

CORRUPTION AND ANTI-CORRUPTION IN BULGARIA (2013 – 2014)

Policy Brief No. 46, November 2014

Levels of corruption and impact on societal sectors

Two problems exist when attempting to assess the spread of corruption. First, the problem of definition, registration and prosecution of the cases of corruption. Second, measuring the actual incidence of corruption transactions (registered or not) for a certain period of time. As shown below, these two aspects of accounting for levels of corruption provide results which differ in magnitude. Cases of corruption which enter the realm of law enforcement are a tiny fraction of corruption transactions occurring on a daily basis. The main reason for this is the high latency rate of corruption victimization (victims have no interest in reporting the offence). This sets limits to the extent in which the efforts of the judiciary could be effective in countering corruption.

In addition to CMS diagnostics, information about the prevalence of corruption is available in institutional statistics (police, judiciary). The problem in this respect is latency (prevalence of crime cases that are not reported to authorities) and/or the inability of law enforcement to process corruption cases. Regarding corruption, crime statistics proves difficult, as different institutions dealing with such cases work with differing classifications. Except for the Prosecutor's Office, none of the other judicial or law enforcement authorities is collecting data specifically on corruption.¹ Based

¹ The institution has its own definition of corruption, according to which corruption behaviour has three basic elements: (1) abuse of power or violation of official duties

KEY POINTS

In 2014, the Corruption Monitoring System has recorded the **highest levels of involvement** of the Bulgarian population in corruption transactions **in the last 15 years**. In the past year Bulgarians have conceded to being involved on average in roughly 158 thousand corruption transactions monthly.

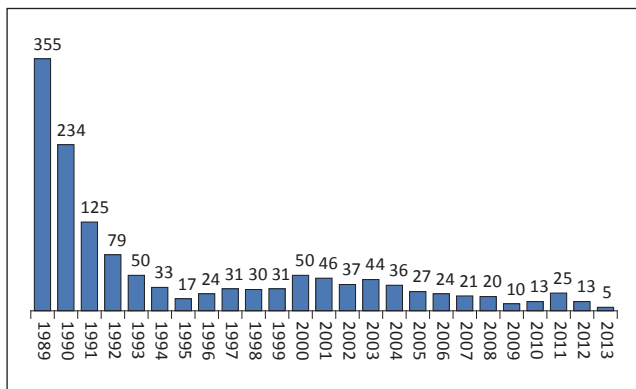
- **Most corruption transactions have been initiated by the administration** through exerting corruption pressure on those seeking public services. The public's susceptibility to corruption in 2014 is similar to 1999 despite the increase of intolerance to corrupt behaviour. In the business sector corruption's effectiveness for solving problems has grown in 2014. Most companies do not trust public organisations and do not consider they are treated equally in courts.
- The very high levels of corruption involvement of the Bulgarian population make **criminal law enforcement initiatives ineffective and inadequate**. First, because the scale of the problem is much larger than the capacity of criminal law enforcement. Second, because law enforcement is often captured by private business and political interests, thus incapacitating and delegitimising its actions.
- In 2014, the Bulgarian public saw the **formidable scale of political corruption**, too. The rise and fall of the Corporate Commercial Bank has demonstrated indisputably that **state capture** has firmly gripped even the most powerful law enforcement public institutions such as the public prosecution, the financial intelligence, as well as the central bank. The South Stream saga at the same time has revealed the depth of corruption corrosion of public institutions, as third country interests have been able to dictate terms on the Bulgarian parliament and the Bulgarian government at the expense of Bulgaria's financial and European interests.
- The **twin peaks of administrative and political corruption** in 2014 have risen at the backdrop of the continuing failure of the Supreme Judicial Council to rise to the challenge and ensure that public prosecution and courts adequately tackle corruption and state capture. Still unresolved is the issue of neutralizing political and other influence in the work, recruitment, and appointment of judiciary officials.

on the available data, the most reliable indicator for the enforcement of anti-corruption legislation is the number of persons sentenced for the most typical corruption crimes such as bribery and abuse of office.

CMS estimates of the prevalence of corruption (Figure 3) sharply contrast to publicly available official data on cases/persons investigated, accused and sentenced on charges of corruption. The values of the principle corruption experience indicators – **involvement in corruption** and **corruption pressure** – point to a serious problem, as there is a difference in magnitude in crime statistics and CMS diagnostics data: while crime statistics show that law enforcement is able to process (investigation, pre-trial, trial, etc.) several hundreds of cases per year, **actual prevalence of corruption transactions over the years ranges from about 9% to 29% of the adult population of the country² (i.e. hundreds of thousands of cases)**. These findings point to two important aspects of measuring prevalence of corruption behaviour:

- Based on the number of cases, involvement in corruption transactions is a mass phenomenon. Prevalence of corruption is comparable to overall crime victimization in the country registered by crime statistics and victimization surveys.

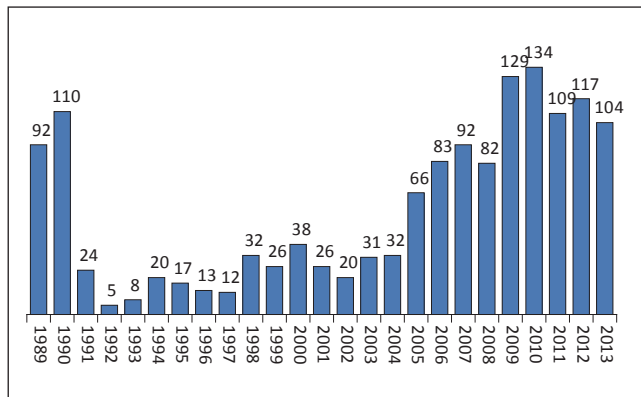
Figure 1. Number of People Sentenced for Abuse of Office (1989 – 2013)



Source: National Statistical Institute of Bulgaria.

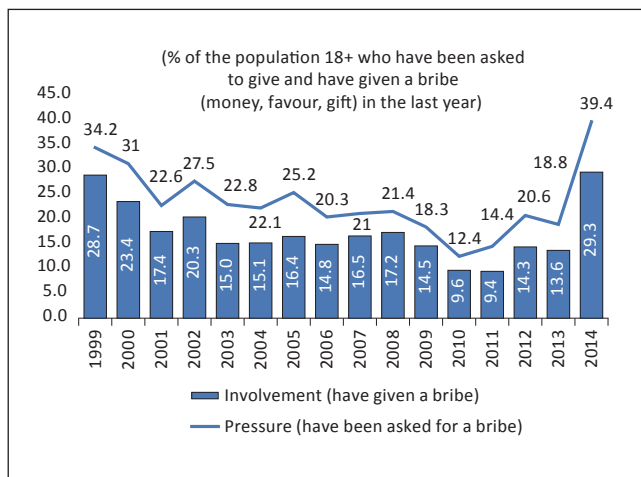
- It is obvious that, given the scale of corruption prevalence, it is not possible to effectively counter corruption only/predominantly through criminal law enforcement measures.

Figure 2. Number of People Sentenced for Bribery (1989 – 2013)



Source: National Statistical Institute of Bulgaria.

Figure 3. Corruption Pressure and Involvement in Corruption



Source: CSD/SELDI Corruption Monitoring System.

In 2014, the observed levels of corruption are the highest in the last 15 years. CMS data (collected since 1999)³ shows that more than one in every four Bulgarian citizens admit to have given a bribe at least once in the last year (Figure 4). Progress over the years has been

for personal gain at the expense of the public interest; (2) making the performance of official duties conditional on obtaining a personal gain; and (3) unlawful redistribution of resources for personal gain and to the detriment of the public interest.

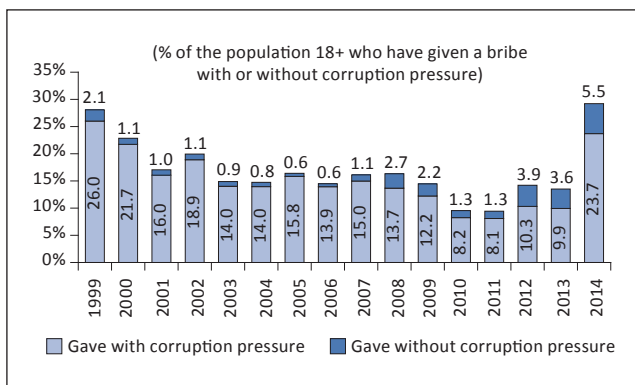
² Based on the population of the country 18+, 1% of the sample would represent about 65,000 persons.

³ See: Center for the Study of Democracy (1998) Clean Future. Sofia: CSD.

moderate and has changed dynamically based on the political cycle: prevalence drops in the first 1-2 years of every new government and then bounces back to higher levels. Reduction of prevalence levels in the first years of governments is mainly the result of initial anti-corruption efforts combined with administrative restraint; at a later stage, these factors are replaced by established corruption channels, clientelism and favouritism. The main reason for such developments is that the governance model in the country has not been and is not being effectively redesigned to counter corruption among public officials at all levels. The sharp deterioration of the corruption environment observed in 2013 – 2014 is just another indication of the validity of such a conclusion; observed corruption levels in the country are much higher than the EU average levels registered by Eurobarometer surveys.⁴

Analysis of micro-level corruption experience indicators shows that factors which precondition citizens' involvement in corruption transactions are contained in the immediate interaction between officials and clients of public organizations.⁵ Practically, this means that most corruption transactions occur after officials attempt to solicit an informal payment or benefit. When citizens are asked by public office

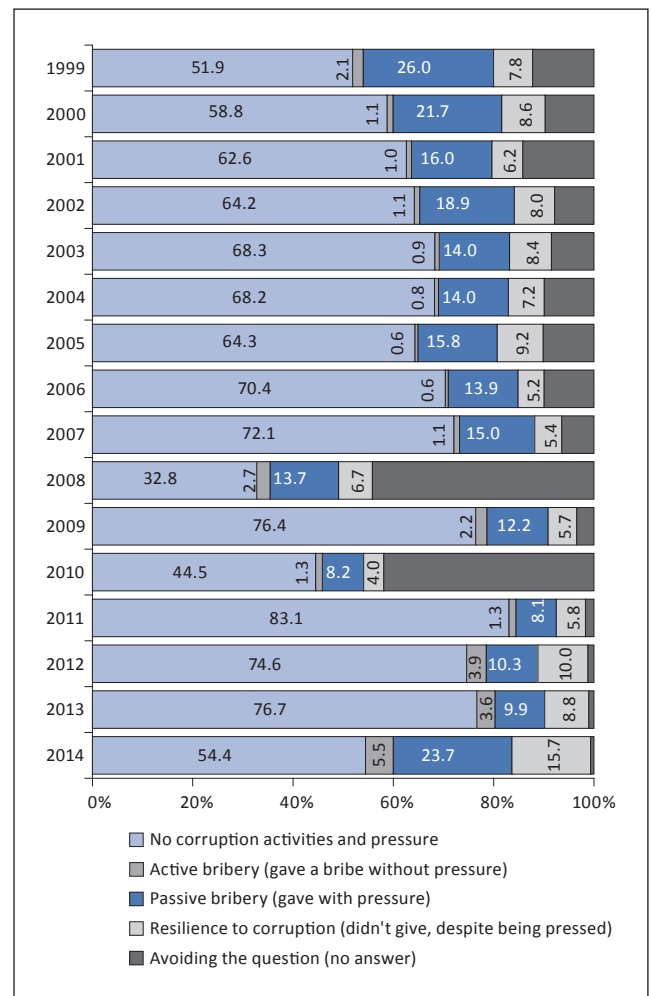
Figure 4. Involvement in Corruption with or without Corruption Pressure



Source: CSD/SELDI Corruption Monitoring System.

holders to give a bribe, provide a service or a gift, on average between 50% and 70% of them comply and enter into a corruption transaction (Figure 4, Figure 5). A specific development was observed in the period 2008 – 2014. On the one hand, fewer citizens have yielded to corruption pressure, with the share of those giving a bribe after they have been asked to going down from 70% to below 50%. On the other hand, the share of people who enter into corruption transactions without corruption pressure has been

Figure 5. Corruption Activities and Pressure – Citizens' Involvement in Corruption Transactions



Source: CSD/SELDI Corruption Monitoring System.

