



BULGARIA: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

May 2013

This report, submitted by Bulgaria, provides information on the progress made by Bulgaria in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 21 May 2013.

The Phase 3 report evaluated Bulgaria's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

a) Summary of findings

1. In March 2013, Bulgaria presented its Written Follow-Up Report to the Working Group on Bribery, outlining its progress on implementation of the recommendations and follow-up issues identified at the time of Bulgaria's Phase 3 examination in March 2011. Many of the recommendations have not been implemented because Bulgaria did not adopt draft legislation or didn't advance far enough in its legislation drafting process. In some cases, Bulgaria is still considering the Recommendations, or plans to take steps to implement them in the future. There continues to be no foreign bribery enforcement actions in Bulgaria; the Bulgarian authorities have not been aware of any allegations of foreign bribery committed by Bulgarian individuals or companies.

2. The Working Group welcomed a draft law on Amendments and Supplements to the Law on Administrative Offences and Sanctions (LAOS) developed by the Inter-ministerial Working Group which, if enacted in its current version, will introduce changes into the regime of liability of legal persons and help fully or largely implement a number of core Phase 3 Recommendations. However, its submission to the Parliament and adoption is expected to take place only at the end of the year due to the upcoming Parliamentary elections.

3. This draft law would substantially increase current maximum penalty available against legal persons in cases where the advantage accruing to the legal person as a result of foreign bribery is not "property" or if the value of the advantage cannot be ascertained and hence implement Recommendation 3(c). Other proposed amendments include changes regarding general jurisdiction over legal persons that would be introduced into the Article 83a regulating sanctions; this would help implement Recommendation 2(a), although it would have been more within the spirit of recommendation to make such changes directly into the Article 4 that regulates jurisdiction. Furthermore, the draft law would clarify procedural framework as to which courts have the competence to hear proceedings against legal persons. It would also expand the list of exceptional grounds to proceed with a case against a legal person when the case against the natural person has been terminated. All these additions would be relevant and, if adopted, help implement Recommendation 2(c). Of greater concern is that the draft law does not address shortcomings in the proceedings against legal persons pointed out in Recommendation 2(b). Current procedural rules remain non compliant with Article 5 of the Convention and the full range of investigative tools under the CPC is not available to the investigators. The draft law is not yet law and therefore Recommendations 2(a), 2(c) and 3(c) are not implemented. The Recommendation 2(b) is also not implemented.

4. Similarly, the Ministry of Justice is drafting a new Criminal Code. The General Part of this Code has been drafted and the authors have been informed of the Phase 3 recommendations. However, the provision covering foreign bribery offence have not yet been reviewed, and the recommendations 1 (a) on elements of the offence and 3(b) on sanctions for aggravated foreign bribery are therefore not implemented.

5. The statistics provided by the Bulgarian authorities on domestic bribery cases indicate a positive tendency in application of effective, proportionate and dissuasive sanctions in practice. However, due to the absence of foreign bribery cases, the Recommendation 3(a) is only partially implemented.

6. Regarding confiscation, Bulgaria did not streamline its legislation on confiscation. Even though the draft law on Amendments and Supplements to the LAOS proposes to extend confiscation of indirect proceeds of bribes from legal persons, if adopted it would address only one part of Recommendation 4(a). Confiscation of bribes from legal persons is still contingent on commencement of proceedings against a natural person and confiscation of proceeds in the hands of third parties from legal persons is not possible. Finally, the newly adopted law on forfeiture provides that proceeds in the hands of third parties from natural persons can be recovered but not indirect proceeds from natural persons. The Recommendation 4(a) is therefore not implemented. On a practical side, Bulgaria took some steps to ensure that prosecutors routinely seek confiscation of the bribe which is evidenced by the provided statistics, however, as in the case of applied sanctions, due to the lack of foreign bribery cases Recommendation 4(b) is only partially implemented.

7. Regarding investigation and prosecution, Bulgaria has put in place an official written procedure for assigning foreign bribery cases; amended the statistical methodology to include the number, sources and subsequent processing of corruption allegations, including foreign bribery; and introduced a centralised mechanism for review and evaluation of the enforcement approach. Therefore, Recommendations 5 (d), 5 (e) and 5(f) are fully implemented. Department 1 of the Prosecution Office responsible for foreign bribery investigations was reorganized to ensure better specialisation and two joint investigative teams were created to support investigations within this Department. In addition, the prosecutors now have an opportunity to draw on the expertise of the Agency for State Financial Inspection on issues of financial inspections in the pre-trial investigations and are supported with the “special superintendence” from senior prosecutor who provide guidance in especially complex cases. However, this reorganisation is sufficient to only partially implement Recommendation 5(a), which requires demonstration of improvements in the quality of actual foreign bribery investigations and prosecutions.

8. The Working Group noted numerous efforts undertaken by Bulgarian authorities with the view to provide specialised training and raise awareness of the foreign bribery offence. Bulgaria took steps to ensure that judges, prosecutors and investigators are aware that the Penal Code bribery offences cover bribes of a non-material nature and fully implemented Recommendation 1(b). Similarly, Bulgarian authorities developed methodological guidelines and provided training to judges, prosecutors and investigators on investigations and prosecutions of legal persons and complex financial cases, and took steps to ensure that such investigations are conducted whenever appropriate, thus fully implementing Recommendation 5(b). Trainings on issues of mutual legal assistance and development of guidelines to encourage its more proactive use were sufficient to only partially implement Recommendation 5(c); full implementation of this Recommendation requires demonstration of results in foreign bribery cases.

9. With respect to broader awareness raising, Bulgaria fully implemented Recommendation 8(b) by developing an educational module on foreign bribery and reporting obligations which was included into the training programs for civil servants for 2010-2012, and by organising targeted trainings for personnel of the Ministry of Economy, Energy and Tourism and Ministry of Foreign Affairs. Other awareness raising efforts were deemed sufficient only for partial implementation of Recommendations 8(c). Finally, Bulgaria did not implement Recommendation 8(a) because it failed to explicitly address the issue of foreign bribery in its main policy document – the Integrated Strategy.

10. Recommendation 9 on whistleblower protection is partially implemented by Bulgaria, as it took adequate steps to implement it in the part which relates to whistle-blowing in the public sector but no activities aimed at addressing of this issue in the private sector have been taken.

11. Regarding tax measures, in January 2013 the amendments to CITA explicitly prohibiting tax deductibility of bribes have entered into force, with this Bulgaria fully implemented Recommendation 7(a). Recommendation 7(b), however, remains to be partially implemented pending organisation of planned

trainings with the use of the Handbook developed by the National Revenue Agency based on the OECD Bribery Awareness Handbook for Tax Examiners.

12. Regarding accounting requirements, external audit, internal controls, ethics and compliance, Bulgaria partially implemented Recommendation 6(b) by clearly allocating responsibility to the Bulgarian SME Promotion Agency for promotional measures recommended in the “Good Practice Guidance on Internal Controls, Ethics and Compliance”, however, awareness raising and trainings for business sector are only being planned. Bulgaria did not implement Recommendation 6(a) because consultations on necessary legislative changes are only being initiated and no training for the accounting and audit profession was organised.

13. Recommendations 10, 11(a), and 12 are also not implemented since Bulgaria has not taken any action. Measures to prevent, detect, and report foreign bribery in the award and execution of ODA contracts will be considered only when new procedures for ODA are in place. Bulgaria did not report any measures to implement recommendation on public procurement. The decision on adhering to the 2006 Recommendation of the Council on Bribery and Officially Supported Export Credits has not been taken. However, Bulgaria fully implemented Recommendation 11(b) by introducing appropriate measures to inform clients about the legal consequences of foreign bribery, requiring to provide anti-bribery declarations, and introducing procedure on conducting due diligence and reporting of foreign bribery in the award process in export credit operations.

b) Conclusions

1. Based on these findings, the Working Group concludes that Bulgaria has implemented Recommendations 1(b), 5(b), 5(d), 5(e) 5(f), 7(a), 8(b), and 11(b); and partially implemented Recommendations 3(a), 4(b), 5(a), 5(c), 6(b), 7(b), 8(c), and 9. The remaining Recommendations are not implemented. The Working Group further invited Bulgaria to provide a written follow-up report by March 2014 on progress made on Recommendations 1(a), 2(a), 2b, 2(c), 3(b), and 4(a).

WRITTEN FOLLOW-UP TO PHASE 3 REPORT - BULGARIA

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 Evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process can be found in the Phase 3 Evaluation procedure [DAF/INV/BR(2008)25/FINAL, paragraphs 55-67].

Responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

*Please submit completed answers to the Secretariat on or **before 11 February 2013**.*

Name of country: Bulgaria

Date of approval of Phase 3 Evaluation report: 18 March 2011

Date of information: 25 February 2013

PART I: RECOMMENDATIONS FOR ACTION

Text of recommendation :

1. Regarding the foreign bribery offence, the Working Group recommends that Bulgaria:
 - (a) amend its foreign bribery offence to cover all cases of bribery in order that an official act outside his/her authorised competence, and to expressly cover bribes given to third party beneficiaries (Convention Article 1)

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

A Working group composed of representatives of the academics, practitioners (judges, prosecutors, lawyers), of the NGO sector has been established to the Ministry of Justice in order to elaborate a draft of a new Criminal Code. Additional NGO representatives are invited also to take part in the Working Group's meetings. Members of the Working group are also experts from the "International Legal cooperation and European Affairs" Department of the Ministry of Justice whose task is to ensure the compliance of the draft provisions with the existing international treaties and standards, as well as addressing the relevant recommendations of various monitoring mechanisms, to which Bulgaria is a party. So, the group was informed in due time of the recommendations addressed to Bulgaria as a result of the Phase 3 evaluation

report of the OECD Working Group on Bribery, which require amendments to the Criminal Code.

Currently, the Working Group has finished the first review on the General Part of the abovementioned draft of the new Criminal Code; the discussions on the Special Part are still at their beginning so the Working Group still hasn't reached to the provisions of bribery. But as already mentioned, all the relevant recommendations of the OECD have been submitted to the above cited Working Group to the Ministry of Justice.

The elaboration of the new Criminal Code is one of the highest priorities of the Ministry of Justice. Due to its matter this task is time-consuming and needs careful consideration. As soon as the Working Group finalises its work on the draft provisions the OECD working group will be informed.

Within the competences of the Ministry of Justice falls the responsibility for organisation of elaboration process of the State criminal policy, including the draft of the new Criminal Code. Therefore, once the draft of the new Criminal Code is ready, the Minister of Justice has to publish it on its official web-site where all the stakeholders will have the possibility to make themselves familiar with the text of the proposal and to make comments and remarks thereto. The Ministry of justice is obliged to organise as well a public discussion of the draft law (this is mandatory stage in the adoption procedure of all draft laws). After that the draft has to be submitted to the relevant institutions for their official opinion within the frames of the interagency coordination process. The Ministry of Justice is obliged to review and where appropriate to reflect in the draft law the opinions and recommendations of the institutions if there are any and afterwards to submit the draft of the new Criminal Code to the Council of Ministers. Once being approved by the Council of Ministers, the draft law will be next forwarded to the Parliament for further discussions.

Text of recommendation :

1. Regarding the foreign bribery offence, the Working Group recommends that Bulgaria:
 - (b) take steps to ensure that judges, prosecutors and investigators are aware that the Penal Code bribery offences cover bribes of a non-material nature (Convention Article 1; 2009 Recommendation III(i)).

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

Activities undertaken by the National Institute of Justice on fulfilling the recommendations 1b and 5b of the report

The offence "bribery" has been included as a separate module in the training programs on Criminal Law for the newly appointed candidates for junior judges and prosecutors as well as in the seminars for continuous qualification of magistrates and in the distant learning courses, organized by NIJ.

Within the last two years from 2011 to 2012 the National Institute of Justice provided following specialized training courses, focused on issues related to interpretation and enforcement of the provisions of Section "Bribery" of the Criminal Code of Bulgaria, including cases where in the event of active bribery the advantage is intended for a third party and where the subject matter of the bribery is non-material advantages:

- In 2011 the National Institute of Justice in cooperation with the Bulgarian Ministry of Justice and the Embassy of Kingdom of Belgium in Bulgaria hosted training on "*Organised Crime and Corruption*". 41 magistrates (22 judges, 16 prosecutors, 3 investigators) and 4 experts to the Ministry of Interior took part in the training.
- In September 2011 the National Institute of Justice in cooperation with Friedrich Ebert Foundation

organized a specialized seminar on “*Fight against Corruption in Judicial System*”, attended by 13 magistrates, 10 experts to the Ministry of Interior and 2 inspectors from Inspectorate to the Supreme Judicial Council.

