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Second Compliance Report

Third Evaluation Round

Second Compliance Report on Bulgaria

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 65th Plenary Meeting
(Strasbourg, 6-10 October 2014)

I. INTRODUCTION

1. The Second Compliance Report assesses further measures taken by the authorities of Bulgaria since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Bulgaria. It is recalled that the Third Evaluation Round covers two distinct themes, namely:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 48th Plenary Meeting (1 October 2010) and made public on 10 November 2010, following the authorisation by Bulgaria (Greco Eval III Rep (2009) 7E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 57th Plenary Meeting (19 October 2012) and was made public on 8 January 2013, following authorisation by Bulgaria ([Greco RC-III \(2012\) 14E](#)).
3. As required by GRECO's Rules of Procedure, the Bulgarian authorities submitted their Second Situation Report with additional information regarding the actions taken to implement those recommendations that were partly implemented or not implemented according to the Compliance Report. This report was received on 9 May 2014 and served as a basis for the present Second Compliance Report.
4. GRECO selected Ukraine and Sweden to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the Second Compliance Report were Mrs Olena TYSHCHENKO on behalf of Ukraine, and Mr Walo von GREYERZ, on behalf of Sweden. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO addressed 4 recommendations to Bulgaria in respect of Theme I in its Evaluation Report. In the subsequent Compliance Report, GRECO concluded that recommendation ii had been implemented satisfactorily, recommendation iii had been partly implemented, and recommendations i and iv had not been implemented. Compliance with recommendations i, iii and iv is dealt with below.

Recommendation i.

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

7. GRECO recalls that up to now, the concept of third party beneficiary was explicitly covered by the current provisions of the Criminal Code (CC) dealing with passive bribery in the public sector, and with active and passive bribery in the private sector. In contrast, the provisions criminalising active bribery in the public sector and active and passive trading in influence were not linked to the provision dealing specifically with third party beneficiaries. GRECO also recalls that the case-law dealing with third party beneficiaries which the authorities referred to both at the stage of the Evaluation Report and of the first Compliance Report, dated from 1969-1976 and that its pertinence was not entirely clear in the current context. Moreover, during the on-site discussions with practitioners, divergent views had been expressed as to whether the element of third party beneficiaries was provided for in all corruption-related offences. In the absence of pertinent steps taken, GRECO concluded in the First Compliance Report that this recommendation had not been implemented.
8. The authorities of Bulgaria now report that on 19 December 2013 the Bulgarian government submitted to the National Assembly draft amendments to the Criminal Code (CC) which provided for the explicit criminalisation of both passive and active bribery and trading in influence where the advantage is intended for a third party (recommendation i.) and criminalisation of bribery of foreign arbitrators (recommendation iii – see below). A first reading took place in the National Assembly on 30 January 2014. The amendments were approved by the Legislative Committee then submitted on 27 June 2014 to the Plenary for second reading and final adoption. However, the Bulgarian government resigned on 24 July 2014 and on 6 August the National Assembly was dissolved with early elections set for 5 October. Therefore, the above pending draft amendments could not be adopted.
9. As far as recommendation i. is concerned, the draft amendments to the CC, which underwent their first reading in Parliament on 30 January 2014, foresees the introduction of a new Art.304c under the Section entitled “Bribery”. It provided that the punishments for the offences under this chapter (passive and active bribery and trading in influence) are also imposed when the advantage is promised, offered or given to another person with the consent of the domestic or foreign bribe-taker (in the case of bribery) or the influence peddler (in the case of trading in influence). At the same time, Article 303 CC (dealing with the punishment of passive bribery in the public sector where the advantage is intended for a third party) would have been abolished. Thus, a single specific provision on third party beneficiaries would have covered consistently and explicitly active and passive bribery in the public sector, as well as active and passive trading in influence.
10. GRECO takes note of the legislative amendments to the Criminal Code (CC), reported above, which were approved by the Government and considered by the Parliament. They would appear to have addressed the uncertainties identified in the Evaluation Report, had they been adopted in time before the dissolution of the parliament. Should these draft amendments be kept in their current wording, according to the established parliamentary practice, they would again require a political endorsement by the future government before subsequent introduction and adoption by the newly elected Assembly. GRECO is pleased to see that so far there has been clear political will to proceed with the necessary amendments on third party beneficiaries and it hopes that Bulgaria will be able to finalise this process. Under the circumstances that it is only due to general political and institutional factors that this process could not be completed, GRECO concludes that recommendation i has been partly implemented.

