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ANNEX 2

ANNEX

BULGARIA

to the

EU Anti-Corruption Report

BULGARIA

1. INTRODUCTION – MAIN FEATURES AND CONTEXT

Anti-corruption framework

Strategic approach. An Integrated Strategy for Preventing and Countering Corruption and Organised Crime was adopted in 2009,¹ followed by an action plan to prevent corruption in 2011-2012.² As part of the 2013 European Semester of economic policy coordination, the Council recommended that Bulgaria fight corruption more effectively.³ In September 2013, the government presented a programme said to prioritise measures against corruption's underlying causes, without explicitly referring to corruption.⁴ Most Bulgarian authorities are open to consultation with stakeholders and civil society on draft laws and strategies. However, efforts against high level corruption have been reactive and formalistic, failing to deliver substantial improvement since EU accession in 2007.⁵

Legal framework. Bulgaria amended corruption-related provisions in the Criminal Code following ratification of international conventions.⁶ Efforts were made to keep the framework consistent, for instance by extending part of the criminalisation of bribery of domestic public officials to their foreign counterparts. According to the Council of Europe's Group of States against Corruption (GRECO), the current criminalisation of bribery and trading in influence provide a fairly sound basis for the prosecution of various corruption offences.⁷ Additional amendments were adopted in response to concerns raised by the European Commission and others regarding the lack of results of the criminal justice system against corruption and organised crime. A draft new Criminal Code was published for consultation in December 2013 and presented to Parliament in January 2014.⁸

Institutional framework. Reform efforts have resulted in the establishment of important and sometimes innovative structures to encourage specialisation in the judiciary and police. Since 2007, internal inspectorates of the administration, under the guidance of the Inspectorate General, have been strengthened. Joint teams between investigatory agencies and prosecution should also lead to a more effective response against corruption. However, the potential of this framework, including the Supreme Judicial Council's powers to manage and lead the judiciary, has not yet been realised fully or consistently. The Commission for Prevention and Ascertainment of Conflict of Interest and the Centre for Prevention and Countering Corruption and Organised Crime (with its BORKOR project) have been embroiled in controversy. There was an overhaul in 2013 of police and security services dedicated to fighting corruption and organised crime. The outcomes of this overhaul remain to be seen. So far, few high-level cases have reached the courts. Dissuasive sanctions for corruption have not yet been applied. Public hearings in the appointment of senior magistrates marked a step in

1 Commission on Prevention and Countering Corruption. *Integrated Strategy for Prevention and Countering Corruption and Organised Crime* <http://anticorruption.government.bg/downloads/Normativni-aktove/strategy-KPPK.pdf>.

2 http://anticorruption.government.bg/downloads/Normativni-aktove/Plan_za_Deistvie_2011.doc%20za%20KPPK.doc.

3 Council recommendation 2013/C 217/03 of 9 July 2013.

4 http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0213&n=480&g=_20 September 2013.

5 The lack of independent, proactive anti-corruption institutions has inhibited progress, leading to administrative activities that tend to be reactive and to focus on formal compliance alone. CVM Report, July 2012.

6 The Criminal Law Convention on Corruption and the Additional Protocol to this Convention, the OECD Convention on combating bribery of foreign public officials in the framework of international business transactions, and the United Nations Convention against Corruption.

7 http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%297_Bulgaria_One_EN.pdf

8 http://www.justice.government.bg/Files/proekt_NK_635232275501945576.doc.

the right direction, even if many of the appointments have continued to raise doubts about political influence.

Opinion polling

Perception surveys. In the 2013 Special Eurobarometer Survey on corruption, 84% of respondents say that corruption is widespread in Bulgaria (EU average 76%), and 73% think the only way to succeed in business is through political connections (EU average 56%). Only 9% (the lowest percentage in the EU) consider there are sufficient numbers of prosecutions to deter people from corrupt practices, while 16% view government efforts against corruption as effective (EU average 23%). The Eurobarometer survey also registered some positive developments, such as a drop (-24 percentage points since 2011) in the number of respondents who say they are affected by corruption in their daily lives (21%; EU average 26%).⁹

Experience of corruption. In the 2013 Special Eurobarometer Survey on corruption, 11% have been asked or expected to pay a bribe over the previous 12 months (EU average 4%).

Business surveys. In the 2013 Eurobarometer business survey on corruption, 89% of Bulgarian respondents say corruption is widespread (EU average 75%), and 51% consider it a problem when doing business in Bulgaria (EU average 43%).¹⁰

Background issues

Cooperation and Verification Mechanism (CVM). Since Bulgaria's EU accession, the European Commission has reported regularly on efforts to prevent and fight corruption and organised crime, and reform the judiciary. In July 2012, the Commission noted that over the previous five years, the cooperation of the Bulgarian authorities with the CVM had been inconsistent. The report called for more consistent implementation to bring together disparate actions.¹¹ The latest report, in January 2014, acknowledges a few steps forward but notes that overall progress has been not yet sufficient, and fragile. Broader consensus within Bulgaria is needed for a consistent approach against corruption and organised crime, although events have also illustrated widespread public aspiration for reform.¹² Monitoring will continue until all benchmarks are fulfilled satisfactorily.¹³

Conflicts of interests and asset disclosure. A law for the prevention of conflicts of interest was adopted in 2008, and a five-member commission was established in 2010 to rule on conflicts of interest and incompatibility.¹⁴ In case of violation of the law, elected and appointed officials are subject to administrative penalties ranging from EUR 500 to EUR 10000, and dismissal from office. The Supreme Judicial Council publishes on its website conflict of interest declarations submitted by magistrates.¹⁵ Separately, the National Audit Office keeps a public register of the domestic and foreign assets, income and expenses of senior public officials and their spouses and children under 18. The asset declaration and verification system has however not effectively tackled illicit enrichment.¹⁶ In March 2013, an

9 2013 Special Eurobarometer 397.