- In the framework of the Regional Training Program for Courts and Prosecutions in December 2011 the Institute organized a workshop on “*Crimes, Committed by Public Officials. Criminal Offences, related to Documents*” for prosecutors and prosecutorial assistants of the Sofia District Prosecution Office. Issues such as active bribery in the public sector, trading in influence, including instances when the advantage is not intended for the official, but for a third party were discussed in practical terms.
- On 23 February 2012 in cooperation with the US Embassy in Bulgaria the National Institute of Justice hosted a public lecturer “*Investigation of corruption offences of high public interest*” with speakers the federal prosecutor Peter Ainsworth (U.S. Department of Justice) and the Romanian prosecutor Ms Anca Jurma. 35 magistrates (4 judges, 20 prosecutors, 11 investigators) and 15 experts to the Ministry of Interior attended the event.
- From 20 March to 24 April 2012 the NIJ provided a distant learning course “**Abuse of office. Bribery.**” 41 representative of judiciary and law enforcement agencies have been trained - 11 judges, 3 junior judges, 13 prosecutors, 1 junior prosecutor, 9 investigators, 2 bailiffs, 1 prosecutorial assistants and 1 court clerk;
- On 18th May 2012 a regional seminar “**Corruption offences**” took place in cooperation with District court of Pazardjik. 52 magistrates and court clerks have been trained - 23 prosecutors, 2 prosecutorial assistant, 13 judges, 3 court clerks and 11 investigators;
- On 12th November 2012 a regional seminar “**Corruption offences**” took place in cooperation with District court of Yambol. 38 magistrates and court clerks have been trained - 25 prosecutors, 5 judges, 3 court clerks and 8 investigators;

The National Institute of Justice works together with several international organizations, dealing with corruption:

The Regional Anti-Corruption Initiative (RAI)

The Regional Anti-Corruption Initiative (RAI) Secretariat, in cooperation with the National Institute of Justice of Republic of Bulgaria, co-organized the annual Summer School for Junior Magistrates from South-Eastern Europe on June 10, 2011, in Sunny Beach, Bulgaria dedicated to the “**International Standards and Cooperation in the Fight against Corruption**”.

On 24 and 25 April 2012 at the Kempinski Hotel Sofia a conference on “**Establishment of the Regional Judicial Training Network (RJTN) in Southeast Europe - a first step towards building a structure for integrated legal education in the region to fight corruption**”, is organized by the Regional Initiative combating Corruption and the National Institute of Justice. The conference was attended by directors and representatives of schools for the training of magistrates in Southeast Europe - Croatia, Bosnia and Herzegovina, Serbia, Albania, Kosovo, Macedonia, Moldova, Montenegro, Romania; representatives of Embassies of the countries participating in the project; judges, prosecutors and members of the Supreme Judicial Council.

A representative of the National Institute of Justice took part at a conference “Establishment of a network for integrated judicial training in the area of combating corruption” in Budva.

The International Anti - Corruption Academy (IACA)

On 6th of June 2012 the National institute of Justice organized a public lecture “The International Anti -

Corruption Academy – main goals and priorities”. The lecture was held by Mr. Martin Kreutner, Head of the International Transition Team and Executive Secretary to the Provisional Commission of the International Anti-Corruption Academy with a seat in Laxenburg, Austria. The International Anti-Corruption Academy (IACA) is an international organization as of 8 March 2011. A joint initiative by the United Nations Office on Drugs and Crime (UNODC), the Republic of Austria, the European Anti-Fraud Office (OLAF) and other stakeholders, IACA is a pioneering institution that aims to overcome current shortcomings in knowledge and practice in the field of anti-corruption. In pursuing this aim, the Academy functions as an independent centre of excellence in the field of anti-corruption education, training, networking and cooperation, as well as academic research. It pursues a holistic approach which is international, inter-disciplinary, inter-sectoral, integrative and sustainable. The event was attended by representatives of MoJ, Ministry of Interior, members of the Supreme Judicial Council, representatives of Embassies, members of the Program council and Managing board of the Institute. The National institute of Justice and the International Anti - Corruption Academy signed a Memorandum of Understanding on undertaking joint projects and activities with a view to prevent and combat corruption in a comprehensive way; this may include providing education, training and research activities for anti-corruption stakeholders through joint courses, seminars, events and conferences and through the development and implementation of technical programmes, curricula and course materials on anti-corruption as well as undertaking joint efforts to foster and promote capacity and institution building programmes in the anti-corruption field. An expert from the National institute of justice took part in a training program of the International Anti - Corruption Academy.

In 2012 the National Institute of Justice started the implementation of a project within the framework of the operational program “Administrative capacity” **„Complex and sustainable training program for magistrates in the context of the full EU membership”**. One of the developed training programs of the projects dedicates to „Active bribery in the public sector. Trading in influence. Corruption in the judiciary. Corruption in football.”

Apart from the above, the issues related to the criminal prosecution of bribery, where the advantage is intended for a third party and where the subject matter of the bribery is non-material advantages, were included in the Programme on Interagency Training of Prosecutors and Investigators in the period September 2011 – June 2012.

In particular, the above issues were discussed and clarified within training sessions held with the participation of prosecutors, investigators and investigating policemen from the appellate regions of Sofia, Varna, Bourgas and Veliko Turnovo. The topics were the following:

- “Incrimination of bribery in the Bulgarian Criminal Code in accordance with the requirements of the Council of Europe’s Criminal Law Convention on Corruption, the United Nations Convention against Corruption and the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions”;
- “Certain aspects of economic crime containing a corruption component”;
- “Efficient means for investigating and criminal prosecution of corruption with a focus on the investigation of corruption involving officials that hold responsible positions and corruption involving foreign officials, in particular, bribery of foreign officials”;
- “Efficient means for investigating and criminal prosecution of corruption”;

The above training sessions were attended by 758 prosecutors, 52 investigators and 49 military investigators.

Apart from their analysis within the Programme on Interagency Training, the above problems

and the related OECD Working Group on Bribery's recommendations were also discussed and clarified at two training seminars organized jointly by the Ministry of Justice, the Bavarian State Ministry of Justice and the Hans Seidel German Foundation and held in May 2011 and January 2012 respectively. These seminars were attended by prosecutors and investigators of the appellate regions of Plovdiv and Sofia.

Text of recommendation :

2. Regarding the liability of legal persons for foreign bribery, the Working Group recommends that Bulgaria substantially amend the regime in the Law on Administrative Offences and Sanctions (LAOS) to ensure that:
 - (a) there is jurisdiction to prosecute Bulgarian companies when a non-Bulgarian national commits foreign bribery outside Bulgaria (Convention Articles 2 and 4);

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

In order to improve the legal regime for sanctioning of legal persons under Chapter IV of LAOS and to address recommendations 2, 3c and 4a Bulgaria has elaborated a Bill on Amendments and Supplements to the Law on Administrative Offences and Sanctions. The Bill has been drafted by an Inter-institutional Working Group under the auspices of the Bulgarian Ministry of Justice in a close cooperation with the Secretariat of the OECD Working Group on Bribery. The adoption procedure has been already launched. The bill has been published on the web-site of the Ministry of Justice where all the stakeholders were provided with the possibility to make themselves familiar with the text and after that it has been sent to the relevant institutions for their official opinion. The adoption procedure is still ongoing; the bill is expected to be discussed in the Parliament and to enter into force in the end of the year at the latest, due to the forth-coming parliamentary elections in July 2013.

The proposed amendments in the draft law which implement the recommendation 2 consist in the following:

New paragraphs 2 and 3 have been inserted in Art. 83 of LAOS which explicitly prescribe that liability of legal persons for crimes committed in their favour should also be sought in cases where one of the crimes under Art. 83a, paragraph 1 has been committed abroad by non-Bulgarian national. According to the amendments, the provision shall also apply to legal persons, which do not have their office registered on the territory of the Republic of Bulgaria, if the crime under Art. 83a, paragraph 1 has been committed on Bulgarian territory.

The insertion of these two provisions eliminate any doubts that Art. 83a, paragraph 1 will apply regardless of the citizenship of the offender and the state where the crime has been committed. The only prerequisite is that the conduct has to be a crime under the Bulgarian Criminal Code and it has to fall into the list of crimes, included in Art. 83, paragraph 1 of the LAOS.

Text of recommendation :

2. Regarding the liability of legal persons for foreign bribery, the Working Group recommends that Bulgaria substantially amend the regime in the Law on Administrative Offences and Sanctions (LAOS) to ensure that:
 - (b) investigations and prosecutions of legal persons for foreign bribery are not affected by the

factors described in Article 5 of the Convention, and the full range of investigative tools in the Criminal Procedure Code is available in such cases (Convention Articles 2 and 5; 2009 Recommendation IV and Annex I(D));

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

According to Article 83a LAOS the liability of legal persons is only administrative-punitive, not punitive on the basis of the Criminal Code. Pursuant to Article 83a paragraph 1 and 2, a legal person may be liable when foreign bribery is committed by an:

- (a) Individual authorised to formulate the will of the legal person;
- (b) Individual representing the legal person;
- (c) Individual elected to a control or supervisory body of the legal person, or
- (d) Employee to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of this task.
- (e) An individual in the categories (a) to (d) above who instigates or is an accessory to an offence of foreign bribery.

But the enumerated natural persons in the described above capacity are investigated and prosecuted *under the rules of the Criminal Procedure Code/CPC/*, because they are *liable for crimes committed under the indicated in Art.83a Paragraph 1of LAOS offences provided in the Criminal Code /CC/*. Investigation and prosecution of these persons is totally subordinated to the principles of the CPC and CC, which guarantee against violation of the statement of Article 5 of the Convention, according to which: *“Investigation and prosecution of the bribery of a foreign public official [...] shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.”*

The investigation and prosecution, carried out by the Bulgarian prosecutors and investigating authorities are subordinated to the fundamental principle for **Equality of citizens in the penal procedure**, provided in Article 11 of the CPC, according to which:

“Art. 11. (1) All citizens who participate in the penal procedure shall be equal before the law. No privileges or restrictions based on race, nationality, ethnic belonging, sex, origin, religion, education, convictions, political belonging, personal and social or property status shall be allowed.

*(2) The Court, the prosecutor and the investigating bodies shall **apply the laws precisely and equally to all citizens.**”*

There are also other fundamental principles in the CPC which guarantee against violation of the statement in Article 5 of the Convention, such as: *Competitiveness. Equal rights of the parties (Art. 12)*, obligation for the Courts and the investigating bodies within the limits of their competence to take all measures *to ensure the detection of the objective truth, following the order and through the means provided by the CPC (Art. 13)*, and to take their decisions by inner conviction, based on objective, thorough and complete inspection of all circumstances of the case, under the guidance of the law (Art. 14). The entitled to the defendant *Right of defence (Art. 15)*, the principle of *Presumption of innocence (art.16)*, as well as *all procedural remedies* provided to the defendant and the other persons participating in the penal procedure that are *necessary for the defence of their rights and legitimate interests deserve to be pointed out too*. These are all principles which guarantee not affection of the statement of Article 5 of the Convention.

The CPC also stipulates the obligation for the Court, the prosecutor and the investigating bodies to *make clear to the defendant and the other persons participating in the penal proceedings their procedural rights and the*

obligation to provide them with the possibility to exercise those rights.

According to Art. 83b. (new – SG 79/05) (1) (amend. – SG 39/11) the proceedings under Art. 83a are initiated by a reasoned proposal of the respective prosecutor to the administrative court after the deposition of the accusation act, also whereas the penal procedure cannot be initiated or the initiated one has been terminated on the ground that:

- a) the perpetrator shall not bear penal liability due to amnesty;
- b) the penal liability has been lapsed due to elapse of the limitation period fixed in the Act.
- c) the perpetrator has died;
- d) after the commitment of the crime the perpetrator has fallen into a durable mental disorder which excludes the soundness of mind.

As far as Paragraph 2 of Art. 83b. requires that the proposal shall contain *description of the crime and the type and size of the benefit and description of the written materials or certified copies of them, which evidence the circumstances at which the crime was committed and the presence of a causal relation between the crime and the benefit of the legal person, the full range of investigative tools under the procedure of the Criminal Procedure Code* which are used in the investigation of the concrete penal case against the persons mentioned in Art.83a, Paragraphs 2 and 3 of LAOS, **are available in the relevant administrative-punitive case**, initiated by the prosecutor's proposal in compliance with the provisions of Art. 83b of LAOS.

As it was pointed out during Phase 3 monitoring of the Working group, the Prosecutor General has issued an internal act – **Methodological Instruction №230/22.06.2010** in order to activate the Prosecutor's offices to implement the procedures provided in Articles 83a – 83e of LAOS. In the course of applying this Instruction practical problems have appeared which called for its amendment in some parts, done by **the General Prosecutor's Order № 665/14.03.2011**. *These internal acts are available at present.*

In the order of Art.83a-83e of LAOS, in 2011 the competent District Prosecutor's offices have initiated 41 files (11 in 2010), 13 reasoned proposals are brought to court (none in 2010). The proposals concern legal persons, that have received illegal proceeds of 3 444 242 BGN in total, established by the prosecution. Till the end of 2011, 2 of the prosecutor's proposals have been taken into consideration. There are no rejected proposals by the court in this period. For the first 9 months of 2012, 5 files are initiated, and 2 are brought to court.