Recommendation iii.

11. *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.*
12. GRECO recalls that in the previous Compliance Report of October 2012, this recommendation was considered “partly implemented” since amendments had been prepared by a Working Group set up by the ministry of Justice and were in the stage of public consultations. The proposal was to include in the Criminal Code (CC) definition of a “foreign official” a specific reference to “foreign arbitrator” (understood as a person performing his/her functions under the national law on arbitration of any other State).
13. The Bulgarian authorities now report that the draft amendments to the CC mentioned in paragraph 8 did provide for the criminalisation of bribery of foreign arbitrators. As it had been announced earlier, a new letter d) was added to Section 15 of Art.93 CC providing that the expression “foreign public official” would also encompass in future any person exercising “functions of arbitrator assigned under the national law of a foreign state”. Thus the definition of foreign public official would have been extended in line with the Additional Protocol to the Criminal Law Convention. As indicated in paragraph 8, the dissolution of Parliament prevented the final adoption of the intended CC amendments.
14. GRECO takes note of the above. Had the intended amendments of the Criminal Code been adopted before the dissolution of the Assembly, including the extension of the definition of a “foreign official”, the objectives of this recommendation would appear to have been met. As mentioned under the previous recommendation, the amending process has stalled for reasons not connected with the lack of political will to proceed with the amendments. GRECO therefore accepts to maintain its earlier conclusion and it hopes that the future government and parliament will soon resume with this amending process.
15. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

16. *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).*
17. GRECO recalls that the First Compliance Report had considered this recommendation as not implemented due to the absence of meaningful follow-up measures¹.
18. The Bulgarian authorities, for the purposes of the present report, do not refer to any new development. It would appear that following the adoption of the First Compliance Report, no further action has been taken by Bulgaria to address this recommendation.

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

19. GRECO therefore concludes that recommendation iv remains not implemented.

Theme II: Transparency of Party Funding

20. In the Evaluation Report, GRECO addressed 16 recommendations to Bulgaria in respect of Theme II. The Compliance Report concluded that recommendations i, v, vi, vii, ix, xi, xii and xiii had been implemented satisfactorily and that recommendations ii and iii had been dealt with in a satisfactory manner. Recommendations iv and xv had been partly implemented and recommendations viii, x, xiv and xvi had not been implemented. Compliance with recommendations iv, viii, x, xiv, xv and xvi is thus dealt with below.
21. GRECO recalls 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 various elections (of national representatives, the President and Vice-President of the Republic, members of the European Parliament, municipal councillors, mayors of municipalities and mayoralities). At the same time, the 2005 Political Parties Act was aligned on the new Code. These various changes became effective on 31 January 2011.
22. The Bulgarian authorities now report that on 4 March 2014 a new Electoral Code was adopted by the National Assembly, which repealed the above Code of 2011. The new Code (published in Official Gazette n°19 of 2014) entered into force on 5 March 2014. In the new Electoral Code the GRECO recommendations in the field of transparency of funding of electoral campaigns, which had been considered as non-implemented or partly implemented, were addressed accordingly (recommendations iv., viii., xiv. and xv.). Moreover, amendments were adopted in February 2013 to the Administrative Violations and Penalties Act in order to extend the statute of limitation applicable to offences under the Political Party Act and the Electoral Code to two years after the commission of a violation (recommendation xvi.).
23. They also point out that the relevant provisions of the Electoral Code of 2011, dealing with the issues addressed by the recommendations which were considered as implemented satisfactorily by the Compliance Report, were transposed accordingly in the new EC of March 2014². An English version of the relevant excerpts of legislation was made available to the Rapporteurs and the Secretariat.