10 2013 Flash Eurobarometer 374.

11 http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf.

12 http://ec.europa.eu/cvm/docs/com_2014_36_en.pdf.

13 http://ec.europa.eu/enlargement/pdf/bulgaria/bg_accompanying_measures_1206_en.pdf.

14 Commission for Prevention and Ascertainment of Conflict of Interest, discussed in greater detail in the section of this chapter on the independence and effectiveness of anti-corruption institutions.

15 <http://www.justice.bg/bg/declaration/zki/kzld/pr16-t38.pdf>.

16 See CVM Reports of July 2012, p. 15 and July 2011, p. 10.

amendment to the law extended the range of officials required to declare their assets, although it did not increase institutional capacity to handle and monitor such declarations.¹⁷

Private sector. Irregular payments and bribes by firms continue to be perceived as common.¹⁸ Problem areas include patent applications, licensing, the issue of permits and the allocation of public subsidies.¹⁹ The 2013 Global Competitiveness Report lists corruption as the most problematic factor for doing business in Bulgaria.²⁰ Bulgaria correctly transposed the provisions of Framework Decision 2003/568/JHA concerning the definition of active and passive corruption, including for non-profit entities, and appropriate penalties. Bulgaria partly transposed provisions on the liability of legal persons.²¹ In July 2013, in response to OECD and United Nations Convention against Corruption (UNCAC) recommendations, the Ministry of Justice drafted amendments to the Law on Administrative Offences and Sanctions to increase penalties for legal persons in cases of a non-material advantage, and to extend the liability of foreign-based entities.²² Of three cases of administrative sanctions imposed on legal persons in 2012, none concerned corruption-related crimes.²³ In 2012, the share of the shadow economy stood at 31.9% of GDP, the highest in the EU.²⁴

Financing of political parties. The National Audit Office (NAO) publishes online the annual financial reports and donor lists of political parties. The 2011 Electoral Code and amendments to the Political Party Act expanded the NAO's role, improved coherence in the framework for supervision of political financing, banned anonymous donations and donations by legal persons. Parties that fail to comply with reporting requirements may lose their state subsidy until the next parliamentary election or be fined EUR 2 500 to EUR 5 000; repeated failure may result in the dissolution of the party, pursuant to a court decision.²⁵ Party officials who obstruct a NAO audit may be fined EUR 500 to EUR 1 000.²⁶ Bulgaria satisfactorily implemented GRECO recommendations concerning provisions on fundraising events, a single campaign bank account, the conservation of financial records, and NAO cooperation with the National Revenue Agency. GRECO also welcomed an increase in material support and human resources at the NAO, after 60 auditors were assigned in 2012 to audit political parties. GRECO welcomed the lowering of the ceiling for cash donations from EUR 2 500 to EUR 500 but suggested that it be lowered further, considering the local economic context.²⁷ GRECO also acknowledged a more coherent range of sanctions. However, the amounts of

17 <http://cpaci.bg/2011-08-03-09-36-42/4-2011-08-03-09-17-27>.

18 'Excellence in Public Administration for competitiveness in EU Member States', report prepared in 2011 - 2012 for the European Commission, DG Enterprise and Industry by Austrian Institute of Economic Research (WIFO), Vienna; Center for European Economic Research (ZEW), Mannheim; IDEAConsult, Brussels. p. 144.

19 'Excellence in Public Administration for competitiveness in EU Member States', report prepared in 2011 - 2012 for the European Commission, DG Enterprise and Industry by Austrian Institute of Economic Research (WIFO), Vienna; Center for European Economic Research (ZEW), Mannheim; IDEAConsult, Brussels. pp. 60 and 61.

20 http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf p. 138.

21 COM(2011) 309 final, Second Implementation report of FD 2003/568/JHA of 6 June 2011: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/report_corruption_private_sector_en.pdf.

22 Проект на Закон за изменение и допълнение на Закона за административните нарушения и наказания, http://www.justice.government.bg/Files/ZID_ZANN-11_07_13_635103661595449739.doc.

23 These statistics relate to Article 83a of the Law on Administrative Offences and Sanctions on legal persons which (would) have benefited from various crimes, including all crimes under the bribery section of the Criminal Code, committed by company staff in the course of their duties. Prosecutor's Office of the Republic of Bulgaria (17 September 2013) Доклад за прилагането на закона и за дейността на прокуратурата и на разследващите органи през 2012 година <http://prb.bg/main/bg/Information/3923/> p. 71.

24 http://ec.europa.eu/europe2020/pdf/themes/07_shadow_economy.pdf.