The data indicate on activation of the competent District prosecutor's offices in implementation of the procedure under Art.83a-83e of LAOS which is due to the Methodological Instruction №230/22.06.2010 of the Prosecutor General and the General Prosecutor's Order № 665/14.03.2011 by which are involved some amendments in the Instruction to cover practical needs of its implementation.

Text of recommendation :

2. Regarding the liability of legal persons for foreign bribery, the Working Group recommends that Bulgaria substantially amend the regime in the Law on Administrative Offences and Sanctions (LAOS) to ensure that:
 - (c) there is a clear procedural framework that identifies the court with competence to hear proceedings against legal persons, and that does not preclude proceedings against legal persons when proceedings against a natural person are terminated or not commenced due to specified grounds in the Criminal Procedural Code (Convention Article 2; 2009 Recommendation IV and Annex I(D)).

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

The draft law for amendment of LAOS provides for a change in the tribal jurisdiction of the proceedings under Chapter IV LAOS. It determines the district court of the company's registered office to act as a first instance court and the appellate court as a second instance court. In cases where the legal person does not have its office registered on the territory of the Republic of Bulgaria, the competent court to hear the case and to impose a sanction to the that legal person will be the Sofia City Court.

The proposed amendment gives to the courts, which already have competence to hear criminal cases the jurisdiction to also rule on the liability of legal persons. It also provides powers to the prosecutor who directs and supervises the pre-trial proceedings against the perpetrator of the crime and who is informed in details with the evidential material in each single criminal case, to prepare the motivated proposal under Art. 83b, paragraph 1 and to take part in the proceedings before the relevant first-instance court under the rules of Art. 83d (as amended).

Furthermore, the amendments provide for a detailed regulation of the court proceedings, prescribing the competences of the court and the possibilities for appeal. Art. 83f is amended in a way that allows the subsidiary application of the provisions of the Criminal Procedure Code for all issues which remained unsettled in Chapter IV of LAOS.

The draft law introduces amendments also with regard to the grounds for initiation of the proceedings against legal persons under Art. 83b LAOS. According to the new texts, proceedings under Article 83a shall be initiated upon motivated proposal of the respective prosecutor to the district court following the entry of the indictment into court, the proposal for exemption from criminal liability with the imposition of an administrative sanction or the proposal for agreement to dispose of a case. The main purpose of this legislative reform is to guarantee that all possible hypotheses under the Criminal Code that may terminate the pre-trial phase of the criminal proceedings will be covered.

The draft law provides new additional grounds upon which the prosecutor may start the proceedings against the legal person although he might have terminated the criminal proceedings against the natural person. These additional grounds are lack of complaint of the victim to the relevant Prosecution Office in cases envisaged in the Special part of the Criminal Code where the complaint of the victim to the Prosecution Office is considered a compulsory condition for initiation of the criminal proceedings; release from criminal liability of the perpetrator with application of educational measures; transfer of the criminal proceedings to another country. Again, the aim of that proposal is to extend the application of the proceedings under Art. 83a LAOS and to ensure that starting of the proceedings against the legal persons in most of the cases won't be affected by termination of the criminal proceedings against the alleged perpetrator of the crime.

For the first time with the draft law the possibility is envisaged for proceedings under Art. 83a LAOS to be started when the criminal proceedings against the natural person have been suspended. This is the case when after committing the criminal offence, the accused party has fallen into a state of short-term mental derangement, which excludes his/her capacity to be liable, or where he/she suffers from another severe ailment, which hinders proceedings to be conducted; trying the case in the absence of the trial defendant would impede discovering the objective truth; or the perpetrator is an individual enjoying immunity. It should be pointed out that this possibility is only applicable when the suspension of the criminal proceedings against the natural person does not hinder the possibility to prove in an undisputable way the facts and the circumstances under art. 83a, paragraph 1 LAOS.

Text of recommendation :

3. Regarding sanctions for foreign bribery, the Working Group recommends that Bulgaria:
 - (a) ensure that sanctions against natural persons that are imposed in practice are effective,

proportionate and dissuasive in all foreign bribery cases (Convention Article 3);

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

The statutory maximum sanctions against natural persons for foreign bribery, provided in the Penal code, have not changed since the Phase 3 evaluation. According to Article 301 Paragraph 5 in connection with Paragraph 1 of CC, foreign bribery continues to be punishable by six years' imprisonment and a fine of BGN 5 000 (approximately EUR 2 600). The sanctions on aggravated bribery in Article 301, Paragraphs 2 (up to 8 years imprisonment and a fine up to 10 000 BGN), Paragraph 3 (up to 10 years imprisonment and a fine up to 15 000 BGN, as well as the sanctions for qualified bribery of officials, who occupy a responsible official positions /high rank officials/, provided in Articles 302 and 302a, **are not applicable for foreign bribery.**

There are also no amendments in the special procedure "**Brief court investigation in the procedure before the first instance**" provided in Chapter 27 of the PPC, according to Article 373, Paragraph 2 of which "*the Court, if renders a conviction verdict shall determine the punishment under the terms of Art. 58a of the Penal Code*". Art. 58a of the Penal Code provides "*If a guilty verdict has been pronounced in the cases referred to in Art. 373, para 2 of the Penal procedure Code, the court shall rule imprisonment according to the provisions of the General part of the present Code and reduced the imposed punishment by one third.*"

At present, the Working Group has finished the first review on the General Part of the abovementioned draft of the new Criminal Code;

A Working group composed of representatives of the academics, practitioners (judges, prosecutors, lawyers), of the NGO sector has been established to the Ministry of Justice in order to elaborate a draft of a new Criminal Code. Additional NGO representatives are invited also to take part in the Working Group's meetings. Members of the Working group are also experts from the "International Legal cooperation and European Affairs" Department of the Ministry of Justice whose task is to ensure the compliance of the draft provisions with the existing international treaties and standards, as well as addressing the relevant recommendations of various monitoring mechanisms, to which Bulgaria is a party. So, the group was informed in due time of the recommendations addressed to Bulgaria as a result of the Phase 3 evaluation report of the OECD Working Group on Bribery, which require amendments to the Criminal Code.

Currently, the Working Group has finished the first review on the General Part of the abovementioned draft of the new Criminal Code; the discussions on the Special Part are still at their beginning and haven't reached to the provisions regarding bribery. But as already mentioned, all the relevant recommendations of the OECD have been submitted to the above cited Working Group to the Ministry of Justice. For further information with regard to the Working Group to the Ministry of Justice please see the answer under the recommendation 1a.

Text of recommendation :

3. Regarding sanctions for foreign bribery, the Working Group recommends that Bulgaria:
 - (b) enact a provision to sanction aggravated foreign bribery to the same extent as aggravated domestic bribery (Convention Article 3);

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

A Working group composed of members of the academia and practitioners has been established to the Ministry of Justice in order to elaborate a draft of a new Criminal Code. The group was informed of the

recommendations to Bulgaria as a result of the Bulgaria's Phase 3 evaluation report of the OECD Working Group on Bribery, which require amendments to the Criminal Code.

Currently, the Working Group has finished the first review on the General Part of the abovementioned draft of the new Criminal Code; the discussions on the Special Part are still on-going. For further information with regard to the Working Group to the Ministry of Justice please see the answer under the recommendation 1a.

Text of recommendation :

3. Regarding sanctions for foreign bribery, the Working Group recommends that Bulgaria:
 - (c) increase the maximum penalty available against legal persons in cases where the advantage accruing to the legal person as a result of foreign bribery is not "property", or if the value of the advantage cannot be ascertained (Convention Article 3).

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

The proposed amendments of the LAOS envisage an increase from 100 000 BGN to 500 000 BGN of the maximum penalty against the legal persons in cases where the advantage accruing to the legal person as a result of foreign bribery is not "property", or if the value of the advantage cannot be ascertained.

Text of recommendation :

4. Regarding confiscation, the Working Group recommends that Bulgaria:
 - (a) streamline its legislation on confiscation, and amend the legislation to expressly cover the confiscation of (i) the bribe from legal persons; and (ii) the indirect proceeds of bribery gained by a briber, and property in the hands of third parties, from natural and legal persons (Convention Article 3).

1. General remarks:

Bulgarian authorities would like to point out once again that the general term "confiscation" (as referred to by the Convention and the Recommendation) encompasses the following under the relevant Bulgarian legislation:

1. Confiscation –as a penalty under the CC (Art. 44);
2. Forfeiture – under the meaning of Art. 53 of the CC;
3. Forfeiture in favour of the State under the Law on Forfeiture in favour of the State of Unlawfully Acquired Property ;

Confiscation under the CC – According to Art. 44, para. 1 confiscation is the compulsory appropriation, without compensation of property in favour of the state, of property belonging to the convict or of part thereof, of specified pieces of property of the culprit, or of parts of such pieces of property. Confiscation is a penalty and as such can only imposed by a final (entered into force) conviction for the offences for which the CC envisages explicitly such type of a penalty.

Forfeiture under the CC – According to Art. 53 of CC:

“(1) **Notwithstanding the penal responsibility, forfeited in favour of the state shall be:**

a) objects belonging to the **culprit**, which were intended or have served for the perpetration of intentional crime;

b) objects belonging to the culprit, which were subject of intentional crime - in the cases expressly provided in the Special Part of this Code.

(2) (New, SG No. 28/1982) **Forfeited in favour of the state shall also be:**

a) objects that have been subject or means of the crime, the possession of which is forbidden, and

b) the acquired through the crime, if it does not have to be returned or restored. Where the acquired is not available or has been disposed of, an equivalent amount shall be adjudged.”.

Forfeiture in favour of the State under the Law on Forfeiture in favour of the State of Unlawfully Acquired Property – The Law explicitly regulates the terms and procedure for forfeiture in favour of the State of **unlawfully** acquired property. Any property for the acquisition of which a legitimate source has not been identified is to be treated as **unlawfully** acquired property. Concerning bribery offence the Law is applicable under the hypothesis of Art. 22 and Art. 23:

“**Article 22.** (1) The examination referred to in Article 21 (2) herein shall commence by an act of the director of the territorial directorate concerned **where a person has been constituted as an accused of a criminal offence under:**

.....
21. [Articles 301](#) to [305a](#) (please note – bribery offences under the CC), [Articles 307c](#) and [307d](#) ;
.....

(2) **The examination shall furthermore commence where a person has not been constituted as an accused of a criminal offence covered under Paragraph (1) by reason of a refusal to institute a criminal proceeding or a termination of a criminal proceeding in progress because:**

1. an amnesty has ensued;
2. the period of prescription, provided for in the law, has lapsed;
3. after commission of the offence the actor has lapsed in a sustained mental derangement which precludes sanity;
4. the actor has died;
5. in respect of the person, a transfer of a criminal proceeding to another State has been admitted.

(3) **The examination shall furthermore commence where the criminal proceeding in connection with any criminal offence covered under Paragraph (1) has been suspended and the person cannot be constituted as an accused because:**

1. after commission of the offence the said person has lapsed in a short-term mental derangement which precludes sanity or suffers from another grave disease;
2. the said person enjoys immunity;
3. the address of the said person is unknown and he or she cannot be found.

Article 23. **An examination under Article 21 (2) herein shall furthermore commence where an act of a foreign court concerning any of the criminal offences covered under Article 22 (1) herein or an administrative violation referred to in Article 24 (1) herein has been recognised according to Bulgarian legislation.”**

2. Concerning Bribery in view of the General remarks above:

The bribe itself (as an object of the criminal offence) shall be forfeited in favour of the state on the basis of Art.307a CC in connection with Art.53, paragraph 1 (b) CC. This rule of the CC is strictly applied by the court as it is obligatory.

Given the General remarks and the sentence above, it should be noted that the concept of the Bulgarian criminal legislation is the following:

- Confiscation can be imposed as a type of a penalty only concerning property belonging to the convict

(please see above Art. 44 of CC). This means, that concerning bribery confiscation can be imposed only in the cases of the Special part where it is explicitly provided as a penalty – this is the case of Art. 302a of PC.

- The bribe (the undue advantage itself) is subject, as highlighted above, to forfeiture under Art. 53 para. 1 letter b) of the CC;

- Any kind of proceeds of bribery offences are subject to forfeiture under Art. 53, para. 2, letter b) of the CC. Here is the exact place to point out that the wording used under the cited provision – “**the acquired through the crime**”, is the broadest possible one, as it does not stipulate the way of acquirement – direct or indirect. The later means that letter b) encompasses both direct and indirect proceeds of bribery.

- “The indirect proceeds of bribery gained by a briber, and property in the hands of third parties, from natural persons” as described in part (ii) of the recommendation, are subject to forfeiture under Art. 53, para. 2 letter b) of the CC.

- The part of the Recommendation referring to “property in the hands of third parties” is covered by the second sentence of Art. 53, para. 2 letter b), according to which, where the acquired is not available or has been disposed of, an equivalent amount is adjudged.

In view of the above, we would like to point out once again that Bulgarian legal approach is a broad enough to cover all the required hypothesis described by the above cited parts of Recommendation 4.