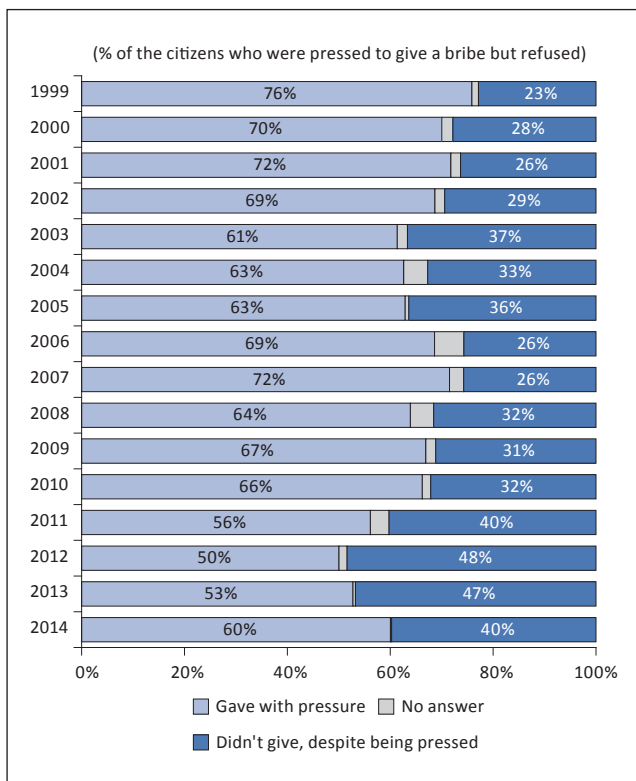
⁴ See: TNS Opinion&Social. Corruption. Special Eurobarometer 374. Brussels: Directorate-General Home Affairs, European Commission, 2012. TNS Opinion&Social. Corruption. Special Eurobarometer 397. Brussels: Directorate-General for Home Affairs, European Commission, 2014.

⁵ The two monitored indicators in this respect – corruption pressure (incidence of officials asking or hinting they expect “something”) and involvement in corruption (incidence of citizens giving money, gifts or favours in exchange for public services – legitimate or illegitimate) – show high level of statistical association: Kendal $t > 0.5$, which is statistically significant ($p < 0.01$).

rising. Bribes are offered to public sector officials even when they are not explicitly demanded. In 2014, only 53% of those who resorted to bribes have been pressured by the recipients of bribes to do so, while in 2007 the respective share was over 90%. Thus, proactive corruption behaviour on the part of citizens has increased based on the belief that a bribe is expected, even when it is not explicitly demanded.

Over the period 1999 – 2014, **resilience to corruption pressure has marginally increased** (Figure 6). This has been both a result of civil society action against corruption and the introduction of more controls and transparency in the administration. Progress, however, has been both uneven and insufficient.

Figure 6. Resilience to Corruption Pressure

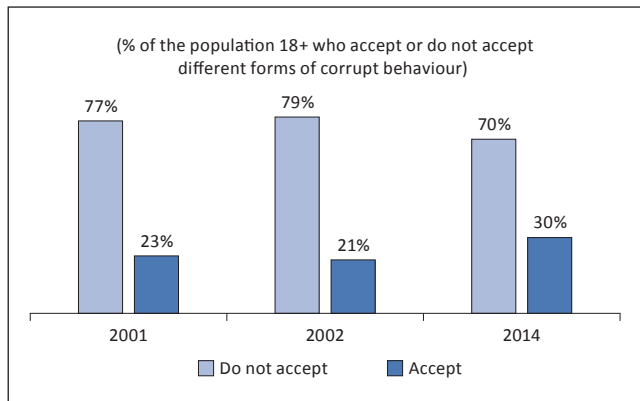


Source: CSD/SELDI Corruption Monitoring System.

The evolution of the Bulgarian corruption situation in the last 15 years includes a combination of relatively high levels of intolerance and rejection of corruption behaviour on the one hand, combined with high levels of involvement in corruption transactions on the other hand. Several details in this respect are worth mentioning:

- **Most Bulgarians are intolerant of corruption behaviour** (Figure 7). This attitude changes marginally after 2001, but in the negative direction. The share of those who are intolerant of corruption behaviour decreases, while the number of people tolerant of different forms of corruption behaviour increases.

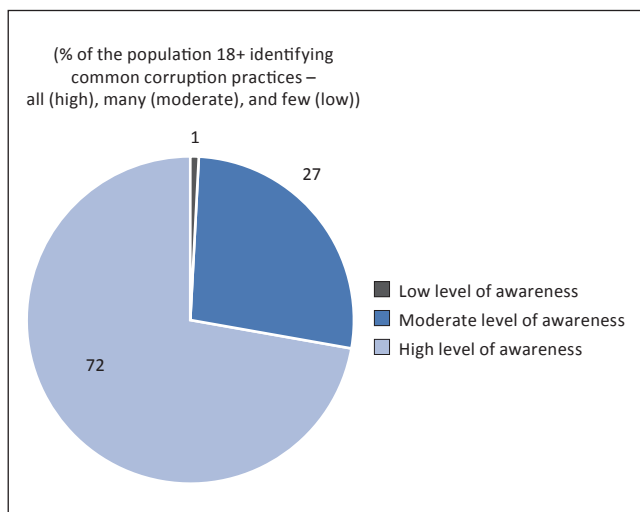
Figure 7. Acceptability of Corruption



Source: CSD/SELDI Corruption Monitoring System.

- Despite legal difficulties in defining the exact content of corruption transactions (necessary to start prosecution of offenders), the majority of the population at large does not have substantial difficulties in identifying common, widely known corruption patterns as corruption behaviour (Figure 8). The **high level of awareness** among

Figure 8. Awareness (Identification) of Common Corruption Practices (2014)

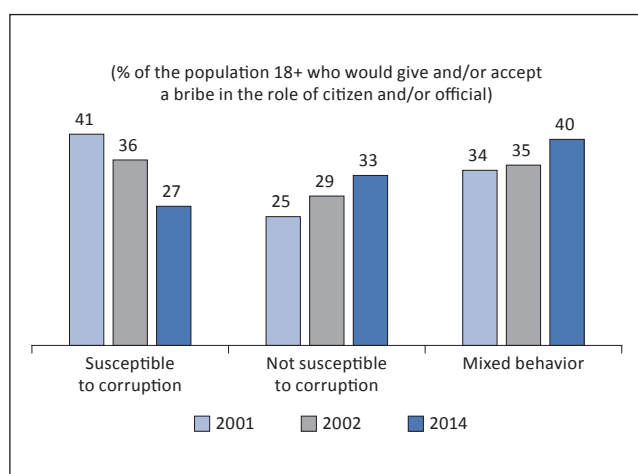


Source: CSD/SELDI Corruption Monitoring System.

the majority (72%) of the population shows that no specific socio-demographic group could be identified as less aware and hence more susceptible to corruption because of ignorance.

- Despite intolerance and high awareness of corruption behaviour, a **substantial number of Bulgarians (18+) would readily engage in giving/accepting bribes** (Figure 10). “Full” susceptibility to corruption (both give and accept bribes) decreases marginally over the years. However, “mixed behaviour” attitudes (either give but not accept, or vice versa) have increased. In 2014, people who are more or less susceptible represent close to 70% of the adult population of the country. From 2001 to 2014, the share of people adhering to high moral standards (would never engage in corrupt behaviour) increases marginally from 25% to 33% of the adult population. Obviously, it is not awareness and attitudes towards corruption that predetermine the concrete decisions people make in situations of interaction with public officials. Rather, it is people’s perceptions of the environment and their rational judgement on how to cope with existing realities. This is probably one of the reasons why tolerance of corrupt behaviour tends to marginally increase over the years.

Figure 9. Susceptibility to Corruption



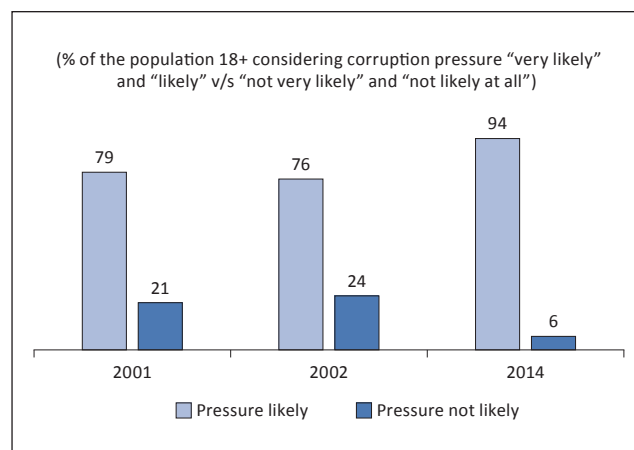
Source: CSD/SELDI Corruption Monitoring System.

Assessments of the Corruption Environment

Judgements of the level of corruptness of the Bulgarian society consolidate in the period 2001 – 2014. Corruption has become part of the price for public services. In 2014, practically **all Bulgarians (94%) consider corruption pressure on behalf of authorities as likely** (Figure 10). This is a prerequisite for the reinforcement of corruption behaviour patterns and explains why they are resilient to countering measures.

Statistical analysis of the interrelation (correlation) between the indicators measuring perceptions and attitudes towards corruption has not been able to identify any meaningful dependence: people who are well aware and intolerant of corruption are not substantially different in their susceptibility to corruption from people who are less aware and tolerant of corruption. In addition, the sets of perceptions and attitudes change only marginally for the period 2001 – 2014.

Figure 10. Perceptions of the Likelihood of Corruption Pressure (%)

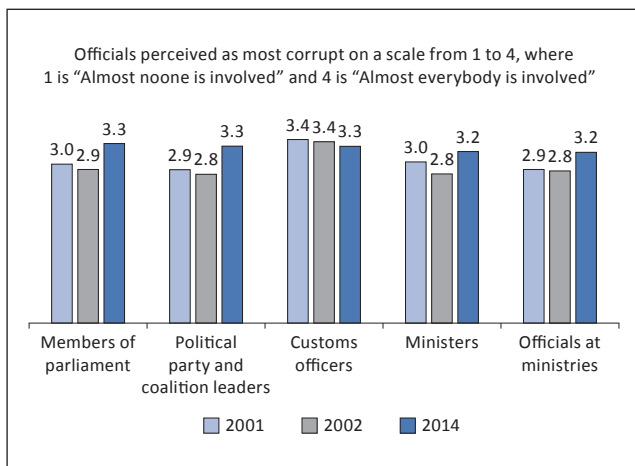


Source: CSD/SELDI Corruption Monitoring System.

