

II. ANTI-CORRUPTION POLICY INSTRUMENTS IN BULGARIA (2009 – 2014)

Integrated Strategy for Prevention and Countering Corruption and Organised Crime

The centrepiece policy document with regard to anti-corruption policy in Bulgaria is the *Integrated Strategy for Prevention and Countering Corruption and Organised Crime* (Strategy) adopted in 2009. The Strategy attempts to set recommendations for limiting the spread and impact of corruption and organised crime on multiple levels of governance (central, regional and local), while also including the business sector and civil society in the process.¹⁰ The responsibility for its coordination lies with the General Inspectorate (GI) and the Commission for the Prevention and Combating of Corruption with the Council of Ministers. Also responsible for the implementation of the Strategy are the inspectorates with ministries and government agencies and regional administrations; they have to propose individual action plans for a certain period and consequently produce implementation reports.¹¹ Action plans need to develop measures focused on six priority lines:

- Implementation of a unified approach to planning and reporting activities in the area of anti-corruption policy. Measures include review of related legislation; stronger general cooperation of the activities for prevention and countering of corruption; application of anti-corruption mechanism for reporting the results in the area of anti-corruption; implementation and periodic update of corruption risk assessment methodologies within the GI and the ministries; increasing the analytical capacity of the GI; increasing the cooperation with the Center for Prevention and Countering Corruption and Organised Crime (BORKOR); review and control of declaration for conflict of interests, etc.
- Sector-specific approach for prevention and countering of corruption. Depending on the sector, analyses and revision of laws and regulations, internal rules, ethical codes, as well as procedures for personnel selection and promotion are among the measures often included in this priority of the action plans.
- Measures aiming at strengthening of the anti-corruption environment.
- Measures for increasing transparency in public administration and raising awareness of anti-corruption measures.

¹⁰ Министерски съвет, Интегрирана стратегия за превенция и противодействие на корупцията и организираната престъпност [Integrated Strategy for Prevention and Countering Corruption and Organised Crime] Adopted by Council of Ministers Protocol No. 4532 of 18.11.2009, <http://anticorruption.government.bg/downloads/Normativni-aktove/strategy-KPPK.pdf>

¹¹ Протокол от заседание на Комисията по превенция и противодействие на корупцията към Министерски съвет, проведено на 11 септември 2013 г. [Protocol from meeting of the Commission for the Prevention and Combating of Corruption from 11 September 2013]. Available in Bulgarian at: <http://anticorruption.government.bg/pdocument.aspx?d=k3BdzV0I3jxTQNRbOc%2FINw%3D%3D>

- Cooperation between governmental institution, civil society, media and the business sector.
- Analysis and assessment for identification of areas with high corruption risk, which often include introduction and/or revision of mechanisms for increased control.¹²

Reports on the implementation of the Strategy are available for 2010, 2011 and 2012. For 2013, the government had an approved action plan and report¹³ only for the final quarter of the year. No plan has yet been adopted and publicly available for 2014. In general, the reports should comment on the results of activities undertaken by ministries, governmental agencies and regional administrations with regard to (1) analysis and identification of areas with high corruption risk; (2) regulatory measures; (3) revision and application of mechanisms for prevention and countering of corruption, more specifically regulatory, administrative, control and punitive instruments; (4) cooperation between governmental institutions, civil society, media and the business sector; (5) transparency in governance and public services; (6) information policy; (7) measures for increasing administrative capacity; and (8) measures to be implemented in central government.¹⁴

Transparency. Due to the unstable political environment, lack of coordination and delays in implementation, the publication of the action plans has so far been sporadic – on central level such are available for the period of July 2011 – July 2012, for August – December 2012, as well as for October – November 2013. Since the adoption of the Strategy (2009), anti-corruption measures have not been available for a substantial period of time without any specific justifications.¹⁵

Evaluation. Overall, there is no clear indication of how the action plans, more specifically their measures and associated indicators, should impact the general anti-corruption environment and contribute to the implementation of the Strategy. The availability of associated indicators for each anti-corruption measure also varies, leaving a considerable portion of measures without a base to be assessed against. So far, a total

¹² Министерски съвет, Интегрирана стратегия за превенция и противодействие на корупцията и организираната престъпност [Integrated Strategy for Prevention and Countering Corruption and Organised Crime] Adopted by Council of Ministers Protocol No. 4532 of 18.11.2009, <http://anticorruption.government.bg/downloads/Normativni-aktove/strategy-KPPK.pdf>

¹³ Доклад за дейността на Комисията по превенция и противодействие на корупцията към Министерски съвет за периода 01.01.2013 – 31.12.2013 [Report for the Activity of the Commission for the Prevention and Combating of Corruption at the Council of Ministers for the period 01.01.2013 – 31.12.2013.] Ref. No. 03.16-1/26.03.2014, <http://anticorruption.government.bg/downloads/--2014-08-15-08-43-18--ДОКЛАД.pdf>