3. Given the fact that liability under the CC is personal (*meaning that subject to penalty can be only a natural person*) and that this is a basic principle of the Bulgarian criminal system, the issue concerning the liability of legal persons is regulated under the Law on Administrative Offences And Sanctions (LAOS) as administrative-penal liability. Bearing in mind the fact that a legal person cannot be a perpetrator of an offence, no forfeiture of the bribe under the Criminal code can be carried out from the legal person itself. So, in compliance with the personal principle of criminal responsibility (*meaning in compliance with national legal system*) and in order to fully guarantee that in all cases where a legal person has enriched itself or would enrich itself from bribery all proceeds of crime should be confiscated, an explicit provision of Art. 83a para. 4 of LAOS is foreseen stipulating that **the proceeds or its equivalent shall be confiscated in favour of the state, if not subject to return or restitution, or forfeiture under the procedure of the Criminal Code.** Both direct and indirect are included within the scope of proceeds, as the wording used is the broadest possible one to cover all types of proceeds. The legal technique approach chosen in LAOS is in consistency with the rest of the legislation and as it does not stipulate explicitly „direct“ or „indirect“ proceeds it is absolutely clear the „proceeds“ encompasses both types. But, in order to dispel all the existing concerns that indirect proceeds could not be confiscated under Art. 83a of LAOS, the draft law amending LAOS now explicitly stipulates that subject to confiscation will be direct as indirect proceeds from the crime. Discussion of the said draft Law is forthcoming.

In addition to the above, the property sanction for a legal person that has enriched itself or would enrich itself from bribery (*in cases where bribery is committed by 1) an individual, authorised to formulate the will of the legal person; 2) an individual, representing the legal person; 3) an individual, elected to a control or supervisory body of the legal person; or 4) an employee, to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of this task; as well as in all cases when the persons under the abovementioned 4 hypothesis have abetted or assisted the commission of bribery, as well as when bribery was stopped at the stage of attempt*) is being imposed regardless of the realisation of the criminal responsibility of the perpetrator (*the natural person*) of bribery.

In view of the above Bulgarian authorities are of the opinion that also parts (i) and (ii – *concerning the part indirect proceeds of bribery to be „confiscated“ from legal persons*) of recommendation 4 (a) are fully addressed.

4. The new Law on Forfeiture in Favour of the State of Unlawfully Acquired Property (LFFSUAP), which has

replaced the Criminal Assets Forfeiture Act, was adopted on 18.05.2012 by the National Assembly (promulgated, SG No. 38/18.05.2012, effective 19.11.2012, last amended SG No. 103/28.12.2012). The law addresses a number of shortcomings with respect to the effective forfeiture of illicit profits and makes an important step forward in Bulgaria's efforts to obstruct the possibilities of obtaining benefits from criminal activity and to prevent the use of such benefits for committing new crimes or other offences.

Under the new law the Commission for Forfeiture of Unlawfully Acquired Property is now entitled to persecute assets acquired from illegal, but not only from criminal activities. In this way the scope of the new law is significantly increased in comparison with the scope of the old one by including offences of administrative and not only criminal nature as a basis for starting the forfeiture procedure.

Subject to confiscation can be a property of at least 250 000 BGN if there is a discrepancy between its value and the income of the person during the review period. The proceedings under LFFSUAP are possible from the moment the person has been indicted for a crime from which it may be presumed that he has benefited or even without criminal prosecution when the criminal proceedings have been terminated or suspended. The proceedings under the new law can also be launched when an enforceable administrative sanction has been imposed on a person for an administrative violation of a nature to generate a benefit of amount exceeding 150 000 BGN, as well as when an act of a foreign court concerning any of the criminal offences covered under Article 22 (1) or an administrative violation referred to in Article 24 (1) has been recognised according to Bulgarian legislation.

An enforceable sentence of conviction is not a condition precedent for the forfeiture of assets. Thus it will be no longer necessary for the Commission to wait for the end of criminal proceedings to bring the forfeiture request before the court.

The law introduces the so called "extended confiscation", which means that subject to confiscation can be not only the assets associated with specific crime, but also additional assets which the court determines are the proceeds of other unspecified crimes.

In contrast to the old regime for forfeiture, the new law abolishes the rebuttable presumption in favour of the state that the property is acquired through criminal activity and which obliged the person under review to prove the legitimate nature of the assets. The new law puts the State under the obligation to establish all essential facts in order the forfeiture to be carried out. This is considered to be a key guarantee for the right of the party under the review to fair trial.

The law puts in place appropriate mechanisms to ensure that assets in danger of being hidden or transferred out of the Bulgarian jurisdiction are able to be immediately frozen or seized while the request for judicial freezing/seizure is pending. It foresees that the proceedings for forfeiture and imposition of security measure are governed by Civil Procedure Code.

The new law also regulates the third party confiscation, according to which property that has been transferred to relatives or third persons can also be subject to forfeiture. The Commission can act so only if they knew or it was impossible not to know that the property which they have acquired has an illegal origin.

Text of recommendation :

4. Regarding confiscation, the Working Group recommends that Bulgaria:
 - (b) take steps to ensure that prosecutors routinely seek confiscation of the bribe, and the direct and indirect proceeds of bribery obtained by a briber (Convention Article 3).

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

Bulgarian law provides for sufficient procedural tools for efficient identification and tracing of the proceeds of bribery. These tools are fully applicable in respect of foreign bribery. In this respect, the investigating authorities take the necessary measures for the timely analysis of the assets of the offender, in order to ensure the implementation of confiscation as a penalty and the forfeiture of the subject of the crime under Art.307a and Art.53 PC.

In all bribery cases – domestic and foreign, the prosecutors apply the provision of Article 307a of the PC, according to which the subject of the bribery shall be forfeited in favour of the state, and if it is missing its equivalence shall be adjudicated.

In the *Interpretive Decision № 2 from 21.12.2011 issued on interpretative case № 2/2011 of the General Assembly of the Criminal Collegiums of the Supreme Court of Cassation*, is stated, that **the provision of Article 307a PC is not applicable in all cases of bribery offences**. The subject of the crime shall not be forfeited in favour of the State on the basis of Art. 307a PC in the cases where the money are ensured by (1) a person, blackmailed by the official, the arbitrator or by the expert to offer, promise or give a bribe and if this person has informed the authorities immediately and voluntarily (art. 306 PC), (2) by the services of the Ministry of Interior, and by the State Agency for National Security.

According to the data provided by the Commission for Forfeiture of Unlawfully Acquired Property the amount of forfeited property in cases of bribery (Art. 301 – 306 CC) for the period 2011 – 2012 is as follows:

Year	Number of proceedings initiated in cases of bribery (Art. 301 – 306 CC)	Number and value of the secured property in cases of bribery (Art. 301 – 306 CC)	Number and value of the forfeiture actions brought to the court in cases of bribery (Art. 301 – 306 CC)	Number and value of the final forfeited property in cases of bribery (Art. 301 – 306 CC)
2011	5	5 cases Value: 1 931 314.00 BGN	No forfeiture actions brought to court	No forfeitures for the period
2012	4	5 cases Value: 816 152.71 BGN	1 forfeiture action brought to court Value: 1 102 028.10 BGN	No forfeitures for the period

Please note that the statistics provided refers only to application of the now repealed Criminal Assets Forfeiture Act. As the new Law on Forfeiture in Favour of the State of Unlawfully Acquired Property became operative on 19.11.2012, there is no data on initiated proceedings under the new law.

Text of recommendation :

5. Regarding investigations and prosecutions, the Working Group recommends that Bulgaria:
 - (a) allocate adequate human and financial resources to investigations and prosecutions of foreign bribery against natural and legal persons, including the availability of expertise in forensic

accounting and information technology (Convention Articles 2 and 3; 2009 Recommendation IV and Annex I(D));

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

In order to optimize the structure of the Supreme Cassation Prosecutor's office, to deepen the specialization in the work of prosecutors and the work on cases with high public interest, including bribery together with all corruptive crimes, the Prosecutor General issued an **Order № LS – 323/10.02.2012** to establish a new structure of the SCPO. In Department First „*Counteracting corruption and offences, committed by officials*“ sector First was restructured into „*Counteracting corruptive offences, including committed by magistrates and other persons under Article 2 of the Law for Publicity of the Property of Persons Occupying High State Positions /LPPPOHSP/*”.

The specialization of the prosecutors, working on bribery and other corruption cases is deepened also by **four joint teams for supporting investigation**, established with an **Order № LS-672/02.03.2012 of the Prosecutor General**, two of which at the Department „*Counteracting corruption and offences, committed by officials*“. The teams are created on the basis of **Order № LS-547/23.02.2012 of the Prosecutor General** in fulfilment of the Agreement between the Prosecutor Office, the Ministry of Interior and the State Agency for National Security from 22.02.2012 concerning organization and activity of the specialized interagency units for supporting investigation in compliance with Article 139 of the Judiciary Law.

By **Orders № 1444/08.05.2012 and № 1803/06.06.2012 of the Prosecutor General** **5 specialised prosecutors' networks** have been established at all levels of the Prosecutor's offices for counteracting offences of high public interest, including a network of prosecutors, specialized to work on corruptive offences, including domestic and foreign bribery. The lists of the participants in the networks at each prosecutor's office in the country are confirmed by the Prosecutor General.

Along with the above mentioned, an **Instruction for rendering of intensified methodological support and supervision on particular penal proceedings in the system of the Prosecutor office** was adopted by an **Order № 455/22.02.2011 г. of the Prosecutor General**, which is in force since 01.03.2011.

In order the capacity of the Investigating magistrates in compliance with *Article 194, Paragraph 1, Item 4 of PPC* to be increased /*Article 194 deals with the distribution of the cases in the pre-trial procedure among the bodies of investigation*/, which means **to be more actively and rationally occupied**, an **Order № 3913 /31.08.2011 of the Prosecutor General** has been issued, which regulates the cases of particular legal and factual complexity which have to be assigned for investigation by the prosecutors at the District Prosecutor's offices to the investigating magistrates at the District Investigating departments.

Text of recommendation :

5. Regarding investigations and prosecutions, the Working Group recommends that Bulgaria:
 - (b) train judges, prosecutors and investigators on investigations and prosecutions of legal persons and complex financial cases, and take steps to ensure that such investigations are conducted whenever appropriate (2009 Recommendation III(i), IV and Annex I (A) and (D));

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

With the **Order № LS – 323/10.02.2012 of the Prosecutor General** which brought changes to the structure of

the SCPO, different sectors within the specialized department for investigation of offences against the financial interests of the EU and those of the Republic of Bulgaria have been established to perform oversight over the prosecution and investigation of different kinds of financial crimes and to give directions. In this regard ***Methodological Instructions about comprehensive financial verifications*** have been in **March 2012**, which aim to improve the effectiveness of complex financial investigations. One of the requirements of the instructions bounds the investigative authorities *during the pre-trial proceeding always to ascertain the links of the financial flows, connected with and resulted from illegal activity.*

The efforts of the Prosecutor Office aiming at improving the professional knowledge and skills of the prosecutors and investigating bodies continue after OECD Phase 3 evaluation in the form of organization ***of training activities for the prosecutors and the investigative bodies.***

From September 2011 to July 2012 a total number of 1067 prosecutors and 142 investigating magistrates has participated in 101 training activities, organized by the Prosecutor's Office, together with the National Institute of Justice, the Ministry of Interior, the German Foundation for International Legal Development, the Institute for Development of the Public Environment together with the foundation "USA for Bulgaria", the Prosecutor's Association in Bulgaria, the Judge's Union in Bulgaria, etc. The topics include substantive criminal and procedural aspects of counteracting corruption, especially bribery.

With regard to the training of judges, prosecutors and investigators please see the information provided under recommendation 2b.

The Ministry of Interior took steps to raise the awareness of the specialised police structures with regard to corruption and economic crime, including the bribery of foreign public officials and to increase their administrative capacity to uncover and investigate such crimes. As part of the application of the Action Plan for the Implementation of the Integrated Strategy for Prevention and Counteraction of Corruption and Organised Crime, during the period June 2011 – February 2012 a considerable number of police officers has been trained.

The police training is carried out in the framework of the initial professional training and in subsequent courses for the enhancement of professional qualification.

The training courses are conducted by the Academy of the Ministry of Interior (AMoI), police investigators also take part in specialized trainings provided by the National Institute of Justice as well as other international trainings.

The curricula of the **initial professional training** for cadets, students and newly recruited police officers have been amended and supplemented in order to expand the training in the field of combating corruption. The counteraction against corruption and the investigation of corruption-related crimes is a part of all forms of initial training - the training of the cadets at the AMoI, the courses for initial professional training and for promotion to a higher rank. The curriculum of these courses includes a separate module "Investigation" which also covers the specificities of the investigation of financial and economic crimes and corruption.

The topic of corruption is also part of the courses for promotion to a higher rank, which cover general knowledge and skills about the organisation and management of the police forces and the investigation and uncovering of crimes, as well as specific, practical areas of the investigation of specific types of crimes, including corruption-related.