While there might be some differences in ranking, the corruption reputation of groups of public officials has not changed substantially in the period 2001 – 2014. The top ranking groups in 2014 are members of the legislature, the political class, and members of the executive with substantial discretionary powers (Figure 11). What should be noted is that

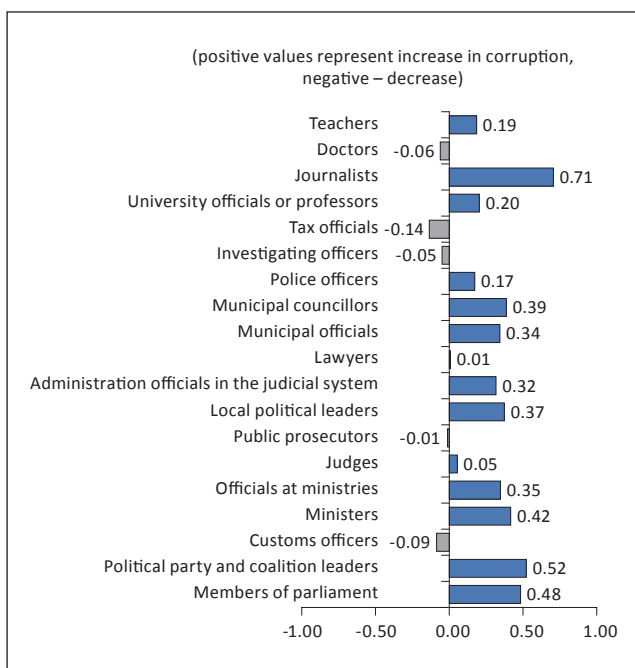
the corruption reputation for the top ranking groups of officials has actually deteriorated. Only customs officers mark a marginal improvement (within the margin of stochastic error). It is also important to note that most of the top ranking groups mark the largest negative change in the period 2002 – 2014 (Figure 12).

Figure 11. Perceptions of Corruptness of Public Officials – Most Corrupt



Source: CSD/SELDI Corruption Monitoring System.

Figure 12. Perceptions of Corruptness of Public Officials – Change in Perceptions between 2002 and 2014

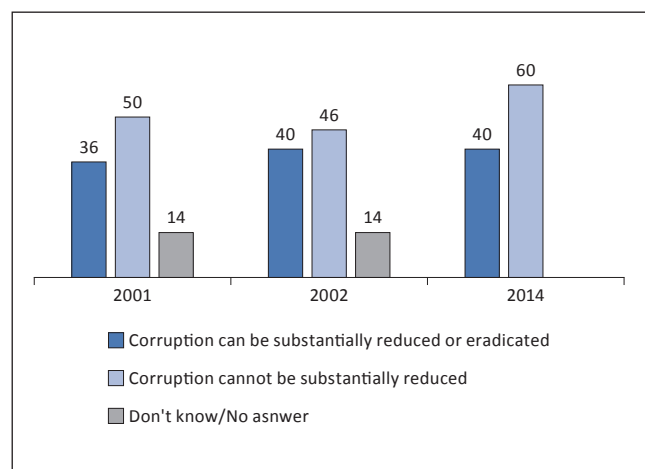


Source: CSD/SELDI Corruption Monitoring System.

Perceptions of corruptness of officials and the overall corruption environment in the country explain some of the aspects of the problem of **anti-corruption ineffectiveness**: the institutions that should lead counteraction efforts are among those with the worst corruption reputation. In this respect, they face two contradicting challenges: to counter corruption through criminal law enforcement (identify and prosecute) and policy measures, and at the same time to resist to corruption behaviour in their own ranks. CMS diagnostics points to the conclusion that citizens consider these same institutions so corrupt that they do not expect them to be able to perform their anti-corruption functions properly.

It is against this background that public pessimism about the feasibility of countering corruption has increased and is dominant (Figure 13).

Figure 13. Perceptions of Feasibility of Policy Responses to Corruption (%)



Source: CSD/SELDI Corruption Monitoring System.

Anti-corruption policy instruments in Bulgaria (2009 – 2014)

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.⁶ 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*⁷ 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.⁸

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.

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.

⁶ Parliamentary Commission on Fighting Corruption and Conflicts of Interest, <http://www.parliament.bg/bg/parliamentary-committees/members/2083/sittings>

⁷ 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.

⁸ 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 ethnical 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.

The Commission for the Prevention and Combating of Corruption with the Council of Ministers (CPCC) was created in 2006.⁹ The organisation of CPCC's work and the administrative and technical services are carried out by the General Inspectorate of the Council of Ministers.¹⁰

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 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 2013.¹¹

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),¹² the BORKOR project has also been criticised for unjustified spending of public money.

⁹ 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

¹⁰ CPCC website: <http://anticorruption.government.bg/>

¹¹ 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>

¹² 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>

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.¹³ 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.¹⁴

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.¹⁵

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.¹⁶ 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

¹³ 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

¹⁴ CPCC website: <http://anticorruption.government.bg/>

¹⁵ Ibid.

¹⁶ 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>

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.

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.¹⁷

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.¹⁸ 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 2,663.¹⁹ 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 billion²⁰ in forgone revenues in the years 2006 – 2008. The Agency has published its first Annual Report²¹ publicly in 2013, but it represents a simple table of enumerated measures and 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.²² 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 employees²³ it seems that the directorate

¹⁷ 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

¹⁸ 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>

¹⁹ Bulgarian Food Safety Agency website: <http://www.babh.government.bg/>

²⁰ CSD, (2009), *Crime without Punishment: Countering Corruption and Organized Crime in Bulgaria*, Sofia, 2009.

²¹ 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

²² The World Bank, (2012), *Doing Business 2013 Smarter Regulations for Small and Medium-Size Enterprises*, Washington, D.C., 2012.

²³ Public Administration Registry data, available on: <http://ar2.government.bg>

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.²⁴

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.²⁵

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 725,250.²⁶

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,²⁷ 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.

²⁴ 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>

²⁵ Weekly information on population health and healthcare control in Sofia, Sofia Regional Health Inspectorate. Available in Bulgarian at: <http://srzi.bg/Pages/reports/49/>

²⁶ 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

²⁷ The monthly reports are available in Bulgarian on the website of the Ministry of Environment and Waters: <http://www.moew.government.bg/?show=165>

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, lobbying, 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 on certain groups – *Law on Civil Service*,²⁸ *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.²⁹ 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;

²⁸ 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.

²⁹ 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.

Box 1. 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 whistle-blowers.

etc. However, they 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.

Anti-corruption policy enforcement

Law Enforcement and the Security Sector

In mid-2013, the General Directorate for Combating Organized Crime (GDCOC) was moved into the State Agency for National Security (SANS). The step involved a transfer of functions and personnel from the Ministry of Interior to SANS. Another important consequence was restoring SANS' powers to conduct investigations. A third "innovation" was the provision that both the appointment and the discharge of SANS' director should be made by the National Parliament after a motion by the Prime Minister. The introduction of these changes was marred by the widely publicized scandal around the rushed appointment and subsequent withdrawal of a controversial Bulgarian MP and media mogul at this post. The introduced concentration of powers in SANS and the reduction in the requirements for the position of its director have confirmed initial fears that the changes have been carried out to appease specific political interests, and not to solve security sector challenges. Most likely, the future governments will undo these changes, further messing up attempts to reform the security sector and to enable bold anti-corruption actions.

The second significant change put into effect was the dissolution of the Ministry of Interior Specialized Directorate for Operative-Technical Operations (SDOTO) and the launch of a separate agency

subordinated to the Council of Ministers – State Agency for Technical Operations (SATO). The main explanation given for this step was the need to shield this unit from undue influence in order to increase its independence and integrity. The reason for such a change was the increasing use of Special Intelligence Means (SIMs) and the frequent use of this unit by competing political groups for obtaining competitive advantages for their business ventures and political interests. Despite the intention to concentrate the use of SIMs within one single structure (even with the risk of infringing the Constitution), in practice SANS still uses them unilaterally, which is fraught with risks of misuse. In addition, the newly created Bureau for Control over SIMs has not yet provided any public information about its functioning, which confirms concerns of continuing lack of transparency in the control of SIMs.

Electoral fraud as political corruption. The last three election campaigns for national and European parliament (2013 – 2014) have made the problem of “political investments” (buying votes and controlling voters) a matter of high political importance. This is a form of political corruption with growing importance: comparing election results in different years has shown that the relative weight of controlled and bought vote has increased from about 9 – 9.5% in 2009 to about 12 – 13% in 2014.

CSD analyses of the last 10 years have shown that local and national level oligarchs are increasingly involved in “political investment”, which they seek to recover after elections by acquiring access to public funds and/or assets. Increasingly, political investors directly ask political parties to compensate the funds spent through procurement contracts, agricultural subsidies, EU funds and others. The negative effects of this process are numerous: disappointment with institutions and political parties, distortion of political representation, lack of trust in central and local government, decreasing quality of public services, and publicly funded construction projects. Overall, controlled and bought votes lead to political demotivation and lower voter turnout, which in

turn increase the relative importance of political investment. The impact of political investment is probably most destructive for law enforcement institutions, e.g. the judiciary, Ministry of Interior, and SANS. The 2014 election experience has shown that officials from these institutions have suspended or restricted to a large degree all activities targeting vote buying and controlling voter behaviour.

The caretaker government (August – November 2014) made efforts to counter political investors and reverse the observed trends, announcing that its main goal would be to ensure fair elections and reduction of vote purchases. Regional Ministry of Interior (Mol) directorates were instructed to evaluate risks and present action plans aimed at countering political investors. The Inspectorate and the Internal Security Directorate of Mol received detailed instructions. Results reported by Mol were mixed: in some local directorates where actual work was done the bought and controlled vote was reduced by about 30 – 40%. However, some directorates remained passive, and in these areas of the country bought and controlled vote was visible and even reported in the media.

The social base of political investment is the growing number of marginalised groups/people especially among the Roma community. These groups form the “reservoir” of votes for sale. On the other hand, the increasing incidence of vote buying has made parties face the “prisoners’ dilemma” (if everybody suspects that others use fraud, every party has to buy votes or risk losing the competition). Supply and demand have in this way created a market in which Roma families offer the potential votes of the whole community (the reservoir) and all big parties compete to buy them. The market has three distinct levels of organization: 1) “privates”, or people who control/sell the votes of their immediate social circle (10 – 15 people); 2) “lieutenants”, or people who control 10 – 15 privates; 3) “brokers”, who control the access to political parties and lower levels of control over this market.

Box 2. Buying Electoral Support: Main Participants and Roles

Mayors who control substantial part of the local economy. Usually, these are regions with inferior economic and demographic performance where municipal administration and municipal companies provide the main (or only) employment opportunity. The municipal economy ensures the bulk of procurement contracts and/or subcontracts for public services, utilities, garbage collection, etc. The local administration is in practice the mayor's "private" administration and loss of elections usually leads to replacement of these officials by the new mayor.

Municipal councillors in smaller cities who have become the unavoidable middlemen. Some municipal councillors have migrated through several parties to remain in the municipal council. In order to boost their influence they make efforts to "keep" 200 – 300 supporters (up to 2,000 – 3,000 in bigger cities) from the Roma communities, poorer people, and party supporters. The votes of these people are used in local elections and are sold on national elections.

