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Third Evaluation Round

Compliance Report on Bulgaria

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 57th Plenary Meeting
(Strasbourg, 15-19 October 2012)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Bulgaria to implement the 20 recommendations issued in the Third Round Evaluation Report on Bulgaria (see paragraph 2), covering two distinct themes, namely:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 48th Plenary Meeting (1 October 2010) and made public on 10 November 2010, following the authorisation by Bulgaria (Greco Eval III Rep (2009) 7E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the authorities of Bulgaria submitted a Situation Report on measures taken to implement the recommendations. This report was received on 11 May 2012 and served as a basis for the Compliance Report.
4. GRECO selected Ukraine and Sweden to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Olena SMIRNOVA, Head of Unit for the Development of Anti-Corruption Policy, Ministry of Justice of Ukraine, on behalf of Ukraine, and Mr Walo von GREYERZ, Legal Advisor, Ministry of Justice of Sweden, on behalf of Sweden. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report, and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

Theme I: Incriminations

6. It is recalled that GRECO in its evaluation report addressed 4 recommendations to Bulgaria in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to ensure that the offences of active bribery in the public sector, as well as trading in influence, are construed in such a way as to unambiguously cover instances where the advantage is not intended for the official him/herself but for a third party.*

Recommendation ii.

8. *GRECO recommended to continue to clarify the interpretation of the law following the 2002 amendments relating to the criminalisation of both material and non-material advantages.*
9. The authorities of Bulgaria report that, in pursuance of the above recommendations and in order to promote the correct interpretation and application of the Criminal Code, following its revision in 2002, the National Institute of Justice and the Prosecution Office of the Republic of Bulgaria, had organised a series of specialised trainings, training events and public lectures. These included, amongst others:
 - five specialised training courses, organised between October 2010 and March 2012, for judges, prosecutors and law enforcement officers, dedicated to the interpretation and application of the provisions of the Criminal Code's Bribery Section, taking into account the requirements of the Council of Europe Criminal Law Convention on Corruption and focusing on cases of active bribery where the advantage is intended for a third party and where non-material advantages are provided as a bribe;
 - a pilot distance training course entitled 'Malfeasance and Bribery', offered in 2010 to 83 magistrates (judges and prosecutors), which placed an emphasis on the punishment of active bribery in the public sector and trading in influence where the advantage is intended for a third party, and on the punishment of bribery where non-material advantages are involved; and
 - two training seminars for judges and prosecutors from Sofia and Plovdiv, organised in May 2011 and January 2012 jointly by the Ministry of Justice of Bulgaria, the Bavarian Ministry of Justice and the Hanns Seidel German Foundation, also tackling the aforementioned issues.
10. The authorities further submit, that questions pertaining to the punishment of bribery where the advantage is intended for a third party and where the subject matter of a bribery are non-material advantages, were included in the Training Plan of the Public Prosecutors Office for the period between September 2011 and June 2012. Training sessions held within this timeframe were attended by a total of 758 prosecutors, 52 investigators and 49 military investigators from the regions of Sofia, Varna, Bourgas and Veliko Turnovo.
11. GRECO commends the authorities of Bulgaria, for having planned and carried through numerous training events dedicated to the analysis of issues addressed by the above recommendations. As concerns recommendation i, GRECO acknowledges that the concept of third party beneficiary is explicitly covered by the current provisions of the Penal Code (PC) dealing with passive bribery in the public sector,¹ and with active and passive bribery in the private sector.² It is to be observed however, that the provisions criminalising active bribery in the public sector³ and active and passive trading in influence⁴, are still not linked to the provision dealing specifically with third party beneficiaries,⁵ the omission which was pointed out in paragraph 61 of the Evaluation Report.

¹ Article 303 PC.

² Article 225 (3) PC.

³ Articles 304 and 304a PC.

⁴ Article 304 b PC.

⁵ Article 303 PC.

Furthermore, the case-law dealing with third party beneficiaries which the authorities referred to both at the stage of drafting of the Evaluation Report and of the present Compliance Report, dates from 1969-1976. GRECO already noted in the Evaluation Report, that the pertinence of this earlier jurisprudence was not entirely clear in the current context, and that during the on-site discussions with practitioners, divergent views were expressed as to whether the element of third party beneficiaries was provided for in all corruption-related offences. At this stage, no new information was submitted by the authorities that would allow for further clarifications of this issue. In light of the foregoing, GRECO concludes that the existing deficiency cannot be solved through training alone, but necessitates amendments to the PC or an interpretative ruling by the Supreme Court of Cassation, so as to ensure that the offences of active bribery and trading in influence cover in explicit and unambiguous terms instances where the advantage is intended for a third party.

12. As regards recommendation ii, GRECO recalls that the PC was amended in 2002 so as to specifically criminalise non-material advantages. However, at the time of the on-site visit, the practice had not yet followed this new development. Therefore, the authorities were requested to provide further clarifications as regards the interpretation of the revised legal provision. It would appear that the long and impressive list of training courses offered to judges, prosecutors and law enforcement officers, as presented by the authorities, has raised the necessary awareness and dispelled any doubts regarding the correct interpretation of the law when it comes to the criminalisation of non-material advantages.

