



DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS

BULGARIA: PHASE 2

**FOLLOW-UP REPORT ON THE IMPLEMENTATION
OF THE PHASE 2 RECOMMENDATIONS ON THE APPLICATION OF
THE CONVENTION AND THE 1997 RECOMMENDATION ON
COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN
INTERNATIONAL BUSINESS TRANSACTIONS**

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 26 January 2006.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

a) Summary of findings

1. Since the evaluation of Bulgaria under Phase 2, the Bulgarian authorities have taken action in an important number of sectors that has had a direct influence on the level of implementation of the Recommendations made to Bulgaria. One conviction for foreign bribery has been reported to the Working Group by the Bulgarian authorities, but the offence did not involve international business. No additional investigations or cases have been reported.

2. The legal and institutional framework for the enforcement of the foreign bribery offence has undergone some key developments since the Phase 2 evaluation. The administrative liability of legal persons for criminal offences has now been introduced through the Law amending the Law on Administrative Offences and Sanctions (a translation of the law, provided by the Bulgarian authorities, is annexed). The Working Group commended Bulgaria for addressing its previous non-compliance with Article 2 of the Convention. Nevertheless, the Working Group expressed some doubt as to whether the maximum fine for legal persons (EUR 500 000; and EUR 50 000 where the advantage is not of property nature or its amount cannot be established) would be effective, proportionate and dissuasive; and identified a potential area of concern regarding the method for establishing the amount of the fine to be imposed in a foreign bribery case (Recommendation 13). Furthermore, the Working Group unanimously praised the amendments to the Constitution and the Law on the Judiciary for the purpose of limiting the immunity of magistrates from investigation and prosecution to functional immunity, and restricting the application of such immunity so that it does not apply to the initial investigative stage (Recommendation 17). However, the Working Group expressed serious concerns regarding the issue of court delays (one of the main issues underlying the Phase 2 recommendations on the use of investigative techniques and the lifting of bank secrecy), which had not been addressed directly in the follow-up written report by Bulgaria (Recommendations 15 and 16).

3. Bulgaria reported undertaking numerous awareness-raising and training actions. Police forces, prosecutors, the judiciary and public servants in general have all been taking part in a variety of training activities pertaining to preventing and combating corruption. The main focus of these activities has been to prevent and combat domestic corruption, but the Working Group acknowledged that most of these were likely to have positive implications for the prevention and combat of foreign bribery as well. Nevertheless, in view of an evolving legal context and a rapidly changing economical environment, and due to the peculiarities of combating foreign bribery, the Working Group encouraged Bulgaria to pursue its training and awareness-raising efforts. Bulgaria was invited to ensure that these efforts were carried on – at least in part – with an explicit view to increase the effectiveness of the fight against the bribery of foreign public officials (Recommendations 1, 2 and 10).

4. The Bulgarian authorities also reported some noteworthy contributions to awareness-raising by the private sector. The professional association for accountants and auditors (the ICPA) has taken significant measures for improving the detection of suspicious transactions by its members, including foreign bribery. Business organisations have been promoting the adoption of codes of ethical conduct by their members, and encouraging them to sign an anti-corruption declaration. At the same time, the Working Group noted that cooperation between the Bulgarian authorities and businesses, business associations and professional associations in developing ways to prevent and combat foreign bribery still

appears to be at a rudimentary stage. Additional efforts to strengthen this cooperation were deemed necessary in order to ensure full implementation of Phase 2 recommendations, as well as to favour efficiency and coherence amongst action taken in each sector (public and private) (Recommendations 1, 2, 3, 5 and 7).

5. Bulgaria has made clear progress in gathering court statistics on cases involving domestic bribery offences and other information. Nevertheless, in view of the Phase 2 Report assessment of the situation, and for awareness-raising and enforcement purposes, the Working Group encouraged Bulgaria to further its efforts in ensuring that all quantitative and qualitative information on the processing of allegations and cases involving foreign bribery (including acquittals, convictions and interpretations of the law) is made publicly available wherever there is no clear confidentiality requirement (Recommendation 4).

6. Another important and welcome enhancement of the Bulgarian framework for corruption prevention pertains to the exclusion of convicted bribers from eligibility for government contracts. The 2004 Law on Public Procurement (LPP) contains an explicit provision [under art.47(1)] that excludes natural persons who have been convicted of a number of offences – including foreign bribery – from the tendering process (Recommendation 6). On the possibility of excluding legal persons whose directors or officers have been found to have been involved in foreign bribery, the Bulgarian representative read out a translation of art.47(3) LPP during the Working Group discussion; clarifying that the grounds for exclusion provided by art.47(1) LLP “shall also apply to the managers or members of management bodies of the candidates; and if these members are corporate bodies, to their representatives in the respective management body”.