¹⁴ Министерски съвет. Отчет за 2011 г. – Институционален подход за реализиране на антикорупционната политика на правителството [Report for the year 2011 on the institutional approach for the realisation of the government's anticorruption policy]. Available at: <http://anticorruption.government.bg/downloads/Normativni-aktove/2011-Strategy-KPPK.doc>

¹⁵ Протокол от заседание на Комисията по превенция и противодействие на корупцията към Министерски съвет, проведено на 11 септември 2013 г. [Protocol from meeting of the Commission for the Prevention and Combating of Corruption from 11 September 2013]. Available in Bulgarian at: <http://anticorruption.government.bg/pdocument.aspx?d=k3BdzV0I3jxTQNRbOc%2FINw%3D%3D>

of 119 indicators are produced, leaving 78 measures with no indicators to assess progress and implementation.

Assessment of effectiveness. Results provided by the implementation reports generally include examples of activities undertaken by administrative bodies without integrated analysis of their contribution to the implementation of the action plans. Results are not linked to specific measures, there is no analysis of the effectiveness and impact of activities or of the status of implementation of anti-corruption measures.

Regional level implementation. Information on the activities undertaken on regional/local level is scarce. Although the majority of regional administrations have adopted separate action plans and produced implementation reports, the provided information is limited and there are virtually no indications to confirm concrete impacts. There is only one attempt to consolidate the activities on local level, with regard to the Strategy: the audit report for 2011.¹⁶

High level corruption. Countering high level corruption has not been specifically addressed in the action plans and in the reports on implementation. The lack of a track record with respect to high level corruption cases remains a major obstacle to Bulgarian citizens' trust that serious action is being taken against corruption.

Overall evaluation. While the Strategy is a comprehensive anti-corruption document, it has not been operationalized into matching action plans, regional level implementation, transparency, evaluation, and reporting mechanisms. It is therefore difficult to assess whether all priorities have been adequately translated into appropriate measures (and action plans) and whether plans and measures have been fulfilled/adopted. The Strategy has no in-built assessment tools that would evaluate progress in achieving its main objective – to reduce corruption. As anti-corruption gradually becomes a top priority of the European Union, it remains unclear how incumbent Bulgarian governments will address this problem.¹⁷ In 2014, the Commission for the Prevention and Combating of Corruption published a Methodology for Corruption Risk Assessment which is based on identified patterns of corruption in the public administration. There have not been reports on the implementation of the methodology so far. While this has been a positive step forward, it does not address the main recommendation of the European Commission under the CVM for an independent external assessment of corruption risks. The methodology will be implemented by the inspectorates.

¹⁶ Министерски съвет. Отчет за 2011 г. – Институционален подход за реализиране на антикорупционната политика на местно ниво [2011 Report on the institutional approach for the realisation of the anticorruption policy on local level]. Available at: <http://anticorruption.government.bg/downloads/File/municipalities-report.pdf>

¹⁷ Министерски съвет. Пламен Орешарски: Откритост, отчетност и диалогичност ще са основни принципи в работата на правителството [Plamen Oresharski: the government will work along the key principles of openness, accountability and dialogue]. Council of Ministers Press Service, 20.09.2013. Available at: <http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0213&n=480&g=>

Specialised Anti-Corruption Bodies and Other Institutions with Anti-Corruption Potential

There are several specialised bodies mandated to drive the country's anti-corruption agenda within the legislature, the executive, and the judiciary, as well as a number of institutions whose activities may have a strong anti-corruption potential.

Parliamentary Commission on Fighting Corruption and Conflict of Interest. The Commission is responsible for accepting and registering the declarations under the *Conflict of Interest Prevention and Ascertainment Act* and, if requested, provides information to the Commission for Prevention and Ascertainment of Conflict of Interest. Due to political controversies in the 42nd Parliament the Commission has conducted only ten meetings and has provided two administrative violation reports under the *Conflict of Interest Prevention and Ascertainment Act*, as well as several comments/recommendations with regard to draft legislation.¹⁸ In addition, the hostile political environment has raised doubts that the Commission is often used to serve party agendas.

Standing Committee on Professional Ethics and Prevention of Corruption in the Judiciary with the Supreme Judicial Council (SJC). Its main responsibility is to perform inspections on specific signals about corruption and complaints, notify competent authorities and inform the SJC about the results; analyse the information on the existence of corruption practices in the judiciary; develop and propose for approval by the SJC specific measures for the prevention and countering corruption in the judiciary. The Committee is largely responsible for the implementation of the *Code of Ethical Behaviour of Bulgarian Magistrates*¹⁹ as well the *Strategy for Preventing and Combating Corruption in the Judiciary*. The Committee also cooperates with the Civil Council to the SJC and other anti-corruption structures within state authorities, including the Ombudsman.²⁰

Information with regard to registered signals and complaints is largely available and consistently reported by the Committee. Despite the large number of complaints, most of which general in nature, for the period of four years (2010 – 2013) there is not a single registered complaint containing concrete data of corruption, while the signals concerning controversial practices are only 23.