Recommendation iv.

24. *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*

² Recommendation i: Art.168, para.1(1) EC;

Recommendations ii and iii: Art.133, para.3(7); Art.127, para.2 and Art.144, para.7; Art.140, para.3(7) and Art.148, para.5(6); Art.151, para.5 and Art.153, para.4 (1) and (6); Art.117, para.1 and Art.119; Art.163; Art.165 and 169; Art.170 EC;

Recommendation v: Art.168, para.1(2) EC;

Recommendation vi: Art.172, para.1 and 3 EC;

Recommendations vii and ix: Art.171 and Art.172 EC

Recommendation xiii: Articles 171, 172 and 497 EC

be accounted for, and the persons responsible for the collection of donations and the handling of the financial records.

25. GRECO recalls that this recommendation has been categorised as partly implemented. Whilst acknowledging the progress achieved by the 2011 Electoral Code (EC), in particular the considerably enhanced consistency of the legal framework governing the financing of election campaigns in Bulgaria, the role of financial managers was unclear. GRECO noted that, pursuant to Article 30 (1) Political Parties Act (PPA), each political party has to appoint specific persons who would be responsible for the revenue, expenditure and keeping of the party's accounts it was assumed that the same person would be in charge of the party's campaign accounts. At the same time, whether and how this rule applies to coalitions of parties and nomination committees had not been clearly spelled out by the EC.
26. The Bulgarian authorities now report that in the new Electoral Code (EC) of March 2014, specific provisions were introduced regarding persons responsible for the financial aspects of an election campaign. Under article 164, para.1 EC each political party and nomination committee has to designate a person or persons responsible for their revenues, expenditures and accounting reports related to the election campaign (a financial manager). Moreover, each coalition of parties is to designate one of the parties involved to be in charge of the revenues, expenditures and accounting reports related to the election campaign, and designate one or several persons responsible for their revenues, expenditures and accounting reports related to the election campaign (article 164, para. 2 EC). The names and positions of the above persons are submitted at the time of the party registration for elections with the respective electoral commission. This information is then communicated to the National Audit Office (NAO) (article 163 EC). Concerning donations, it is provided that the coalitions and nomination committees may finance the campaign from donations of individuals made only to the financial manager (article 162, para.2(3) and para.3(3) EC). An obligation was also introduced to publish in the Single Public Register the name of the political party designated within a coalition to be in charge of the income, expenditure and accounting reports related to the campaign, as well as the names of the financial managers responsible (article 171, para.2 (3) and (4) EC). The authorities confirm that these persons are responsible for the centralisation of all income and expenditure items of the campaign, which includes for instance making all the payments concerned from the designated bank account.
27. GRECO takes note of the above and it considers that the remaining concerns have been addressed in a constructive manner.
28. GRECO concludes that recommendation iv has now been implemented satisfactorily.

Recommendation viii.

29. *GRECO recommended to provide for clear criteria concerning the use of public facilities for party activity and election campaign purposes.*
30. GRECO recalls that this recommendation had been categorised as not implemented. Bulgaria had merely indicated 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». GRECO concluded that the effect of such a measure, which existed already at the time of the evaluation, was limited and did not remedy the various concerns expressed in the Evaluation Report.

31. The Bulgarian authorities indicate that an explicit prohibition was established in article 168, para.3 EC to “use free-of-charge” any public administrative resources in relation to an election campaign. According to the definition of Section 1(18) of the Supplementary Provisions EC, “public administrative resources” are budgetary funds, premises, motor vehicles, aircrafts and other means of transportation, equipment and other movable and immovable property owned by the State or municipalities, which are provided to the public administration, state and local authorities, or state and municipal enterprises”. In addition, a special administrative sanction was provided by article 474 EC in case of violation of the above prohibition in form of a fine from 1 000 to 3 000 BGN (500 to 1500 EUR). In case of repeated offence, the range of the fine is higher, namely 3 000 to 10 000 BGN (1 500 to 5 000 EUR).
32. GRECO takes note of the above. Bulgaria has clearly made some improvements. However, for the time being, the safeguards against the misuse of public resources for political activities only address partly the present recommendation. They are not broad enough to clearly apply outside the election campaign context: senior officials who have sufficient authority within the public sector may still (mis)use public resources and infrastructures for the benefit of the activities of their party (or before or after the campaign period). When Bulgaria introduces broader safeguards, it would be desirable to ensure that the prohibitions also cover clearly the human resources usually associated with public facilities.
33. GRECO concludes that recommendation viii has been partly implemented.