25 Article 40(1) Political Parties Act.

26 National Audit Office, <http://www.bulnao.government.bg/index.php?p=2344&lang=en>.

27 http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282012%2914_Bulgaria_EN.pdf.

administrative fines are not dissuasive when compared with campaign spending limits,²⁸ while the dissolution of a political party is too severe a sanction to be of practical use.²⁹ In February 2013, the Electoral Code and the Law on Administrative Offences and Sanctions were amended in response to some pending GRECO recommendations. The amendments require the designation of campaign finance managers, prohibit the use of public resources for campaigning, and extend the relevant statute of limitations to two years. However, concerns remain about the extent to which official financial information submitted by parties reflects reality; one party in government declared that it had received no donations in 2012.³⁰

Whistleblowing. The Administrative Procedure Code and the Conflict of Interest Prevention and Ascertainment Act contain provisions on the protection of whistleblowers' identities, while the Criminal Procedure Code requires citizens, and specifically public servants, to report crime.³¹ However, effective administrative arrangements for whistleblowers are not yet in place.³² In 2011, a police officer was forced to resign after being identified as the source of media reports about donors to the Interior Ministry whose vehicles were allegedly exempt from road checks. Claims that donors to the Interior Ministry included suspects under investigation led the Ministry to introduce rules on donations and to publish an online list of donors, updated every three months.³³ However, no steps were taken to strengthen the protection of whistleblowers. In July 2013, all donations to the Interior Ministry were prohibited to prevent potential conflicts of interest.³⁴

Transparency of lobbying. Lobbying is not regulated in Bulgaria. There is no specific obligation for registration of lobbyists or reporting of contacts between public officials and lobbyists.

Media and access to information. Media freedom is protected by law and there is a wide variety of media. However, media ownership is increasingly concentrated, compromising editorial independence.³⁵ Media ownership and financing lack transparency, and paid-for coverage is not consistently identified as such. Print media, especially local outlets, depend on the public sector for advertising revenue.³⁶ To address such concerns, Parliament is considering new legal provisions on the transparency of media ownership. In 2013, the government vowed to streamline procedures for awarding publicity contracts financed by EU funds; statistics suggest such contracts may have been allocated to the detriment of media independence.³⁷ An increase has been noted in media self-censorship due to corporate and

28 Campaign expenditure is capped at EUR 2 million for parliamentary elections and EUR 1 million for presidential elections.

29 http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282012%2914_Bulgaria_EN.pdf.

30 National Audit Office, <http://erik.bulnao.government.bg/egfonew/default.aspx?year=2012>.

31 UNCAC reviewers recommended more comprehensive provisions to protect whistleblowers. <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1187232e.pdf>

32 Commission Staff Working Document SWD 232 final. (July 2012). Bulgaria: Technical Report accompanying the document: COM(2012) 411 final Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism. p. 24. http://ec.europa.eu/cvm/docs/swd_2012_232_en.pdf.

33 http://www.mvr.bg/pravila_darenia.htm.

34 Except for the provision of financing and equipment under international treaties and projects.

35 Commissioner Neelie Kroes and EU Member State ambassadors in Sofia have raised concerns about transparency and concentration of media ownership.

36 <http://www.freedomhouse.org/report/freedom-press/2013/bulgaria>.

37 Изпълнение на всички Комуникационни планове на Оперативните програми и на Програма за развитие на селските райони от началото на 2007 г. до 22.05.2013 г. <http://www.government.bg/fce/001/0211/files/spravka%20EP.pdf>.

political pressure.³⁸ Bulgaria has the lowest rank among EU members in the World Press Freedom Index.³⁹

Organised crime. Corruption facilitates organised criminal activities and obstructs their prosecution. Organised crime in Bulgaria is reported to enjoy patronage through corruption in public administration, the judiciary, police and customs.⁴⁰ A minister resigned in 2008 over contact with organised crime leaders. According to one assessment, in 2010-2011, illicit cigarettes and VAT fraud led to corruption within law enforcement, state and local administration and local political parties, while corruption related to drugs and prostitution declined.⁴¹ While its focus may shift, organised crime continues to exercise influence in the economy.⁴²

2. ISSUES IN FOCUS

Independence and effectiveness of anti-corruption institutions

CVM reports have repeatedly noted the need for an independent institution to focus efforts, make proposals and drive action against corruption.⁴³ In response to this recommendation, an inter-agency working group, in consultation with civil society, examined the feasibility of an independent council to coordinate and monitor the prevention and combating of corruption. Such a council has not yet been established. The Commission for Prevention and Countering of Corruption, chaired by the Minister of Interior, coordinates and monitors the preparation and implementation of anti-corruption strategic documents.⁴⁴ However, anti-corruption bodies remain fragmented and lack independence and external oversight. Institutions tasked with investigating conflict of interest and forfeiture of illegal assets lack autonomy and resources.

Ministry inspectorates need more analytical capacity to work proactively. The anti-corruption unit at the inspectorate within the Ministry of Finance has limited powers to address corruption in customs and tax administration. It is unclear to what extent ministries implement a risk assessment methodology developed by the General Inspectorate.

At the Ministry of Interior, the Internal Security Directorate investigated 728 cases in 2011, a 30% increase over the previous year.⁴⁵ The directorate has units throughout the country and it can use covert investigative methods, yielding a degree of progress against low-level corruption in border and traffic police. However, there is duplication with the Interior Ministry's inspectorate, which would benefit from a comprehensive system to manage tip-offs. Challenges remain in the prioritisation of higher-level cases.