13. GRECO concludes that recommendation i has not been implemented and recommendation ii has been implemented satisfactorily.

Recommendation iii.

14. *GRECO recommended 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.*

15. The authorities of Bulgaria report that, in pursuance of this recommendation, a Working Group was set up by the Minister of Justice. Its objective is to amend the Penal Code so as to include, in explicit terms, foreign arbitrators (understood as an arbitrator performing his/her functions under the national law on arbitration of any other State) in the definition of a "foreign official". This will be done by expanding the latter definition by creating a sub-category covering any person performing "functions of arbitrator, assigned in accordance with the legislation of a foreign state" (the text was provided to the Rapporteurs). The authorities state that the draft is currently subject to public debate and is available on the Ministry of Justice's web site. Following the completion of public consultations, it will be submitted to the Government and the National Assembly.

16. GRECO takes note of these developments. Bearing in mind that the suggested amendments to the Penal Code are still at the drafting stage and not formally adopted, GRECO encourages the authorities of Bulgaria to complete this process without undue delay.

17. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

18. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery in the public sector in cases of effective regret (article 306 of the Criminal Code).*
19. The authorities of Bulgaria report that issues arising from this recommendation were subject to interpretation by the Supreme Court of Cassation. On 21 December 2011, the Court issued Interpretative Decision No. 2 in which it had addressed contradictory case law pertaining to the forfeiture of a bribe offered with the aim of detecting an offence by a person subject to blackmail or by an investigating agency. In its decision, the Court stated that the object of bribery should not be forfeited in favour of the State given that the money which served to detect the crime was provided for by the blackmailed person, the services of the Ministry of Interior or the State Agency for National Security. The authorities also report that they are currently considering the possibility of addressing this recommendation through relevant provisions of the new drafted Penal Code.
20. GRECO observes that the issue of “effective regret” was given some consideration in the context of the Interpretative Decision of the Supreme Court of Cassation. However, only some specific aspects of the forfeiture of the bribe were addressed therein. Possible amendments to the Penal Code are also being considered in order to give effect to this recommendation. GRECO recalls that, in paragraph 74 of the Evaluation Report, it had expressed concerns that the ‘effective regret’ provision represented an automatic and total exemption from punishment and that the validity of application of this provision was not subject to judicial review. GRECO regrets that so far no concrete measures have been taken to thoroughly examine this matter in order to ensure a positive outcome of any eventual revision process.
21. GRECO concludes that recommendation iv has not been implemented

Theme II: Transparency of Party Funding

22. It is recalled that GRECO in its Evaluation Report addressed 16 recommendations to Bulgaria in respect of Theme II. Compliance with these recommendations is dealt with below.
23. The authorities now report that, following the adoption of the Evaluation Report, new legislation concerning the transparency of political financing was adopted in Bulgaria. On 19 January 2011, the National Assembly approved the new Electoral Code, which consolidated and systematised several previous acts and regulations pertaining to the holding of elections of national representatives, the President and Vice-President of the Republic, members of the European Parliament, municipal councillors, mayors of municipalities and mayoralties. The Code was published in the State Gazette on 28 January 2011, and entered into force three days later. To ensure conformity with the Code, amendments were also introduced in the 2005 Political Parties Act. These were published in the State Gazette on the same day as above.

Recommendation i.

24. *GRECO recommended to clarify the prohibition of fund raising events.*
25. The authorities of Bulgaria report that the new Electoral Code, has introduced an explicit prohibition of anonymous donations in any form as a source of financing of an election campaign.⁶ Such a ban covers, *inter alia*, the financing for the purpose of an election campaign obtained in the course of fund raising events. In order to address similar concerns in the framework of operational activities of political parties, an identical provision was introduced in the Political Parties Act.⁷
26. GRECO welcomes the introduction of a prohibition on anonymous donations in any form under both the Electoral Code (EC) and the Political Parties Act (PPA). It recalls that in the past, fund raising events were removed from the list of permissible income sources under the PPA, but were not clearly categorised as sources of prohibited funding, thus creating a lot of confusion. GRECO is satisfied that the new provisions of the PPA and of the EC, remedy this deficiency and ensure consistency between the two legal acts.
27. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

28. *GRECO recommended i) to regulate third party support received during election campaigns in a way that this support is to be accounted for by those who benefit from it; ii) to examine the advisability of regulating in a more detailed manner the transparency of financial activity and transparency of coalitions.*

Recommendation iii.