During the second half of 2012 the Academy of the Ministry of Interior carried out a number of courses which covered corruption related topics. **704** police officers were trained under these training courses.

With reference to the courses for **enhancement of professional qualification** amendments to the organisation of the training process and the curricula were introduced in the following areas: increasing the knowledge and improving the skills of the police investigators for the investigation of corruption-related crimes and improving the competence of the MoI officials with police powers, which received investigation powers with the amendments to the Criminal Procedure Code (SG, 32/2010).

After the entry into force of the abovementioned amendments to the Criminal Procedure Code **about 2000** police investigators underwent different types of specialized training for the investigation of serious crimes: corruption, economic and financial crimes and other crimes related to the organised crime.

In addition to that, as part of the general training in the area of investigation and the new procedural possibilities for the MoI officials with police powers (provided for in the amendments to the Criminal Procedure Code from May 2010), more than **6000 police officers** were trained.

An example of the training provided in different training courses is the **professional training at the working place, which was carried out between January and March 2012** and which covered the following three topics:

1. "Immediate actions for investigation";
2. "Bribery and crimes of public officials"
3. "Crimes against the financial and tax system"

under which a total of **9632 police officers** were trained.

Specifically under the second module "Bribery and crimes of public officials" a total of **2452** MoI officials were trained (1641 in January, 669 in February and 142 in March).

Among the specialized courses for police officers with investigative functions which were carried out during the second half of 2012 Bulgarian authorities would like to specifically note the course "**Current Issues of the Counteraction against Corruption**" which included **82** police officers.

Together with the Prosecutor's Office and the National Institute of Justice, focused measures in the form of joint trainings are applied aimed at improving the capacity of the investigating bodies for the investigation of complicated crimes, the collection and analysis of financial and economic information and the application of an investigation strategy.

This training is carried out following a coordinated and regularly updated Plan, also including the relevant resource allocations, for joint trainings of magistrates, police investigators and other competent authorities participating in the criminal proceedings.

Text of recommendation :

5. Regarding investigations and prosecutions, the Working Group recommends that Bulgaria:
 - (c) take steps to ensure that its authorities are more proactive when seeking mutual legal assistance (Convention Article 9; 2009 Recommendation XIII(i) and (iii));

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

Bulgaria is in principle able to provide a wide range of international assistance in bribery and foreign bribery cases.

As there have been no pre-trial proceedings for foreign bribery offences since OECD Phase 3 evaluation of Bulgaria, the Bulgarian authorities are not able to provide data for proactive seeking of mutual legal assistance in practice.

Text of recommendation :

5. Regarding investigations and prosecutions, the Working Group recommends that Bulgaria:
- (d) issue an official written procedure for assigning foreign bribery cases to the various prosecutorial and investigative bodies (Convention Article 5);

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

*The precise implementation of the principle of random selection through electronic distribution of the files and cases amongst the prosecutors and investigating magistrates, provided for in **Article 9, paragraph 1 of the Law on Judiciary System**, is of substantial importance for the effective counteraction of internal corruption within the judiciary. As far as no special procedure for prosecution and investigation of foreign bribery is envisaged under the Bulgarian CPC, the distribution for investigation of such cases shall be performed in compliance with the principle of Art. 9 of the LJS, which is applicable for all criminal cases. The control over the implementation of this principle is guaranteed by the electronic way of its performance and the written form, attached to the file, as a result of the electronic distribution.*

Text of recommendation :

5. Regarding investigations and prosecutions, the Working Group recommends that Bulgaria:
- (e) maintain statistics as to the number, sources and subsequent processing of foreign bribery allegations and consider ways of publicising information heard by the courts, as described in Phase 2 Recommendation 4 (2009 Anti-Bribery Recommendation III(i)).

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

After the OECD Phase 3 evaluation, annual and semi-annual data for foreign bribery cases are included and maintained in the *statistic form 4.2.1 "Pre-trial proceedings, initiated for corruption crimes. Decisions on them of the prosecutors and the Court. Defendants and convicted persons."* of the Supreme Cassation Prosecutor's Office.

Text of recommendation :

5. Regarding investigations and prosecutions, the Working Group recommends that Bulgaria:
- (f) put in place a centralised mechanism for the periodic review and evaluation of the enforcement approach and the effectiveness of the enforcement efforts of the different agencies involved in the fight against foreign bribery, as referred to in Phase 2 Recommendation 14 (Convention Articles 1 and 5; 2009 Anti-Bribery Recommendation V).

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

The department "Information Technology" at the General Prosecutor's Administration *continues the development of the Project "Further Development and Improvement of the United Information System for Counteracting Crime/UISCC/ and Integrating the Institutional Information systems into the core of UISCC", financed from the Operative Programme "Administrative capacity" (OPAC)*. The maintenance of the UISCC as a centralized mechanism ensures the systematic and periodical completion of the information with data from the different agencies involved in the fight against corruption, incl. domestic and foreign bribery.

At the same time *The Unified Information System /UIS/ of the Prosecutor's Office* is working on all prosecutor's offices' levels, meaning that all prosecutors have access to the system and can use it. The UIS contains data about the movement of the criminal cases and the prosecutor's and court's acts issued within all types of penal proceedings. Along with the UIS, in 2012 the Department "IT" within the General Prosecutor's Administration has worked out an *Electronic register containing data about the terms stipulated by the CPC within which the prosecutors and the investigating bodies are obliged to provide the conduction of the pre-trial procedures against known perpetrators, and on the restraining measures "Detention in custody" and "Home arrest"*. In the first half of 2012 the elaboration of an *Electronic register on the Special Intelligence Devices* was also completed, which is used in the pre-trial proceedings, including bribery and other corruption cases. The register came into use on 01.03.2012 and is available to all prosecutor's office, which keep registers for classified information in according to the Law on Protection of Classified Information.

Text of recommendation :

6. Regarding accounting requirements, external audit, internal controls, ethics and compliance, the Working Group recommends that Bulgaria:
 - (a) introduce effective, proportionate and dissuasive sanctions for false accounting offence, and intensify training and awareness-raising in foreign bribery that targets the accounting and auditing profession (reiterates Recommendation 3 of Phase 2) (Convention Article 8; 2009 Recommendation III(i) and X(A(iii)));

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

Regarding the implementation of Recommendation 6a of the Monitoring Report on Phase 3 it is assigned to Tax Policy Directorate in the Ministry of Finance to prepare an analysis on the necessary legislative amendments to the Accountancy Act and other regulations in order to fully meet the requirements of Article 8 of the OECD Convention on Combating Bribery of Foreign Public Officials in International

Drawing up proposals of legislative amendments in the area of the accountancy is of the competency of the Ministry of Finance, in particular of the Tax Policy Directorate, Accounting Legislation Division, which fulfills these functions and powers; whereas drawing up proposals of amendments in the Criminal Code is of competency of the Ministry of Justice.

It is envisaged that the final analysis will be prepared by end of March 2013. The analysis will include the results from meetings and consultations with the Institute of Certified Public Accountants, professional organizations of accountants and auditors, academics and others, as well as an

analysis of the law of other States Parties to the OECD Convention.

In this regard official request have been sent to all EU Member States, which are parties to the OECD Convention aiming at exchange of experience and good practices on the implementation of Article 8 of the Convention in their national laws. The request has been sent to the tax attaches of the EU Member-States through the Official Representative of Bulgaria in Brussels.

The consultations and meetings are primarily limited to clarify which of the activities associated with keeping false accounts (using forged documents, accounting for non-existing expenses, listing liabilities with incorrect identification of their object and others to conceal the bribes) constitute an administrative offense and which constitute a crime. This shall determine whether legislative amendments in this regard are needed in the Accountancy Law or Criminal Code, or in both laws.

In the Criminal Code there are many provisions dealing with false accounting documents – Art. 209-212 (deceit and documentary fraud with the purpose of gaining possession over another person's assets), Art. 255-255a (false accounting for tax evasion), Art. 256 and 258 (budgetary funds fraud), Art. 260 (certification of an untrue annual financial report), Art. 308-311 (forgery of official and private documents). All provisions have been in place at the time of on-site visit carried out in the framework of the Phase III evaluation of Bulgaria (October 2010). The provision of Art. 258 of the CC has been subsequently amended in 2011 and the current wording states the following:

“Article 258

(Amended, SG No. 28/1982, repealed, SG No. 10/1993, new, SG No. 62/1997)

(1) (Amended, SG No. 33/2011, effective 27.05.2011) A person who unlawfully creates obstructions to the revenue authorities in implementation of their lawful duties, shall be punished by imprisonment for up to three years and a fine from BGN 1,000 to 2,000.

(2) Should the deed under paragraph (1) be committed by force or threat, the punishment shall be imprisonment from one to six years and a fine from BGN 2,000 to 5,000.”

The report of the analysis will include specific proposals for legislative changes.

Currently, the Accounting Legislation Division in Tax Policy Directorate is drawing up the following amendments to the Accountancy Law:

▪ **Amendments to Administrative Penal Provisions of the Law:**

Article 46 of Accountancy Law

(1) Whoever should fail to fulfill an obligation arising from this Act, shall be penalized with a fine ranging from BGN 100 to 300; legal persons and sole proprietors shall be imposed a pecuniary sanction ranging from BGN 300 to 500.

(2) Where a violation has been made for a second time, a fine or pecuniary sanction in a doubled amount shall be imposed.

An increase of administrative sanctions is foreseen – fines and pecuniary sanctions for violation of provisions of the law relating to the true and fair presentation of the financial statements of companies. According to the proposal the amount of the fine shall be from 500 to 2,500 BGN and this of the pecuniary sanction from 1000 to 5000 BGN. It is considered the possibility to be envisaged an administrative penalty for the auditors attesting financial statements with false content

in the Independent Accounting Audit Act. At present Registered Auditors are not administrative liable for violations of the management and staff of audited entities. If the auditor attests unlawful financial statements, the responsibility for these activities during the audited period is only of the management of the audited entity (Article 35 of Independent Accounting Audit Act) and registered auditors are responsible only for the damage caused to the audited entity attributable to the auditor.

- **Creation of new Chapter “Responsibility of the persons for authenticity of the accounting”**

The object of the new chapter is to provide an authentic accounting of business transactions in accordance with the current regulations. The provisions will relate to bringing to administrative criminal liability of persons performing the accounting of the entity, as well as persons responsible for accounting irrespective of their position (chief accountants, financial managers, directors and others) in the case of unclear presentation of business operations as well as concealment and destruction of data and documents. Clear definitions will be given of “unclear presentation”, “concealment” and “destruction”. This Chapter will be discussed further with the Ministry of Justice and professional organizations of the accountants and auditors regarding the inclusion of texts for criminalization of false accounting in the Penal Code.

- **New provisions related to obligation to alert relevant authorities (Prosecution, the Economic Police and others) by identification of payments and transactions for bribes or deals concealing bribes**

In order to make it absolutely clear and to avoid any misinterpretation the obligation to report to the competent authorities by identification of payments and transactions for bribes or deals concealing bribes shall be incorporated in the current law. Subject to this obligation will be persons who have access to those accounting documents and accounting of the entity - accountants, auditors and others. In case of suspicions of crimes related to the bribery of public officials, they should notify the investigating and prosecuting authorities based on collected evidence and detailed patterns. Same obligation is imposed by Article 3 of the Law on Measures against Money Laundering, according to which accountants and auditors are required to notify the specialized bodies in the case of identification of suspicious transactions above a certain amount.

- **New Administrative Penal Provisions related to the new chapter in the Accountancy Law and the relevant texts in the Penal Code**

The introduction in the Accountancy Law of pecuniary sanction to the legal entity in which violations related to false accounting are committed is discussed. The proposal is the amount of penalty to be from BGN 3,000 to 10,000. After consultation with the Supreme Cassation Prosecutor's Office, Ministry of Interior, professional organizations of accountants and auditors, and business representatives a motivated legislative proposal will be submitted to the attention of the Working Group within the Ministry of Justice involved in the development of a new Penal Code.

The proposed legislative amendments to the Accounting Act and the Criminal Code will be coordinated in advance with the OECD, namely the Secretariat of the Working Group on bribery of foreign public officials and the Committee on Fiscal Affairs as well as with the Bulgarian Ministry of Justice.

In relation to the Recommendation on increase training and awareness which is aimed at accounting and auditing professions Institute of Certified Public Accountants, the Association of Accountants in Bulgaria and other industry organizations, regularly conduct trainings for their members, as the topics of the trainings, once a year, are focused on identifying illegal, non-existing and fictitious transactions and subsequent actions for persons who have ascertained presence of such a transaction.

After the adoption of the amendments to the Accountancy Law and Penal Code related to false accounting, Ministry of Finance plans to be conducted joint trainings with the Ministry of Justice and the branch organizations of auditors, accountants and business representatives.

Another explanatory measure is the magazine "Audit in Bulgaria" which publishes articles by experts from the National Audit Office, the Institute of Public Accountants and the Institute of Internal Auditors in Bulgaria on topics related to identify and analysis of transactions and payments, concealing crimes including bribery, tax evasion and money laundering.