In April 2013, the head of the Interior Ministry's Directorate-General for Combating Organised Crime was dismissed and prosecutors launched a bribery investigation after an anonymous source sent the media classified documents from probes dating back over a decade. The authenticity of the documents was confirmed but it remains unclear why action

38 US Department of State, 2012 Human Rights Report, <http://www.state.gov/j/drl/rls/hrrpt/2012/eur/204270.htm>.

39 Reporters without Borders, World Press Freedom Index 2013, <http://en.rsf.org/press-freedom-index-2013,1054.html>.

40 'Study to examine the links between organised crime and corruption', Philip Gounev and Tihomir Bezlov, Center for the Study of Democracy, 2010.

41 Center for the Study of Democracy. (2012). *Serious and Organised Crime Threat Assessment (2010-2011)*. <http://www.csd.bg/artShow.php?id=15991>.

42 SWD (2012) 232 (Accompanying the European Commission's Report on Progress in Bulgaria under the Cooperation and Verification mechanism, p 29.

43 Commission Report COM(2012) 411 final. (2012, July 18). *Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism*. http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf.

44 The Minister of Finance is Vice-Chair of the Commission.

45 CSD (2013), Countering Police Corruption: European Perspectives, <http://www.csd.bg/fileSrc.php?id=21610>, p. 105.

was not taken earlier on indications that smuggling and drug-trafficking suspects were being shielded from within law enforcement.

Repeated wiretapping controversies revealed flaws in the system for authorisation and conduct of surveillance, with significant implications for Bulgaria's capacity to address corruption. Leaked transcripts of wiretapped conversations appear to indicate political interference in the prosecution service and media, and shielding of businesses from investigation. In April 2013, prosecutors launched an investigation into a former minister and other officials amid claims of mass unauthorised wiretapping of politicians, magistrates and business people. A court verdict, acquitting a former defence minister of bribing an investigator to shelve an earlier investigation, noted irregularities in the approval and handling of surveillance material.⁴⁶ These cases highlighted the need for stronger guarantees against the risk of surveillance abuses, as the European Court of Human Rights ruled in 2007 and 2012.⁴⁷ In August 2013, Parliament overrode a presidential veto over amendments to the Special Surveillance Devices Act. The veto had been based on concerns over judicial independence and the powers of the newly created Bureau for control over special surveillance devices to request information and issue binding instructions.

The State Agency for National Security (SANS) was established in 2008 with significant resources, to fight high-level corruption and serious organised crime. However, its initial period was marked by controversy. After only two years of existence, a new government revised its mission and decreased its staff and budget, transforming it into a security agency dealing mostly with counterintelligence matters. SANS activities are supervised by a special parliamentary committee with rotating members. Its anti-corruption results were limited, as it was gradually stripped of its focus on corruption investigation. In May 2013, the deputy head of the SANS resigned, taking responsibility for leaks in an investigation into alleged electoral fraud.

In 2013, an overhaul of the security apparatus transferred the Interior Ministry's Directorate-General for Combating Organised Crime to the SANS. Control over surveillance was transferred from the Interior Ministry to the Council of Ministers. The outcome of these reforms remains to be seen. As noted in the January 2014 CVM report, personnel changes since May 2013 have reinforced concerns about the political independence of officials responsible for fighting corruption and organised crime, and about continuity in the law enforcement sector.⁴⁸

Parliament's fast-track amendment of the SANS Law⁴⁹ in 2013 and the election of a controversial MP as head of the SANS raised concerns in Bulgaria and beyond. The European Commission urged the authorities to make key appointments in the fight against corruption and organised crime on the basis of merit and integrity, and following extensive

46 http://scc.spnet.net/scc/wp-content/uploads/2013/05/motivi_4048_2010.doc.

47 Case of Association for European Integration and Human Rights and Ekimdzhiiev v. Bulgaria <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81323>. Case of Hadzhiiev v. Bulgaria <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114076>.

48 http://ec.europa.eu/cvm/docs/swd_2014_36_en.pdf pp. 21-22. Center for the Study of Democracy, in *Policy Brief 43*, November 2013, notes that: 'Such degree of sudden politically-motivated personnel changes within law-enforcement and civil service, coupled with premature and hasty restructuring of the law-enforcement institutions, has significantly weakened the state's capacity to counter organised crime, corruption, and the grey economy'. p. 11. <http://csd.bg/fileSrc.php?id=21643>

49 National Assembly of the Republic of Bulgaria, Law on Amending and Supplementing the Law establishing the State Agency for National Security <http://parliament.bg/bg/bills/ID/14377/>.

consultation.⁵⁰ The controversial appointee was withdrawn and replaced. An appointee for deputy minister of interior was also withdrawn.

Established at the Council of Ministers in 2010, the Centre for Prevention and Countering Corruption and Organised Crime is charged with assessing risks across public institutions, focusing on procurement.⁵¹ Its annual budget is EUR 2.5 million. In January 2013, the Centre's first interim report presented software (BORKOR) developed to identify corruption risks, and listed numbers of vulnerable areas without naming them.⁵² The head of the Centre was dismissed in 2012 for insufficient results, and its deputy head was removed without explanation in 2013. The new government has not yet confirmed its plans for the Centre. Concrete results of BORKOR are yet to be seen.