29. *GRECO recommended i) to require political parties and campaign participants to use – as a rule – the banking system for the receiving of donations and other sources of income, and for the payment of expenditure; ii) to ensure that if a threshold is maintained for donations in small amounts, it is adapted to the economic context of Bulgaria; iii) to introduce the principle of a unique campaign account for the financing of election campaigns.*
30. The authorities of Bulgaria state that the Electoral Code (EC) provides that each political party, coalition of political parties or nomination committee, may use only one banking account to service its election campaign. While applying for registration at the Central Election Commission, the political parties⁸, coalitions of parties and nomination committees are requested to present a certificate on the relevant active banking account. As concerns coalitions, only one of the parties participating therein may hold a banking account in its name to service the coalition's election campaign.⁹ As regards nomination committees, in addition to the banking account certificate, they are requested to provide information on a person designated to represent the committee and to act as the holder of the campaign account.¹⁰ Within five days of registration with the Central

⁶ Item 1 of Article 152 (1) EC.

⁷ item 1 of Article 24 (1) PPA.

⁸ items 11 of Article 82(3) and 9 of Article 89 (3) EC.

⁹ items 5 of Article 84 (4), 5 of Article 91 (4); and 6 of Article 95 (5) EC.

¹⁰ Items 1 of Article 97(8) and 5 of Article 97(8) EC.

Election Commission, the political parties, coalitions of parties and nomination committees are to submit to the National Audit Office the data on their campaign account.¹¹

31. The Electoral Code specifically prescribes, that all revenues and expenditures pertaining to the campaign and exceeding 1,000 BGN (approximately 500 Euros)¹², shall be carried out by way of bank transfers.¹³
32. GRECO welcomes the adherence of Bulgaria to the principle of a unique election campaign account. Pursuant to the new Electoral Code (EC), all support received in the course of an election campaign is to be accumulated in a single banking account and all related expenditures are to be paid from it. The new rules are applicable to all participants in elections, i.e. the political parties, coalitions of parties and nomination committees.
33. As concerns part one of recommendation ii, GRECO is satisfied that the third party support has been addressed via the aforementioned single banking account provisions, as well as the prohibition to finance an election campaign from means other than those specifically listed in the EC (for more details see paragraph 36 below). Moreover, the EC appears to regulate in a clear and coherent manner the campaigning activities carried out by “canvassers”. Such activities, according to the law, may not have any financial implications.¹⁴ As regards part two of recommendation ii, the EC now explicitly requires that the financial activities of parties that are members of a coalition, be carried out via a single banking account and be reflected in the financial statements submitted to the National Audit Office subsequent to elections. The EC specifies that, for each type of elections, each party may participate only in one coalition of parties;¹⁵ additionally, any party which is included in a group of partners forming a coalition may not run an independent election campaign.¹⁶ GRECO welcomes the introduction of these rules as they significantly enhance the transparency of coalitions and their financing during elections, in line with the recommendations contained in the Evaluation Report.

As stems from the above, parts one and three of recommendation iii, have been adequately addressed by the authorities. As concerns part two of recommendation iii, GRECO has doubts whether the threshold of 500 Euros established for the donations to be made via bank transfers has been adapted to the national economic context. It is to be recalled nonetheless, that at the time of the evaluation, the threshold was approximately 2,500 Euros and was widely regarded as a first positive attempt at regulation. GRECO cannot discard the fact, that in comparison to the time of the visit, the threshold has been reduced fivefold. It, therefore, accepts that the authorities had given due consideration to this issue and decreased the threshold to the extent possible, even though in GRECO’s opinion, the figure could be reduced even further.

34. GRECO concludes that recommendations ii and iii have been dealt with in a satisfactory manner.

¹¹ Article 157 EC.

¹² 1 BGN is approximately 0,5 Euros.

¹³ Article 154 (4) EC.

¹⁴ Article 101 (1) and 102 (1) EC.

¹⁵ Article 76 (2) EC.

¹⁶ Article 86 (1) EC.

Recommendation iv.

35. *GRECO recommended to adopt a comprehensive and consistent legal framework for the financing of election campaigns that would spell out clearly in particular the various forms of permissible income and expenditure, the precise manner in which income and expenditure are to be accounted for, and the persons responsible for the collection of donations and the handling of the financial records.*
36. The authorities of Bulgaria report that the Electoral Code (EC) has established a list of permissible sources for the financing of election campaigns. Thus, political parties and nomination committees, which have registered candidates for participation in elections, may finance their campaigns from: own financial resources of a political party, members of nomination committees, candidates in election, as well as from donations provided by natural persons.¹⁷ Upon registration of candidates by a coalition of parties, the coalition may finance its election campaign with the funding of the parties participating therein, financial resources of the candidates in election, as well as contributions donated by natural persons.¹⁸ A separate list has been included in the EC which enumerates the sources of prohibited funding.¹⁹
37. An aggregate donation by one natural person to one party, a coalition of parties or a nomination committee in one calendar year may not exceed 10,000 BGN (approx. 5,000 Euros).²⁰ Where a total contribution exceeds 1,000 BGN (approx. 500 Euros), the person is to submit a standard declaration attesting to the origin of his/her financial resources. Natural persons may furthermore provide for gratuitous use, their own movable and immovable items and services. In respect of movable or immovable items, a standard form attesting their ownership is to be signed.²¹
38. As previously mentioned, all revenues and expenditures exceeding 500 Euros are to be carried out via bank transfers. Maximum expenditure ceilings have been established for the different types of elections (e.g. of national representatives, the President and the Vice-President of the Republic, members of the European Parliament).²²
39. While the campaign is still in progress, the National Audit Office is under the obligation to regularly publish information from a so-called Single Public Register which was established and is maintained by the Office. The Register includes in particular, the identification data of participants in elections; the names of donors, the type, purpose, size and value of donations; the names of natural persons who have provided for gratuitous use items or services, the term of use, type and description of the items and the type of services; the declarations on the origin of the donated funds, on the ownership of items provided for gratuitous use and on the origin of funds of candidates and nomination committees' members.²³ Access to the Register is unlimited and free of charge. Complete financial reports on the election campaigns' income and expenditures are presented to the National Audit Office within 30 days of the polling day²⁴ and are subject to scrutiny.²⁵

