding a responsible official position”) and foreign jurors (who are assimilated to “foreign public officials”) calls for no particular comment; the GET welcomes the fact that these incriminations exist in Bulgarian law although the country has itself no jury system. Active and passive bribery of arbitrators – as well as of experts and defence counsels – are the explicit subject of article 305 CC. This is not a stand-alone provision as it refers back to the applicability of “*the punishments for bribery under the preceding paragraphs*”. The GET could not determine precisely whether an arbitrator would be prosecutable for passive bribery as a regular official (under article 301 CC) or as an “official in a responsible position” (under article 302 CC); the same goes for the provisions applicable to the bribe-giver (and whether article 304 or article 304a are applicable). The Bulgarian authorities stressed after the visit that prosecutorial and judicial bodies would decide on a case by case basis, depending on the specific circumstances, which provisions would apply.
69. Moreover, since article 305 CC does not spell out explicitly its applicability to bribery of both domestic and foreign arbitrators, the GET was concerned that the latter would be excluded from its scope. During the on site discussions it was explained that arbitration proceedings in Bulgaria

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<sup>11</sup> According to a decision of the Supreme Court of Cassation no 787 of 20 October 2005, “whether the bribe-taker really has refrained from acting or just has deceived the briber by refraining from acting is irrelevant for establishing the criminal liability”.

<sup>12</sup> For instance: Decisions of the Supreme Court of Cassation No 568 of 11 September 2007, No 57 of 4 April 2008, No 347 of 25 September 2008, No 99 of 19 April 2010, and No 47 of 19 February 2010. In Decision No 786 of 27 December 2007, the Supreme Court of Cassation has made detailed considerations on the specific characteristics of the private sector bribery offence.

are governed by the International Commercial Arbitration Act (“ICAA”) of 1988<sup>13</sup>. The GET was also told that article 11 of the act constitutes the basis for the applicability of article 305 CC to foreign arbitrators as it states: “An arbitrator may also be a person who is not a citizen of the Republic of Bulgaria”. However, the GET understood that this provision concerns essentially the ability of a foreign citizen to act as an arbitrator under the ICAA (domestically or abroad, as long as the parties agree to submit their conflict to Bulgarian arbitration rules). If this reading by the GET is correct, the incrimination of (active and passive) bribery of foreign arbitrators does not meet the requirements of article 4 of the Protocol, since the concept of foreign arbitrator is understood in the Protocol by reference to the performance of functions “*under the national law on arbitration of any other State*”; what prevails is not the nationality of the arbitrator but the law under which s/he operates. For the above-mentioned reasons, the GET recommends **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.**

70. In Bulgaria, the legislation (penalties) is usually more severe with the bribe-taker or person selling influence than with the bribe-giver or person buying influence (penalties are higher for passive bribery than for active bribery). The justification given for this is that the bribe-taker is considered to be most frequently the initiator of bribery offences and therefore it is s/he who represents a particular danger for society. The GET does not have at its disposal sufficient information on national practices that would allow it to evaluate the pertinence of this approach (some other countries do have a similar approach, and others don't); the differences in punishment are not too important in the case of Bulgaria (the sanctions are the same for the basic offences, it is essentially the aggravating circumstances that differ).
71. Overall, the sanctions applicable to persons who have committed a bribery offence involving a person from the public sector (articles 301, 302, 303, 304, 304a, 307 CC) appear to be sufficiently dissuasive bearing in mind the maximum applicable penalty (up to 10 years' imprisonment for the active or passive bribery offence). Moreover, the fine is always an additional penalty. There is no lower limit to the prison sentence or fine (except under article 302 CC), but the general criminal provisions provide for statutory minima (3 months for imprisonment and BGN 100 for fines, according to articles 39 and 47 CC).
72. In contrast, the maximum penalties applicable to the offences of bribery in the private sector (article 225c CC)<sup>14</sup>, intermediation (article 305a CC)<sup>15</sup> and trading in influence (article 304b)<sup>16</sup> are noticeably lower but still within the average level of punishment observed to date in other GRECO member states. The fact that intermediation in private sector bribery offences under article 225c paragraph 4 CC is subject to a maximum penalty of only one year' imprisonment is a minor exception.
73. Generally, the time limit for the prosecution of bribery and trading in influence offences is 5 to 10 years beginning from the commission of the offence and lapsing with the instigation of prosecution (and not the rendering of a verdict). The length of the statute and the way it is

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<sup>13</sup> The ICAA was initially designated to regulate only international commercial arbitration proceedings. In 1993 the Parliament passed a very important and conceptual amendment of the ICAA whereby subject to certain exceptions the ICAA became applicable to domestic arbitration proceedings as well. As a result, since 1993 domestic and international arbitration proceedings in Bulgaria are both governed by the ICAA although its name remained unchanged.

<sup>14</sup> Up to three years' imprisonment or a fine of up to BGN 15 000 [EUR 7500] for passive bribery, up to five years' imprisonment or a fine of up to BGN 20 000 [EUR 10 000] for active bribery.

<sup>15</sup> Up to one year imprisonment and a fine of up to BGN 5000 [EUR 2500].

<sup>16</sup> Up to three years' imprisonment and a fine of up to BGN 3000 [EUR 1500] for active trading in influence; up to six years' imprisonment and a fine of up to BGN 5000 [EUR 2500] for passive trading in influence.

calculated are in line with the situation in most other GRECO member States evaluated to date. Moreover, since it is interrupted by each procedural act of the accusation, the statute can thus be extended by up to half of the initial time limit. The only situation where the basic prosecution time limit is too short is for offences falling within the scope of Article 225c paragraph 4 CC (mediation in connection with private sector bribery), where it is three years (since the last Criminal Code amendments of April 2010); this results from the maximum term of imprisonment which is up to (and not more than) one year, since the statute of limitation is determined by the level of penalty applicable.