Recommendation x.

34. *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.*
35. GRECO recalls that this recommendation had been considered not implemented. It was merely reported that the profession had been applying the International Standards of Auditing (ISA) for 10 years and that these provide for adequate guarantees of independence of auditors (by means of a policy on conflicts of interest). GRECO pointed to the concerns expressed in the Evaluation Report (paragraphs 110-112), in particular as a result of indications that a margin of accuracy as high as 50-70% is reportedly applied in practice concerning financial statements of political parties. The report also noted that although political financing is allegedly exposed to risks of money laundering and auditors and political parties are required by the anti-money laundering legislation to file suspicious transaction reports with the financial intelligence unit, there had never been such reports in practice. Leaving the effectiveness of the AML system aside as it is assessed in other fora, GRECO expected concrete measures to narrow the margin of accuracy and to increase the independence of auditors (e.g. reasonable rotation, appointment of a second auditor).
36. The Bulgarian authorities do not refer to any new development and apparently nothing has been done to address the issues that have given rise to this recommendation.
37. GRECO regrets the absence of initiatives in the above field. It recalls that even the best rules on the transparency of political financing are worthless if they are not effective. It urges Bulgaria to take determined action to implement this recommendation and concludes that recommendation x remains not implemented.

Recommendation xiv.

38. 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.
39. GRECO recalls that this recommendation had been categorised as not implemented as no specific action had been taken with a view to its implementation. GRECO had pointed out that the Political Parties Act (PPA) provides for the following sanctions.
40. The authorities of Bulgaria now report that with the adoption of the new Electoral Code (EC) in March 2014, the PPA was also amended (article 43 and new article 43a PPA) in order to complement the existing system of administrative offences concerning party funding rules, with new administrative law violations. Some of the sanctions can be imposed on the person entrusted with party accounts and financial management and/or party representation, as recommended in the first part of the recommendation. For the sake of clarity, the rapporteurs and the Secretariat have drawn the table below to give a consolidated overview of the current sanctions under the PPA. The Bulgarian authorities point out that the provisions of article 36 and 43 PPA which sanction the failure to present financial statements annually are to be understood broadly as allowing to sanction also the presentation of statements in an inappropriate format or the non-inclusion of the list of donors for instance.

Requirement violated	Sanction applicable
Failure to present within the established deadline (31 March) the annual financial statements (as required by art.26 Accounting Act) including a declaration with list of donors, (art.43 par.1 PPA)	Loss of public subsidy until next parliamentary elections (art.36 para.1) If party receives public subsidy, file sent to the tax authorities for further review Amended 2014: (art. 43 PPA): fine of 5000 to 10 000 BGN (2 500 to 5 000 EUR)
Failure to establish a public register of donors or to include in it the required information (art.43 par.2 PPA)	Fine of 1 000 to 5 000 BGN (500 to 2 500 EUR)
Systematic violations of the PPA, failure to submit financial statements in two consecutive years, not participating in any election for more than 5 years etc. (art.40 PPA)	Sofia City Court can pronounce dissolution at the prosecutor's request
New 2014: Establishing / participating in a commercial activity contrary to art. 22, accepting a donation above 10 000 BGL in total in a calendar year (art. 23 para.2), accepting support from unauthorised sources (art.24), using resources for purposes other than those of art 29 para.1	Fine of 1 000 to 5 000 BGL (500 to 2 500 EUR) imposed on the natural person entrusted with accountancy and financial management, or party representation (new art.43a) (or twice the above amount if repeated violation)
Non-declaration in due course of bank accounts to the National Audit Office (art.28a)	Fine of 100 to 500 BGL (50 to 250 EUR) (new art.43a para.2) on the natural person(s) mentioned above (or twice these amounts if repeated violation)
Non designation / communication of the person entrusted with accountancy and financial management (art.30 para.1 and 2)	Fine of 200 to 500 BGL (100 to 250 EUR) imposed on party representative (new art. 43a)