¹⁷ Article 150 (1) EC.

¹⁸ Article 150 (2) EC.

¹⁹ Article 152 EC.

²⁰ Article 151 (1-2) EC.

²¹ Article 154 (1-3) EC.

²² Paragraphs 1-4 of Article 155 EC.

²³ Article 158 (2) EC.

²⁴ Article 159 (1) EC.

²⁵ Article 159 (5) EC.

40. In this connection, two instructions were adopted by the National Audit Office. The first one entitled "Instructions on Submitting Information to the National Audit Office for Publication in the Unified Register under the Electoral Code (Article 158)" from 9 September 2011, which establishes the format for the submission of relevant data and obliges persons representing a political party, a coalition of parties or a nomination committee to notify to the Office the list of those authorised to submit such data and to sign this information with their electronic signatures. The second one, which was adopted on 7 July 2012 and entitled "Instructions on Drafting the Reports on Incomes, Expenditures and Payment Obligations", prescribes the format for the submission of the financial report presented subsequent to the elections. It requires persons designated to represent a political party, a coalition of parties or nomination committee to personally sign these reports.
41. The authorities submit that, where appropriate, identical provisions have been introduced in the Political Parties Act.²⁶ In particular, each party is under the obligation to create and keep a public register recording the same type of information as included in the Single Public Register pursuant to the EC. The publicity of the register is ensured by means of the Internet site of a party.²⁷
42. GRECO acknowledges that the new Electoral Code (EC) has enhanced considerably the consistency of the legal framework governing the financing of election campaigns in Bulgaria. In particular, the Code clearly enumerates the sources of permitted and prohibited sources of funding, introduces the ceilings for contributions by natural persons, as well as the caps on the total expenditure under a specific type of elections. The Code also establishes rules so that the campaign-related income and expenditures be accounted for, namely through registration of all categories of donations and donors. To ensure greater transparency, the Single Public Register has been set up, information from which is being published in the course of an election campaign. The veracity of financial statements is subsequently checked by the National Audit Office. Furthermore, specific instructions have been adopted by the Office to ensure the coherent presentation of data entered into the Single Public Register and of the financial report prepared subsequent to the elections. They also clarify, amongst others, the responsibility of those requested to present information and reports to the National Audit Office.
43. However, when it comes to provisions relating to persons responsible for the handling of donations, the situation remains rather uncertain. According to the EC, political parties, coalitions of parties and nomination committees are only required to designate persons who shall represent them at the Central Election Commission but not those in charge of the relevant campaign banking accounts. GRECO notes that, pursuant to Article 30 (1) PPA, each political party is to appoint a specific person/s who shall be responsible for the revenue, expenditure and keeping of the party's accounts. It can be assumed that the same persons may be in charge of the party's campaign accounts. However, whether and how this rule applies to the coalitions of parties has not been clearly spelled out by the EC. The handling of financial records by the nomination committees also needs to be clarified. GRECO concludes that the existence of transparent and clear rules regarding persons designated to collect donations and to manage election campaign banking accounts, is an indispensable element of any comprehensive legal framework aimed at the proper regulation of the election campaign financing. For this reason, it cannot conclusively determine that this recommendation has been fully implemented.

²⁶ Articles 23 (dealing with the sources of financing of political parties) and 29 PPA (dealing with the registration of donations).

²⁷ Articles 29 (2-4) PPA.

44. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

45. *GRECO recommended to regulate in a consistent and clear manner the prohibition of donations from legal persons in the context of party and election campaign financing, in line with the already introduced amendments to the Political Parties Act, the acts on election of national and European parliamentarians, and the new practice adopted in this regard by the National Audit Office.*

46. The authorities of Bulgaria report that, in order to ensure conformity with the provisions of the Political Parties Act,²⁸ the new Electoral Code now includes a specific prohibition on the financing of election campaigns of all types by legal persons and sole traders.²⁹

47. GRECO recalls that Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns does not contain a requirement to prohibit the financing of political parties and election campaigns by legal persons. GRECO also recalls that, in paragraph 104 of the Evaluation Report, it expressed concerns about the absence of a consistent prohibition of donations from legal persons, which were forbidden under the Political Parties Act but not under several of the previously existing election laws. This prevented a clear separation between the regular party funding and the election campaign financing, for example, where local or presidential elections were held in the same year as parliamentary elections. GRECO acknowledges that this deficiency has now been rectified.