Local businesspersons (oligarchs) who are part of the municipal economy and part of the interest network together with local councillors and mayors. They usually offer the votes of their employees, but also provide funds for vote buying. Many of them personally communicate with the local Roma community leaders.

High-level officials in the administration (police, tax administration, inspectorates, etc.). These people are local level political appointees and dispose of additional resources to "convince" local businesses to contribute with the controlled employee vote. Often, local labour inspectorates intensity checks in the beginning of the election campaign.

Members of Parliament who often mediate in the negotiations between parties and middlemen. An MP running in elections becomes practically inaccessible to law enforcement. Due to their parliamentary immunity, investigation procedures against MPs are essentially blocked. People with criminal background are also often included in party lists in order to engage in the buying of votes. Operational investigations of MoI and investigations of journalists have shown that some bigger parties have even attributed some leaders of regional party lists with responsibilities both with regard to the party campaign and to the buying and control votes.

Criminal leaders and their networks who have been permanent participants in the process in the last 10 years. Criminals working both in Bulgaria and abroad in illegal lending, drugs and prostitution are actively involved. In addition to being middlemen, they also have enforcement functions with regard to informal contracts and payments related to buying and control of votes. Private security companies became a new actor in the last election: they had the function to enforce contracts, as this is part of the black market and force is often used to ensure compliance.

Judiciary and Anti-Corruption

Members of the Bulgarian judiciary have only functional immunity. This is theoretically seen as a good basis for strengthening the integrity and accountability of the judiciary. However, in practice

no significant progress was made in key areas such as governance of the judiciary and monitoring of its performance, enforcement of criminal cases for corruption, weaknesses in the state accusation, the ambiguous role of the prosecution, etc.

Governance of the Judiciary

The Supreme Judicial Council (SJC), which appoints, promotes, demotes, transfers and removes from office all magistrates (judges, prosecutors and investigative magistrates, the latter being part of the Prosecutor's Office), sets the direction of the overall judicial policy. Therefore, the election of this collective body, as well as the election of the heads of the higher courts and the Prosecutor General is subject to attempts at political influence and backstage negotiations. Loaded with high public expectations, the current SJC, inaugurated on October 3, 2012, has raised doubts about its legitimacy:

- Regarding the judicial chapter, the election was marked by non-transparent selection of delegates heavily influenced by the administrative heads of the respective courts and prosecutor's offices. This was especially visible in the election of the prosecutors' quota, where a large number of the delegates, and most successful candidates, were among the administrative heads of various offices.
- The election of the parliamentary chapter increased the already existing suspicion that positions are negotiated behind the scenes between the parliamentary political forces. The checks and hearings of the nominated candidates were formal and did not fulfil their goal to ensure openness and public participation in the procedure.
- The SJC accumulated criticism as regards its managerial capacity and integrity by its inaction in relation to the allegations accompanying the two unsuccessful procedures for the election of a constitutional justice by the Parliament.
- The election of the new Prosecutor General in December 2012 clearly showed that even seemingly competitive and public elections could be non-transparent, especially if the competition is fictitious and the procedure is manipulated, including, paradoxically, even the use of electronic voting to pre-determine the vote. Such shortcomings showed also the failed election of a new president of the Supreme Court of Cassation at the end of September 2014.

In the beginning of 2014, the Council received another series of criticisms after the disciplinary dismissal of one of its members, a former high-ranking prosecutor. The dismissal led to doubts about the very legality of the SJC's actions, since the magistrate was removed by a lesser number of votes than that required by law, following the leak of wiretapped conversations, supposed by law to be destroyed after not being used for the criminal case they were made under and certainly not for grounding and disciplining the magistrates involved.

Moreover, despite some formal steps being taken (the Committee on Proposals and Evaluation of Judges, Prosecutors and Investigative Magistrates being divided into a sub-committee on judges and a sub-committee on prosecutors and investigative magistrates), judges and prosecutors are still practically being governed together, as witnessed by a case in March 2014, where a member of the prosecutorial quota allegedly proposed a harsh disciplinary penalty for a judge in a highly controversial disciplinary proceeding.

Monitoring Judicial Performance

Doubts as to the ethics enforcement capacity of the SJC and its ability to oversee the work of the judiciary through its Inspectorate continued in relation to the institutional stalemate as regards the so far failed election by Parliament of a Chief Inspector of the Inspectorate of the SJC. The Inspectorate is mainly tasked by law to inspect the administrative activity of the judiciary and the case progress, as well as to analyse and summarize the closed cases and files, without infringing upon the independence of magistracy. The election of a new Chief Inspector has been generally seen as a test both for the Parliament, having to form a majority of two thirds of all MPs, and for the judiciary as to its capacity to put forward a candidate "of high professional and moral qualities", as required by law. The initial single nomination of a Supreme Court Justice, allegedly involved in unclear property transactions with her mother and husband, was largely criticized as flawed and non-transparent. In the face of a growing public scandal, the Justice ultimately retired, receiving the substantial monetary compensation due upon retirement, a number of

Box 3. Measures for Raising the Capacity and Integrity of the Supreme Judicial Council

- Adoption and effective enforcement of new rules for election of the members for the Supreme Judicial Council, in particular of its judicial chapter such as “one magistrate – one vote”, electronic voting etc.;
- Effective implementation of transparent and open for public participation procedures for nominating and electing SJC’s members of the parliamentary chapter;
- General internal division of the Council in 2 chambers – one composed of judges and competent to deal with the management of the court and one composed of prosecutors and investigators to manage the prosecution;
- Increasing publicity regarding disciplinary proceedings against magistrates on corruption-related grounds.

magistrates refused to be put forward as subsequent candidates, which led monitors to consider the perception of judicial integrity in Bulgaria as falling into complete collapse.

Enforcing the Criminal Law in Cases of Corruption

After a series of legislative amendments (the last one dating back to the year 2010) Bulgarian criminal law was brought in compliance with the main international standards in the field of anti-corruption. The catalogue of criminal offences and their corresponding sanctions satisfies the requirements of the major international treaties to which Bulgaria is a party. The main forms of corruption behaviour are incriminated and the sanctions are relatively high. Most of the corruption-related offences are grave crimes (punished by more than five years of imprisonment), which means that they can be investigated through special intelligence means. However, the current Criminal Code was subject to justified criticism for a number of reasons.³⁰ In January 2014, the Ministry of Justice submitted to the National Assembly a draft of a new Criminal Code.³¹ The poor quality of the draft combined with the inability of the Ministry of Justice to adequately defend the controversial provisions caused strong

criticism on the part of legal practitioners, NGOs and the general public. The Ministry of Justice preferred not to respond to the appeals for a public discussion on the draft before its submission to the parliament. Ultimately, the ministry dropped the project submission, which was one more signal for lack of strategic vision and political will for laying the foundations of a comprehensive criminal law reform.

Despite this inconsistency, the main problem in the field of criminal law and procedure is not the legislation itself but rather its ineffective enforcement. The problems affect both the investigation of the crimes at the pre-trial stage and the subsequent trial proceedings. The result is a low number of cases ending with conviction, lenient sanctions and no successfully completed high-profile cases.

The problems start at the **police** where a **significant share of the registered crimes remains unsolved** (Figure 14).

The share of bribery cases which the police were unable to solve during the same year is gradually increasing, reaching almost 40% in 2012. There are numerous reasons for the low success rate of the police in corruption cases. On the one hand, corruption

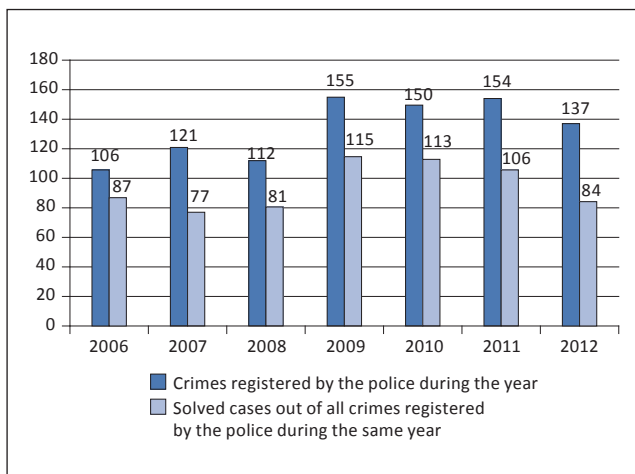
³⁰ Adopted in 1968, it basically follows the Soviet model of criminal law, which does not correspond to the new economic and social environment. The numerous and often inadequate amendments of the Code and particularly of its Special Part (the one listing the crimes and their corresponding penalties) resulted in gaps and contradictions, which in turn led to problems with its practical application and inconsistent case law. There were also problems in terms of compliance with international standards, including those of the EU and the Council of Europe.

³¹ Despite the long drafting process, which took several years and involved a number of criminal law experts, the final version of the draft presented by the Ministry of Justice did not meet the expectations of both the legal community and the general public. The Ministry of Justice disregarded most of the proposals and recommendations coming from NGOs and practitioners and presented its own version of the law.

cases are difficult to solve because there are no real victims who could assist the law enforcement bodies. On the other hand, without underestimating the objective complexity of these cases, there are also problems related to the integrity and capacity of the investigative authorities.

The public prosecution admits that the number of uncovered corruption crimes is extremely low. However, instead of undertaking a more pro-active approach, it prefers to blame the bodies exercising administrative oversight for not reporting a sufficient number of corruption cases to the public prosecutors and even the civil society for "the embedded public attitudes and the insufficiently pro-active citizens' standpoint for the eradication of corruption mechanisms and practices".³²

Figure 14. Number of Bribery Cases Registered and Solved by the Police (2006 – 2012)



Source: Ministry of the Interior.

Public Prosecution

Experience so far clearly shows the significant impact of the Prosecutor General on the effectiveness of the entire Prosecutor’s Office.

Despite the declared will to prioritize the prosecution of high-level corruption and organized crime, the Prosecutor’s Office did little in this direction. Soon after the election of the new Prosecutor General a number of high-profile cases were launched, but few of them marked significant progress. The Prosecutor’s Office heavily advertised the launch of these cases by special media notes, some of which went beyond the mere description of the facts and included assumptions bordering on a violation of the presumption of innocence.

As a result of the organizational changes of February 2012, the specialized department for countering corruption and crimes committed by public officials of the Supreme Prosecutor’s Office of Cassation was assigned with the task to monitor also the corruption cases against members of the judiciary. In 2012, these teams received 14 pre-trial proceedings and completed five of them, bringing charges against one investigator, one judge, and several parliamentarians.

Specialised Criminal Court and Prosecution

In 2010, the National Assembly passed legislative amendments providing for the establishment of a specialized criminal court with a jurisdiction to examine organized criminal group cases and a specialised court of appeal acting as a court of second instance.³³ The same legislative package provided for the establishment of new units within the prosecution system: a specialised prosecutor’s office of appeal and a specialised prosecutor’s office with an investigation department as a constituent element. The specialised criminal court enjoys a status equal to that of a district court and examines cases sitting in a panel of one professional judge and two lay judges, unless otherwise provided for in a law.