41. GRECO takes note of the amendments of March 2014 reported above. With regard to the first part of the recommendation, Bulgaria has taken measures to address it by re-introducing in the Political Parties Act (PPA) provisions on certain violations committed by party officials entrusted

with financial and/or representative functions. GRECO welcomes this, bearing in mind concerns expressed in paragraph 119 of the Evaluation Report and the fact that all sanctions for physical persons had been abolished in 2009 (with retroactive effect) after a series of party leaders had been subject to such proceedings. The new sanctions cover at present a series of sensitive requirements of the PPA provided for in its articles 22, 23 paragraph 2, 24 and 29, for instance for accepting donations above the prescribed limit or from unauthorised sources of party funding including anonymous donations. Their dissuasive effect would normally contribute to securing an appropriate level of financial discipline, accountability and internal control within party structures. As for the second part of the recommendation, some additional important requirements of the PPA are now subject to sanctions. There is still room for improvement; for instance, the improper identification of donors and the inadequate or non-registration of elements of income and expenditure – which are examples mentioned in the recommendation – have still not been adequately addressed. The authorities also refer to the applicability of general sanctions contained in the Law on Accountancy, the Law on Measures against Money Laundering, the Law on Administrative offences (when it comes to confiscation)³ and criminal sanctions for documentary offences (article 308, paragraph 1 and article 313⁴ of the Criminal Code) to address different violations concerning the registration and reporting of income and expenditure. GRECO notes that this important information is not mentioned in Bulgaria's Third Round Evaluation. In addition, in GRECO's view, the PPA would need at least to make explicit reference to these other general provisions for the sake of legal security (according to the authorities the declaration forms issued by the National Audit Office make an explicit reference to the criminal liability under article 313 CC). Moreover, GRECO continues to consider that the range of sanctions does not meet the requirements of the recommendation ("effective, proportionate, dissuasive"). In view of GRECO, the level of the fines remains, as before, globally low and inadequate to sanction significant financial violations and illegal dealings. For comparison purposes, a fine of up to 10 000 BGL is equivalent to the maximum amount a beneficiary is allowed to accept in a given year from an individual donor (both under the PPA and the EC). The supervisory bodies and judicial institutions would normally consider the possible dissolution of a party (on the basis of "systematic violations" under article 40 PPA), but there could be reluctance to use this mechanism in practice, as GRECO has already pointed out. Likewise, the loss of the public subsidy (or the suspension or reimbursement of public support if this was introduced) would deserve to be applicable to a broader range of circumstances. In conclusion, Bulgaria clearly needs to pursue the implementation of the second part of this recommendation.

42. GRECO concludes that recommendation xiv has been partly implemented.

³ The authorities explain that In case of violation of Art.477 of the Electoral Code (acceptance of a donation from an individual above the ceilings provided by Art.167 EC), in addition to the sanction imposed on the financial manager, the assets exceeding the donation ceilings will be forfeited under the general rule of Art.21 of the Law on administrative offences and sanctions. This general rule is applied in case of all administrative offences, including those established by the Political Parties Act and Electoral Code. Article 21 of the Law on administrative offences and sanctions reads as follows: "All assets/effects acquired by the offender as a consequence of the administrative violation committed shall be forfeited in favour of the state, regardless of their quantity and value."