7. The Working Group commended the Bulgarian authorities for providing guidance to tax officials through their training programme. However, no substantial consideration had been given to the possibility of introducing an express denial of tax deductibility: the reasons provided to the Working Group during the Phase 2 evaluation and the follow-up oral report (19 January 2005) had only been reiterated (*i.e.* the incompatibility of the Bulgarian tax law with an express denial of tax deductibility). This response was not satisfactory to the Working Group, which noted some recent recommendations on the matter made to other members (*e.g.* the Slovak Republic), and in view of the utility of such an express denial in trying to achieve broad awareness and strong incentives for detection amongst tax officials (Recommendation 11). The Working Group expressed concern that no method had been designed – specifically – to encourage law enforcement agencies to provide appropriate feedback and assistance to other agencies with the aim of improving their detection and reporting capabilities (Recommendation 9), and also noted that consideration for establishing whistle-blower protection measures for both public and private sector employees had only reached a very early stage of development (Recommendation 7).

8. The Working Group was not able to provide an objective assessment on the level of implementation for some items in the Phase 2 recommendations, due to the limited information made available by Bulgaria to the Working Group. This was notably the case regarding the follow-up issue on the application of sanctions (Follow-up Issue 18), as statistics on the application of fines were not available (it was also noted that any such statistics would have to be considered in conjunction with data on deprivation of liberty sanctions, as both forms of sanctions are applied in a complementary manner).

b) Conclusions

9. Based on the findings of the Working Group with respect to Bulgaria's implementation of the Phase 2 recommendations, the Working Group reached the overall conclusion that Recommendations 2, 6, 8, 10, 12, 13, 14, and 17 have been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations 1, 3, 4, 5, and 15 have been partially implemented. Recommendations 9 and 16 have not been implemented. Recommendations 7 and 11 require further consideration from Bulgaria.

10. The Working Group invites the Bulgarian authorities to report orally on the implementation of Recommendations 1, 3, 4, 5, 9, 15 and 16, and on further consideration of Recommendations 7 and 11, within one year, *i.e.* by 31 October 2006.

BULGARIA: WRITTEN FOLLOW-UP TO PHASE 2 REPORT

Name of reporting country: Bulgaria

Date of approval of Phase 2 Report: 6 June 2003

Date of information: 21 September 2005

Part I: Recommendations for Action

Text of recommendation 1:

With respect to awareness raising with a view to promoting the implementation of the anti-bribery legislation, the Working Group recommends that Bulgaria:

Take measures to raise the level of awareness of the foreign bribery offence among officials in government agencies that could play a role in detecting and reporting it and undertake effective public awareness activities for the purpose of educating and advising the private sector on the offence. (Revised Recommendation, Article I).

Actions taken as of the date of the follow-up report to implement this recommendation:

The inspectors in the ministries who are internal control officials participate in a special program at the Academy of the Ministry of Interior (Police Academy) aimed at providing them with the basic skills how to detect and report bribery offences, including foreign bribery. The training took place in April and May 2004 and is ongoing. All the members of the ministries inspectorates participate in this training.

The Financial Intelligence Agency, Inspectorate Department carries out frequent trainings and provides methodological support to the obliged persons under Art. 3, Para. 2 and 3 of the Law on Measures against Money Laundering (LMML).

The Bulgarian translation of the Report on the application of the Convention and 1997 Recommendation adopted within phase 2 was published on the web-site of the Ministry of Justice (www.justice.government.bg) and the Governmental Commission on Co-ordination of the Anti-corruption Activities (www.acc.government.bg). The Minister of Justice addressed letters to the Bulgarian Industrial Association (BIA), Bulgarian International Business Association (BIBA) and Bulgarian Chamber of Commerce and Industry (BCCI) in order to encourage the awareness raising of foreign bribery offence among the business associations. In 2005 the Bulgarian Industrial Association (BIA) established hot line (telephone and e-mail address) for receipt of signals about corruption in the public procurement procedure.

On 23 February 2005 the Bulgarian International Business Association (BIBA), Bulgarian Business Leaders Forum and Bulgarian Bureau of Business and Congress Tourism announced a Declaration against corruption supported by 360 companies (www.anticorruption.bg). In Part II item 8 of

the Declaration the Bulgarian companies undertook to raise awareness on corruption offences.