³² ПРБ. Доклад за прилагането на закона и за дейността на прокуратурата и на разследващите органи през 2012 година [Report on the Enforcement of the Law and the Activities of the Public Prosecution and the Investigating Authorities in 2012], 17.09.2013, p. 98, available at: http://www.prb.bg/uploads/documents/docs_3923.pdf

³³ The proponents and the opponents of a specialised criminal court first clashed back when the government unveiled its idea on its establishment, even though it was never submitted to a broad expert and public discussion. Despite the doubts about the need of this new instrument and opinions against this idea expressed by legal practitioners and experts, the parliamentary majority pushed through the amendments.

Box 4. Enhancing the Capacity of the Judiciary to Enforce Anti-Corruption Legislation

- Improve the substantive and procedural legislation, the investigation process and collection of evidence, as well as the capacity of prosecutors and investigating authorities. Address delays in investigations and judicial proceedings.
- Put focus on the pursuit of high level corruption, which can as a result improve the public and investors' confidence. Expand the jurisdiction of the specialised court and prosecution to be able to examine cases for high-level corruption as well.
- Reform the pre-trial proceedings and strengthen law enforcement for lawfully implementing special means and techniques for detecting and investigating corruption and their links with organized crime, and for gathering reliable evidence.
- Increase the responsibility of the prosecution to conduct and direct investigations of corruption and to press reasoned and proven charges before the court.
- Improve judicial practice for dealing with corruption cases and imposing adequate penalties.
- Significantly improve the collection of statistical data on criminal cases in general and on corruption cases in particular. A common definition of corruption offences should be elaborated and all judicial and law enforcement authorities should be obliged to collect data in line with this definition.
- Further reform the Prosecutor's Office. A system of performance indicators should be developed and implemented to assess both the work of individual prosecutors and the operation of the whole system.

The establishment of the specialized courts and prosecutor's offices was debatable even before the adoption of the legislative amendments and still remains so. Among the main obstacles before the specialized court to administer justice more efficiently in organized crime cases is that specialised Courts and Prosecutor's offices are in Sofia, and the investigation very often takes place far from their headquarters. Another obstacle is posed by the still unaddressed weaknesses of the pre-trial proceeding in the collection of evidence. One such weakness is said to be the prosecutors' practice to keep modifying the charge without citing evidence and the lack of control over this practice.

Corruption in the business sector

In 2014, the Bulgarian public saw first-hand indicators of the **formidable scope and scale of political corruption** and its corrosive impact on the economy:

- The rise and fall of the Corporate Commercial Bank has demonstrated that **state capture** has firmly

gripped even the most powerful law enforcement public institutions such as the public prosecution, the financial intelligence, as well as the central bank. Bulgarian public institutions have been paralysed for months, leaving small depositors stranded in a bank under special supervision, while two powerful moguls have been disputing ownership over the bank and its assets.

- The **South Stream saga** at the same time has revealed the depth of corruption reach in public institutions, as third country interests have been able to dictate terms on the Bulgarian parliament and the Bulgarian government at the expense of Bulgaria's financial and European interests. In the face of rising economic and political risks to the project government ministers have acted haphazardly to ensure ways for more than BGN 1 billion of public funds to be irreversibly committed to the project. This has happened against the backdrop of a continuing rise of indebtedness of state-owned energy companies, with National Electric Company debts towering over BGN 3.5 billion, while Bulgargas and gas dependent central heating companies have been constantly scrambling for cash to ensure adequate gas and heating supply.
- The lack of control over public spending in 2013

Box 5. The CCB Case

In the CCB affair public institutions have been pitched against one another at the expense of the general public interest, with the net public welfare loss likely to rise well above 5% of Bulgaria's GDP, or comparable to the EU funds the country was entitled to receive in the 2007 – 2013 period. The case has revealed the very high level of political and oligarchic control of the Bulgarian economy in key sectors such as fuel trading, telecommunications, media, etc.

State-capture symptoms, which have so far surfaced in the affair:

- The Bulgarian prosecution, MoI, and SANS have launched a coordinated highly publicized attack on companies close to the bank a week before its placement under special supervision in June 2014. The attack has coincided with media outbursts against the stability of the bank from one of the large media groups in the country, and with the start of criminal investigations against the deputy governor of the central bank in charge of banking supervision. It is unlikely that professionals from the law enforcement institutions would not consider very carefully the full effect of their actions on the stability of the bank and the banking system as a whole.
- The Bulgarian National Bank has appeared incapacitated and unwilling to act swiftly and with resolve to shore up the bank, and to stop the panic from spreading, preferring instead to continuously appeal to politicians for action. It has issued numerous conflicting statements over the health of the bank in a very short period of time, and has chosen to withhold important pieces of information from the bank's review following its placement under special supervision. The bank has been initially evaluated as well capitalised, liquid, and stable by the central bank, which has been confirmed by the CCB withstanding withdrawals of up to BGN 1 billion in the week before the bank's placement under special supervision. The subsequent revision of the bank's loan portfolio, requested but not disclosed publicly by the central bank, revealed a potential loss of asset value to the tune of BGN 4.5 billion. Claimed irregularities are so blatant that it is inconceivable for them not to have been noticed in advance by the central bank and law enforcement bodies.
- In a final accord the newly convened Bulgarian parliament decided to consider scenarios for saving CCB in an apparent act of rebuttal of central bank authority and trust.

and 2014 coupled with long leadership vacuum at key revenue agencies and the de-facto blocking of anti-corruption law enforcement has resulted in the **rise of public procurement and administrative corruption**. Ultimately, Bulgaria has entered a spiral of rising debt, with the Ministry of Finance proposal from October 2014 for the total allowable debt ceiling for 2014 rising from 22% to 28% of GDP in a matter of six months. Total government debt stood at 14% of GDP at the end of 2009. Public expenditures have kept crawling up in 2014 according to plan, although revenues have continuously fallen short of expectations.

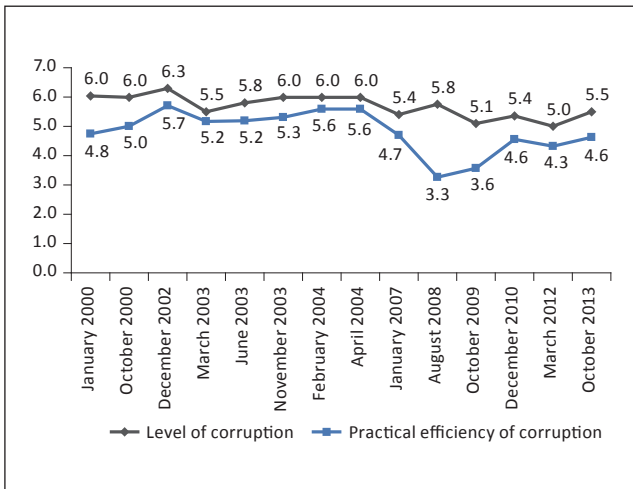
Administrative corruption

Bribes have in effect become part of the price for certain administrative services. In the business

sector, the practical efficiency of corruption as a means to resolve problems and obtain access to services remains high, and has even been on the rise since 2008. The indexes for corruption pressure and involvement in corruption practices measuring the level of corruption in the business sector have not changed significantly in recent years. There is no notable change in perceptions of the corruptness of the business environments, either, i.e. no principle change of the business environment has been achieved.

According to the Eurobarometer survey 2013 and the *EU Anti-Corruption Report*, corruption is most likely to be considered a problem when doing business by companies in the Czech Republic (71%), Portugal (68%), Greece and Slovakia (both 66%). In Bulgaria, 51% of the companies consider corruption as a problem to

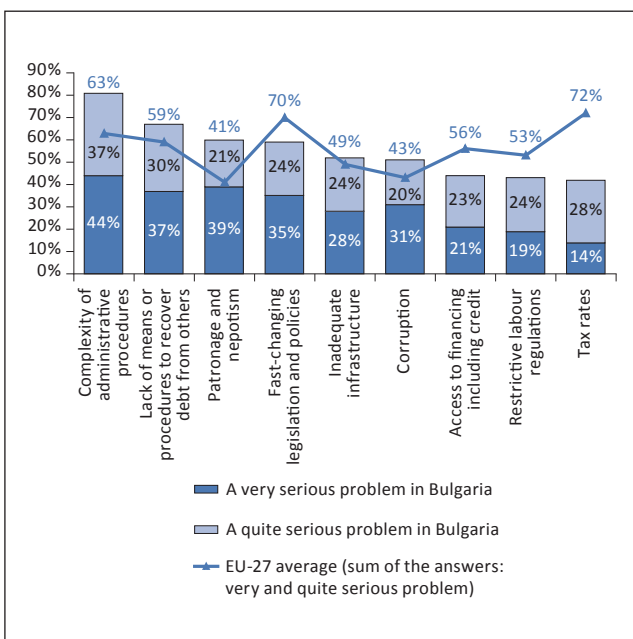
Figure 15. Perceptions of Corruptness of Society and Practical Efficiency of Corruption in the Business Sector in Bulgaria (Trend)



Source: CSD/SELDI Corruption Monitoring System.

their operation. This is slightly higher than the EU average. In addition, more than 60% of companies in Bulgaria consider patronage and nepotism to be quite serious and very serious problem to doing business in the country, as compared to only 40% on average in the EU. This is exacerbated by the higher complexity of administrative procedures companies face in Bulgaria compared to the EU.

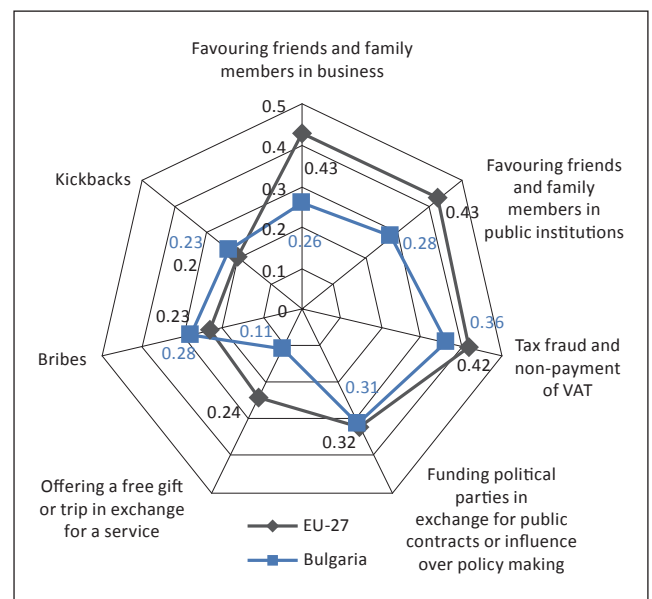
Figure 16. Problems Encountered in Doing Business



Source: Flash Eurobarometer – Business, EC, 2013.

In terms of types of corruption practices, Bulgarian companies are much more likely to encounter pecuniary forms of corruption than their EU counterparts, with bribes and kickbacks being the most widely spread corruption practices in the country. In Europe these are more likely to be replaced by favouritism of friends and family as well as different forms of fraud. Interestingly, buying political influence seems to be equally likely in Bulgaria and in the EU.

Figure 17. Most Widespread Corruption Practices



Source: Flash Eurobarometer – Business, EC, 2013.

Several summary conclusions could be made regarding the impact of corruption on the business sector:

- Corruption is still an effective tool to resolve immediate business problems, e.g. dealing with competition pressure or avoiding a fine. Through corruption many businesses often make successful efforts to shield themselves from the competition and/or obtain procurement contracts. In this respect countering corruption would be much more effective if economic, rather than criminal justice policies and measures are enforced, such as improvement in the anti-monopoly practice, ensuring higher transparency of key markets, etc.
- Companies lack confidence in the public institutions, and complain of lack of equal treatment by the legal system.