¹⁸ Parliamentary Commission on Fighting Corruption and Conflicts of Interest, <http://www.parliament.bg/bg/parliamentarycommittees/members/2083/sittings>

¹⁹ The Code of Ethical Behaviour of Bulgarian Magistrates was approved by the Supreme Judicial Council in 2009. In contrast to the preceding situation, where ethical rules for judges, prosecutors and investigative magistrates were found in three separate ethical codes, one for each of the professions, adopted by the respective professional organizations, this document covers all members of the judiciary. Moreover, it subsumes under the 'magistrate' category the members of the Supreme Judicial Council, as well as the inspectors in the Council's Inspectorate, thus subjecting magistrates and non-magistrates (members of the Council from the parliamentary quota are not necessarily such) performing judicial and practically non-judicial activity to the same ethical requirements. Although presenting a visible effort to regulate the ethical aspects of judicial activity, including the prevention of corruption, the Code does not discern the procedural roles of judges and prosecutors and their often different ethical duties and the different situations with corruption implications they may come into. Moreover, for a document, whose violation can lead to disciplining, it contains quite a few cases of overly general or insufficiently precise phrasing, which can put under serious doubt the foundation of sanctions imposed for the ethical rules' infringement.

²⁰ The Supreme Judicial Council's official webpage is: <http://www.vss.justice.bg/bg/start.htm>

TABLE 1. NUMBER OF COMPLAINTS (SIGNALS) FOR THE PERIOD 2010 – 2013

Type of complaint (signal)	2010	2011	2012	2013*
General complaint	1,856	767	1,124	613
Complaints (signals) containing concrete data for corruption	0**	0	0	0
Complaints (signals) for violations of ethical rules by magistrates	19	16	31	61
Complaints (signals) containing data for controversial practice	11	5	6	1
Complaints (signals) containing objections with regard to the initiation, progress and the timely completion of cases	43	34	51	10

* No data available for August 2013.

** Assumed to be "0" as such complaints are not mentioned at all.

Source: Reports on the activities of the SJC and the SJC Inspectorate for 2010, 2011, 2012; monthly reports on the Committee on Professional Ethics and Prevention of Corruption to the SJC.

Standing Committee on Disciplinary Proceedings with the Supreme Judicial Council. Its responsibilities include disciplinary infringement and disciplinary sanctions against judges, prosecutors and investigators. The disciplining activity of the Council is still divided between, on the one hand, some cases of sanctioning violations of the Ethical Code and actions ruining the reputation of the judiciary, and, on the other hand, more cases of non-compliance with procedural deadlines and actions, unjustifiably slowing down proceedings. As admitted by the Council's own Review of Disciplinary Case-Law of 2009 – 2013, in the continuing absence of a clear vision or a generally acclaimed methodology for determining the workload of magistrates, putting an emphasis on disciplining magistrates primarily on the grounds of slow proceedings still steps on insufficiently clear grounds and can potentially diverge disciplinary efforts away from corruption-related cases. Moreover, the lack of disciplinary action in the face of serious corruption allegations allows the involved magistrates to resign without any review or penalty for their alleged actions. As regards statistics for disciplinary proceedings against magistrates on corruption-related grounds, no such data is publicly available.

The Commission for the Prevention and Combating of Corruption with the Council of Ministers (CPCC) was created in 2006.²¹ The organisation of CPCC's work and the administrative and technical services are carried out by the General Inspectorate of the Council of Ministers.²²

In theory, the functions and coverage of CPCC are close to a comprehensive body for anti-corruption policy. In practice, the CPCC lacks the necessary

²¹ Министерски съвет. Решение N 61 от 2 февруари 2006 година за създаване на Комисия по превенция и противодействие на корупцията [Decision N61 Establishing the Commission for the Prevention and Combating of Corruption]. Available at: http://anticorruption.government.bg/cms/files/mod_file/RMS61.doc

²² CPCC website: <http://anticorruption.government.bg/>

capacity to effectively perform its functions, especially implementing a synergetic approach against corruption. A lack of coordination is evident in the established 28 regional councils on anti-corruption. While the majority of regional administrations have adopted separate action plans and produced implementation reports, inconsistencies in reporting and limited information have determined the lack of results. Four annual reports have been published inconsistently. The last publicly available report is for 2013.²³

Centre for Prevention and Countering Corruption and Organised Crime (BORKOR). BORKOR is a specialised anti-corruption body, established at the Council of Ministers in 2010 to assess, plan and develop preventive anti-corruption measures. At the heart of the Centre is the BORKOR software, which aims at identifying weak spots and developing network measures against corruption. Since the establishment of BORKOR its efforts have been focused on acquiring a cyber-system of the type V-Modell XT claimed to be a unique highly-technological instrument with no analogue in the world, to be used in developing anti-corruption measures. The continuous lack of results has drawn repeated criticisms from civil society and the media. With a spending of BGN 10.3 million (over EUR 5 million) in a three-year period (2011 – 2013),²⁴ the BORKOR project has also been criticised for unjustified spending of public money.