The Commission for Prevention and Ascertainment of Conflict of Interest became operational in 2011.⁵³ It has not yet succeeded in acting systematically and independently to prevent or uncover risks of political corruption. Instead, there are indications of an arbitrary and formalistic approach. An example is a probe into a former minister of economy, energy and tourism on his resignation in 2012. The commission established a conflict of interest based on dividends drawn on company shares nominally worth about EUR 140.⁵⁴ In July 2013, prosecutors charged the chair of the commission with abuse of office on the basis of evidence of politically manipulated investigations. An appeals court upheld his dismissal. An MP resigned over the same case.

The Law on the Forfeiture of Illegally Acquired Assets, which entered into force in November 2012, applies to all citizens and envisages proceedings regardless of criminal or administrative liability.⁵⁵ The dissuasive effect of the new provisions will depend on cooperation with prosecutors and administrative control authorities, and consistency of judicial interpretation regarding the burden of proof. In September 2013, the Asset Forfeiture Commission⁵⁶ and the Prosecutor's Office agreed to establish joint teams in cases of discrepancy between the income and assets of persons under investigation.⁵⁷ The first such team is to investigate a former senior MP charged with money laundering. In the 2013 Eurobarometer, 12% of respondents in Bulgaria say that measures against corruption are applied impartially and without ulterior motives (EU average 33%).

Independence and integrity of the judiciary

Specialised international bodies such as UNCAC⁵⁸ and GRECO⁵⁹ have confirmed that a satisfactory legal framework is largely in place to allow the prosecution of corruption-related offences, with some remaining room for improvement. The lack of results in terms of final court rulings on high-level corruption is attributable to weaknesses (including perceived corruption) in investigative and judicial practice. UNCAC reviewers noted that legislative

50 http://europa.eu/rapid/press-release_SPEECH-13-561_en.htm.

51 Centre for Prevention and Countering Corruption and Organised Crime. <http://borkor.government.bg/en/>.

52 Centre for Prevention and Countering Corruption and Organised Crime (2013), 'Първи доклад на ЦППКОП относно проекта „Модел на решение в областта на обществените поръчки', <http://borkor.government.bg/en/>

53 Commission for Prevention and Ascertainment of Conflict of Interest, <http://cpaci.bg/en/>.

54 http://cpaci.bg/images/reshenia/109_16.08.pdf.

55 Law on the Forfeiture of Illegally Acquired Assets, <http://www.mvr.bg/NR/rdonlyres/2991F5B0-8DF9-4460-92FB-41D1CA6791DC/0/ZOPDNPI.pdf>.

56 Commission for Forfeiture of Illegally Acquired Assets, <http://www.ciaf.government.bg/>.

57 Commission on Forfeiture of Illegally Acquired Assets (3 September 2013) *Инспектори на КОППИ и прокурори ще работят съвместно в разследващи екипи*.

58 <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1187232e.pdf>.

59 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_One_EN.pdf).

amendments need to be accompanied by administrative reform to enhance inter-agency coordination, streamline data collection, and promote effective implementation of relevant laws. Delays in investigations and judicial proceedings also need to be addressed.⁶⁰ As repeatedly noted in CVM reports, the prosecution of corruption and organised crime is obstructed by flawed pre-trial investigations, procedural delays and dismissal on technicalities.

Allegations surfaced in 2009 that a construction entrepreneur had acted as a power broker, promising to 'sell' senior positions in the judiciary. A perjury case against him for testifying that he did not know any magistrates collapsed. Two Supreme Judicial Council members resigned after telephone records revealed they had been in frequent contact with the alleged broker. In 2013, courts sent a tax evasion case against the same person back to prosecutors because of procedural flaws. Some of his assets were frozen at the initiative of the Forfeiture Commission.

In September 2012, Parliament's vote on candidates for the Supreme Judicial Council (SJC), the judiciary's self-governing body, followed partisan considerations. Background checks on candidates were limited to information about criminal or disciplinary offences.⁶¹ Rulings by the newly elected SJC have not yet established a consistent record against integrity violations.

The nomination and selection of new Constitutional Justices highlighted integrity challenges in the judiciary and flaws in Parliament's role in judicial appointments. A parliamentary committee chair refused to allow participants in a hearing on a candidate to consider corruption-related allegations raised by an MP. Instead, Parliament proceeded with the nomination. After the European Commission warned of a possible interim CVM report, the candidate was not allowed to take oath in extraordinary circumstances, after the President left the swearing-in ceremony. The candidate later requested retirement.

The next candidate for the Constitutional Court also had to withdraw after making inconsistent statements about her family's property and financial transactions. The case highlighted the lack of vetting for specialised prosecutors, as the candidate was deputy chair of the Specialised Appellate Prosecutor's Office, established to combat organised crime. She was subsequently demoted. While increased transparency did help prevent controversial appointments, the process also exposed enduring challenges.

The SJC has initiated checks on key courts and cases, to produce an analytical report and recommendations on the reasons for failures and delays. The new SJC's committee for professional ethics and prevention of corruption has not yet removed doubts about its capacity to uncover corruption and safeguard integrity.⁶² In September 2013, the SJC suspended one of its members, a senior prosecutor subject to a disciplinary probe, amid speculations of trading in influence ahead of the 2012 election of the SJC.⁶³

Magistrates' internal integrity mechanisms are currently under close scrutiny. The Prosecutor General ordered an investigation at the Inspectorate of the Supreme Cassation Prosecutor's

60 UNODC, Country Review Report of Bulgaria, http://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2013_08_06_Bulgaria_Final_Country_review_report.pdf.