- E-Justice and e-government are far from operational despite the substantial amounts of public money spent on such projects. Most documents requested by the administration are considered official only if presented on paper. This puts additional administrative burden on the companies and citizens, slows down turnover, and generates corruption pressure.

Hidden economy

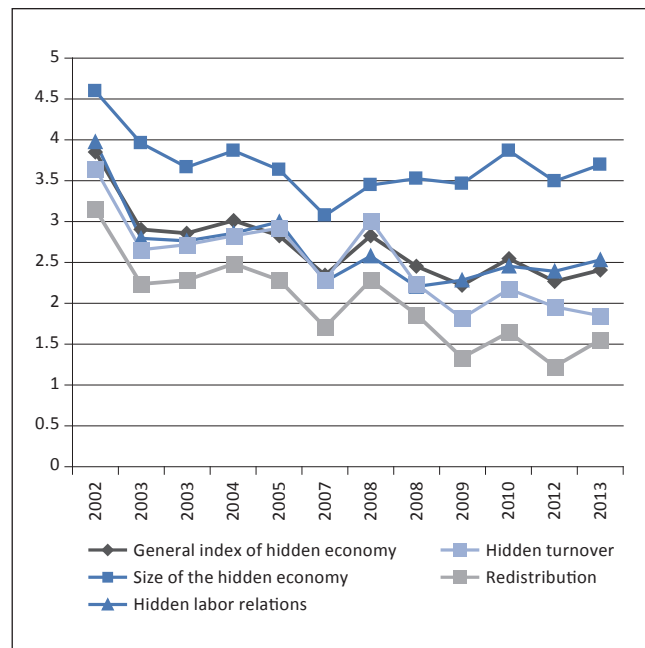
According to various estimations, the hidden economy in Bulgaria is about 30% of GDP. The operation of businesses in the hidden economy is related, among others, to the use of bribes, mostly directed towards the public administration and the control bodies (social securities, tax, etc.). It should be noted that, as a positive trend over the last 10 years, the hidden economy has shrunk due to various economic factors, including the economic convergence with the EU, the deepening of the credit markets, the introduction of mandatory employment contract registration in 2003 and the real-time linking of fiscal devices with the National Revenue Agency (NRA) servers, as well as the performed follow-up checks.

Still, according to CSD’s 2013 *Hidden Economy Index*, the share of the hidden economy in Bulgaria has increased slightly on an annual basis. This trend is likely to have persisted in 2014. The main reasons can be sought in the lack of improvement of the general economic sentiment and the continuing overall political instability, which has affected negatively the functioning of the control and compliance bodies. Estimates show that, according to rough approximations, almost BGN 1.45 bn annually is lost to VAT evasion and social security contribution gaps, while the real figure could be even higher.³⁴

One of the key factors, which can influence positively or negatively the development of the hidden economy and the corruption related to it is the functioning of the numerous control and compliance bodies in the public administration. In the past two years political oversight on the functioning of these bodies has

been lax, increasing the risks of corruption. The control functions of these bodies are considered one of the most potent risk factors in business. Some of the key agencies have remained without management for an extended period of time, which has affected negatively their performance, e.g. revenue collection. Although the level of transparency and performance appraisal of most such agencies has improved, they remain predominantly focused on controlling, rather than servicing businesses. At the same time, it is unlikely that negative attitude towards control and compliance bodies is replaced by more cooperative behaviour while large-scale displays of graft such as the CCB case remain unresolved.

Figure 18. Hidden Economy Index 2002 – 2013



Source: *Hidden Economy Index*, Center for the Study of Democracy/Vitoshka Research, 2013.

Public Procurement and Corruption

Economic difficulties after 2008 increased the competition among companies for public contracts and gave an additional lever to both politicians and the administration to extract corruption fees. Despite economic difficulties, the total value and number of procurement contracts has increased continuously, indicating an increase in corruption opportunities (Table 2).

³⁴ CSD Policy Brief 42: *The Hidden Economy in Bulgaria in 2013*, Center for the Study of Democracy, November 2013.

Table 2. Public Procurement Contractors, Announcements and Contracts in Bulgaria

	2010	2011	2012	2013
Number of awarding entities	2,585	3,217	4,662	5,302
Number of contractors	14,700	16,347	18,257	20,490
Total number of public procurement announcements	7,404	8,194	10,129	11,939
out of them: above the EU threshold	1,599	2,022	2,570	3,653
out of them: with EU funding	951	1,210	2,421	3,012
Public procurement announcements in construction	1,056	1,177	1,552	1,791
Public procurement announcements in supplies	3,463	4,025	4,679	5,162
Public procurement announcements in services	2,877	2,989	3,888	4,986
Number of contracts	15,755	17,579	20,813	22,779
Total value of the contracts, in billions of BGN	4.00	5.78	5.97	8.04

Source: Public Procurement Agency.

Note: The number of contracts and the total value in Table 2 may differ from other sources, as the Public Procurement Registry is continuously updated.

On the positive side, the number of awarding entities and the number of contractors has been increasing, which denotes a rising and vibrant market and competition. While this has improved the value for money proposition in competitive markets, it has also made it more difficult for compliance and control authorities to check for irregularities.

In the area of public procurement, a complex and ever changing legislative framework has made it even more difficult to create a culture of objectivity and rigour. The e-procurement system has been gaining traction in Bulgaria, but still has limited functionalities. The increasing responsibilities of the specialised Public Procurement Agency have not been matched with similar increase in its human capacity and budget. Thus, the positive idea to task the agency with ex-ante checks of larger procurement procedures has been limited in scope due to capacity constraints. The checks cover neither the decisions of contracting authorities to apply derogations to the application of EU procurement legislation, nor the technical specifications of the tenders. More importantly, there are doubts about the effective enforcement of rules and the application of sanctions in the public procurement process, which are confirmed in highly publicised cases of wasteful spending in the case of large energy projects, the

acquisition of vehicles for government agencies and ministries, etc.

The Flash Eurobarometer 2013 survey among 2,816 European companies shows that 58% of the Bulgarian firms claim corruption has prevented them from winning public tender or public procurement contract in the last 3 years. Closest to that are data for Slovakia (57%), Cyprus (55%) and the Czech Republic (51%). At EU-27 level an average of 32% of the companies that have participated in public tenders/public procurement say corruption prevented them from winning a contract. A total of 58% of the Bulgarian and 57% of the EU-27 firms consider that public procurements are tailor-made for specific companies.

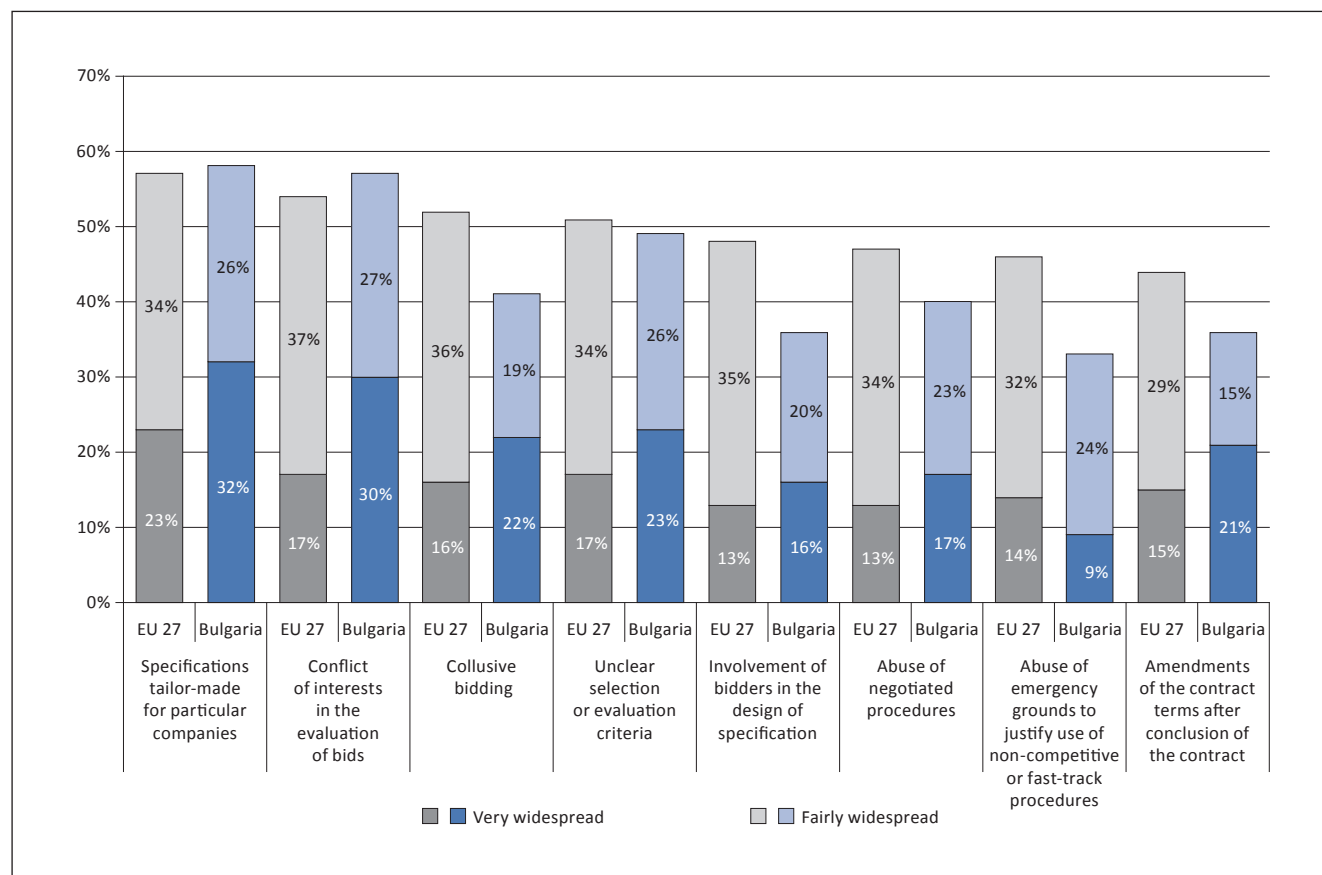
Checks by the Public Procurement Agency, the Public Financial Inspection Agency (PFIA) and the national Audit Office prove key instruments in ensuring transparency in public procurement. The violations of the public procurement law and procedures uncovered by the PFIA remain very high. The capacity of the Agency to tackle problematic public procurement increases, but its deterrence and prevention effects are very limited and violations continue to be widespread. One reason is the constant political interference in the work of the agency, in particular in bigger public procurement contracts.³⁵

³⁵ Source: Stoyanov, A., R. Stefanov, and B. Velcheva. *Bulgarian anti-corruption reforms: a lost decade?* ERCAS Working paper #42 (2014).

An issue of concern remains the **share of non-competitive procedures** among the announced public procurements (25% in 2012 and 26.3% in 2013), including negotiated procedure with and without

publication of a contract notice, which are generally considered an instrument particularly exposed to fraud and corruption.