⁴ Article 313 paragraph 1 provides that "A person who asserts an untruth or holds back a truth in a written declaration or an electronic message which by virtue of a law, decree or regulation of the Council of Ministers are submitted to a state authority for certifying the truth about certain facts, shall be punished by deprivation of liberty for up to three years or by a fine of BGN 100 to 3 00"

Recommendation xv.

43. 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.
44. GRECO recalls that this recommendation had been found partly implemented. In the Electoral Code (EC) introduced in 2011 – which replaced a series of election-specific laws – Bulgaria made provision for a more coherent range of sanctions clearly linked to violations of rules on election campaign financing. But GRECO considered these as insufficiently effective, proportionate and dissuasive. Additionally, it regretted the absence of provisions on the liability of the persons designated to manage the campaign accounts belonging to parties, coalitions of parties and nomination committees (to be consistent with the Political Parties Act (PPA)).
45. The Bulgarian authorities now report that in the new Electoral Code of March 2014, a number of provisions were introduced, aimed at increasing the dissuasive effect of the administrative sanctions for violation of the rules for financing of election campaigns (Articles 474 and 476-479 EC). As in the previous recommendation, the rapporteurs and the Secretariat have drawn up a table, to give a clearer overview of the evolution of the situation since the First Compliance Report:

EC 2011 (situation reported in the First Compliance Report)	New EC March 2014
<p>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 5 000 Euros) may be imposed on persons representing a political party or a nomination committee, or the persons representing a coalition of parties.</p> <p>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. (...)</p>	<p>Breaches of ceiling on campaign spending (art.165 EC), of rules on prohibited sources of funding and administrative “free-of-charge” resources (art.168 EC) as well as of duty to use bank transfers for operations on income and expenditure above 1 000 BGN (art. 170 EC): these attract a fine from 3 000 to 15 000 BGN (1500 to 7500 EUR) (art.476 EC).</p> <p>Note: in accordance with art. 474 EC, non-compliance with article 168 paragraph 3 specifically attracts also the (different) penalties – fine up to 10 000 BGN (5 000 EUR) mentioned in the discussion of Recommendation viii above – see paras 29-32)</p> <p>Receiving private support above the prescribed 10 000 BGN ceiling (art. 167 para.1 and 2 EC) or receiving goods or services in violation of the rules under art.167, para.3 or 4 a fine is imposed from 2 000 to 10 000 BGN (from 1 000 to 5 000 EUR) (art.477 EC).</p> <p>Not complying with requirements for the submission of information to the Single Public Register including relevant information on donations (name of donor, purpose, type and value of donation) attracts a fine from 3 000 to 10 000 BGN (from 1 500 to 5 000 EUR) (art.478 EC).</p> <p>For a breach of the requirement for submission of report on the revenues, expenditures and liabilities related to the election campaign a fine is imposed from 2000 to 10 000 BGN (from 1 000 to 5 000 EUR) (art.479 EC).</p>

<p>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).</p>	<p>Any person who violates the EC in cases other than those covered under the above articles 474 and 476-479 shall be liable to a fine or a pecuniary penalty from 200 BGN (approx. 100 Euros) to 2,000 BGN (approx. 1,000 Euros) (art.495 EC)</p>
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46. The Bulgarian authorities explain that in most cases, the sanctions are imposed on the natural persons responsible for the financial management of political parties, nomination committees and coalitions. Where the violations are related to the requirements for submission of information to the Single Public Register and the requirement for submission of financial statements on the election campaign, the administrative sanction is imposed on the natural persons designated to represent the political party, nomination committee or coalition. As was the case in the EC 2011, violation protocols are established by the NAO auditors and the sanction is pronounced subsequently by the NAO President (art.497 EC).
47. GRECO takes note of the changes introduced in the new Electoral Code (EC) of March 2014. It would appear that the new EC 2014 follows a radically different approach from its predecessor of 2011 when it comes to sanctions: specific violations and provisions have replaced the earlier catch-all provisions and this is likely to make these more dissuasive and effective in practice. Also, the sanctions were increased to some extent, from the equivalent of 5 000 to 7 500 euro in the case of offences covered at present by article 476 EC. GRECO is also pleased to see that financial managers are at present subject to liability for some of their basic duties. The new approach requires in principle that the system of sanctions is consistent and applies to all major requirements on campaign financing. The Bulgarian authorities refer to the broad complementary coverage of article 495 EC but the maximum amount of the fine/ penalty is the equivalent of 1 000 EUR, and thus seems to be below the expectations of the recommendation. The authorities also refer, as in the previous recommendation, to the applicability of the Criminal Code for serious accounting violations and manipulations, and provisions contained in other laws. Overall, GRECO is pleased with the progress made by Bulgaria.
48. GRECO concludes that recommendation xv has been implemented satisfactorily.