61 Summary setting out an appraisal of the state-of-play of judicial reform and the necessary further steps to be taken. <http://www.judgesbg.org/en/library/papers/item/512-summary-setting-out-an-appraisal-of-the-state-of-play-of-judicial-reform-and-the-necessary-further-steps-to-be-taken.html>.

62 Commission Staff Working Document SWD (2012) 232 final. (2012, July 18). *Bulgaria: Technical Report accompanying the document: COM(2012) 411 final Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism*. p. 15. http://ec.europa.eu/cvm/docs/swd_2012_232_en.pdf.

63 Supreme Judicial Council, 26 September 2013, <http://www.justice.bg/bg/decisions/2013/pr-37-13.htm>.

Office, which revealed violations, including destruction of documents and disciplinary proceedings against prosecutors because of their rulings on cases. The head of the Inspectorate was removed from office and the Prosecutor General has brought a proposal in the SJC for her dismissal as a magistrate, the toughest disciplinary action. In April 2013, Sofia prosecutors specialising in the misuse of EU funds charged a former agriculture minister, following an investigation that other prosecutors had allegedly delayed.

A detailed functional audit commissioned by the Prosecutor General, as suggested by the CVM, noted delays in the prosecution of high-level corruption and a ‘campaign’ approach to opening cases after ministers had left office. The Prosecutor General drafted an action plan on the basis of the functional audit and an analysis of corruption cases since 2007.

In March 2013, a senior prosecutor resigned after it emerged that he had contravened the system for random allocation of cases. The case builds on OLAF investigations into the import of equipment from Germany, entailing alleged embezzlement from the EU’s special accession programme for agriculture and rural development (SAPARD). In one case the suspects were donors to a presidential election campaign. German accomplices in the same case were sentenced and imprisoned in their country in 2008.

Events since July 2012 indicate some progress in public hearings and dismissal of tainted magistrates. However, CVM recommendations on judicial reform have not yet been taken on board fully. Citing increasing threats to judicial independence, Freedom House lowered Bulgaria’s rating for judicial framework and independence in 2012.⁶⁴

Good practice: role of NGOs in fostering transparency and accountability

The Transparent Judicial Appointments Initiative by the Bulgarian Institute for Legal Initiatives (BILI) facilitates public scrutiny of recruitment and promotion in the judiciary, and promotes integrity as a key element in such decisions.⁶⁵ Using open sources of information, it publishes ethical and professional profiles of candidates who are allowed to have input in the assessment. BILI also works with individual courts and the Supreme Judicial Council to organise public hearings. The initiative aims for more transparent and merit-based nominations of magistrates to management positions, as part of a modernised human resources policy within the judiciary, as recommended in CVM reports.

Public procurement

The public administration has been subject to a variety of anti-corruption measures, including the adoption in 2008 of the Law on prevention and disclosure of conflicts of interests (amended in 2013), the decision to vest the State Financial Inspection Agency with *ex-officio* powers in 2011 (allowing it to initiate an investigation not only when alerted but also on its own initiative), the establishment of inspectorates in ministries and state bodies, awareness campaigns and training, and the establishment of BORKOR, a risk assessment tool with a special focus on the prevention of corruption in public procurement. Nevertheless, gaps remain in implementing transparency and anti-corruption provisions.

More proactive *ex-ante* and stronger *ex-post* controls, based on risk assessment, are needed to prevent, detect and address corruption in public procurement. CVM reports note risks and shortcomings in the implementation of public procurement rules, as indicated by audits

64 http://www.freedomhouse.org/sites/default/files/Bulgaria_final.pdf.

65 <http://judicialprofiles.bg/profiles/>.

conducted and complaints received by the European Commission. Sectors at risk include infrastructure works, energy and healthcare. The problem is aggravated by the scarcity of dissuasive sanctions applied in public procurement fraud cases. In August 2013, the government proposed amendments to the public procurement law aiming to open opportunities for small and medium enterprises, extend *ex-ante* controls to works contracts financed by national funds above certain thresholds (to date, these controls apply only to EU funds above certain thresholds), to vest the managing authorities with *ex-ante* control powers, and enhance the selection process for external experts. In addition, contracting authorities would be required to publish online information not just on the tender but also on the implementation of contracts.⁶⁶

These proposals were prompted in part by popular perception that a few companies dominate the procurement market in areas such as road construction. 73% of the general population surveyed in the 2013 Eurobarometer survey say that the only way to succeed in business is through political connections (EU average 56%). In the 2013 Eurobarometer business survey, 58% of Bulgarian respondents (the highest in the EU) said that corruption had prevented them from winning a public tender or procurement contract over the last three years.⁶⁷ Bulgarian respondents from the business sector perceive the following practices as being widespread in public procurement: involvement of bidders in the design of specifications (36%), unclear selection or evaluation criteria (49%), conflicts of interests in the evaluation of the bids (57%), specifications tailor-made for particular companies (58%), abuse of emergency grounds to justify the use of non-competitive or fast-track procedures (33%) and collusive bidding (41%). 66% considered that corruption is widespread in public procurement managed by national authorities (EU average: 56%) and 78% thought this was the case with local authorities (EU average: 60%). At the end of 2011, the Bulgarian Industrial Association calculated that corruption in tenders and EU funding applications increased from 66% to 75% year-on-year, i.e. affecting 75% of all tenders in 2011, according to a survey of 500 managers from various sectors of the Bulgarian economy.⁶⁸ These indicators, while not necessarily directly related to corruption, illustrate risk factors that increase vulnerability to corruption in public procurement procedures.