Figure 19. Most Common Irregularities in Public Procurement According to Businesses



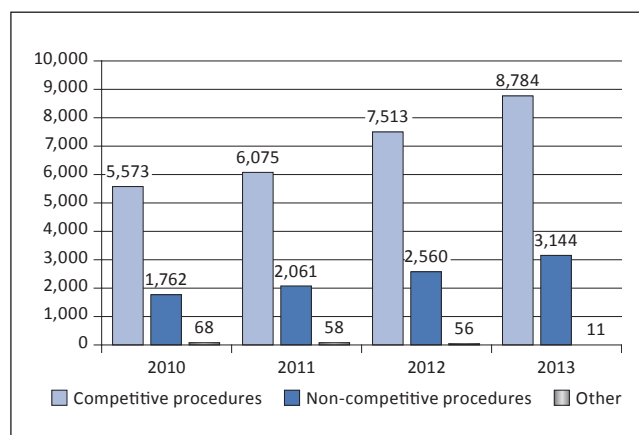
Source: Flash Eurobarometer – Business, EC, 2013.

Table 3. Volume and Number of Inspected Public Procurement Contracts per Year (2007 – 2013)

Year	Volume of the inspected PP contracts (million BGN)	Number	Volume of the PP contracts with discovered violations (million BGN)
2013	4,562	2,484	1,795
2012	2,044	2,446	1,488
2011	1,459	1,368	1,060
2010	2,203	1,391	1,191
2009	1,084	1,140	660
2008	636	1,364	306
2007	1,031	1,529	601

Source: PPA Annual Reports; PFIA Annual Reports, 2013.

Figure 20. Number of Announced Public Procurements by Type of Procedure (2010 – 2013)



Source: Public Procurement Agency.³⁶

The Price of Public Procurement Corruption in Bulgaria

The exact value of the losses due to corruption in public procurement in Bulgaria is hard to estimate.

According to PFIA data, the volume of the public procurement contracts with discovered violations range from 601 million BGN in 2007 to 1,795 million BGN in 2013. The introduced ex-ante control of PPA on certain public procurement procedures of increased public interest has shown that about a third of the submitted documents did not comply with the requirements of the law, indicating high corruption potential from lack of professional capacity.

The European Commission has requested a study on the costs of fraud and corruption in public procurement in the EU, which has taken an alternative approach to estimate the losses from public procurement irregularities.³⁷ The report notes that out of the 18% calculated budget volume loss from corrupt/grey public procurements in the 8 analysed Member States, 13% of budgets' loss involved can be attributed to corruption. According to very rough estimations, if the same methodology is applied to Bulgaria, corrected with the country's score in Transparency International's Corruption Perception

Table 4. Ex-ante Control of the Documents from Public Procurements According to Art. 20b of the Law on Public Procurement (Negotiated Procedure without Notice), in Force from 1 January 2009

	Number of procurement documents
The selected procedure is lawful	2,070
The selected procedure could be considered lawful if the Contractor presents sufficient evidence	419
The selected procedure cannot be considered lawful or the evidence is not sufficient	359
The selected procedure is illegal	132
No position available (suspended procedure)	127
Total	3,107

Source: Public Procurement Agency.³⁸

³⁶ Note: Non-competitive procedures include: (a) restricted procedures (incl. restricted fast-track procedures); (b) negotiated procedure (with the publication of a contract notice, fast-track negotiation with the publication of a contract notice, negotiation without publication of a contract notice) and (c) negotiated procedure following an invitation under the RSSPP (repealed). Competitive procedures include: (a) open procedure (incl. framework agreement) and (b) open contest under the RSSPP (repealed). Other procedures include (a) ex-ante selection systems; (b) project competition (open or restricted) and (c) project competition under the RSSPP (repealed).

³⁷ Identifying and Reducing Corruption in Public Procurement in the EU, PricewaterhouseCoopers (PWC), Ecorys, June 2013.

³⁸ Note: Ex-ante control is implemented for EU Funds beneficiaries that procure in the areas of (a) construction – from BGN 264,000 to BGN 2.64 million or for (b) supplies, services and design contests – from BGN 66,000 to the respective threshold defined in Art. 45a, para. 2 of the Public Procurement Law.

Index 2013 scores, the direct cost of corruption in public procurement as share of the overall value of the published public procurement contracts for 2013 could be assessed to be between BGN 334.1 mn and BGN 506.91 mn.

Corruption in the Energy Sector

The energy sector, an unliberalized market with few large privatized monopoly electric distribution companies, presents an **example for high political corruption risk** in Bulgaria. There are considerable economic interests at stake in the sector, with strong political lobbies and substantial financial resources involved. About one in four public procurement contracts relates to the energy sector, which renders it one of the biggest spenders of taxpayer money. While transparency has improved in recent years, the sector remains largely captured by vested interests and with large information asymmetries at the detriment of the consumers. Malpractices in the sector's governance are abundant in all its subsectors, but several **manifestations of the corruption risk** in the last three years should be noted:

- The findings of the 41st Parliament about serious malpractices in the energy sector, including the procedures for the construction of the Belene nuclear power plant have so far remained without any consequences. The publicized arrests of officials who took part in the project, without a clear picture of the general direction of the investigation, raised suspicions that these measures have been selective and politically motivated.
- The non-transparent model of decision making in the Belene Nuclear Power Plant (NPP) has been continued more recently in the handling of the South Stream gas pipeline project. Each of these projects is worth as much as the annual value of public tenders in Bulgaria. Yet, both projects have been developed without a clear strategic framework and without cost-benefit analysis. In the case of South Stream there have been clear signs of state capture, as the project has been

continuously pushed forward by separate cabinet members in the end of 2013 and the first half of 2014, even though there have been increasing signs of rising risks to the project.

- The decision of the Bulgarian Parliament from 4 April 2014 to adopt at first reading the amendments in the *Energy Law*, which grants South Stream special status highlights the lack of logic in the national energy policy and compounds the impression that public interest is not the driving force behind the proposed changes. The subsequent revelations that this decision has been taken on proposal by the contractor are a very serious sign of state capture. Avoiding established procedures for coordination and consensus-building in the executive and circumventing common EU rules, the amendments to the *Energy Law*, which concern enormous public resources and long-term interests, have been introduced by two Members of Parliament (MPs).³⁹
- In the electricity sector, the state-owned enterprises have continued to pile debts, squeezed by politically motivated freeze in the process and state-guaranteed private sector profits and subsidies. Frequent shuffles in the top management of the State Energy and Water Regulatory Commission, and changes in the energy-pricing model create opportunities for illegal access to regulatory decisions and two-way corruption pressure between the regulator and the business sector. There have been repeated signs that state-owned enterprises disregard important decisions, with hundreds of millions of public funds at stake, of their owner – the state, as represented by the respective line ministry. The government and the regulator have repeatedly failed to solve pricing frictions in the case of long-term contracts in the coal and renewables sectors, at the expense of the public purse.
- In the fuels sector, the lack of transparency as to the compliance of the national refinery with the requirements of installing metering devices on inflows and outflows of products has continued to hang in the air after a spate of public confrontation

³⁹ CSD Media note: *Energy in (security): the parliament's decision on the South Stream pipeline increases the risks for Bulgaria's energy security*, April 4, 2014.

between the refinery and customs authorities in 2012. Regular check-ups by the National Revenue Agency in the past three years have demonstrated that the share of illegal fuel market has not shrunk despite control measures, hinting at structural problems.

Over half of the public tenders in the energy sector are conducted through closed procedures. When audited, most of these procedures are found to contain irregularities and other abuses.⁴⁰ The most big energy projects (e.g. Belene NPP, Tsankov Kamak HPP and the rehabilitation of facilities) can serve as examples of the abuse of public procurement mechanisms.⁴¹ In addition, previous CSD analysis of the management of key energy projects (Belene NPP, the Tzankov Kamak Hydro Power Plant (HPP) project, Maritsa Iztok 2 Thermal Power Plant (TPP), Toplofikacia Sofia,

etc.) has revealed complete disregard for even basic rules of good governance, leading to skyrocketing project costs. The **failure of the checks and balances system** raises legitimate concerns about the state's ability to manage large-scale infrastructure projects worth over EUR 500 million.⁴² There are several important trends that could be derived from the available data.⁴³

EU Funds Management

The distribution of EU funds in Bulgaria is associated with **red tape and corruption vulnerabilities**. Although the managing authorities (MAs) perform strict technical and financial checks, various official evaluation reports and mid-term reviews note the continuing lack of administrative capacity and technical knowledge in the public administration. One of the major identified

Box 6. Measures for Improving Governance in the Energy Sector⁴⁴

- A detailed review of the financial control system of state-owned energy companies is necessary. It may include, among others, annual energy policy review by the National Assembly.
- The ex-ante and ex-post control should be strengthened; the number of inspections of public procurements in the energy sector should be increased, in particular the ones performed by the Public Financial Inspection Agency.
- Improving the functioning and management of state-owned energy enterprises by reducing political control over energy enterprises.
- Developing an emergency bailout plan for Bulgaria's energy sector in order for catastrophic scenarios to be avoided, implementing controlled wind-down of main financial strains such as long-term subsidies, followed by subsequent market restructuring, as well as introducing a liberalised market.
- The current model of centralized administration and excess electricity production should give way to decentralized production, liberalization of the energy market, and adequate mechanisms to cushion vulnerable energy-poor groups against the transition.
- Decisions concerning major investment projects in the energy sector must incorporate comprehensive and transparent financial, economic, social, and environmental impact assessments. It is paramount that the current practice of signing contracts and agreements for large energy projects in the absence of information about the total costs is discontinued.
- Creating an energy information system and database, as well as registry of public procurement contracts of state-owned energy enterprises.

⁴⁰ CSD Policy Brief 43: *Corruption and Anti-Corruption in Bulgaria (2012 – 2013)*, CSD, November 2013.

⁴¹ CSD (2013) *Addressing the Threat of Fraud and Corruption in Public Procurement: Review of State of the Art Approaches, Compendium*, and CSD (2011) *Anti-Corruption in Public Procurement: Balancing the Policies*.

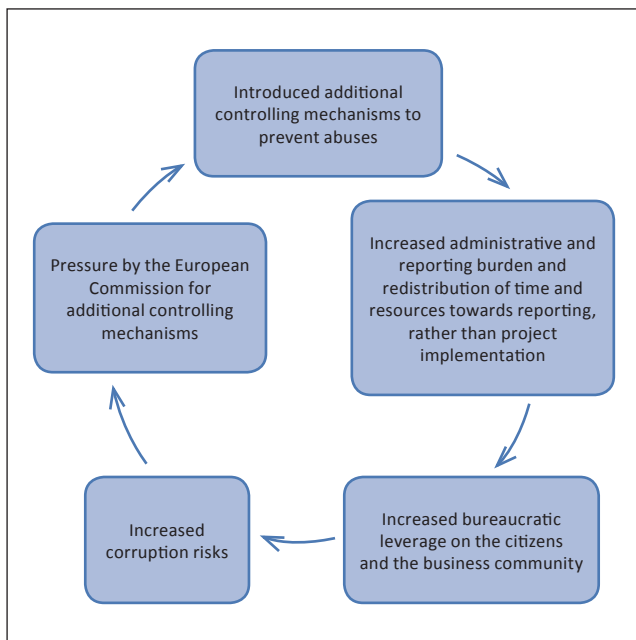
⁴² CSD (2011) *Energy and Good Governance in Bulgaria. Trends and Policy Options*.

⁴³ CSD (2014) *Good Governance and Energy (In)Security in Bulgaria*.