By Decision 223 of 30 March 2005 the Bulgarian government amended the National Anticorruption Strategy and Action Plan for its implementation by including the following measures dealing with the coordination of the anticorruption initiatives with the private sector: setting up of a joint Council with representatives of the business in view of establishing public-private partnership for suppression of corruption in the business community and establishment and implementation of a policy for encouragement of the businesses which do not use and actively counteract corruption practices.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2:

With respect to awareness raising with a view to promoting the implementation of the anti-bribery legislation, the Working Group recommends that Bulgaria:

Develop the role of the Bulgarian Trade Promotion Agency in awareness-raising and in deterrence, by considering measures which prevent public funds being spent on assistance, or official support given, to companies involved in foreign bribery. (Revised Recommendation, Article I).

Actions taken as of the date of the follow-up report to implement this recommendation:

The Bulgarian Small and Medium Enterprises Promotion Agency (BSMEPA), which is legal successor of the Bulgarian Trade Promotion Agency (BTPA), maintains the undertaken commitment to raise awareness of Bulgarian companies concerning the liability in case of offering or giving of a bribe to foreign public officials.

The translation of the OECD Convention and 1997 Revised Recommendation of the Council on Combating Bribery in International Business Transactions, the annex to the Revised Recommendation "Agreed Common Elements of Criminal Legislation and Related Action", as well as an information on the activity of the OECD Working Group on Bribery were published on the BSMEPA website (www.sme.government.bg).

The BSMEPA's Executive Director issued an order for collecting, summarizing and analyzing of information concerning the implementation of anti-corruption practices by the companies. The information will be published on BSMEPA's website with a relevant internet forum on it. In developing the new website of BSMEPA a section "Forum" will be included with a separate sub-section "Anti-corruption practices" where the citizens and organisations could share on-line opinions, statements and examples of corruption and anti-corruption practices in the central and local administration. A questionnaire for Small and Medium Enterprises has been elaborated, which includes questions for BSMEPA's and other public institutions activities regarding the anti-corruption practices.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3:

With respect to awareness raising with a view to promoting the implementation of the anti-bribery legislation, the Working Group recommends that Bulgaria:

Work proactively with the accounting, auditing and legal professions to establish training and awareness-raising activities about the foreign bribery offence in order to maximise the opportunities for prevention and deterrence within the business community. (Revised Recommendation, Article I).

Actions taken as of the date of the follow-up report to implement this recommendation:

The Minister of Justice addressed letter to the President of the Institute of Certified Public Accountants (ICPA) in order to encourage the awareness-raising activities within the community of the accounting/auditing professionals.

The Bulgarian translation of the Report on the application of the Convention and 1997 Recommendation adopted within phase 2 was published on the web-site of ICPA (www.ides.bg).

The issues of anti-corruption activities are discussed in the framework of the Annual International Conferences organised by ICPA.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4:

With respect to awareness raising with a view to promoting the implementation of the anti-bribery legislation, the Working Group recommends that Bulgaria:

Maintain statistics as to the number, sources and subsequent processing of allegations of violations of the laws against foreign bribery and consider ways of making sufficient information available as a matter of public record on cases of bribery heard by the courts, including acquittals, convictions and interpretations of the law, to meet the needs of judges, lawyers and those engaged in research, as well as the media and the public. (Revised Recommendation, Article I).

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the beginning of 2004 the Bulgarian authorities have processed court statistics on corruption offences, which differentiate between active and passive bribery in the private sector, active and passive bribery of domestic officials, active and passive bribery of foreign public officials, bribery of arbitrators and experts, trading in influence, misuse of functions, etc. In 2004 there was one conviction in a case involving the bribery of a foreign public official by a Bulgarian citizen abroad. The offence did not involve international business.

The Criminological Research Council at the Ministry of Justice started its activity in 2003. The

research on corruption and analysis of statistics on prosecution of corruption is one of the main fields of activity of the Criminological Research Council.

In October 2003 the Bulgarian Government adopted Decree on the additional financing of the Unified Information System for Counteracting Crime.

The special services of the Ministry of the Interior prepare quarterly as well as annual reports containing statistical data on the numbers of signals and results of subsequent police /pre-trial/ investigation, including cases of bribery of foreign officials, if any.

The cases of bribery within the tax system are published in the bulletin of the General Tax Directorate.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5:

With respect to other preventive measures, the Working Group recommends that Bulgaria:

Encourage the introduction of codes of conduct and compliance policies in corporations. (Revised Recommendation, Article VI).

Actions taken as of the date of the follow-up report to implement this recommendation:

Bulgarian Chamber of Commerce and Industry (BCCI) and its members adopted Code of Ethics which was published on the web-site of BCCI (www.bcci.bg). Besides that, in 2003 the BCCI adopted Code of Conduct for the BCCI personnel.

In 2005 the Minister of Justice addressed letters to the Bulgarian Industrial Association (BIA), Bulgarian International Business Association (BIBA) and Bulgarian Chamber of Commerce and Industry (BCCI) in order to encourage the introduction of codes of conduct in corporations.