Inspectorates are responsible for the prevention and elimination of distortions in the functioning of the administration, including independent and objective assessment of the public administration. For 2013, a total of 32 administrative bodies have reported the establishment of inspectorates, while inspectorates under special laws were created in 4 administrative units.²⁵ The reach of the inspectorates with regard to anti-corruption is relatively wide but restricted only to the specific administrative unit. Among other duties, the inspectors:

- perform check-ups of structures, activities and processes in the administration;
- assess the corruption risk and propose measures to limit it;
- ensure compliance with regulations and laws, including the Conflict of Interest Prevention and Ascertainment Act;
- propose disciplinary proceedings when violations of official duties are present.²⁶

²³ Доклад за дейността на Комисията по превенция и противодействие на корупцията към Министерски съвет за периода 01.01.2013 – 31.12.2013 [Report for the Activity of the Commission for the Prevention and Combating of Corruption at the Council of Ministers for the period 01.01.2013 – 31.12.2013.] Ref. No. 03.16-1/26.03.2014, <http://anticorruption.government.bg/downloads/--2014-08-15-08-43-18--ДОКЛАД.pdf>

²⁴ Министерски съвет – Център за превенция и противодействие на корупцията и организираната престъпност. Отчет за извършените разходи на ЦППКОП за периода 2011 г., 2012 и 2013 г. [Council of Ministers Center for Prevention and Countering Corruption and Organized Crime Report on expenses for 2011 – 2013.] <http://borkor.government.bg/document/138>

²⁵ Министерски съвет. (2014) Доклад за състоянието на администрацията 2013. [Report on the State of the Bulgarian Public Administration in 2013], http://www.government.bg/fce/001/0211/files/DSA_2013.pdf

²⁶ CPCC website: <http://anticorruption.government.bg/>

The General Inspectorate (GI) with the Council of Ministers is subordinated directly to the PM and is responsible for the coordination of the work of all inspectorates. The GI prepares methodological guidance on the functions and operating procedures of the inspectorates and their interaction with the specialised control bodies, as well as corruption risk assessment methodologies to be approved by the PM. Supervision of compliance with the *Conflict of Interest Prevention and Ascertainment Act* and examination of corruption signals in the executive are also part of the responsibilities of the GI.²⁷

The new **Commission for Illegal Assets Forfeiture**, which inherited the older illegal assets identification structure, was established in February 2013. The only tangible effect so far is a dwindling number of injunctions and ensuing forfeiture cases. This negative tendency could become a permanent downward trend if no concrete legal measures are undertaken. Several factors determine this institutional ineffectiveness. First, the wave of staff changes at all levels of the Commission has negatively influenced practical activities and undermined their outcomes. Second, the interpretative case in the Supreme Court of Cassation initiated by the National Ombudsman has led to the blocking of several cases which were built on legal hypothesis existing in the old Law and slowed the procedures under the new Law.

As for the procedures under the new Law, they also justified the concerns voiced by several experts back in 2012 that, instead of enhancing the efficiency of the Commission, the new Law will lead to its long-term decline. In 2013 for example, of the 3,348 signals and 2,951 checks carried out (i.e. even more than in 2012), only one forfeiture case was launched. This paradox is explained by the fact that the sum of BGN 250,000 as a discrepancy mark between declared and real assets of a person proved to be way too high to be used as an efficient tool.²⁸ This negative result indicates the likely outcome of the Commission activities in 2014: substantial amounts of investigative work with minimum effect, i.e. small number of injunctions in court and forfeiture cases completed.

National Revenue Agency. In 2012, the NRA published a detailed annual report (the latest publicly available one), which contains data on control and enforcement activity. The NRA has tried to come up with more complex efficiency and risk management indicators. According to NRA's annual report, the NRA has made 220,578 control checks in 2012, compared to 227,230 checks made in 2011, a decrease of around 3%. A particularly high growth has been witnessed (243.8%) in social security enforcement related checks, as this had been one of the priorities of NRA in 2012. The increase in hidden social security contributions in 2013 shown by the hidden economy monitoring indexes demonstrates that enforcement measures have not produced sustainable results. No evaluation of the burden of NRA inspections on businesses or of the efficiency of control measures has been made.

²⁷ Ibid.