Recommendation xvi.

49. *GRECO recommended to extend the statute of limitation applicable to violations of the Political Parties Act of 2005 and the various election acts.*
50. GRECO recalls that in the absence of any follow-up measure, this recommendation was considered not implemented. It seemed 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) had received no consideration. GRECO underlined 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. In that context, it furthermore appeared that no mechanism for the suspension of the statute had apparently been provided. GRECO had found these requirements to be too strict in the context of political financing, should a violation be detected or reported only several months after it was committed.

51. The Bulgarian authorities now report that with the amendments to the Administrative Violations and Penalties Act (Art.34, para.1 as amended) adopted in February 2013 (State Gazette n°17 of 21.02.2013), the statute of limitations for initiating administrative proceedings for violations of the Electoral Code and of the Political Parties Act was extended to two years, running from the moment when the violation is committed.
52. GRECO welcomes the clear-cut improvement reported above and concludes that recommendation xvi has been implemented satisfactorily.

III. CONCLUSIONS

53. **In view of the conclusions contained in the Third Round Compliance Report on Bulgaria and in light of the above, GRECO concludes that Bulgaria has now implemented satisfactorily or dealt with in a satisfactory manner fourteen of the twenty recommendations contained in the Third Round Evaluation Report.** Four further recommendations remain partly implemented and two remain not implemented.
54. More specifically, with respect to Theme I – Incriminations, recommendation ii has been implemented satisfactorily, recommendations i and iii has been partly implemented and recommendation iv remains not implemented. With respect to Theme II – Transparency of Party Funding, recommendations i, ii, iii, iv, v, vi, vii, ix, xi, xii, xiii, xv and xvi have now been implemented satisfactorily or dealt with in a satisfactory manner, recommendations viii and xiv have been partly implemented, and recommendation x remains not implemented.
55. In so far as incriminations are concerned, Bulgaria has used the additional time since the First Compliance Report to prepare further amendments and submitted these to Parliament to cover third party beneficiaries of undue advantages, and bribery of foreign arbitrators where these operate under the law of another jurisdiction. Unfortunately, despite the merit of these amendments, they could not be adopted due to the dissolution of the National Assembly on 6 August, two weeks after the Government had resigned. GRECO also regrets that no meaningful action was taken to date to review the mechanism of effective regret and GRECO urges Bulgaria to take up again consideration of this matter. Overall, GRECO observes that at this stage, Bulgaria has managed so far to fully or partly implement three of the four recommendations on incriminations.
56. As regards transparency of political financing, Bulgaria has used the additional time to implement satisfactorily three further recommendations and to achieve some further results. The rules on financial managers to be appointed by political parties, coalitions and nomination committees participating in any election were made more consistent in March 2014, on the occasion of the adoption of a new Electoral Code (EC) which replaced the one adopted in 2011. The administrative statute of limitation for proceedings to sanction violations under the Political Parties Act (PPA) and the EC was extended from one year to two years. This now gives real possibilities for supervisory action to the National Audit Office in the context of the annual reporting on party financing in particular. With the new EC of March 2014, the system of sanctions in relation to the financing of election campaigns was significantly changed with number of specific offences replacing at present the (previous) catch-all provisions. In addition, partial progress took place to prevent the misuse of public facilities for political activity and in the area of sanctions concerning party funding in the PPA. Full implementation of the recommendations concerned would however require greater consistency of the new rules and a more ambitious approach in those areas. Finally, as regards the quality and independence of audit certification of the parties' financial

statements by private sector auditors, no action was taken and Bulgaria is urged to rapidly address this matter given the concerns expressed in the Evaluation Report.