Text of recommendation :

6. Regarding accounting requirements, external audit, internal controls, ethics and compliance, the Working Group recommends that Bulgaria:
 - (b) encourage companies to introduce codes of conduct and compliance programmes, as well as to promote the implementation of measures recommended in the "Good Practice Guidance on Internal Controls, Ethics, and Compliance" and clearly allocate responsibility for such promotion (2009 Recommendation X(C) and Annex II).

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

In order to make the OECD Convention on combating bribery of foreign public officials and its accompanying documents more popular among representatives of the **Bulgarian business the Bulgarian SME Promotion Agency (BSMEPA)** has published on its Internet site the text of the Convention and the revised recommendation of the OECD Council with regard to the fight against bribery in international business transactions, as well as information about the Bulgarian participation in the activities of the OECD Working group on bribery. The web site also contains information which aims is to raise the awareness of the Bulgarian business community and Bulgarian enterprises acting in foreign markets about the responsibility of legal persons for proposal or giving of a bribe to a foreign public official under the Bulgarian legislation.

Together with the abovementioned publications the Internet site of BSMEPA has also a section devoted to "Corruption and conflict of interest, e-mail for signals" with a link for signals and proposals to the Commission for prevention and ascertainment of conflict of interest under the Council of Ministers and a link to the "Internal rules for acceptance and reporting signals for corruption and complaints of individuals or legal persons", now known as "Internal rules for protection of persons providing signals for corruption, abuse with functions, trading in influence and conflict of interest against public BSMEPA's officials".

There is also an opportunity for electronically feed-back with a public official of the BSMEPA, responsible for receiving the signal for corruption and conflict of interest. By this means, a quick access to the relevant stakeholders from the business has been established in order to allow them to pose questions and receive information and submit signals for corruption and conflict of interest.

Nevertheless, in order to address this recommendation the BSMEPA is planning to organise trainings or/and seminars for the representatives of the business to make them familiar with the existing standards in the fight against corruption. The seminars will also promote the benefits from introducing of companies own codes of conducts and compliance programmes.

The **Ministry of Justice** has translated und uploaded to its web page (both in English and Bulgarian) all the documents related to the work of the OECD WGB – the phase 1-3 reports for Bulgaria, the OECD Anti-bribery Convention and the commentaries thereto, the 2009 Recommendations and the annexes thereto, the 2006 Export Credit Recommendation and information and brochures for the WGB Awareness Raising

Initiative (<http://www.justice.government.bg/new/pages/eu/default.aspx?evntid=z6j9ydjstrq%3d>). The same set of documents has been submitted to 8 NGO's and Business Associations, including the Bulgarian Chamber Of Commerce And Industry, the Bulgarian industrial Association, the Confederation of the Bulgarian Employers and Industrialists, etc.

Text of recommendation :

7. Regarding tax measures, the Working Group recommends that Bulgaria implement its declared intention to:
 - (a) establish an express legislative provision to prohibit the tax deduction of bribes including those paid to foreign public officials and review its tax law with a view to identifying and removing potential loopholes for hiding foreign bribery as tax-deductible expenses (2009 Recommendation VIII(i));

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

In implementation of Recommendation 7a, an analysis was made of the provisions of the Corporate Income Taxation Act (CITA) insofar as these provisions fully transpose the requirements of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the 2009 Fiscal Recommendations. The analysis revealed that the existing fiscal legislation does not cover all the requirements necessary for full transposition of the OECD Convention and as such legislative changes are needed to ensure that the CITA provisions are more clear and straightforward, and forestall the risk of allowing tax deductibility of bribes disguised as other expenses.

In September 2012 the Ministry of Finance drafted a Bill to amend CITA so as to explicitly prohibit the recognition of bribes as deductible expenses for tax purposes. The proposed amendments to CITA were coordinated in advance with the Secretariat of the OECD Working Group on bribery of foreign public officials and the OECD Committee on Fiscal Affairs.

The proposed changes in the legislation were adopted by the National Assembly and published in State Gazette no. 94 of 30.11.2012. The amending provisions entered into force on 01.01.2013.

The changes in the legislation include addition of a new item 12 to Art. 26 CITA and two new definitions in the Concluding Provisions chapter of CITA:

CITA Art. 26, it. 12

„The following accounting expenses shall not be deductible for tax purposes:

12. expenses for bribery and/or hiding bribery of a public official or a foreign public official.”

The following new items 65 and 66 were added to paragraph 1 of the Concluding Provisions chapter of CITA:

„it. 65. “Bribery” shall, for the purposes of Art. 26, it. 12, mean the crimes defined in Articles 301 through 307 of the Criminal Code.

it. 66. “Public official” and “foreign public official” shall have the meaning attributed to these terms in Art. 93, it. 1 and it. 15 of the Criminal Code.

Art. 93, it. 1 and it. 15 of the Criminal Code:

1. “Public official” is a person appointed, with or without salary, on temporary or permanent basis:

- a) to serve at a state institution, except the persons performing substantially operative tasks;
- b) to perform managerial work or work related with keeping or management of other persons’ property/assets at a state-owned enterprise, cooperative, non-government organisation, other legal entity or sole trader as well as the work of notary, assistant notary, private enforcement officer or assistant to a private enforcement officer.”

15. “Foreign public official” is a person:

- a) serving at an institution of a foreign state;
- b) exercising functions assigned to it by a foreign state, including a foreign state-owned enterprise or organisation;
- c) serving or performing tasks assigned to such person by an international organisation, or serving at an international parliamentary assembly or international court.

Text of recommendation :

7. Regarding tax measures, the Working Group recommends that Bulgaria implement its declared intention to:

- (b) provide guidelines and training to tax inspectors as to the types of expenses that constitute bribes to foreign public officials, using the OECD Bribery Awareness Handbook for Tax Examiners (2009 Recommendation VIII(i)).

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

As follow-up to Recommendation 7b, the Minister of Finance appointed a Working Group, which includes representatives of the Ministry of Finance and the National Revenue Agency (NRA) and is tasked to develop a Detection of Corruptive Practices Handbook for NRA Officers in line with the OECD Bribery Awareness Handbook for Tax Examiners.

The draft Handbook, now completed and expecting approval by the NRA Executive Director in February, consists of the following main sections:

“Legal framework” section: explains the provisions of the Criminal Code (which criminalize both the giving and receiving of bribes to/by local and foreign persons), the new provisions in the Administrative Offenses and Administrative Penalties Act (which provide for the imposition of pecuniary penalty up to BGN 1,000,000/EUR 500,000 on legal entities obtaining benefits for themselves by perpetration of crime, including bribery) and the provisions in CITA.

“Essential characteristics of bribery” section and “Definitions used” section.

The section on “Reporting of confirmed or suspected cases of giving or receiving bribes” contains detailed description of the process, which NRA officers should follow in reporting cases of confirmed or suspected bribery of local and foreign public officials to pre-trial authorities for the latter to initiate criminal procedures.

The section on “Indicators of the existence of fraud or bribery” explains the types of indicators pointing to potential existence of bribery and the techniques used by the persons involved to disguise bribing practices. This section also includes practical examples.

The section on “Plan of tax audits and verifications of declared data” describes the process of planning tax

checks and audits by tax offices as well as the various sources of information that can be used in the context of such checks and audits.

Section on “Information from other state institutions or states, with which Bulgaria has Tax Treaties”.

The section on “Techniques for carrying out tax checks and audits” includes the techniques, which audit officers should employ in performing efficient checks and audits aimed at the uncovering bribes or transactions used to disguise the giving of bribes to public officials.

“Bribery monitoring and analysis” section.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Comments and Recommendations are included as annexes to the Handbook.

After its adoption, the Detection of Corruptive Practices Handbook for NRA Officers will be included in the ongoing planned trainings in NRA as part of the trainings on the new tax legislation for 2013. The training will also focus on the amendments of the Corporate Income Taxation Act which entered into force on 01.01. 2013. The training will be organized by the Training Centre of the NRA and will be geared towards the NRA officers performing inspection functions (tax checks and audits).

One initial training of trainers is planned to take place in 2013; the trained officers will then conduct training of the revenue authorities on the regional level. For the next few years an e-learning course will be developed. The Training Centre of the NRA has chosen the system for training of trainers as one of the most effective systems for training.

The schedule for the trainings in 2013 and the number of participants are as follows:

1. Training of Trainers with 50 participants in total, divided into two groups (18 - 22 March 2013).
2. Training of the revenue authorities on regional level with 2300 participants, divided into 65 groups (in the second quarter of 2013).

The training will be organized as lecture and will include presentation and discussion of the subject matters. The drafters of the handbook will be invited as lecturers. The training program will cover the following subtopics:

1. Legislative framework;
2. Indications of bribery;
3. Techniques to identify bribes or costs concealing bribes.

Text of recommendation :

8. Regarding awareness-raising, the Working Group recommends that Bulgaria:
 - (a) explicitly address combating bribery of foreign public officials in international business transactions in its anti-corruption policy (2009 Recommendation II and III(i));

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

The Integrated Strategy for Prevention and Counteraction of Corruption and Organised Crime, which was adopted on 21.11.2009, is a founding document for the anti-corruption policy of the Bulgarian government. Formation of firm attitude and active position of the society for decreasing the tolerance to corruption through the use of education policies and communication campaigns is a clearly defined strategic national priority.

The Integrated Strategy is implemented through an Action plan. The responsibility for planning, coordination of the execution, monitoring and evaluation of the Plan is assigned to the Commission for Prevention and Countering Corruption at the Council of Ministers. The Action plan contains a separate section on increasing transparency in the activities of the administration, raising awareness of the corruption risks and the actions taken to address them.

The Integrated Strategy and the Action Plan thereto refer to prevention and counteraction of corruption and organised crime in general and aim to cover all their manifestations. Although not explicitly mentioned in the text, there is no doubt that the aims of these strategic documents and the measures for their realisation refer also to foreign bribery.

The implementation of Recommendation 8 a) is laid down in measure IV.3. "Taking measures for raising the awareness of the public" of the Action plan (July 2011 – July 2012). With reference to this the brochure **Fighting Foreign Bribery AN INITIATIVE TO RAISE AWARENESS** has been translated into Bulgarian. The original and translated brochures have been published on the website of the Ministry of Justice, in section "International Cooperation", where the texts of the Convention and the Phase 3 report have also been published in Bulgarian and English.

Text of recommendation :

8. Regarding awareness-raising, the Working Group recommends that Bulgaria:
- (b) raise awareness of the foreign bribery offence among the relevant ministries and provide regular training about the offence and reporting obligations to officials in government agencies that could play a role in detecting and reporting, including the officials of the Ministry of Foreign Affairs (2009 Recommendation III(i) and IX(ii));

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

The Institute of Public Administration (IPA) has elaborated an educational module named "Combating Bribery of Foreign Officials", which has been included in the training under the Career and Professional Growth Programmes of the 2011, 2012 and 2013 Catalogues. The module provides a regular education with regard to the offence "foreign bribery" and the existing obligation of the civil servants to report such crimes to the competent law-enforcement authorities.

The purpose of the training is:

- to bring the progress in international co-operation in combating bribery of foreign public officials to the attention of the participants, which include actions taken by the UN, the World Bank, the OECD, the International Monetary Fund, the World Trade Organisation, the Organisation of American States, the Council of Europe and the European Union;
- to present the legal terms "foreign public official", "bribery", "foreign country", "act or refrain from acting in relation to the performance of official duties" within the meaning given by the OECD Antibribery Convention;
- to present the basic provisions of the OECD Antibribery Convention regulating the responsibility of legal persons, sanctions, enforcement, statute of limitations, money laundering, accounting, mutual legal assistance, monitoring and follow-up.

For the reported period a total number of 2890 civil servants (1 258 in 2011 and 1632 in 2012), entrusted with control functions and with the application of the Conflict of Interest Prevention and Disclosure Act, internal

auditors in the public sector and control bodies under special laws (Ministry of Interior Act, Customs Act, Spatial Development Act etc.) have undergone the training in the module and enhanced their knowledge and skills in applying the OECD Convention.

To address the recommendation in 8b of the phase 3 report of Republic of Bulgaria **the Centre for prevention and fighting corruption within the Council of Ministers** has organized a conference on the topic "Prevention and counteracting bribery of foreign public officials in international business transactions". The conference was held on 4 December 2012 in the Information Centre of the Ministry of Offence and has marked the International day for fight against corruption. The forum was planned as a round table discussion and has been attended by representatives of judiciary, different ministries and agencies, as well as representatives of NGOs, financial institutions, major business organisations and mass media.

Subject of the discussions were the state of legislation with regard to the crime "bribery of foreign public officials", the identified shortcomings in the Bulgarian anti-corruption legislation in the light of the recommendations of the OECD Working Group on Bribery, etc.

During the round table presentations and reports have been made by representatives of the Ministry of Justice, the Supreme Prosecution's Office of Cassation, the National Institute of Justice, the Ministry of Finance and the Bulgarian Agency for Export Credits. The discussion has been broadly covered by the media.