On 23 February 2005 the Bulgarian International Business Association (BIBA), Bulgarian Business Leaders Forum (BBLF) and Bulgarian Bureau of Business and Congress Tourism announced a Declaration against corruption supported by 360 companies (www.anticorruption.bg). In Part II item 10 of the Declaration the Bulgarian companies undertook to work pro actively in order to promote the Standard of Business Ethics in all the companies and business sectors.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6:

With respect to preventive measures, the Working Group recommends that Bulgaria:

Consider operating a policy of excluding any individuals, or any entities whose directors or officers have been found to have been involved in foreign bribery from eligibility for government contracts (Convention, Article 3; Revised Recommendation, Article VI).

Actions taken as of the date of the follow-up report to implement this recommendation:

*On 24 March 2004 a new Law on Public Procurement (LPP) was adopted by the National Assembly that contains explicit provision excluding from the tendering process persons who have been convicted of a number of offences, including foreign bribery. Under Art.47, paragraph 1 (1) of the LPP a candidate who has been convicted of crimes against the financial, tax and insurance system, of **bribery** and of economic crimes may not participate in the in the tendering procedure. Where the candidate is foreign individual or foreign legal person he/she/it should meet the requirements of Art.47 in the state of establishment (Art.48, paragraph 1).*

The new LPP entered into force on 1 October 2004.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7:

With respect to the reporting of foreign bribery to the appropriate authorities, the Working Group recommends that Bulgaria:

Consider the introduction of measures of whistleblower protection sufficient to protect employees, both in the public and private sectors, from dismissal in order to encourage individuals to report suspected cases of foreign bribery without fear of retaliation. (Convention, Article 5).

Actions taken as of the date of the follow-up report to implement this recommendation:

On 23 February 2005 the Bulgarian International Business Association (BIBA), Bulgarian Business Leaders Forum and Bulgarian Bureau of Business and Congress Tourism announced a Declaration against corruption supported by 360 companies (www.anticorruption.bg). In Part II, item 6 of the Declaration the Bulgarian companies undertook "to encourage and provide for protection of their employees who report corruption at any level".

The introduction of specific legislative measures of whistleblower protection, different than the existing general measures of protection, is under consideration.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8:

With respect to the reporting of foreign bribery to the appropriate authorities, the Working Group recommends that Bulgaria:

Bearing in mind the vital role of accountants in uncovering and reporting foreign bribery, consider measures designed to encourage increased reporting by members of the profession; and consider requiring auditors to report indications of possible illegal bribery to the competent authorities. (Convention, Article 8, Revised Recommendation, Article V B 4).

Actions taken as of the date of the follow-up report to implement this recommendation:

In accordance with the obligation under Art.16 of the Law Against Money Laundering (LMML), on 16 June 2003 the Institute of Certified Public Accountants (ICPA) adopted Unified Internal Rules on Control and Prevention of Money Laundering. These Rules establish clear criteria of detection of suspicious transactions and clients, rules of training of personnel and use of techniques for detection. The Internal Rules of ICPA were approved by the Financial Intelligence Agency by the end of June 2003.

On 7 July 2003 the General Assembly of ICPA adopted Code of Professional Ethics.

The ICPA issued a clear statement regarding the precedence of the civic obligation under the Criminal Procedure Code to report suspicious of foreign bribery detected in companies' records to the law enforcement authorities.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9:

With respect to the reporting of foreign bribery to the appropriate authorities, the Working Group recommends that Bulgaria:

Encourage the enforcement agencies to provide appropriate feedback on reports that are made, in order to assist the tax and other authorities in improving their detection and reporting capabilities with regard to foreign bribery. (Revised Recommendation, Articles I and II (ii)).

Actions taken as of the date of the follow-up report to implement this recommendation:

The exchange of information, use of databases and operational and technical cooperation between the specialized services of the Ministry of the Interior, on one hand, and the Tax Administration, the Customs Administration and the Financial Intelligence Agency, on the other hand, is regulated by special instructions issued jointly by the Minister of the Interior and the Minister of Finance under the Law on the Ministry of Interior (Art. 23, paragraph 1, item 2 amended in 2003).

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10:

With respect to detection, the Working Group recommends that Bulgaria:

Provide all officials having a role in the detection, reporting and enforcement of the foreign bribery offence with detailed and regularly updated training about the content of the offence, and guidance, in the form of guidelines or typologies where appropriate, on the circumstances in which it occurs and how to recognise it. (Revised Recommendation, Article I).