57. More generally, looking back at the situation at the time of the Evaluation visit in October 2009, Bulgaria has no doubt come a long way to improve its regulatory framework on the transparency of political financing, to encourage greater self-discipline of the political parties in this area and to improve the supervision, first and foremost by the National Audit Office (NAO). GRECO wishes nonetheless to underline that the new arrangements for the transparency of political financing need some stability and serenity to become progressively effective, and should be spared the overhauls which the legislation and institutions (their management) undergo just too often⁵. As regards the EC 2014, introduced just three years after the first EC of 2011, GRECO welcomes the assurances given by Bulgaria in paragraph 23 that the relevant provisions of the EC 2011 which corresponded to recommendations implemented satisfactorily according to the First Compliance Report, were transposed accordingly in the new EC 2014. On the other hand, GRECO noted that legislation passed in April 2014 has – again – reorganised the NAO. The latter underwent a reform just three years ago, following amendments passed in December 2010. GRECO considered that these had implemented satisfactorily the recommendations which called for improvements on political financing supervision (see the First Compliance Report, recommendations xi and xiii especially). The reform of April this year has triggered allegations of political instrumentalisation in an important year for electoral purposes and the financial supervision of political institutions⁶. The amendments have now put in place a completely new structure and leadership of the NAO – thus replacing the current chairperson and his deputies – and reportedly reversed changes in the management structure (under the previous ruling coalition). It has been alleged that the current new arrangements would now make the NAO leadership more susceptible to pressure from political parties⁷ whereas the Third Round Evaluation Report (para 114) so far had assessed positively the NAO's operational independence: “[the NAO] enjoys satisfactory guarantees of independence as well as the reputation of being reasonably distant from the parties and parliament.” GRECO therefore calls upon Bulgaria to ensure that the fears expressed in relation to the reform and operational independence of the NAO will not materialise. It also urges Bulgaria to fully implement the outstanding recommendations on Theme II.
58. In conclusion, in view of the fact that three (out of four) recommendations concerning incriminations are yet to be implemented, GRECO in accordance with Rule 31, paragraph 9 of its Rules of Procedure asks the Head of the delegation of Bulgaria to submit additional information on the pending recommendations, namely regarding the implementation of recommendations i, iii and iv on Theme I – Incriminations, and recommendations viii, x and xiv on Theme II – Transparency of Party Funding by 31 July 2015 at the latest.

⁵ GRECO had noted political instrumentalisation in the conclusion to the Evaluation Report: “*the way the relevant legislation is drafted and prepared, under the main responsibility of the political parties themselves, suggests that so far, this legislation has been politically instrumentalised. For instance, the Local Elections Act was amended 24 times since its adoption in 1995 – often too late for these amendments to become fully applicable to the upcoming elections and for reasons of the ruling parties' own interests, as pointed out during the on-site discussions*”

⁶ 2014 is a year of European Parliament elections, local elections as well as early general elections. In January 2014, the NAO announced its intention to audit the Parliament as well as a large number of state agencies in the course of the year; it also pointed to gaps in the political financing legislation; see <http://www.balkan.eu.com/bulgarias-audit-office-check-parliament-state-agencies/> and <http://www.novinite.com/articles/157119/Bulgaria's+Audit+Office+Proposes+Changes+in+Political+Parties+Law>.

⁷ See for instance <http://sofiaglobe.com/2014/04/30/bulgarian-parliament-elects-new-audit-office-chief/> and <http://www.novinite.com/articles/161216/Bulgarian+MPs+Hastily+Approve+National+Audit+Office+Members>

59. Finally, GRECO invites the authorities of Bulgaria to authorise, as soon as possible, the publication of the present report, to translate it into the national language and to make the translation public.