²⁸ КОНПИ (2014) Доклад за дейността на КОНПИ за 2013 г. [Commission for Illegal Assets Forfeiture Annual Activity Report 2013], available at: <http://www.ciaf.government.bg/web/attachments/Page/56/385/52a5e2b923559.pdf>

Chief Labour Inspectorate. CLI's annual report is less detailed and less customer-friendly than NRA's. In 2013, CLI has made 55,952 checks on enterprises, or 479 more than the checks made in 2012. A total of 246,787 violations have been found of which 58.3% have been labour law violations and 41.3% – health and safety violations. Among the labour law violations, 17.4% are related to payment schemes (25,101 compared to 33,367 in 2012). The report does not provide assessment of the burden on businesses from the performed inspections or of the corruption risk, nor any explanation on the continuing large number of violations despite the introduced penalties.²⁹

National Customs Agency. The Agency's latest report (for 2013) contains no information about total budget or staff; it only states that a total of 85 new customs employees have been hired over the course of the year. Over that same period, a total of 5,698 proceedings have been started, and during that period 7,351 sanctions have been imposed for violations of the customs regime. Customs have consistently ranked among the most corruption prone institutions in the country. Since the beginning of 2013, there have been several "changes of the guard" at the leadership level in the Agency, which led to deterioration in its performance in 2013 and 2014. In 2013, the Agency fulfilled 96.1% of the budget plan (compared to 100.2% for the previous year), despite reporting higher revenues in absolute figures.³⁰ At the beginning of March 2014, the Bulgarian parliament approved the text of the amended *Law on Customs*. The draft law features an article that compels the Customs Agency and the Ministry of Interior to exchange information through shared databases, which is a much anticipated and necessary step.

Bulgarian Food Safety Agency. The agency was created in 2011 and employs a staff of 2,663.³¹ Although it has considerable power to influence the foods market, it has not produced a publicly available report on its activities and their impact yet. The agency also has a separate centre for risk analysis, which has not provided public information on its work yet (the latest available information is from October 2012).

Executive Forest Agency. The Agency has become known for authorizing hundreds of land-swaps at below-market prices, which have allegedly cost the state more than a billion³² in forgone revenues in the years 2006 – 2008. The Agency has published its first Annual Report³³ publicly in 2013, but it represents a simple table of enumerated measures and

²⁹ Доклад за дейността на Изпълнителна агенция „Главна инспекция по труда“ през 2013 година [Report on the activities of Chief Labour Inspectorate in 2013], May, 2014, available at: http://www.gli.government.bg/upload/docs/2014-05/Doklad_2013_IA_GIT.pdf

³⁰ Агенция Митници. Годишен доклад на Агенция „Митници“ за 2013 г. In: Митническа хроника БРОЙ 6/2013 [Customs Agency Annual Report 2013], available at: <http://www.customs.bg/bg/mag/90>

³¹ Bulgarian Food Safety Agency website: <http://www.babh.government.bg/>

³² CSD, (2009), *Crime without Punishment: Countering Corruption and Organized Crime in Bulgaria*, Sofia, 2009.

³³ Изпълнителна агенция по горите. Отчет на Годишната програма на ИАГ с цели и дейности за 2013 г. [Report on the Annual programme of the EFA with goals and activities for 2013], available at: http://www.iag.bg/data/docs/otchet-godishna_programa2013.pdf

statements of self-assessment of their implementation, which does not allow independent performance evaluation.

National Construction Control Directorate. Traditionally one of the most heavy-handed control bodies in the country overseeing an area of doing business, in which the World Bank has consistently ranked Bulgaria worse than in any other area.³⁴ The number of complaints to the directorate and respectively of follow-up checks on law infringements has increased in the last two years to nearly 100,000. With its 419 employees³⁵ it seems that the directorate is understaffed, but at the same time its work has apparently not deterred infringements. In 2013, the directorate undertook 27,082 checks, which resulted in 631 proceedings and 279 administrative sanctions, amounting to a total of BGN 914,050 in fines.³⁶

Regional Health Inspectorates. There are 28 inspectorates, one in each of the district centres of Bulgaria, which supervise pharmacies, medical activities, occupational health, etc. There is no publicly available annual report on the work of the inspectorates and independent evaluation of their efficiency. Some Inspectorates have recently started publishing weekly reports on conducted checks. For example, the Sofia Inspectorate, which according to the Official State Gazette has a staff of 363 people, stated that over the course of one week they have conducted over 1,200 checks which led to 45 proceedings and 29 sanctions for violations of various health regulations.³⁷

Bulgarian Drug Agency. The agency can impact significantly a number of medical businesses, including control over clinical trials. It publishes a detailed annual report on its web site. The report does not contain clear indicators of efficiency, but provides a statistical and narrative account of activities. In 2013, the Agency undertook a total of 1,654 checks, including market inspections (827 checks) and warehouses for wholesale (71) and retail (756) of medicinal products, which resulted in the issuing of 359 bills. Of the latter, 265 ended with fines or property sanctions amounting to a total of BGN 725,250.³⁸

Regional Inspectorates on the Environment and Waters. The drive for a greener economy in Europe increases the importance of such public bodies, including their impact on the cost of doing business. Inspectorates provide detailed monthly account of their activities online,³⁹

³⁴ The World Bank, (2012), *Doing Business 2013 Smarter Regulations for Small and Medium-Size Enterprises*, Washington, D.C., 2012.