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

Recommendation vi.

49. *GRECO recommended to spell out clearly that all income and expenditure connected with an election campaign need to be accounted for.*

50. The authorities of Bulgaria report that the Electoral Code provides that all revenues, expenditures and other obligations undertaken in connection with the election campaign by parties, coalitions of parties and nomination committees need to be registered and submitted in the form of reports to the National Audit Office.³⁰ The financial resources of a candidate and/or a nomination committee member is to be accounted for in the same manner, and if those resources exceed 1,000 BGN (approx. 500 Euros), a declaration as to their origin is to be enclosed.³¹ The authorities draw attention to the fact that the financial statements should include all funding pertaining to and designated for the purposes of an election campaign, even if raised or used before the commencement of the election campaign period. This notably includes loans and printed materials purchased or ordered prior to the campaign.

51. GRECO takes note of the relevant provisions of the Electoral Code. These are meant not only to ensure that income and expenditure incurred in the course of an election campaign is properly accounted for, but also that the so-called “pre-campaign” activities be reflected in the statements

²⁸ Item 2 of Article 24 (1) PPA

²⁹ Item 2 of Article 152 (1) EC.

³⁰ Article 159 (1) EC.

³¹ Article 159 (2) EC.

and subject to the same set of rules. GRECO observes that independent candidates, not supported by a nomination committee, have now been required to present their financial statements to the National Audit Office, along with all other categories of participants in elections.

52. GRECO concludes that recommendation vi has been implemented satisfactorily

Recommendation vii.

53. *GRECO recommended to provide in a consistent manner for the timely publication of financial reports pertaining to election campaigns in general.*

Recommendation ix.

54. *GRECO recommended to provide for rules on the conservation of relevant financial records and documents, that would apply also in the context of campaign financing.*

55. The authorities of Bulgaria state that, within 30 days of the election day, the political parties, coalitions of parties and nomination committees are to submit to the National Audit Office, a hard and electronic copy of the report with details of revenues, expenditures and the payment of obligations undertaken in connection with the elections campaign, along with a statement of their banking account. The reports are prepared on the basis of a sample form approved by the National Audit Office and are made public within 15 days of their submission.³²

56. As mentioned above (see paragraph 39), the Electoral Code provides for the setting up of a Single Public Register of political parties, coalitions of parties and nomination committees maintained by the National Audit Office. While the campaign is in progress, the Office publishes, in real time, information on income and expenditure incurred by the participants in elections. Within 45 days of the polling day, reports pertaining to the election campaign financing are made accessible through the Register where they remain until the holding of the next elections of the same type (e.g. four years in respect of parliamentary elections and five years in respect of elections of the President of the Republic).³³

57. GRECO takes note of the measures taken in pursuance of these recommendations. It finds the overall period for the submission and publication of financial reports on election campaigns (45 days) to be reasonable and facilitating the necessary verifications promptly after the elections. GRECO is furthermore pleased that an effort has been made to harmonise to the extent possible, the periods of conservation of relevant financial records pertaining to election campaigns and operational activities of political parties. As concerns conservation of receipts confirming the expenditures incurred, GRECO understands that relevant provisions of the Accounting Act apply.

58. GRECO concludes that recommendations vii and ix have been implemented satisfactorily.

³² Article 159 (1-4) EC.

³³ Article 158 (1) EC.

Recommendation viii.

59. *GRECO recommended to provide for clear criteria concerning the use of public facilities for party activity and election campaign purposes.*
60. *The authorities of Bulgaria report that the «National Assembly has established a permanent practice involving the adoption of a decision prohibiting the use of administrative facilities, including office cars, during the election campaign».*
61. *GRECO recalls its findings contained in paragraph 108 of the Evaluation Report, in which it stated that the previous regulations did not clearly address the (mis)use of public facilities during the election campaigns. GRECO had welcomed the decision by the National Assembly of 29 May 2009 to restrict the use of administrative resources by members of parliament during the campaign periods and noted that these kinds of initiatives were a step in the right direction and could inspire other state and local institutions. In this light, GRECO has difficulty in interpreting the above information as submitted by the authorities. As concerns members of parliament, it would appear that, once adopted, there is no need for the decision of the National Assembly to be renewed. In the negative case, the situation remains controversial and requires a more stringent regulation. Furthermore, GRECO is not persuaded that the National Assembly's decision also applies to other state and local institutions and addresses the (mis)use of public facilities in other types of election. It concludes that the effect of the measures reported remains rather limited.*
62. *GRECO concludes that recommendation viii has not been implemented.*

Recommendation x.