The Ministry of Defence has carried out anti-corruption initiatives such as the adoption of an ethics code for its officials and an integrity pact with business partners. However, in December 2012, the Ministry decided to purchase fighter jets without tender, in a procedure that was subsequently cancelled. In May 2013, business leaders called for greater transparency in defence procurement.

Irregularities have been reported in EU-funded tenders for distributing food to the poor. Procurement corruption is also a challenge in local government, including the involvement of political parties at local level.⁶⁹ Smaller towns face particular risks of organised crime infiltration, linked to a combination of violence, threats and collusion with local politicians and law enforcement, and concentration of economic power. Such risks have direct implications for the ability of local authorities to carry out impartial and transparent procurement procedures.

66 http://www.government.bg/fce/001/0211/files/ZID_ZOP.doc.

67 2013 Flash Eurobarometer 374.

68 [http://www.bia-](http://www.bia-bg.com/uploads/files/_oldsite_news/bulgarian_industrial_association_news_1324284448_anketa_2011.pdf)
[bg.com/uploads/files/_oldsite_news/bulgarian_industrial_association_news_1324284448_anketa_2011.pdf](http://www.bia-bg.com/uploads/files/_oldsite_news/bulgarian_industrial_association_news_1324284448_anketa_2011.pdf).

69 Center for the Study of Democracy. (2012). *Serious and Organised Crime Threat Assessment (2010-2011)*. <http://www.csd.bg/artShow.php?id=15991>.

Local governments are responsible for a significant proportion of public procurement. According to CVM reports, municipalities implemented anti-corruption measures such as a 'one-stop shop' system to reduce the number of officials in direct contact with the public, enhancing transparency through the use of municipal newsletters and websites, codes of ethics, establishing systems for internal financial management and control, recruiting some 400 internal auditors and recruiting local public mediators (local ombudsmen). All 28 regions in Bulgaria have anti-corruption councils, which should include representatives of local government, territorial structures, the judiciary, various ministries, civil society and business.⁷⁰ The impact of these councils on the reduction of corrupt behaviour in local and regional public bodies remains difficult to assess, as no concrete information has been made public.

A crucial element supporting transparency, including on procurement, is effective access to information. This is limited in practice, despite the existence of relevant legislation.⁷¹ No independent oversight mechanism is in place to ensure uniform and correct implementation of the law on access to public information.⁷² A 2013 survey of institutional websites found that 66% included a register of procurement tenders and 10% contained information about contracts awarded.⁷³

Improved knowledge and capacity of public authorities involved in the procurement process, as well as a fully operational nationwide e-procurement system allowing electronic submission of bids, would increase transparency and help prevent corruption.

Accountability and integrity of elected officials

An appropriate system to ensure the accountability and integrity of elected officials sets an example to others and constitutes an important element in the prevention of high-level corruption. Members of Bulgaria's Parliament are required to declare potential conflicts of interest when proposing bills, speaking in plenary or in a committee.⁷⁴ Attempts to pass a code of conduct for Members of Parliament have failed. In the absence of a code, Parliament's Committee on corruption, conflicts of interest and parliamentary ethics has been ineffective as illustrated by a 2010 hearing convened after 16 MPs appeared during session time at a presentation staged by media with the promise of a free mobile telephone. In July 2013, following the election of a controversial MP as chair of the Committee, the National Assembly transferred the issue of parliamentary ethics to the Committee on religions.⁷⁵

The former deputy chair of the parliamentary committee for agriculture and forests was accused of proposing amendments that served his private interests, including a partial lifting of the ban on construction on swapped forest land, as well as amendments to the hunting act and efforts to lift a ban on smoking in public. After lengthy deliberations, the Commission for Prevention and Ascertainment of Conflict of Interest ruled that the former MP had breached rules by opposing a smoking ban; he had transferred ownership of tobacco businesses to his relatives before entering Parliament. A conflict of interest was also established regarding

70 Council of Ministers. (2012). *Report on the State of the Public Administration 2011*
<http://www.strategy.bg/Publications/View.aspx?lang=bg-BG&Id=81>.

71 Закон за достъп до обществена информация, <http://lex.bg/laws/ldoc/2134929408>.

72 'Money, politics, power: Corruption risks in Europe', by Transparency International. June 2012, p. 5.

73 Tendencies in Online Disclosure of Information, Results from AIP 2013 Audit of the Web Sites of Executive Bodies in Bulgaria, http://store.aip-bg.org/surveys_eng/AIP_Active_Transparency_Audit_2013.pdf.

74 Rules for the organisation and activity of the People's Assembly, Chapter 12,
<http://parliament.bg/bg/rulesoftheorganisations>.

75 <http://parliament.bg/bg/desision/ID/14481>.

proposed amendments to the forestry act.⁷⁶ If the Commission's decision is upheld upon appeal, the former MP may be subject to a fine of EUR 2 500 to EUR 3 500 and may face confiscation of his income from public office during the period in question. He is also under investigation for vote-buying, after the emergence of a secret video recording in April 2013.