³⁵ Public Administration Registry data, available on: <http://ar2.government.bg>

³⁶ Доклад за дейността на Дирекция за национален строителен контрол за 2013 г. [Report on the activities of the National Construction Control Directorate for 2013], 2014, available at: <http://www.dnsk.mrrb.government.bg/UI/Home.aspx?0ZKDwUgLUJoIGMALia%2bNv8hQnouB3tnen4mEaq%2fCBTRVE01UsvUJWEDeScAesAH%2b>

³⁷ Weekly information on population health and healthcare control in Sofia, Sofia Regional Health Inspectorate. Available in Bulgarian at: <http://srzi.bg/Pages/reports/49/>

³⁸ Годишен доклад за дейността на Изпълнителна агенция по лекарствата за 2013 година [Annual report on the activities of the Bulgarian Drug Agency for 2013], available at: http://www.bda.bg/images/stories/documents/annual_reports/doclad_2013.pdf

³⁹ The monthly reports are available in Bulgarian on the website of the Ministry of Environment and Waters: <http://www.moew.government.bg/?show=165>

which reveals a pattern similar to the other control agencies: very high inspection activity which leads to many, but fairly small penalties for companies and no apparent change in their behaviour.

The overview of these selected regulatory agencies has demonstrated that almost none of them have built up modern public accountability mechanisms. Some of them even do not publish an annual activity report. Most agencies do not provide a comprehensive analysis of efficiency and impact. In this respect, the example of NRA, which has started reporting on some impact indicators, should be lauded. Based on type of activities reported, the work of regulatory agencies greatly varies, but certain elements need to be present in order for transparency and quality control to be ensured, and for corruption risks to be reduced:

- details about staff, budget, type of governance;
- watchdog function details, including clear specification of public functions and institutions regulated;
- report on the service of information centre, including fraud signals by citizens;
- actions taken as a result of citizens' signals and complaints related to informal/illegal activities;
- report on auditing revisions and results of specific regulatory actions;
- actions taken, including results from court proceedings on decisions taken by the agency;
- assessments of effectiveness and impact based on concretely specified goals and objectives.

Risk Assessment and Processing of Complaints

Corruption risk assessment is implemented across the executive.⁴⁰ The majority of ministries have developed internal methodologies for assessing corruption risks. The assessment should be performed on an annual basis and be accompanied by reports, containing objective analysis of the performance of each indicator of corruption risk, as well as assessment of the overall level of risk of corruption. However, these are too general and are applied to all public administration bodies, regardless of their specific tasks. The risk assessments are based on self-evaluation by the personnel of respective ministries/bodies. Publicly available information about the effectiveness of the actual implementation of the risk assessment methodology is limited, with the one exception – the Ministry of Economy and Energy. It remains unclear to what extent ministries implement the risk assessment methodologies and, more importantly, with what level of detail and expertise. This has been noted in the first *EU Anti-Corruption Report*, published in 2014.⁴¹

⁴⁰ Министерски съвет. Методология за анализ и оценка на ефективността на дейността на администрацията [Methodology for analysis and assessment of the effectiveness of the work of the state administration], Adopted by Council of Ministers' Ordinance № P-180 of 29 September 2010, available at: <http://anticorruption.government.bg/downloads/Normativni-aktove/zapoved-p180.doc>

⁴¹ European Commission. (3 February 2014). EU Anti-Corruption Report, Annex Bulgaria. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_bulgaria_chapter_en.pdf

Nevertheless, there is an apparent increase in transparency and availability of other anti-corruption related documentation, not only on central, but also on regional and local level. A majority of the central and regional administrations have developed internal rules of conduct. In 2013, 510 administrations (87% of all structures) introduced or continued using a register of personnel declarations under the *Conflict of Interest Prevention and Ascertainment Act*.⁴² Corruption signals can be sent to virtually any administrative structure. The most preferred communication channels include e-mail, telephone, “corruption box”, webpages, etc. The majority of central and regional administrations also publish audit reports on the undertaken activities with regard to registered complaints.

A number of standard anti-corruption measures were implemented at municipal level, such as a “one-stop-shops” system to reduce the number of officials in direct contact with the public, enhancing transparency through municipal newsletters and websites, Codes of Ethics, and establishing systems for internal financial management and control. The impact of such measures is difficult to assess due to the large number and variety of local administration units.