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the end of 2003 the Commission for Coordinating of the Activities for Combating Corruption (Anti-corruption Commission) started preparation for carrying out comprehensive anti-corruption training for the civil servants, including concerning the detection of bribery offences. Anti-corruption training for the civil servants is delivered online (2 CD with educational materials, films, tests and surveys were prepared for the E-anticorruption self-teaching of the civil servants) or by organizing 3 to 5 days seminars. Since 2004 the anti-corruption training is obligatory for all the civil servants in the administration (order of the Minister of Public Administration). Twelve seminars on the models and mechanisms of combating corruption in state administration have been held since the beginning of 2005. The training materials are developed by the Institute for Public Administration and European Integration under the guidance of the Anti-corruption Commission.

Due to the specificity of the work of the inspectorates in the ministries and their operation as internal control bodies a program was developed with the Police Academy to provide them with the basic skills needed to perform their functions. The training took place in April and May 2004 and is ongoing. All the members of the ministries inspectorates participated in this training.

In the Ministry of Interior specialized training is provided to the police officers on detection and counteraction of bribery. The Police Academy Curriculum includes 2 separate courses devoted to corruption – “Counteracting Corruption” and “Corruption in the Public Administration”. In May 2005 the Ministry of the Interior published two monographs for training and supporting police staff working in the field of combating corruption: “Bribery Detection” and “Corruption and Police Prevention”.

The National Institute of Justice (NIJ) included in its annual curriculum for 2004 – 2005 and 2005-2006 year the fight against corruption as priority in the trainings of judges, prosecutors and investigative magistrates. In 2004 two specialized trainings took places dealing with different forms of

bribery, detection methods and counteraction models. In November 2005 the NIJ and the TAIEX department of the European Commission will co-organize training on "Fight against corruption" for junior judges".

The officials of Financial Intelligence Agency took part in a number of seminars and training programs organized by OLAF, the American initiative "Open management" etc., including in the Course "Fraud Detection and Prevention", November-December 2004, and OLAF Seminar "Corruption, Financial Fraud and Money Laundering", January 2005.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11:

With respect to detection, the Working Group recommends that Bulgaria:

Establish clear guidelines for the tax authorities to encourage the detection of foreign bribery, and consider introducing an express denial of deductibility in order to strengthen the mechanisms available for detecting and deterring the offence. (Revised Recommendation, Article IV).

Actions taken as of the date of the follow-up report to implement this recommendation:

Under the training program for 2004-2005 approved by the General Tax Directorate, since May 2005 the tax examiners participate in special training dealing with the texts of the OECD Bribery Awareness Handbook for Tax Examiners.

Following the relevant consideration the Bulgarian tax authorities stated that the established principles of the Bulgarian tax legislation do not permit an express denial of tax deductibility.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12:

With respect to detection, the Working Group recommends that Bulgaria:

Take steps to ensure that the officials responsible for processing requests for information under the Access to Public Information Act are properly trained so that information necessary for the detection and reporting of foreign bribery is available to the fullest extent allowed by that statute. (Revised Recommendation, Article I).

Actions taken as of the date of the follow-up report to implement this recommendation:

In 2003 63 officials responsible for processing requests for information under the Access to Public Information Act (37 officials from the central administration and 26 from the local administrations) were trained in the framework of the specialized training covering anticorruption aspects of the implementation of the above Act.

In 2004 the total number of the trained officials responsible for processing request for information is 104 (61 from the central administration and 43 from the local administrations).

The training is organized by the Institute for Public Administration and European Integration in cooperation with the Anti-corruption Commission and non-governmental organisations.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13:

The Working Group noted Bulgaria's non-compliance with Article 2 of the Convention and therefore encourages it to proceed diligently with the recently instituted measures aimed at fulfilling the requirements of the Convention by establishing the liability of legal persons for the bribery of a foreign public official, and put in place sanctions that are effective, proportionate and dissuasive, including, in particular, confiscation in cases where the proceeds or assets are in the hands of a legal entity. (Convention, Articles 2, 3).

Actions taken as of the date of the follow-up report to implement this recommendation:

On 21 September 2005 the 40th National Assembly adopted the Law amending the Law on Administrative Offences and Sanctions dealing with the introduction of liability of legal persons for criminal offences, including for foreign bribery. The Law provides for a monetary sanction of up to 1 million Levs (approximately EUR 500 000) but not less than the amount of the advantage obtained or that could have been obtained. Confiscation of the proceeds of crime is also provided by the Law. The sanctions shall be imposed irrespective the penal responsibility of the physical perpetrator. The Law provides also for regulation of the procedure for imposing sanctions on legal persons. The English translation of the Law of 21 September 2005 amending the Law on Administrative Offences and Sanctions is attached.