63. *GRECO recommended i) to examine the advisability of raising the standards and the quality of audit certification of financial statements submitted in the context of party financing and of increasing coordination with the profession; ii) to strengthen the independence of the political parties' external audit of accounts.*
64. *The authorities of Bulgaria reported that, in the beginning of 2012, the National Audit Office held consultations with the Institute of Certified Public Accountants. What transpired from these consultations was the realisation that, for the past ten years, the auditors in Bulgaria had been acting in line and on the basis of the International Standards of Auditing (ISA) developed by the International Federation of Accountants. This provided requisite guarantees of the auditors' independence, as prior to undertaking auditing functions in respect of new clients, auditors had to declare the absence of conflicts of interests. The declaration was enclosed to the work file.*
65. *GRECO recalls its findings contained in paragraphs 110-112 of the Evaluation Report. In particular, reference was made to the reportedly very high margin of accuracy (50-70%) between the examined statements, as submitted by the audited political parties, and the real situation. According to the interlocutors met on site, such a situation was widely accepted and tolerated by the Bulgarian auditors, thus compromising the very process of certification of the financial statements. GRECO was, furthermore, repeatedly reminded that the financing of political parties and election campaigns in Bulgaria was allegedly exposed to risks of money laundering, but no reports were ever submitted to the FIU by auditors dealing with political financing. From this perspective, it is to be regretted that no meaningful steps have been taken to redress the current situation. In the opinion of GRECO, more could be done to narrow the margin of accuracy and to*

increase the independence of auditors by means, such as a reasonable rotation of auditors, the appointment of a second auditor, as was suggested in the Evaluation Report.

66. GRECO concludes that recommendation x has not been implemented.

Recommendation xi.

67. *GRECO recommended to provide for additional support to the National Audit Office to enable it to fulfil in an effective manner its control function in respect of party and election campaign financing.*

Recommendation xiii.

68. *GRECO recommended to provide for an adequate and consistent supervision over the financing of election campaigns of political parties, candidates and other campaign participants, under the clear responsibility and leadership of the National Audit Office.*

69. The authorities of Bulgaria report that a new National Audit Office Act was adopted and entered into force on 17 December 2010. It brought about significant changes in the Office's structure and scope of operation. Thus, four directorates were established, one of which, the Specific Audits Directorate, has been tasked with conducting audits under the Political Parties Act (PPA) and the Electoral Code (EC). In 2012, 60 auditors were assigned to the Directorate, to conduct audits specifically under the PPA. In the very same year, inspections were carried out, under the EC, of reports submitted subsequent to the 2011 elections of the President, Vice President, municipal councillors and mayors. These audits were assigned to the above 60 auditors, as well as 50 auditors from other directorates across the country. The National Audit Office also received a budget for developing specialised software servicing the Single Public Register. In 2011, the Register became operational. As a consequence, financial reports of political parties, coalitions of parties and nomination committees, which participated in the 2011 elections, are now publicly available.

70. The authorities further report that the new EC regulates clearly and consistently the responsibilities of the National Audit Office in connection with the supervision and control over the financing of election campaigns. As previously mentioned, the Office has been made responsible for the electronic Single Public Register (see paragraph 39 above). Subsequent to elections, it is bound to publish reports on revenues and expenditures and on the payment of obligations undertaken by participants in elections in connection with the election campaign. Even more importantly, the National Audit Office is now explicitly mandated to check the consistency between the revenues and expenditures. In the case of violations of rules on the financing of election campaigns established in the course of inspections, auditors are to issue statements of violations which lead to the imposition of fines by the Office's President.

71. GRECO welcomes the authorities' endeavours to increase the material support and to provide for supplementary human resources to the National Audit Office. It would appear that the important internal restructuring, the increase in the number of staff (from 22 auditors in 2009 to 60 auditors in 2011), as well as the introduction of the new software have enhanced the Office's capacity to fulfil its functions under the Political Parties Act and the Electoral Code. Furthermore, GRECO welcomes the legislative and operational steps taken by the authorities to provide for a more consistent supervision of the financing of election campaigns. As concerns verifications of financial reports, GRECO is satisfied that the responsibility for identifying and acting upon

violations of the Electoral Code, has been clearly attributed to the National Audit Office (it may be recalled that some of the previously existing electoral acts had assigned those functions to the Central Election Commission). Furthermore, the setting up of the Single Public Register enabling – for the first time – the on-going monitoring of financial activities carried out in the course of an election campaign is a commendable effort. GRECO trusts that the National Audit Office is now in the position to exercise a more proactive supervisory role in the sphere of party and election campaign financing, as was demonstrated by the more vigorous inspections conducted subsequent to the 2011 elections.

72. GRECO concludes that recommendations xi and xiii have been implemented satisfactorily.

Recommendation xii.

73. *GRECO recommended to provide for more effective ways of cooperation between the National Revenue Agency and the National Audit Office under the Political Parties Act.*

74. The authorities of Bulgaria, firstly, recall that the role of the National Revenue Agency with regard to control over financial activities of political parties is subsidiary and complementary to that played by the National Audit Office. In 2010-2011, acting upon the findings of the National Audit Reports, which uncovers irregularities committed by parties subject to state aid and parties which fail to submit their financial reports on time, the National Revenue Agency conducted a total of 16 inspections of political parties and movements. In the course of one inspection, audit obligations in the amount of 16,393 BGN (approx. 8,196 Euros) were established, and overall, nine statements of administrative violations of the accounting legislation were issued.