Receiving complaints/signals in the public administration. The data from the 2013 report on the state of the public administration shows that the total number of received signals amounts to 98,081, marking a significant increase from the previous year (10,932 in 2012). This is almost entirely attributed to the total of 84,098 signals accounted for by Sofia municipality. A notable change, compared to the previous year 2012, is the number of signals with regard to illegal or wrongful acts or omissions – 3,583 in 2013, compared to 2,118 in 2012. Interestingly, there is a decrease in the corruption-related signals both for reporting civil servants` corruption (from 612 signals in 2012 to 445 in 2013) and executive bodies` corruption (from 11 to 5 respectively). More remarkable, however, is the reported continuing drastic increase in the public administration capacity to conduct inspections on received signals. According to previous reports on the state of the public administration, for a period of only two years, authorities managed to increase their workload more than three times, conducting 19,864 checks (from a total of 20,716 signals) in 2011 compared to 6,132 (from 9,325 signals) in 2009. The data for 2013 is even more dazzling, as administrations report the undertaking of 96,586 checks (98.48% of the total 98,081 received signals). While there has been a visible increase in civil society activity in 2013, the reported numbers most probably represent some sort of skilful presentation of data on checks by the public administration in order to show higher levels of impact.

The review of specialized anti-corruption bodies shows that they fail to drive the fight against corruption in a coordinated, cooperative manner. Despite the efforts to increase coordination capacity by establishing a Council for Coordination the Activities in the Fight against Corruption in

⁴² Министерски съвет. (2014) Доклад за състоянието на администрацията 2013. [Report on the State of the Bulgarian Public Administration in 2013], http://www.government.bg/fce/001/0211/files/DSA_2013.pdf

the Republic of Bulgaria⁴³ and by attempting to establish wide cooperation with BORKOR, there is little evidence to support the presence of concrete results. The European Commission has repeatedly stated, including in its latest report⁴⁴ under the Cooperation and Verification Mechanism (CVM) and the first edition of the *EU Anti-Corruption Report*,⁴⁵ that there is an apparent need for the establishment of “an independent institution to focus efforts, make proposals and drive action against corruption”.

Bulgaria continues to lack institutional independence in the area of anti-corruption, which limits the administration’s pro-activeness and delivery of independent monitoring. Political changes in Bulgaria generally lead to widespread changes at the administrative level and tend to negatively impact the fight against corruption.⁴⁶ Reactiveness and the presence of predominantly formal compliance continue to set the tone.⁴⁷ Despite the increased transparency due to the many good practices introduced within the general administration, their impact with regard to anti-corruption is limited.

Legislation Intended to Prevent and Counter Corruption

Effective implementation of anti-corruption policies requires appropriate legislation and regulations. Especially important in this respect are conflict of interest, lobbyism, whistle blower protection, company and NGO registration legislation, etc.

Conflict of Interest and Related Areas of Lobbyism and Whistle-Blower Protection

Since Bulgaria’s EU accession, the European Commission through the CVM has been monitoring and has reported regularly on efforts to prevent and fight corruption and organized crime, and on reform of the judiciary including conflict of interests and related issues. Conflict of interests and asset disclosure were in the focus also of the first EU Anti-Corruption Report (2014). The main legal provisions in this respect are contained in the *Law on the Prevention and Ascertainment of Conflict of Interest*. There are a number of specific laws and regulations

⁴³ The Council for Coordination the Activities in the Fight Against Corruption in the Republic of Bulgaria includes the Heads of the Committee on Professional Ethics and Prevention of Corruption at the SJC, the Parliamentary Commission on Fighting Corruption and Conflicts of Interest and Commission for the Prevention and Combating of Corruption

⁴⁴ European Commission. (22 January 2014). Commission Staff Working Document Bulgaria: Technical Report. Accompanying the European Commission’s Report on Progress in Bulgaria under the Cooperation and Verification mechanism. {COM(2014) 36 final}. Available at: http://ec.europa.eu/cvm/docs/swd_2014_36_en.pdf

⁴⁵ European Commission. (3 February 2014). EU Anti-Corruption Report, Annex Bulgaria. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_bulgaria_chapter_en.pdf

⁴⁶ European Commission. (22 January 2014). Commission Staff Working Document Bulgaria: Technical Report. Accompanying the European Commission’s Report on Progress in Bulgaria under the Cooperation and Verification mechanism. {COM(2014) 36 final}. Available at: http://ec.europa.eu/cvm/docs/swd_2014_36_en.pdf

⁴⁷ European Commission. (18 July 2012). Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism {SWD(2012) 232 final}. Available at: http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf

on certain groups – *Law on Civil Service*,⁴⁸ *Labour Code*, *Law on Public Procurement*, *Law on Local Self-Government and Local Administration*, as well as various internal ethical regulations on conflict of interests and assets disclosure.

It is important to note that, unlike many other professions and other branches of state power, **there are no ethical norms binding Members of the National Assembly** and no effective oversight mechanism over their integrity. There are no specific rules on conflict of interests applicable to public procurement officials, but they are explicitly asked to disclose potential conflicts of interests in each public procurement case.⁴⁹ The National Audit Office keeps a public register of the domestic and foreign incomes and assets. However, the asset declaration and verification system has not effectively tackled illicit enrichment.