⁴⁴ Ibid.

shortcomings of the process is the focus placed on the documentation checks, and not on the evaluation of the actual impact and benefits of the money spent. The process is a typical vicious circle – the pressure by the European Commission leads to additional controlling mechanisms to prevent abuses, however this strengthens the “bargaining position” of the administration and increases its bureaucratic leverage on the citizens and the business community and increases corruption risks.

Figure 21. The Vicious Circle of EU Funds Management



Source: Center for the Study of Democracy, 2014.

The corruption risks can be sought in several areas:

- **Large projects** are associated with corruption risks, similar to large public procurement contracts. The online information system for management and oversight of the EU Structural Instruments in Bulgaria (UMIS) presents data on the largest OP beneficiaries (mostly public entities), some of them awarded with 40 – 80 projects each for amounts ranging between BGN 500,000 (EUR 255,645) and BGN 2 million (EUR 1.02 million).

- **Burdensome administrative procedures.** The OPs application and implementation remain a relatively complex process due to excessive control procedures by the national authorities in order to prevent rule violations.
- **Public procurement contracts** requirements from EU funds beneficiaries impose an additional burden on the implementation and increase the risks of formal non-compliance. During the economic crisis this has resulted in the freezing of a number of procedures and the introduction of penalties which have been discretionarily taken up or not by the national budget. This has increased corruption risks, in particular among large-scale contractors and municipalities.
- **Lack of understanding on the technical specifics** of the implemented projects can easily lead to misinterpretation of the results. Although the MAs use external experts in different areas for evaluation of project applications, expert knowledge and consultations are not readily available on all stages of the project monitoring process.
- **Achieving fast absorption for the 2007 – 2013 period** and preparing for the next 2014 – 2020 programming period is another corruption risk factor. The end of the programming period 2007 – 2013 was marked by an increase of the number and value of contracts, as well as by increased payments, to compensate for the initial low absorption rates. This led to less control and a shift from competitive distribution of funds to direct contracting.⁴⁵

According to the latest available report by the AFCOS Directorate to the Bulgarian Ministry of Interior, the forefront institution to protect EU financial interests, the following irregularities with EU Funds should be noted, although they date back to 2011 (the time of the latest available report).⁴⁶

- European Agricultural Guarantee Fund and European Fund for Rural Development: 149 cases of financial irregularities for EUR 5,356,732.

⁴⁵ Resume of the mid-term evaluation of Operational Programme “Environment” for the period 2010 – 2010, Association European Analyses and Evaluations, 2012, http://ope.moew.government.bg/files/useruploads/files/Evaluation/resume_interim_evaluation.pdf

⁴⁶ AFCOS Directorate to the Ministry of Interior, 2011 Annual report, http://afcos.bg/upload/docs/2012-06/Doklad_2011_final.pdf

- Structural Funds (European Regional Development Fund and European Social Fund): 49 cases of financial irregularities for EUR 5,423,511.
- Cohesion Fund: 2 cases of financial irregularities for EUR 571,350.

Examples of needed improvement in the cooperation of AFCOS with EU funds' directorates include:

- Introduction of timelier relaying and investigation of signals rather than work only on planned inspections.
- Lack of timely updates to the information entered in the records of received signals for irregularities.
- The follow-up activities and other changes in previously reported cases of irregularities are not reported to AFCOS.
- Delays in taking measures for forced recovery of undue or over-payments, as well as unduly or improperly utilized resources.

Civil society and anti-corruption

Civil society involvement in anti-corruption activities in Bulgaria has a long and strong track record from the late 1990s on, following the establishment of the pilot civil society anti-corruption initiative *Coalition 2000*. Besides direct anti-corruption initiatives, Bulgarian NGOs also contribute indirectly to anti-corruption through pressure for higher transparency and access to information, or even through appealing of specific decisions with high corruption risk (mainly concerning environmental issues).

Practically behind most major policy decisions that have led to the decrease of petty corruption in the past 15 years there has been civil society pressure to first accept that there is a problem, then agree that at least one of the suggested tools works, and finally seek public support in implementing it (despite internal opposition to the measures). The years 2013 – 2014 marked a new wave of rising civil society anti-corruption initiatives but also a maturing of civil society in terms of impact

on policy outcomes. Throughout its one year term, the 42-nd Bulgarian parliament and the Bulgarian government it has supported have tried to actively divide civil society by selectively choosing to negotiate legislative and policy changes with conformist and loyal NGOs, while actively trying to discredit others. This policy has ultimately failed, but it has created a rift both between politicians and civil society and within civil society itself.

After the February protests in 2013, many new NGOs were registered in attempt to legitimize new civil society leaders, but more than a year after that, these NGOs are practically non-existent. The political battles and even corruption have been transferred to the NGO level, where some of the NGOs are preserving the original ethos of the civil society and others are simply using these organizational forms and positive reputation of the sector to achieve their illegitimate goals. The June 2014 and follow-up protests saw a new and qualitatively different wave of active involvement of the civil society sector and the formation of new activist groups with high impact potential. Preserving this potential and further developing the organisational potential of the civil society sector in Bulgaria will be one of the main factors in reducing political and administrative corruption in the country.

Although there is rarely corruption within the civil society similar to the one in the public administration (someone paying a bribe to receive a service from an NGO, manipulating procurement procedures leading to loss of public value, receiving a service which is not due, etc.), the public at large is very concerned about the NGO – government relations. Particularly sensitive is the receiving of funds by **quasi-NGOs** established and managed by top-ranked politicians and government officials and/or their relatives, or the so-called capturing of NGOs, when their agendas are closely aligned with government of the day priorities through lavish funding. Such quasi-NGOs blur the public's perception of the activities of the NGO sector and discredit its credentials as an anti-corruption player.⁴⁷

⁴⁷ Most of the cases at the margins of civil society and the government have been discussed in CSD's report from 2010 Civil Society in Bulgaria: Trends and Risks.

Publications by the Center for the Study of Democracy

Anti-Corruption Reloaded: Assessment of Southeast Europe, Sofia, 2014.

ISBN: 978-954-477-221-5

Disposal of Confiscated Assets in the EU Member States: Laws and Practices, Sofia, 2014.

ISBN: 978-954-477-218-5

Addressing the Threat of Fraud and Corruption in Public Procurement: Review of State of the Art Approaches, Sofia, 2013.

ISBN: 978-954-477-213-0

Countering Police Corruption: European Perspectives, Sofia, 2013.

ISBN: 978-954-477-202-4

Assisting and Reintegrating Child Victims of Trafficking in Bulgaria: Legal, Institutional and Policy Framework, Sofia, 2012.

ISBN: 978-954-477-196-6

Right of Defence and the Principle of Equality of Arms in the Criminal Procedure in Bulgaria, Sofia, 2012.

ISBN: 978-954-477-194-2

Anti-Corruption Measures in EU Border Control, Sofia, 2012.

ISBN: 978-954-477-192-8

Countering Organised Crime in Bulgaria: Study on the Legal Framework, Sofia, 2012.

ISBN: 978-954-477-189-8

Serious and Organised Crime Threat Assessment 2010 – 2011, Sofia, 2012.

ISBN: 978-954-477-185-0

Integrating refugee and asylum-seeking children in the educational systems of EU Member States, Sofia, 2012.

ISBN: 978-954-477-183-6

The Hidden Economy in Bulgaria and the Global Economic Crisis, Sofia, 2011.

ISBN: 978-954-477-181-2

Crime and Punishment: Studying Justice System for Shaping Criminal Policy, Sofia, 2011.

ISBN: 978-954-477-179-9

Crime Trends in Bulgaria 2000 – 2010, Sofia, 2011.

ISBN: 978-954-477-176-8

Green Energy Governance in Bulgaria at a Crossroads, Sofia, 2011.

ISBN: 978-954-477-174-4

Better Management of EU Borders through Cooperation, Sofia, 2011.

ISBN: 978-954-477-169-0

Anti-Corruption In Public Procurement: Balancing The Policies, Sofia, 2011.

ISBN: 978-954-477-173-7

Penitentiary Policy and System in the Republic of Bulgaria, Sofia, 2011.

ISBN: 978-954-477-171-3

Energy and Good Governance in Bulgaria: Trends and Policy Options, Sofia, 2011.

ISBN: 978-954-477-167-6

Civil Society in Bulgaria: Trends and Risks, Sofia, 2010.

ISBN: 978-954-477-164-5

Examining the Links between Organised Crime and Corruption, Sofia, 2010.

ISBN: 978-954-477-162-1

Monitoring and Assessment of Public Policies and Programmes, Sofia, 2009.

ISBN: 978-954-477-160-7

Crime without Punishment: Countering Corruption and Organized Crime in Bulgaria, Sofia, 2009.

ISBN: 978-954-477-158-4

Organized Crime in Bulgaria: Markets and Trends, Sofia, 2007.

ISBN: 978-954-477-150-8

Reinforcing Criminal Justice in Border Districts, Sofia, 2007.

ISBN: 978-954-477-155-3

Corruption in the Healthcare Sector in Bulgaria, Sofia, 2007.

ISBN: 978-954-477-154-6

Anti-Corruption Reforms in Bulgaria: Key Results and Risks, Sofia, 2007.

ISBN: 978-954-477-146-1

Corruption in Public Procurement: Risks and Reform Policies, Sofia, 2006.

ISBN: 978-954-477-149-2

Monitoring of Anti-Corruption Reforms in Bulgaria, Sofia, 2006.

ISBN-10: 954-477-143-3

ISBN-13: 978-954-477-143-0

Police Stops and Ethnic Profiling in Bulgaria, Sofia, 2006.

ISBN-10: 954-477-142-5

ISBN-13: 978-954-477-142-3

Crime Trends in Bulgaria 2000 – 2005, Sofia, 2006.

ISBN-10: 954-477-140-9

ISBN-13: 978-954-477-140-9

On the Eve of EU Accession: Anti-corruption Reforms in Bulgaria, Sofia, 2006.

ISBN-10: 954-477-138-7

ISBN-13: 978-954-477-138-6

The Healthcare Ombudsman – Best Practices and Prospects for Bulgaria, Sofia, 2006.

ISBN-10: 954-477-136-0

ISBN-13: 978-954-477-136-2

Judicial Reform: The Prosecution Office and Investigation Authorities in the Context of EU Membership, Sofia, 2005.

ISBN: 954-477-134-44

Corruption and Tax Compliance: Challenges to Tax Policy and Administration, Sofia, 2005.

ISBN: 954-477-132-8

Weapons under Scrutiny: Implementing Arms Export Controls and Combating Small Arms Proliferation in Bulgaria, Sofia, 2004.

ISBN: 954-477-117-470

Transportation, Smuggling and Organized Crime, Sofia, 2004.

ISBN: 954-477-119-0

Partners in Crime: The Risks of Symbiosis between the Security Sector and Organized Crime in Southeast Europe, Sofia, 2004.

ISBN: 954-477-115-8

The Drug Market in Bulgaria, Sofia, 2003.

ISBN: 954-477-111-5

Corruption, Trafficking and Institutional Reform, Sofia, 2002.

ISBN: 954-477-101-8

Smuggling in Southeast Europe, Sofia, 2002.

ISBN: 954-477-099-2

Corruption and Illegal Trafficking: Monitoring and Prevention, Second, revised and amended edition, Sofia, 2000.

ISBN: 954-477-087-9