75. The authorities also report, that on 23 January 2012, the National Audit Office and the National Revenue Agency had signed a cooperation and interaction agreement. Article 7(1) thereof provides that the National Audit Office and the bodies of the National Revenue Agency should interact and cooperate in the exercise of powers vested in them by the Political Parties Act. This covers, in particular, the co-operation and communication in the frame of tax inspections and audits of political parties, subject to state aid. It is envisaged that the National Audit Office is to publish on its web site the information provided by the National Revenue Agency within one month of receipt thereof. It is further envisaged that the regulations concerning the interaction between the Audit Office and the National Revenue Agency on findings related to public obligations and the actions undertaken in connection with such findings should be also applied in respect of findings related to election campaigns. Twice a year, the two agencies are to conduct joint meetings, to assess the progress made in their co-operation under the agreement.

76. GRECO notes the strengthening of collaboration between the National Audit Office and the National Revenue Agency, as manifested by the increase in the number of inspections conducted by the latter, pursuant to the National Audit Reports. The new co-operation agreement concluded between the two agencies further concretises the modalities of their co-operation and communication under both the Political Parties Act and the Electoral Code. Whilst this agreement and the laws governing it are relatively new, they appear to have put in place an improved framework for a more effective external control of political financing in Bulgaria.

77. GRECO concludes that recommendation xii has been implemented satisfactorily.

Recommendation xiv.

78. *GRECO recommended i) to complement the existing arsenal of sanctions available under the Political Parties Act by further sanctions which can be imposed also on natural persons, including persons in charge of party accounts; ii) to provide for a broader range of penalties that would be more proportionate and dissuasive, and would address further important requirements of the Act such as accepting an illegal donation, the improper identification of donors, the inadequate or non-registration of elements of income and expenditure.*
79. From the information submitted by the authorities of Bulgaria it would appear that no specific action has been taken with a view to implementing this recommendation.
80. GRECO recalls that the Political Parties Act (PPA) provides for the following sanctions. A systematic violation of the requirements established by the PPA, including those pertaining to the financing of operational activities of political parties, may result in the dissolution of a party, pursuant to a decision by the Sofia City Court. The same penalty may be imposed in case of the failure to submit annual financial statements to the National Audit Office for two consecutive years.³⁴ Additionally, a political party which fails to submit a financial statement and a declaration containing a list of donors and which fails to fulfil its obligation to create and keep a public register is liable to a pecuniary penalty of 5,000 BGN (approx. 2,500 Euros) or exceeding this amount but not exceeding 10,000 BGN (approx. 5,000 Euros).³⁵ A repeated commission of any violation is punishable by a fine of 5,000 BGN (approx. 2,500 Euros) or exceeding this amount but not exceeding 10,000 BGN (approx. 5,000 Euros).³⁶
81. As stated in paragraph 120 of the Evaluation Report, the system of sanctions established under the PPA cannot be deemed effective, proportionate and dissuasive. In the opinion of GRECO, the dissolution of a political party is too severe a sanction to be of any practical use, whereas the administrative fines are very low, in comparison to the average expenditure of a party in any given calendar year (as well as bearing in mind the allegations of shadow financing and money laundering tarnishing political funding in Bulgaria). Furthermore, as is clear from the above, accepting an illegal donation or the improper identification of a donor, have not been defined as separate violations under the PPA. Similarly, the imposition of sanctions in respect of natural persons in charge of the party accounts has not been provided for. GRECO concludes that no concrete measures have been taken with regard to this recommendation.
82. GRECO concludes that recommendation xiv has not been implemented.

Recommendation xv.

83. *GRECO recommended to provide for effective, proportionate and dissuasive sanctions – similar to those recommended in connection with the Political Parties Act – which would be applicable in case of infringements to the regulations on the financing of election campaigns.*
84. The authorities of Bulgaria report that, pursuant to the new Electoral Code (EC), in cases of violations of the requirements for the financing of election campaigns established by Chapter 8, Section VI EC, a penalty ranging between 5,000 and 10,000 BGN (approx. between 2,500 and

³⁴ Article 40 (1) PPA.

³⁵ Article 43 (1) PPA.

³⁶ Article 45 (2) PPA.

5,000 Euros) may be imposed on persons representing a political party or a nomination committee, or the persons representing a coalition of parties. Moreover, a fine of 5, 000 BGN (approx. 2,500 Euros) may be imposed on candidates for a position of a municipal councillor or a mayor if they are found to be in violation of the requirements set forth for the election campaign financing.³⁷ Additionally, any person who or which violates any provision of the Electoral Code shall be liable to a fine or a pecuniary penalty, in the amount of 200 BGN (approx. 100 Euros) or exceeding this amount but not exceeding 2,000 BGN (approx. 1,000 Euros). Statements which ascertain the said violations are to be prepared by the authorised auditors and followed by the penal orders issued by the President of the National Audit Office.