Most of the cases decided by the Commission on Conflict of Interests (CCI) with a sanction have involved mainly low-profile public officials and have had to do with conflicts of interests at local and regional level (e.g. mayors). The number of investigations regarding top-ranking politicians and/or administrators is very limited, and such cases are moving particularly slow into their final decisions, with too little publicly available information. The former Chair of the Commission on Conflict of Interests Philippe Zlatanov, was charged with criminal breach and violation of his duties in the period December 2012 – July 2013. He was found guilty and sentenced by Sofia City Court (SCC) at first instance to 3 ½ years of imprisonment.

Given the shortcomings found in the work of the Commission, two draft laws were introduced by the end of 2013 in the National Assembly amending the *Law on the Prevention and Ascertainment of Conflict of Interest*. The proposed changes, which can be defined as positive, refer to: widening the circle of persons holding public office for whom the rules of the Law are applicable; introducing a procedure for removing a person holding public office in the presence of private interest; the opportunity for the person holding public office on suspicion of conflict of interests to approach directly the Commission, which is required to adopt an opinion within 14 days; expanding the Commission's rights to obtain information from third institutions including disclosure of bank secrecy; etc. However, they

⁴⁸ According to the *Law on Civil Service*, all public servants, upon starting employment, are required to declare their property possessions to the appointing authority. By April 30th of each year public servants are also required to declare property possessions, as well as any external payments, received from activities outside their official employment (reasons for such activities and the employer/sponsor, who has paid them) during the previous year. This Law lists the incompatibilities, but all relevant norms related to conflicts of interests are found in the *Law on the Prevention and Ascertainment of Conflict of Interest*. Statistics are not available.

⁴⁹ According to the *Law on Public Procurement*, public procurement officials should declare that they have no private interest as defined in the *Law on Prevention and Ascertainment of Conflict of Interests* as regards the respective public procurement they work upon. Also, officials may not be “related persons”, as defined in the Law on Prevention and Ascertainment of Conflict of Interests, with a candidate or a participant in the procedure or with subcontractors appointed by him/her, or with members of their management or control bodies.

do not provide sufficiently for ensuring effective and independent performance of the Commission's duties, neither do they contribute enough to preventing further violations of the CCP duties, such as registered in the case of its former chairman. The most inexplicable component of the amendments is the proposed sharp reduction of the penalties provided for violations of the law.

There is no specific legislation on **lobbying** in Bulgaria and a specific obligation for registration of lobbyists or reporting of contacts between public officials and lobbyists. Every new government in office has put forward proposals, but such a law has not been adopted yet. The term "lobbyism" has already acquired negative connotation, as it is often associated with corrupt practices, public scandals of alleged immoral and/or undue influence of private interests on public policies and legislation, as well as with expedited preparation and adoption of laws, behind which lobbyist interests are seen. The lack of legislation on lobbying in Bulgaria has made it even more difficult to differentiate between positive and negative lobbying, which has contributed to the largely negative public attitude towards lobbyism.

Effective administrative arrangements for **whistle-blowing** are not yet in place. The *Administrative Procedure Code* and the *Law on Prevention and Ascertainment of Conflict of Interests* contain provisions on the protection of whistle-blowers' identities, while the *Criminal Procedure Code* requires citizens, and specifically public servants, to report crime. However, no adequate steps have been taken to strengthen the protection of whistle-blowers.

Company and NGO Registration

With the entry into force of the *Law on the Commercial Register* of January 1, 2008 a Central Electronic Commercial Register began operating, in which all traders are registered, including cooperatives and branches of foreign traders. The operation of the Commercial Register, despite periodic attempts of various lobbies to limit its publicity, showed the advantages of this system of company registration – accelerated registration procedures and other entries of different circumstances; access to information and security of the information received; freeing the courts from excessive workload; and reducing corruption in the judiciary.

Non-profit organizations, however, continue to be registered by district courts at the location of their headquarters. Registers are kept on paper, and the whole procedure remains non-transparent because there is no centralized database with information on all such organizations. The judicial nature of the registration and entry of changes makes the process time-consuming, expensive and unpredictable. There are contradictions in the practice of the various district courts. Many other legal persons, governed by private law, who are not established for non-profit purposes, are registered, depending on their nature, in different registers kept by various institutions according to various regulations.

The implementation of further reforms in the registration of non-profit and other organizations that will increase their transparency (including through publishing their financial reports) and narrow the possible areas for corruption and solve many of the problems of the existing decentralized, non-electronic records, is imperative.

Addressing Legislative Anti-Corruption Gaps

- Improvement of the legal framework on prevention and ascertainment of conflicts of interest, as well as of mechanism for publicity of the property of persons occupying high government positions;
- Adoption of legal provisions for transition from court to administrative registration and establishment of a Central Electronic Register of the NGOs and other legal persons governed by private law kept by the Registry Agency with the Ministry of Justice;
- Revisions in the legal framework for the financing of political parties;
- Legal regulation of lobbying;
- Legal provisions to strengthen the protection of whistleblowers.

