

Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

BULGARIA

(Information as of 9 September 2008)

Date of deposit of instrument of ratification/acceptance or date of accession

Bulgaria deposited its instrument of ratification on 22 December 1998. The Convention entered into force on 15 February 1999. The text of the Convention (Bulgarian translation) was promulgated in "State Gazette" No 61 of 6 July 1999.

Implementing legislation

On 15 January 1999 the National Assembly adopted a Law amending the Criminal Code (prom. in SG No 7 of 26 January 1999) whereby the active bribery of foreign public officials in international business transactions was criminalised (Art.304, para. 3 of the Criminal Code). The above-mentioned law introduced an autonomous definition of "foreign public official" (Art.93, para. 15 of the Criminal Code).

On 8 June 2000 the National Assembly adopted amendments to the Criminal Code (prom. in SG No 51 of 23 June 2000) whereby promising and offering of a bribe to domestic and foreign public officials (phase 1 OECD Working Group's recommendation) were established as a criminal offence. By the same law the restriction as to the context in which the active bribery of the foreign public officials occurs, i.e. in international business transactions, was abolished.

On 13 September 2002 the National Assembly adopted amendments to the Criminal Code (published in "State Gazette" No 92 of 27 September 2002) which provided for: including non-material advantages in the scope of definition of a bribe (phase 1 OECD Working Group's recommendation); it introduced also criminalisation of bribery in the private sector, trading in influence, passive bribery of foreign public officials, bribery of arbitrators and, in some specific cases, bribery of lawyers; enlargement of the scope of the foreign public official definition; restriction of the existing defences concerning the punishment of active bribery (phase 1 OECD Working Group's recommendation); introducing the fine as additional punishment for bribery; and more severe punishments for bribery of judges, jurors, prosecutors and examining judges.

Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations

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

In 2005 the **Law on the Forfeiture to the State of Proceeds of Crime** (civil confiscation) was introduced. This law regulates the terms and procedure for imposition of seizure and forfeiture to the State of any assets derived, whether directly or indirectly, from criminal activity. By this law, the body handling the procedure is the Multidisciplinary Commission for Establishing of Property Acquired from Criminal Activity (CEPACA), which became operational in October 2006.

Law of the Protection of the Persons Threatened in Connection with Criminal Procedure (promulg. SG 103 of 23 November 2004)

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

In 2006 changes were introduced to all the legislation concerning the public procurement – the Law on Public Procurement, the Rules Implementing the Law on Public Procurement and the Ordinance for Assigning Small Public Procurement. The changes entered into force as of 01 July 2006. They introduced a number of mechanisms for countering corruption in public procurement.

*The Council of Ministers adopted **Public Sector Internal Audit Standards** with Decree No 165/30.06.2006.*

After the amendments of the Constitution of the Republic of Bulgaria from 2003 the immunity of magistrates from investigation and prosecution was limited to a functional one. On 2 February 2007 the National assembly adopted the Fourth Amendment of the Constitution. One of the main changes was the **removal of the penal inviolability of the magistrates**. Only the immunity, securing the independence and freedom of the magistrates in the execution of their functions and issuing of their decisions, remains in place.

Other information

Relevant authorities

Under Art.205, para 1 of the Criminal Procedure Code (new, prom. SG 86 of 28 October 2005, entered into force on 29 April 2006), information on criminal offences, including on bribery offences, should be reported to the bodies of the pre-trial proceedings, i.e. prosecutors, investigators at the Ministry of Interior, or to other public body.

Central authorities for mutual legal assistance:

Ministry of Justice - in respect of requests for mutual assistance at the stage of the trial. (1, Slavianska Str., 1040 Sofia)

Supreme Cassation Prosecutor's Office - in respect of requests for mutual assistance at the stage of pre-trial proceeding, (2, Vitosha Bulvd., 1040 Sofia)

Other relevant authorities:

The Commission for establishing of property acquired from criminal activity (112 Rakovski Str., 1040 Sofia)

Relevant internet links to national implementing legislation

Ministry of Justice: <http://www.mjeli.government.bg>

Anticorruption Commission: <http://www.anticorruption.government.bg>

All Bulgarian Legislation (free access): <http://www.lex.bg>

Signature/Ratification of other relevant international instruments

- Council of Europe Criminal Law Convention on Corruption: ratified on 7 November 2001.
- Additional Protocol to the Council of Europe Criminal Law Convention on Corruption on 4 February 2004.
- Council of Europe Civil Law Convention on Corruption: ratified on 8 June 2000.
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime: ratified on 2 June 1993.
- United Nations Convention against Corruption: ratified on 3 August 2006
- United Nations Convention against Transnational Organized Crime: ratified on 12 April 2001
- EU Convention on the Protection of the European Communities' Financial Interests and the Protocols thereto: ratified on 24 January 2007.
- EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States: ratified on 14 February 2007.

Working Group on Bribery Monitoring Reports

Phase 1: Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/13/53/2385450.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/8/19/2790505.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions

<http://www.oecd.org/dataoecd/35/60/36101867.pdf>