85. GRECO takes note of the information provided. It acknowledges that the Bulgarian authorities have introduced a more coherent range of sanctions which are now clearly linked to the violation of rules pertaining to the financing of election campaigns. Although, comparative to the previously existing provisions, the level of fines has been increased, GRECO is not persuaded that they would produce a desired dissuasive effect in view of the expenditure ceilings established for certain election campaigns (e.g. 2,000,000 Euros per party and coalition of parties in the case of parliamentary elections; 1,000,000 Euros per party, coalition of parties and nomination committees in the case of presidential elections). GRECO also regrets that the new legal framework does not allow for the imposition of sanctions in respect of natural persons in charge of campaign accounts belonging to parties, coalitions of parties and nomination committees.
86. GRECO concludes that recommendation xv has been partly implemented.

Recommendation xvi.

87. *GRECO recommended to extend the statute of limitation applicable to violations of the Political Parties Act of 2005 and the various election acts.*
88. The authorities of Bulgaria report that the introduction of a special statute of limitation for offences under the Political Parties Act and the Electoral Code, distinct from the general statute of limitations established under the Administrative Violations and Penalties Act, has not been considered and, therefore, no measures have been taken to that effect.
89. GRECO takes note of the information provided. It regrets that this important aspect has remained outside of the scope of amendments introduced in the Political Parties Act and was not dealt with in the drafting of the Electoral Code. GRECO recalls that, according to the existing statute of limitations provided by the Administrative Violations and Penalties Act, proceedings may not be initiated if a statement establishing the existence of a violation is drawn up three months after the detection of an offender, or one year after the commission of a violation. The situation is further complicated by the fact that no mechanism for the suspension of the statute seems to have been provided. GRECO already stated in paragraph 124 of its Evaluation Report, that these requirements appeared to be too strict in the context of political financing, should a violation be detected or reported only several months after it was committed. GRECO therefore regrets that no concrete progress has been accomplished on the present matter.
90. GRECO concludes that recommendation xvi has not been implemented.

³⁷ Article 289 (1-2) EC.

III. CONCLUSIONS

91. **In view of the above, GRECO concludes that Bulgaria has implemented satisfactorily or dealt with in a satisfactory manner eleven of the twenty recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendation ii has been implemented satisfactorily, recommendation iii has been partly implemented, and recommendations i and iv have not been implemented. With respect to Theme II – Transparency of Party Funding, recommendations i, v, vi, vii, ix, xi, xii and xiii have been implemented satisfactorily, recommendations ii and iii have been dealt with in a satisfactory manner, recommendations iv, and xv have been partly implemented and recommendations viii, x, xiv, xvi have not been implemented.
92. In so far as incriminations are concerned, Bulgaria has invested considerable resources into the training and raising awareness of a large number of judges, prosecutors and law enforcement officers on issues pertaining to the active bribery in the public sector and trading in influence where the advantage is intended for a third party and the criminalisation of non-material advantages. However, as regards the former, no tangible steps have been made to ensure that the Penal Code covers in explicit and unambiguous terms instances where the advantage is intended for the third party. Other problematic areas not covered by the Code include the application of the provision on “effective regret”, which in GRECO’s view, represents an automatic and total exemption from punishment and which is not being subject to judicial review, and the bribery of foreign public arbitrators when these perform their duties under the national law on arbitration of any other State. GRECO has been reassured, however, that pertinent revisions of the Penal Code as regards arbitrators are under way and will be completed in due course.
93. As regards the transparency of political financing, important efforts have been deployed in order to comply with the recommendations. The new Electoral Code (EC) was adopted in 2011, replacing several previously existing legal acts. To provide for conformity and coherence with the Code, the 2005 Political Party Act (PPA) was amended the same year, borrowing many provisions from the Code. The two legal acts have created a clearer and more robust legal framework as far as transparency and supervision of political financing is concerned. They enumerate the sources of permissible and prohibited funding and ban anonymous donations under any form, as well as donations by legal persons, be it within the framework of regular activities of political parties or in the course of an election campaign. In order to monitor revenues and expenditures, the PPA has placed an obligation on parties to set up on-line public registers, containing all relevant details on donors, donations, whereas the EC has also established an electronic Single Public Register under the auspices of the National Audit Office to supervise the financing of election campaigns and has considerably expanded the Office’s scope of duties, notably as regards the verification of election campaigns’ finances. As concerns the weaknesses of the two legal acts, their provisions on sanctions have remained virtually unchanged and are still lacking the requisite effective, proportionate and dissuasive effect.
94. In light of what has been stated above, GRECO commends Bulgaria particularly for the substantial reforms carried out with regard to Theme II – Transparency of political financing. It encourages Bulgaria to pursue its efforts in order to implement the pending recommendations with the same vigour within the next 18 months. GRECO invites the Head of the delegation of Bulgaria to submit additional information regarding the implementation of recommendations i, iii, iv (Theme I – Incriminations) and recommendations iv, viii, x., xiv, xv, xvi (Theme II – Transparency of Party Funding) by 30 April 2014 at the latest.

95. 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.