74. As indicated in paragraph 51, article 306 CC establishes a system of effective regret which entails total exemption from liability when a bribe-giver is forced ("*blackmailed*") to commit the act. Since 2002, the two safeguards are cumulative: 1) the briber must have been forced to act; 2) s/he reports the offence without delay. Moreover, mandatory confiscation of proceeds is to be applied (article 307a). Discussions held on site suggested that in practice, the expression "without delay" is interpreted strictly as meaning within 24 hours before any initiative is taken by the authorities (in accordance with case law). And, in principle, the defence is not applicable when the offender has committed an offence (the example given was a traffic offence). It was repeatedly stressed that this provision is essential for the prosecution of corruption offences and it would appear that the vast majority of cases taken to court are based on this form of denunciation. However, the GET was concerned by the fact that the defence has apparently an automatic character. Moreover, the GET received diverging information as to the extent to which the decision to apply effective regret is subject to judicial review<sup>17</sup>: during the on-site discussions, prosecutors indicated that the final decision rests with the prosecutors and the court cannot examine the validity of the application of article 306 CC; on the contrary, the Bulgarian authorities stressed after the visit that the prosecutor's decision is always subject to the courts' control<sup>18</sup>. Moreover, although article 306 CC applies in principle only to *bona fide* bribe-givers who have been forced to act, it refers to the three elements of the bribe-giving offence, including "offering" which is theoretically incompatible with the spirit of the provisions, in the GET's opinion. Examples of situations where article 306 CC had been applied were discussed on site, and it appears that although the element of constraint was often present, this was not always clearly the case<sup>19</sup>. Given these various factors, the GET believes that this provision needs to be put under scrutiny. It therefore recommends **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)**.
75. Besides the general territorial competence of Bulgaria for all offences committed in the country (article 3 CC), Bulgaria has jurisdiction for offences committed abroad by nationals, and also foreigners insofar as these would affect the interests of the country or of Bulgarian citizens (articles 4 and 5 of the Criminal Code). This means that the concept of "interests" of the country or

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<sup>17</sup> Decision № 411/16.05.2007 of the Supreme Cassation Court, Decision № 21/10.02.2006 of the Military Appellate Court of the Republic of Bulgaria.

<sup>18</sup> The Bulgarian authorities stressed that there is consistent court practice on such elements as reporting without delays, not seeking revenge against an official etc. (Decision № 411/16.05.2007 of the Supreme Cassation Court, Decision № 21/10.02.2006 of the Military Appellate Court of the Republic of Bulgaria). A decision of the prosecutor to terminate criminal proceedings, including on the basis of article 306 CC, is subject to judicial review (article 243, par. 3 of the Criminal Procedure Code) and the court can repeal the prosecutor's decree and order the continuation of investigation. The wording 'shall not be punished' means that only the punishment of the act is dropped but the punishment is decided by the court and therefore the applicability of article 306 CC is always a matter of the punishing authority assessing the evidence, so in practice this provision is most often applied by the court.

<sup>19</sup> For example the defence of effective regret could be invoked when an official would have triggered the payment of a bribe just by saying "I have too much work and no time to deal with your request".

of Bulgarian citizens, used in article 5 CC, needs to be interpreted broadly enough to allow the legal framework to comply with Article 17 paragraphs 1b and 1c of the Convention ; in particular, to enable the country to prosecute under Bulgarian law the relevant offences committed abroad by domestic officials who are not Bulgarian nationals, as well as those committed abroad by a foreign person/entity where the target of the influence or the bribe-taker is a domestic official (or assembly member or Bulgarian employee of an international organisation etc.). It remained unclear to the GET whether article 5 CC had been tested successfully in a corruption case. It is reportedly also accepted in legal doctrine that Bulgarian jurisdiction applies to acts committed only partly in the national territory, as required by Article 17 paragraph 1a of the Convention. The GET could not discuss the above matters in more detail since the meeting scheduled with academics was cancelled. The Bulgarian authorities may wish to examine the advisability of putting beyond any doubt that the legal provisions on jurisdiction are in conformity with article 17 paragraph 1 of the Convention.

## V. CONCLUSIONS

76. The incriminations of corruption-related offences contained in the Bulgarian Criminal Code of 1968 have been amended on several occasions, following the ratification of the Criminal Law Convention on Corruption (ETS 173) and the Additional Protocol to this Convention (ETS 191), as well as other international instruments. Obvious efforts have been made to keep the framework consistent and it does comply to a large extent with the provisions of the Convention and Protocol under review. The Bulgarian legal framework on incriminations thus offers many good tools for the prosecution and adjudication of corruption offences. That being said, some adjustments or additional measures aimed at providing clarification are necessary to ensure full compliance and to strengthen further the implementation of the law. In particular, there is a need to clearly incriminate bribery and trading in influence in the various situations where the beneficiary of the undue advantage is a third person (whether a natural person or a legal entity). Moreover, it would appear that despite legal changes introduced in 2002, the concept of undue advantage is interpreted too narrowly in practice as implying a material benefit which has a discernible and legitimate market value. The incrimination of bribery of foreign arbitrators needs to be reviewed and the mechanism of effective regret should be subject to an assessment in respect of the practice.
77. In view of the above, GRECO addresses the following recommendations to Bulgaria:
  - i. **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** (paragraph 61);
  - ii. **to continue to clarify the interpretation of the law following the 2002 amendments relating to the criminalisation of both material and non-material advantages** (paragraph 63);
  - iii. **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** (paragraph 69);



- iv. 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) (paragraph 74).**
78. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Bulgarian authorities to present a report on the implementation of the above-mentioned recommendations by 30 April 2012.
  79. 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.