Besides that, on 16 February 2005 Law on Forfeiture of Proceeds of Crime was adopted. Foreign bribery is also covered by this law. Under Art.6 of the Law, also proceeds or assets should be forfeited in favour of the State (i.e. confiscated) which are in the hands of legal person where the perpetrator of the respective crime exercise control.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14:

The Working Group recommends that Bulgaria consider putting in place a centralised mechanism for the periodic review and evaluation of the effectiveness of the enforcement efforts of the different agencies involved in the fight against foreign bribery. (Convention, Article 5).

Actions taken as of the date of the follow-up report to implement this recommendation:

The Commission on Coordination of the Activities in the Field of the Fight against Corruption (Anti-corruption Commission) was entrusted with the co-ordination and supervising of the activities related to the implementation of the National Anti-corruption Strategy and the Action Plan, with the task to analyze and summarize the information about the anti-corruption measures undertaken and to make proposals to enhance the effectiveness of the anticorruption measures.

The Chairman of the Anti-corruption Commission is the Minister of Justice, Deputy Chairman is the Minister of State Administration, and members are Deputy Minister of Interior, Deputy Minister of Justice, Member of the Court of Auditors, Director of the Agency for State Internal Financial Control, Director of the Financial Intelligence Agency, Deputy Director of the Customs administration, Director of the Inspectorate at the General Tax Directorate.

The Anti-corruption Commission adopts and publishes annual report on the implementation of the National Anti-corruption Strategy and the Action Plan including evaluation of the effectiveness of the enforcement efforts of the different agencies involved in the fight against bribery .

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15:

The Working Group recommends that Bulgaria employ special investigative techniques in respect of the foreign bribery offence where needed, and: (i) ensure that they are available in cases involving requests to lift judicial immunity and (ii) clarify the procedures for applying for authorisation to use such techniques, in order to ensure that these are consistently applied and the time-limits respected. (Convention, Article 5).

Actions taken as of the date of the follow-up report to implement this recommendation:

Following the amendments to the Constitution (2003) and Law on Judiciary (2004) the procedural immunity (inviolability) of magistrates (judges, prosecutors, investigating magistrates) does not cover the institution of the preliminary criminal proceedings nor the investigation but may be applied only in relation to the bringing of charge/accusation against a magistrate and to the arrest of a magistrate. It means that the special investigative techniques may be used in order to collect data for the requests to lift immunity (also rec.17).

The procedures for applying for authorisation to use special investigative techniques are

clarified by amendments to the Law on Special Investigative Techniques of 2003.

In June 2003 the Government adopted Regulation on the Use of Under-cover Agents by the National Service on Combating Organised Crime and the National Service of Security. The Regulation entered into force on 28 September 2003.

In 2004 the Criminal Procedure Code was amended in order to regulate the use of under-cover agents (covert investigations), controlled delivery and cross-border observation as forms of the mutual legal assistance.

In the new Criminal Procedure Code (adopted on first reading on 25 August 2005) the covert investigation and controlled delivery are established as procedural institutes which could be used in order to collect evidences before the court.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 16:

The Working Group recommends that Bulgaria examine the rules applicable to the lifting of bank secrecy in the course of financial investigations and the manner in which they are currently applied, to ensure that the process is simple and consistently implemented. (Convention, Articles 5, 9).

Actions taken as of the date of the follow-up report to implement this recommendation:

Under the explanations submitted by the Ministry of Interior, the rules for the lifting of bank secrecy, established by Art.52 of the Law on Banks, are consistently applied by the competent bodies. The bodies of the Ministry of Interior prepare a motivated proposal to the respective Prosecutor's Office which submits it to the respective District Court to obtain a permission for lifting of the bank secrecy. The court judgment is sent from the Prosecutor's Office to the respective service of the Ministry of the Interior.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 17:

The Working Group recommends that Bulgaria consider, within the constitutional principles of the State, measures that may be taken in order to ensure that judicial immunity does not impede effective investigation, prosecution and adjudication in foreign bribery cases. (Convention, Article 5).

Actions taken as of the date of the follow-up report to implement this recommendation:

On 24 September 2003 the National Assembly adopted amendments to the Constitution of the Republic of Bulgaria which dealt with the scope of immunities from criminal proceedings applied to

magistrates and the procedure for lifting of the immunities of magistrates. In particular, the adopted amendments to Articles 131 and 132 of the Constitution provided for:

- establishment of “functional immunity” for judges, prosecutors and investigating magistrates, i.e. it is explicitly stipulated that the immunity covers only the acts committed in relation to the judicial duties (Art.132, para.1);

- restriction of the scope of the immunity, i.e. the procedural immunity (inviolability) does not cover the institution of the preliminary criminal proceedings and the investigation but may be applied only in relation to the bringing of charge/accusation against a magistrate and to the arrest of a magistrate (Art.132, para.2 and 3);

- lifting of the immunity of magistrate also upon a request submitted by one fifth of the members of the Supreme Judicial Council, i.e. introducing of another possibility to initiate the lifting of the immunity besides the request which may be submitted by the Prosecutor General (Art.132, para.4);

- secret vote by which the decision of the Supreme Judicial Council for lifting the immunity of magistrate is taken (Art.131).