In 2010, Parliament's Committee on corruption, conflict of interests and parliamentary ethics found evidence of a conflict of interest in the case of a political party leader who had received EUR 1 million as a consultant on hydropower projects, without engineering qualifications. The case was referred to the Supreme Administrative Court which ruled there was no conflict of interest.⁷⁷ In a separate case, an MP was arrested in July 2012 on charges of demanding a bribe to intervene in a local agricultural dispute. He later resigned from Parliament.

Electoral irregularities

Electoral irregularities often entail the corruption of public officials and undermine confidence in the institutions tasked with upholding the rule of law. In Bulgaria, public attention has long focused on the problem of vote-buying, in particular among minority groups. Waste-disposal industry owners, leading employers of members of the Roma minority, are suspected of using their influence to manipulate the voting of Roma communities. Cases were reported during the 2011 local elections and 2013 parliamentary elections. Eradicating vote-buying requires a structural and multi-disciplinary approach including consideration of access to education and employment.⁷⁸

The Criminal Code contains a section on crimes against the political rights of citizens, including vote-buying.⁷⁹ In February 2013, the minimum prison sentence for organising vote-buying was increased.⁸⁰ There is no information available on attempts by the authorities to thoroughly audit the electoral process to identify and address weaknesses. In 2012, Transparency International Bulgaria published a detailed analysis of the transparency and integrity of the election process.⁸¹ It recommended increasing the budgetary independence and staff of the electoral administration, including permanent experts in addition to political appointees, ensuring free access to media by registered candidates, and amending the legislation to allow closer monitoring by civil society. Effective and dissuasive sanctions have not yet been applied. Prosecutors launched an investigation into vote-buying and tax fraud following the emergence in May 2012 of a wiretapped conversation suggesting electoral abuse (vote-buying and falsification of election results) and links between political parties and organised crime.

In the lead-up to the May 2013 parliamentary elections, the message was repeatedly emphasised that buying or selling votes is a crime. International observers acknowledged the elections as competitive and well run, but noted problems with public trust in the process, provoked by allegations of pre-election wiretapping and vote-buying. Shortly before the elections, prosecutors discovered unaccounted-for ballot papers at a printing press owned by a

76 Commission for Prevention and Ascertainment of Conflict of Interest, <http://www.cpaci.bg/images/reshenia/206.pdf> and <http://www.cpaci.bg/images/reshenia/205.pdf>.

77 Supreme Administrative Court, <http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/db2227f5a1f93534c22577af0030920a?OpenDocument>.

78 *Le processus électorale en Bulgarie — Principaux risques et déficits*, Fondation RiskMonitor, Sofia 2011, p 90.

79 Art.167, para.2 and para.3 of the Criminal Code.

80 The penalty is one to six years' imprisonment and a fine of EUR 2 500 to EUR 10 000. State Gazette 17 of 2013.

81 Transparency International Bulgaria, *Transparency and integrity of the election process: Report on the monitoring of the presidential and local elections in the Republic of Bulgaria*. Sofia, 2012. www.transparency.bg.

local councillor from a leading political party. The revelation prompted speculation on the day before the elections, when campaigning is prohibited by law.

Prosecutors opened 77 investigations and seven people were arrested for electoral fraud. Plea bargains led to one sentence of a fine and five months' imprisonment for having paid five voters EUR 7.50 each; seven others received suspended sentences.⁸² Increased vigilance helped to expose individual instances of a problem whose long-term resolution requires a comprehensive effort. More senior organisers of vote-buying have not so far been prosecuted.

3. FUTURE STEPS

Fighting corruption has long been a declared priority for Bulgaria. Since EU accession in 2007, these efforts have been supported by the Cooperation and Verification Mechanism, which monitors progress on six related benchmarks. Legal and constitutional reforms have resulted in the establishment of new structures and increased specialisation. However, corruption remains a serious challenge in Bulgaria at different levels, and petty bribery continues to be reported in healthcare, police, customs, local authorities and beyond. The absence of dissuasive sanctions being applied in practice for corruption, especially for senior officials, exacerbates the challenges. A focus on results and additional efforts are necessary to improve the independence and effectiveness of anti-corruption institutions and the judiciary, to boost the transparency of public procurement and the accountability and integrity of elected officials, and to prevent electoral irregularities.

The following points require further attention:

- Ensuring effective coordination of **anti-corruption institutions**, shielding them from political influence and appointing their management in a transparent, merit-based procedure. Conducting consistent checks and applying dissuasive sanctions for conflicts of interest.
- Applying clear integrity criteria for appointing **magistrates** and evaluating their performance in a transparent procedure, and ensuring random assignment of cases in courts through a single, effective nationwide system, as recommended by the CVM.
- Adopting a code of ethics for **Members of the National Assembly** and establishing an effective oversight mechanism. Ensuring dissuasive sanctions for **electoral fraud**, including for higher-level organisers, and developing a comprehensive multi-disciplinary strategy to focus on vulnerable parts of the population.
- Further extending the scope of compulsory ex ante control of **public procurement**, including technical specifications and exceptions from the applicable legislation, effectively using the *ex-officio* powers of the State Financial Inspection Agency for ex-post controls. Effectively applying dissuasive sanctions for corruption in public procurement at national and local level.

82 Prosecutor General's Office, June 2013, <http://www.prb.bg/main/bg/News/3649/>.