In order to further raise the awareness of foreign bribery offence the Centre is preparing an information brochure containing all the materials from the conference, which will be distributed among the stakeholders and the public.

The Ministry of Economy, Energy and Tourism (MEET) has published on its official website "Internal Rules for implementation of anti-corruption procedures", including procedures for reporting, detection or identification of errors, irregularities, fraud, abuse of functions, etc. within MEET. The said rules are posted in section "Anti-corruption and signals", "Contact to the Inspectorate". The aim is to engage every official of the MEET in applying anti-corruption policies and to bring out the intolerance to any form of corruption.

The Chief inspector of the **Ministry of foreign affairs (MFA)** takes part in the courses for enhancement of professional qualification of diplomatic personnel and provides training about prevention and counteraction of corruption. Apart from that, a specialized training on the issues of good governance, encompassing also corruption, incl. the OECD Anti-bribery Convention is to be included in the trainings organized by the Bulgarian Diplomatic Institute to the MFA.

The MFA has circulated instructions to its overseas representations which advice them to strictly apply the provisions of the Law on Prevention and Disclosure of Conflict of Interests. The instructions also identified concrete fields, where corruption and conflict of interests' risks do exist and which would be used as ground for the future planning of the concrete efforts for prevention of corruption practices.

The Ministry of Interior also took steps to raise the awareness of the specialised police structures with regard to corruption and economic crime, including the bribery of foreign public officials and to increase their administrative capacity to uncover and investigate such crimes. Please see the information provided under recommendation 5 b).

Text of recommendation :

8. Regarding awareness-raising, the Working Group recommends that Bulgaria:
 - (c) raise awareness among the private sector of the offence, in co-operation with the Bulgarian SME Promotion Agency and business associations (2009 Recommendation III(i)).

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

In order to make the OECD Convention on combating bribery of foreign public officials and its accompanying documents more popular among representatives of the **Bulgarian business the Bulgarian SME Promotion Agency (BSMEPA)** has published on its Internet site the text of the Convention and the revised recommendation of the OECD Council with regard to the fight against bribery in international business transactions, as well as information about the Bulgarian participation in the activities of the OECD Working group on bribery. The web site also contains information which aims is to raise the awareness of the Bulgarian business community and Bulgarian enterprises acting in foreign markets about the responsibility of legal persons for proposal or giving of a bribe to a foreign public official under the Bulgarian legislation.

Together with the abovementioned publications the Internet site of BSMEPA has also a section devoted to “Corruption and conflict of interest, e-mail for signals” with a link for signals and proposals to the Commission for prevention and ascertainment of conflict of interest under the Council of Ministers and a link to the “Internal rules for acceptance and reporting signals for corruption and complaints of individuals or legal persons”, now known as “Internal rules for protection of persons providing signals for corruption, abuse with functions, trading in influence and conflict of interest against public BSMEPA’s officials”.

There is also an opportunity for electronically feed-back with a public official of the BSMEPA, responsible for receiving the signal for corruption and conflict of interest. By this means, a quick access to the relevant stakeholders from the business has been established in order to allow them to pose questions and receive information and submit signals for corruption and conflict of interest.

The **Ministry of Justice** has translated und uploaded to its web page (both in English and Bulgarian) all the documents related to the work of the OECD WGB – the phase 1-3 reports for Bulgaria, the OECD Anti-bribery Convention and the commentaries thereto, the 2009 Recommendations and the annexes thereto, the 2006 Export Credit Recommendation and information and brochures for the WGB Awareness Raising Initiative (<http://www.justice.government.bg/new/pages/eu/default.aspx?evntid=z6j9ydjstrq%3d>).

The same set of documents has been submitted to 8 NGO’s and Business Associations and the Ministry of Economics, Energetic and Tourism (MEET). The documents are accessible also on the web pages of the **MEET**, the Executive Agency for SME’s and the Bulgarian Export Insurance Agency, the Bulgarian Industrial Association.

The **Bulgarian Chamber Of Commerce And Industry** has published the information submitted to it by the Ministry of Justice in its electronic bulletin “Info business”, reaching to more than 5000 Bulgarian firms (<http://www.infobusiness.bcci.bg/economy-2-21-02-2012.html>). It has also forwarded the information to all its 28 regional chambers throughout the country and to approx. 100 branch organisations. The information has been also uploaded on their webpage (<http://www.bcci.bg/news/3028>). By doing this the information is going to reach to more than 52 000 companies covering all the economics branches.

The Bulgarian Industrial Association has also reported to having submitted the set of documents received by the Ministry of Justice to all of its members.

The Confederation of the Bulgarian Employers and Industrialists (KRIB or CEIB - successor of BIBA) has also published a link on its web page to the documents on the MoJ web page and has separately published some of them on its web page.

On the 9th March 2011 An Anti-Corruption Seminar has been held in Sofia, co-organised by the Bulgarian – Nordic Chamber of Commerce and the Swedish Trade Council, aiming at making companies familiar with the OECD Anti-bribery convention. Participants were about 10 companies, 3 business associations and 2 NGO’s. (See Attachment 1)

Text of recommendation :

9. Regarding whistleblower protection, the Working Group recommends that Bulgaria consider extending the recently established provision for the protection of whistleblowers who report instances of conflict of interests to cover foreign bribery, or establish another mechanism to ensure that public and private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities are protected from discriminatory or disciplinary actions. The Working Group further recommends that Bulgaria implement measures to raise awareness about such mechanisms (2009 Recommendation IX(iii)).

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

In order to reduce the vulnerability of the administration environment to corruption and to ensure the effective prevention of corruption, the Bulgarian authorities have initiated changes to the current regulations (laws and regulations for their implementation, internal rules and procedures). Most of the statutes of the ministries (Ministry of Justice, Ministry of Foreign Affairs, Ministry of Health, Ministry of Finance, Ministry of Agriculture and Food, Ministry of Economy, Energy and Tourism, Ministry of Defence, Ministry of Regional Development and Public Works, Ministry of Transport, Information Technology and Communications, etc.) have been complemented and the functions of the inspectorates within the ministries have been updated in order to be set in compliance with the provisions of the *Administration Act* and *the Act on Prevention and Detection of Conflict of Interests*. Among other responsibilities of the inspectorates the statutes now expressly indicate receiving of signals for corruption within the relevant administration and initiation of checkups on the signals. The statutes further entitle the inspectorates to assess the corruption risks in the relevant administration and to organise checkups in order to prevent and combat corruption.

In order to improve the procedural rules for dealing with signals for corruption, as well as with reporting of errors, irregularities, fraud and other abuses in the administration updates in the Internal rules organizing the activities of the Inspectorates have been done. The internal rules are considered to be of great help for the inspectors as they contain provisions regulating the channels for reporting and the examination of the signals. It is a duty of the respective administration to make its office workers aware of the adopted Internal Rules.

Most of the Internal rules foresee a detailed procedure for receiving the signals and keeping in secret the source, from which signals for corruption have been received. The protection of whistleblowers is exercised mostly through introduction of stringent controls on admission, registration, movement, distribution, handling and delivery of the signals. The measures are directed to non-disclose of identity or personal information of the whistleblower, non-disclosure of the facts and allegations contained in the signal, protection of all written documents provided by the person. Some internal rules (such as the Internal rules for protection whistleblowers in the Commission on Consumer Protection) envisage that all signals for corruption shall be recorded in a special register "Registry for corruption allegations" and shall be given a unique number. Others even allow the submission of anonymous signals, when they contain enough information for corruption. Moreover, in order to protect the whistleblowers from being dismissed or bad treated because of the signals, some of the internal rules provide guarantees against dismissal and state that in cases of dismissal the dismissed person has the right to compensation.

The public officials may choose other channels to report corruption crimes within the administration. They can submit their signals either through the prosecutor's office or through other means such as anticorruption hot-lines, mails that are at their disposal, thus evading their administrative superiors. All anti-corruption agencies have anti-corruption hot-lines and maintain mailboxes on their Internet pages for reporting of corruption. Inspectorates and numerous committees and institutions that receive signals for corruption have been established in the past - the Parliamentary Commission against Corruption and Conflict of Interests and

Parliamentary Ethics, Committee on Prevention and Combating Corruption within the Council of Ministers, the Commission for Professional Ethics and Prevention of Corruption within the Supreme Judicial Council, anticorruption bodies within the regional governments and municipalities, etc.

There are also legal remedies provided in the Labour Code and the Law on Civil Servants in cases of unlawful dismissal of the whistleblowers from the office. The unlawfully dismissed persons have to right to compensation under art. 225 of the Labour Code and Art.104 of the Law on Civil Servants.

Persons who report corruption may also benefit the protection measures provided under the Law on protection of persons threatened in connection with criminal procedure, which provisions may apply only after the criminal proceedings have been initiated. The protection regime under that law shall benefit whistleblowers whose testimonies, explanations or depositions are of significant importance to the criminal proceedings and who are at risk because of their assistance to the competent authorities.

Concerning protection of whistle blowers working in the private sector the Declaration against corruption shall apply and urge the Bulgarian business “to encourage and to ensure protection of Bulgarian employees and partners who report corruption practices on any level”. The Declaration was adopted on 23.02. 2005 by the Bulgarian international business association, the Bulgarian forum of business leaders and the Bulgarian bureau for business and congress tourism and has gained support from more than 360 Bulgarian companies.

Labour Code

Article 225

(Amended and supplemented, SG No. 100/1992)

(1) Upon wrongful dismissal, the factory or office worker shall be entitled to compensation from the employer amounting to the worker's gross labour remuneration for the period of unemployment caused by reason of the said dismissal, but not more than six months.

(2) When during the period under the foregoing paragraph the factory or office worker has worked in a lower paid job, the said worker shall be entitled to the difference between the wages. The same entitlement shall apply to a factory or office worker who has been wrongfully transferred to another, lower paid job.

(3) Where a wrongfully dismissed factory or office worker is reinstated to work and after reporting to the enterprise to take the work to which he or she has been reinstated, is not admitted to the execution of the said work, the employer and the blameworthy officials shall be jointly liable to the factory or office worker for payment of an amount equal to the worker's gross labour remuneration from the day of reporting to the day of actual admission to work.

Law on Civil Servants

Article 104. *(1) (Amended, SG No. 95/2003, SG No. 38/2012, effective 1.07.2012) Where the order on termination of the civil-service relationship is revoked by the appointing authority or by the court of law, the civil servant affected shall be entitled to compensation equivalent to the basic salary thereof as fixed at the time of the pronouncement of the discharge as unlawful or of the failure of the said servant to report for assumption of service, for the entire period of exclusion from civil service but not exceeding six months. Should the said civil servant have been appointed to another civil service with a lower salary or have received remuneration of a lower amount for another work, the said servant shall be entitled to the difference between the salaries or to the difference between the salary and the remuneration calculated on the basis of the basic salary or the basic remuneration, as the case may be.*

(...)

Text of recommendation :

10. Regarding official development assistance (ODA), the Working Group recommends that Bulgaria, in the course of developing its ODA policies and procedures, adopt measures to prevent, detect and report foreign bribery in the award and execution of ODA contacts (2009 Recommendation II, IX(i) and IX(ii)).

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

The Ministry of Foreign Affairs is planning to summon the “Official development assistance” Council to review the priority state partners for Bulgaria and to reconsider the fields for awarding of official development assistance.

The process of preparation and approval of the provisions and the procedures for awarding of ODA is still ongoing.

If no action has been taken to implement recommendation 1, 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. Regarding officially supported export credits, the Working Group recommends that the Bulgaria:
 - (a) adhere to the 2006 Recommendation of the Council on Bribery and Officially Supported Export Credits (2009 Recommendation XII(i));

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

The Bulgarian Export Insurance Agency (BAEZ) has raised the question about adhering to the 2006 Recommendation of the Council on Bribery and Officially Supported Export Credits before the Ministry of Economy, Energy and Tourism, which is the Sole Shareholder of the Capital of BAEZ, by means of amending the Law on Export Credit Insurance. Since the latter is within the scope and competence of the Ministry of Economy, Energy and Tourism, BAEZ has already formulated the matter before the Minister of Economy, Energy and Tourism.

Text of recommendation :

11. Regarding officially supported export credits, the Working Group recommends that the Bulgaria:
 - (b) introduce measures to inform clients about the legal consequences of foreign bribery, require clients to provide anti-bribery declarations, conduct due diligence in the award process (including through the use of available debarment lists), and report suspicions of foreign

bribery in export credit operations (2009 Recommendation XII(i)).

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

1. Regarding the recommendation to Bulgarian Export Insurance Agency (BAEZ) to “introduce effective measures to inform its clients about the legal consequences of bribery in international business transactions” the following was done:

- The insurance services consumers have the possibility to get acquainted with the “Antibribery initiative for raising the public awareness on combating bribery of public officials” on BAEZ’ web site /www.baez-bg.com/, where they have the access to the related documents, including, but not only, the Convention on combating bribery of foreign public officials in international business transactions, the 2009 revised Recommendation on combating bribery in international business transaction and others.
- On BAEZ web site the insurance services consumers have also a direct connection to the publicly accessible debarment lists of the following international financial institutions: World Bank Group, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter –American Development Bank.