Following the above-mentioned amendments to the Constitution of the Republic of Bulgaria, on 25 March 2004 the National Assembly adopted Law amending the Law on Judiciary (published in State Gazette № 29 of 9 April 2004). The law dealt with the restriction of the scope of immunities from criminal proceedings applied to magistrates (judges, prosecutors, investigating magistrates) and facilitating of the procedure for lifting of the immunities of magistrates, but also with the reduction of the categories of judicial officials covered by immunities. In particular, the provisions of Articles 157 and 162 of the Law on Judiciary dealing with the immunities of judge-bailiffs and registering judges were repealed. Thus the above mentioned judicial officials were excluded from the list of categories of officials covered by immunities.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Part II: Issues for Follow-up by the Working Group

Issue for follow-up (number 18)

The application of sanctions, in particular the fines now available under Articles 304 and 305a of the Penal Code, in order to determine whether they are sufficiently effective, proportionate and dissuasive to deter and penalise the offence of foreign bribery. (Convention, Article 3).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

No statistics available on this issue.

Issue for follow-up (number 19)

Whether the existing language defining the elements of the offence of foreign bribery is sufficiently clear to be used in practice in cases where a benefit is directed to a third party. (Convention, Article 1).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

*In Art.303 of the Penal Code it is stipulated that “an official or a **foreign official** shall also be punished where, with his/her consent, the gift or benefit have been offered, promised or given to another (person)”.*

The offence of active bribery, under the criminal law theory and practice in Bulgaria, is mirrored by passive bribery offence (one perpetrator offers, promises or gives advantage and the other perpetrator accepts the offer, promise or gift). Following this common approach to the application of the bribery provisions, the existence of the explicit provision on punishment of the passive bribery, where there is third party beneficiary, implies the only conclusion that the active bribery provision is applied under the same conditions. Therefore, the Bulgarian authorities reconfirm their statement that the offence of active bribery of foreign public official (Art.304, paragraph 3 of the Penal Code) is applied also where there is a third party beneficiary.

Issue for follow-up (number 20)

Whether the proposed Law on the Amendment and Supplements to the Law on Measures Against Money Laundering is passed by the National Assembly (Convention, Article 8).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In 2003 the National Assembly adopted Law amending the Law on Measures against Money Laundering (LMML) which additionally broadened the categories of reporting individuals/entities in accordance with the Directive 2001/97/ by covering legal advisers/lawyers (Art.3, paragraph 2, new item 28 of the LMML) and persons/companies dealing in real estate (Art.3, paragraph 2 , new item 29 of the LMML).

ANNEX 1.

LAW ON ADMINISTRATIVE OFFENCES AND SANCTIONS (PROVISIONS ON THE LIABILITY OF LEGAL PERSONS FOR CRIMINAL OFFENCES ADOPTED BY THE 40TH NATIONAL ASSEMBLY ON 21 SEPTEMBER 2005)

[Unofficial translation]

..... **Chapter Four**

“Administrative-penal sanctions with regard to legal persons and sole traders”.

.....
Article 83a. (1) On a legal person which has obtained or would obtain advantage from the criminal offences specified in articles 108a, 109, 110 (preparation to terrorism), 142-143a, 169-159b, 209-212a, 213a, 214, 215, 225c, 242, 250, 252, 253, 254, 254b, 256, 257, 280, 283, 301 – 307, 319a-319f, 320-321a, 354a -354b of the Criminal Code, as well as from other criminal offences committed on an errand or in fulfilment of a decision of an organised criminal group where committed by:

1. person empowered to form the will of the legal person;
2. person representing the legal person;
3. person elected in control or supervising body of the legal person;
4. worker and servant to whom the legal person has assigned a particular work, where the offence is committed on the occasion of or in performing this work,

monetary sanction shall be imposed at the amount up to 1 000 000 Levs, but not less than the equivalent to such advantage, where the advantage is of property nature, and where the advantage is not of property nature or it's amount cannot be established, the sanction will be from 5 000 to 100 000 Levs.

(2) The monetary sanction shall be imposed also where the natural persons under paragraph 1 (1-3) have been involved as instigators or accessories in the commission of the above criminal offences as well as when such acts have been committed in the phase of an attempt.