2. Regarding the recommendation to BAEZ to: “*require clients to provide anti-bribery declarations*” – the Board of directors of BAEZ adopted a template of a declaration, which is an integral part of the application for an insurance, and has to be dully filled by the insurance services consumers when applying for insurance coverage for account of the State and prior to signing the insurance policy. The content of the anti-bribery declaration is in conformity with the 23 questions which are answered by the member countries of the OECD and which questions cover the requirements imposed by the OECD recommendations in the sphere of export credits. We enclose herewith a standard form of the Declaration (See Attachment 2).

3. Regarding the recommendation in the Report to BAEZ to ***conduct due diligence in the process of award of insurance coverage*** the Board of Directors of BAEZ has inserted a new text in the part on risks excluded from the following General Terms:

- General Terms for insurance of credit for pre-shipment financing of the export activity;
- General Terms for insurance of credits and financing;
- General Terms for insurance of payments under export contacts/shipment contracts for goods and services against medium-term commercial and non-commercial risk;
- General Terms for insurance of payments under export contacts/shipment contracts for Bulgarian goods and services against short-term non-commercial risk;
- General Terms for insurance of receivables in connection with financing of the export activity;
- General Terms for insurance of payments under export contacts/shipment contracts for goods and services against non-marketable short-term commercial risk;
- General Terms for insurance of investments of Bulgarian legal persons in foreign States against risk of impossibility of transfer of the investment income, expropriation or politically motivated acts of violence.

The changes find expression in supplementing Excluded Risks as follows:

“..... According to the present General Terms, this insurance excludes all direct or indirect losses resulting from the occurrence of a risk which is not covered within the meaning of Article 5, including:

.....

3. any violation or non-compliance on the part of the Insured, a representative or a subcontractor thereof, of or with:

(a) the effective legislation in the Republic of Bulgaria, in the transit States and in the States related to the performance of the export contract/shipment contract or the execution of payments thereunder;

(b) the provisions of the Special Part, Chapter Eight, Section IV Bribery of the Penal Code of the Republic of Bulgaria, including acts of the Government or of other administrative authorities, regarding combating of bribery, including bribery of foreign public officials in international commercial transactions, where this is related to the preparation, conclusion and performance of the export/shipment contract;

(c) the terms and conditions of the insurance contract.”

The declaration became a mandatory requirement in the application procedure for insurance cover under the Law on Export Credit Insurance on 20.02.2012 when the Board of Directors of BAEZ has approved the declaration.

Prior to administering the application for an insurance cover on behalf of the State and assessing the risk of the buyer and all the other relevant details related to obtaining an insurance cover on behalf of the State, a check in the debarment list of the World Bank Group, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter –American Development Bank is being done by the risk assessment expert in BAEZ. If the applicant is listed in one of the debarment lists, the application for insurance cover shall be rejected.

By suspicion of foreign bribery the BAEZ personnel is obliged to report it to the prosecutor’s office and to submit all the relevant documentation. So far, there have been no reported cases.

Text of recommendation :

12. Regarding public procurement, the Working Group recommends that Bulgaria introduce a legal provision to allow debarment of legal persons from public procurement, provide guidance to the procurement bodies on due diligence, and consider maintaining a record of natural and legal persons convicted of bribery which could be consulted by contracting authorities. (2009 Recommendation XI).

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

According to the Law on Public Procurement (LPP) every tenderer should submit a declaration that he/she has not been convicted for crimes contained in Art. 47, paragraph 1, item 1 of the LPP, which also include bribery under 301-307 of the Criminal Code. In this regard, tenderer who declare false facts are held criminally liable under the provision of Art.313 of the Criminal Code. The law also forbids any foreign natural or legal persons from participation in a public procurement award procedure if they have been sentenced for bribery in their state of origin or state of registration (Art. 48).

The legal conditions that could lead to exclusion of the tenderer from participation in a public procurement award procedure are in compliance with the conditions envisaged in the relevant directives of the European Union in the filed of public procurement - Directive 2004/17/EC and Directive 2004/18/EC, as well as

Directive 2007/66/EC and Directive 2009/81/EC, and which Bulgaria has transposed in its national legislation.

Under the LPP, the tenderer is requested to submit official documentation to prove the declared facts only after being selected as a public procurement supplier, contractor or service provider. In view of the Bulgarian Public Procurement Agency, this approach is considered to be efficient and not to cause additional administrative impediments for the participation in the procedure. The same approach has been taken by the above cited European directives, which do not foresee more stringent procedure for proving the circumstances covered by the LPP.

Nevertheless, according to art.68, paragraph 11 LPP the commission, appointed by the contracting authority to examine, evaluate and rank the tenders, may at any time undertake due diligence with regard to the declared fact of the tenderer by requesting information from other institutions or persons. In addition, the provision of Art. 69, paragraph 1, item 5 LPP provides for a special ground for exclusion from the public procurement award procedure when the commission proves that the tenderer has submitted false information in his application documents.

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up:

13. The Working Group will follow up the issues below as the case law and practice develop:
- (a) The number of and reasons for cases returned by the courts to the pre-trial authorities (Convention Article 5 and 2009 Recommendation Annex I(D));

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 pursuance of several Decisions of the Supreme Judicial Council from 2008 and Decision № 19/30.05.2011 as well as the Order № LS 239 /02.02.2009 of the Prosecutor General annually and periodically **analysis of the cases returned from the court** is done. The Analysis is in compliance with the criteria given in ***Instruction № II-154/28.03.2012 of the Prosecutor General for improvement of the organization in the prosecutor's office aiming the reduction of cases returned by the court to the prosecutors for further investigation***, and the criteria contained in the ***Methodology for the criteria on the basis of which the analysis has to be done by the prosecutor's office***, attached to the Instruction. This instruction and Methodology replaced the *Instruction №2614 /18.02.2009 z. of the Prosecutor's General Depute*.

The Instruction concerns indicators for the reasons leading to the returned cases, such as:

1. Returned cases prior to examination of the case at a court hearing *under the conditions of Article 249 Paragraph 2 CPC* - due to removable significant breach of procedural rules in the course of pre-trial proceedings, which have resulted in the restriction of procedural rights of the accused party and his counsel, of the victim or of his/her heirs. *In these cases the prosecutor is obliged to correct the existing procedural irregularities according to the provision of Art. 242, Para. 2 CPC.*

2. Returned cases in the course of the judicial trial *under the conditions of Article 288, Item 1 of CPC* - due to removable substantial violations of procedural rules in the course of preliminary proceedings, which have resulted in the restriction of procedural rights of the accused or his counsel. In this case the court discontinues the court procedure and forwards the case to the respective prosecutor.

3. Returned cases in the hypothesis of not approved agreements by the court *under the conditions of Art.382 of the CPC*;

4. Returned cases of not approved proposals for implementation by the court the provision of Article 78a of the Criminal code (*release from criminal liability and imposing a fine as an administrative punishment if the stipulated punishment for the crime is imprisonment of up to three years or another more lenient punishment when it is deliberate* – practically not applicable to bribery cases as most of the corpus delicti of this type of crime provide minimum punishments of up to 6 years of imprisonment;

5. Returned cases due to the subjective opinion of the reporting judge;

6. Returned cases due to Technical errors.

7. Other reasons.

In 2011 **2 627** prosecutor's acts (2 491; 2 899) have been returned by the courts from totally 46 511 prosecutor's acts brought to court (against 45 598 in 2010 and 45 147 in 2009), which is **5,6%** (5,5% in 2010; 6,4% in 2009) from all the prosecutor's acts, brought to court.

Statistical data show that for the first 9 months of 2012 the prosecutor's acts returned by the court are 5,5% from all the prosecutor's acts, brought to court. The final data will be given in the annual Report of the Prosecutor General for the activity of the Prosecutor's Office in 2012 which will be available in April 2013.

With the amendments in the PPC, SG 32 /2010 (in force since 28.05.2010) an opportunity to appeal or challenge the order of the reporting judge for return of the case to the prosecutor of the was provided in the new *Paragraph 3 of Article 249 CPC*.

Prosecutors in all the prosecutor's offices in the country ascertain for cases, which the courts return during the Court session procedure, not by the reporting judge in the preparatory phase of the Court session, which dispositions ***can not be appealed or challenged before the upper court, because of a legislative omission in Article 288 of PPC***.

Data indicate that similar to the previous statistical periods, $\frac{3}{4}$ of the returned cases are due to identified significant procedural breaches made by the investigating bodies during the investigation phase of the pre-trial proceedings, as well due to breaches of the prosecutor while preparing the indictment.

The administrative heads of the prosecutor's offices are doing analysis of the reasons leading to the return of cases by the court in compliance with the above mentioned Methodology. Based on the conclusions drawn they take appropriate measures to ensure that the prosecutors will exercise more effective control on the investigating bodies and will be acquainted in details with the undertaken procedural activities. This measures also aim to urge prosecutors to give on time instructions for removal of identified procedural breaches in the pre-trial proceedings so that the materials of the investigation to be well grounded and carefully studied and in end effect the number of cases returned by the court to be reduced.

The analysis of the data indicates that most of the significant breaches in the pre-trial proceedings committed by the investigating bodies and left unnoticed and not removed by the prosecutor while preparing the indictment, and which have let to return of the cases by the court can be sum up as follows: no defence was provided to the defendant at the performance of investigating-procedural activities or one and the same defender was assigned in cases where there are contradictory interests, incomplete and inaccurate legal qualifications of the crime in the course of the involving of the person as defendant, the defendant or the victim wasn't acquainted with the materials of the investigation and their rights, the victim of the crime was not ascertained, as well as the defendant and his defender, the victim and his trustee weren't summoned for presentation of the investigation, etc.

Another group of reasons for returning cases by the court to the prosecutor due to committed procedural breaches while preparing the indictment by which the case is brought to court, are connected most commonly with inconformity of the circumstantial part of the acts of indictment and the legal qualification of the

committed criminal act; lack of indication of elements from the corpus delicti of the offence; lack of concretisation of the indictment.

The prosecutor's offices indicate that, though in small number, there are court orders to return the case without concrete breaches to be pointed out, but only general formulations for admitted breaches, not indicating what kind of procedural activities are required to be performed, or if there is a need more evidence to be gathered, that can be gathered in the court session procedures.

By the initiative of the Prosecutor Office, different meetings take place in the country in order to get together judges, prosecutors and representatives of the investigating bodies *to observe and discuss the reasons, leading to return of cases. Each three months there are check-ups and analysis in the District prosecutor's offices and each six months – in the Appellate prosecutor's offices in this regard. It also has to be noted that each prosecutor's office keep registers of the returned cases.* All these efforts aim to increase the strict control exercised by the prosecutors over the work of the investigating bodies and to ensure that the prosecutors will precisely follow their obligations with regard to the preparation and bringing to court of the acts of indictment.

Text of issue for follow-up:

13. The Working Group will follow up the issues below as the case law and practice develop:

- (b) Time taken to conduct preliminary checks when there is sufficient information to commence pre-trial proceedings (Convention Article 5 and 2009 Recommendation Annex I(D)).

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:

Continuance of the pre-trial phase is an indicator that has been included in the statistics of the Prosecutor's office in 2007 by recommendation of EU experts. "*Continuance of the pre-trial phase*" means the period from the initiation of the case until its solving by the prosecutor in merits – bringing to court an act of indictment or a proposal for agreement, or issue a Ruling for discontinuation of the pre-trial proceeding.

For 2011 the data is as follows:

- 65429 or 47,6% of all pending pre-trial proceedings are completed and solved in merits within 7 months;
- 11242 (8,2%) are completed and solved in merits within the period from 7 months to 1 year;
- and 60778 (44,2%) – for a period exceeding 1 year.

Cases for organized crime, *corruption crimes*, tax crimes, money laundering and misuse of Euro funds, trafficking in narcotics and in human beings, *are voluminous as evidence materials, and are of significant legal and factual complexity, which presumes longer period of investigation.*

For the first 9 months of 2012 the data concerning the continuance of the pre-trial proceedings for the above enumerated types of crimes are: 215 *finalized and terminated* pre-trial proceedings (against 189 for the same period in 2011) and 163 pre-trial proceedings *brought to court* (against 177 for the same period in 2011). The total continuance of the pre-trial proceedings is:

- within 7 months for 206 or 54,5% of all solved pre-trial proceedings (against 191 for the same

period in 2011; 52,2%);

- Up to 1 year – 60 or 15,9% of all solved pre-trial proceedings (72; 19,7%);
- More than 1 year – 112 or 29,6% of all solved pre-trial proceedings (103; 28,1%).

It should be noted that the provided statistics for 2012 is not final. It will available in April 2013, after the adoption of the Report on the activity of the Prosecutor's office for 2012.