(3) The monetary sanction shall be imposed regardless of the criminal responsibility of the perpetrator of the criminal act under paragraph 1.

(4) The advantage or its equivalent shall be forfeited in favour of the State, if it is not subject to return or recovery or to forfeiture under the Criminal Code.

(5) Property sanction under para1 may not be imposed on the State, state bodies and local public bodies, as well as on the international public organizations.

Article 83b. (1) Proceedings against legal persons under article 83a shall be instituted upon a motivated proposal by the respective prosecutor to the regional court:

1. after bringing the indictment before the court;
2. where the criminal proceedings may not be instituted or the instituted proceedings are discontinued because:
 - a) the perpetrator is not criminally liable because of amnesty;
 - b) the criminal liability has been extinguished by prescription;
 - c) the perpetrator has died;

- d) after the commission of the criminal offence the perpetrator has fallen into continuous mental disorder which excludes sanity.

(2) The proposal shall contain:

1. description of the offence, the circumstances under which it has been committed and the existence of a causal link between the criminal offence and the advantage for the legal person;
2. type and amount of the advantage;
3. designation, subject of activity and address of the legal person;
4. personal data of the persons representing the legal person;
5. personal data of the accused or sentenced persons;
6. list of the written materials or their certified copies which establish the circumstances under p.1 and 2;
7. list of the persons to be summoned;
8. the date and the place of drafting the proposal and the name and official position of the prosecutor.

(3) A copy for the legal person shall be enclosed to the proposal.

Article 83c. The prosecutor may ask the court to take measures for securing the monetary sanction of the legal person under the Civil Procedure Code.

Article 83d. The proposal shall be considered by the court in open session with the participation of the prosecutor.

Article 83e. In the course of the trial the court shall consider the case within the framework of the factual circumstances specified in the proposal and on the basis of the evidence gathered and it shall estimate:

1. whether the legal person has obtained unlawful advantage;
2. whether there is relation between the perpetrator of the criminal act and the legal person;
3. whether there is link between the criminal offence and the advantage for the legal person;
4. the amount of the advantage in case where the advantage is of property nature.

Article 83f. (1) The court shall rule the judgment by which a monetary sanction shall be imposed after the entry into force of the conviction or after the pronouncement of decision under article 97, paragraph 4 of the Civil Procedure Code* and where the circumstances under article 83e have been proved.

(2) The judgment shall contain complete data of the legal person, the origin, the type and the amount of the advantage, the amount of the monetary sanction imposed.

(3) On cases, which constitute factual or legal complexity, the motives may be drafted even after the pronouncement of the judgment but not later than fifteen days.

(4) Appeal against the judgment may be lodged before the respective second instance court within fourteen days after the pronouncement of the judgment.

(5) The second instance court shall consider the appeal under the Criminal Procedure Code. The decision is final.

* Article 97, paragraph 4 of the Civil Procedure Code: *A claim for ascertaining a criminal circumstance which is of importance for a civil legal relation shall be allowed in the cases where the criminal prosecution cannot be instigated or has been terminated for any of the reasons, pointed out in article. 21, para1, subparagraphs 2 - 5 or where it has been stayed for any of the reasons, pointed out in article 22, subparagraph 2 and 22a of the Criminal Procedure Code, as well as where the perpetrator of the act has not been found.*

ANNEX 2.

LIST OF CRIMINAL OFFENCES MENTIONED IN ARTICLE 83A OF THE LAW ON ADMINISTRATIVE OFFENCES AND SANCTIONS (LIABILITY OF LEGAL PERSONS)

Art. 108a - Terrorism

Art.109 - Financing of Terrorism

Art.110 - Preparation for Terrorism

Art.142 – 143a - Kidnapping and Illegal Deprivation of Liberty

Art. 159 – 159c - Trafficking in Human Beings

Art. 209- 212a - Fraud

Art. 213a and 214 – Extortion and Racketeering

Art. 215 - Concealment

Art. 225c - Bribery in the Private Sector

Art. 242 - Crimes against Customs Regime (smuggling)

Art. 250 and 252 – Offences against the Bank System

Art. 253 - Money Laundering

Art. 254 and 254b - Fraud Affecting the Financial Interests of the European Union

Art. 256 and 257 - Offences against the Tax System

Art. 280 - Illegal Taking of People across the Border

Art. 283 - Abuse of Functions

Art. 301 – 307 – Bribery of Domestic Officials, Bribery of Foreign Public Officials and Trading in Influence

Art. 320- 321a - Public Provocation to Terrorism, Organised Crime

Art. 354a – 354c – Drugs Related Crimes