



Combating corruption: from commitments to action

*The messy fight against corruption in Bulgaria
and the need for ambition in the EU institutions*

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To Action***

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*Executive
Summary*

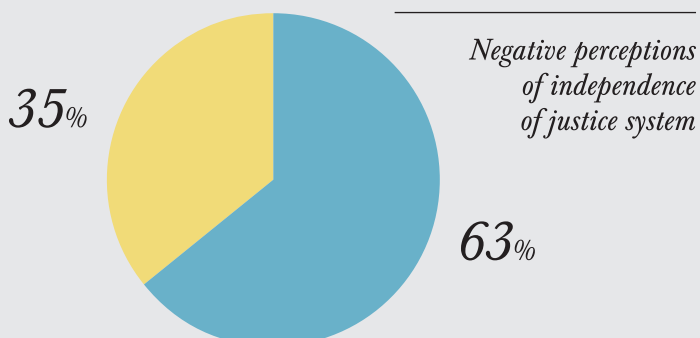
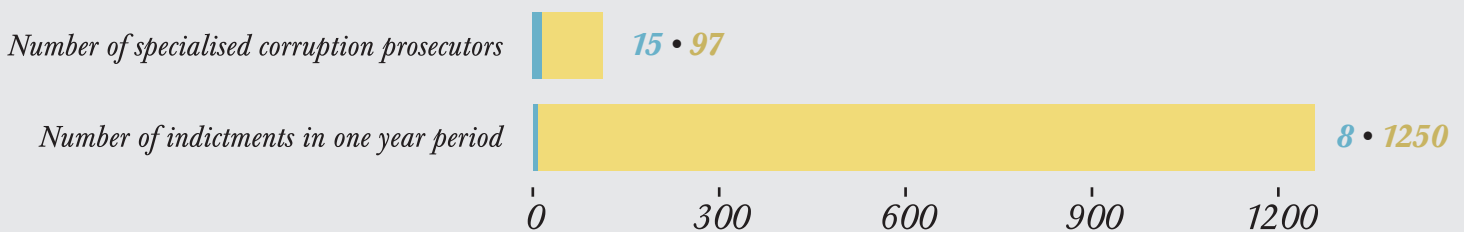
Out of all the EU Member States, Bulgaria has the worst standing in the Transparency International Corruption Perceptions Index, ranking 75th out of all the countries in the world. Although the fight against corruption has been set as a priority by various Bulgarian governments, anti-corruption policies and approaches have changed inconsistently over time, and it could even be argued that the fight against corruption has been overly politicized, at least in recent times.

Before 2009, most anti-corruption strategies sought to improve the integrity and accountability of the public administration as a whole, whereas the more recent ones focus rather on applying sanctions against corruption by high level politicians. However, neither of these two approaches is strong and effective enough when applied in isolation.

In the case of Bulgaria, the necessary legislative framework to counteract corruption has been adopted and the relevant international instruments have been signed. However, problems persist due to weak implementation of this legislation and the lack of coordination among the institutions involved in the process. Comparing levels of prosecution in practice, in 2015, the Romanian Anti-Corruption Prosecutor's Office produced 1250 criminal charges against public officials, including against a Prime-Minister, five ministers, 16 MPs, five senators, and 97 mayors and deputy mayors. In contrast, in Bulgaria, there were only 8 indictments against corruption offences over the course of one year. In addition, Bulgarians have the lowest levels of trust in their courts and judges compared to all other EU countries, with 63% rating their independence either as "fairly bad" or "very bad".¹

1. See https://ec.europa.eu/info/sites/info/files/file_import/european-semester-thematic-factsheet-effective-justice-systems_en.pdf

Prosecuting Corruption Offences: Quick Comparison



Legend:

Romania

Bulgaria

Sources: <http://www.media-pool.bg/antikoruptionsionoto-zveno-na-tsatsarov-za-edna-godina---edna-prisada-na-parva-instantiya-news246766.html>

and http://data.europa.eu/euodp/en/data/dataset/S2148_447_ENG/resource/6e3eb4f8-c256-4879-b75c-677ede146673

The Cooperation and Verification Mechanism applied by the European Commission for the monitoring of the progress in Bulgaria and Romania since 2007 in the fields of judicial reform, corruption, and (in Bulgaria) organized crime has proved to be an important tool. The continued pressure for stronger and more efficient measures has led Bulgaria to debate the adoption of a specific anti-corruption law, which was voted on by the Parliament at the end of 2017 but then vetoed by the President in early January 2018. This veto was then overturned on the 12th January by the majority of MPs, meaning that the law should soon enter into force.

However, the draft law fails to comply with international standards in the fight against corruption and even raises further concerns in that area. Furthermore, it would appear that the fight against corruption is now being used as an excuse to limit criticism of the government and tame the opposition.

In particular, the majorities in the Bulgarian Parliament voted against stronger protection for whistleblowers in what was clearly a step backwards, because they felt that whistleblowers should take legal responsibility for their reporting of corruption offenses.

In addition, the newly established Anti-Corruption Commission will be given the power to conduct secret surveillance of public officials and to target those suspected of “corruptive behavior”, which is a term that is not properly defined in the law. Furthermore, the new law focuses mostly on the confiscation of property, which is seen as a priority, while on the other hand, the Anti-Corruption Commission will not be responsible for overseeing conflict of interest situations in the civil service, having had its competences restricted to cover only high-ranking officials.

This focus on confiscation is particularly problematic given the fact that in December 2017, the owner of one of the few free, critical, and respected media was subjected to the current law on confiscation of property and his assets were frozen, thus putting at risk the existence of the entire media outlet. Bulgaria is already the EU country with the lowest ranking in the Reporters without Borders World Press Freedom Index, lagging far behind in 109th position

Around the same time, a newspaper controlled by an influential Bulgarian oligarch printed and circulated a book maliciously defaming a number of journalists, NGO activists, and politicians who were critical of the government, including a European Commission officer working in Sofia. The book presented those people’s call for real and ambitious reform in the field of corruption as “corrupt” and inspired “from the outside”. This publication was preceded by a number of defamatory articles plus several similar books, some of which were even circulated in English in the European Parliament.

These examples raise questions about whether the existing laws in Bulgaria - and therefore also the future anti-corruption law - are enforced in a way that combats corruption or whether, on the contrary, they are inefficient and serve rather as a box-ticking exercise to keep up appearances.

For its part, despite the fact that the Cooperation and Verification Mechanism is based on a well-developed methodology and has proved to work well, especially in the case of Romania,

the EU does not seem to plan on expanding it as a monitoring tool for other country members in the field of corruption. In fact, the European Commission has actually taken a step back in the fight against corruption in the Member States by refusing to publish a new edition of what was supposed to be an annual anti-corruption report.

The relationship between the EU institutions and the fight against corruption in Bulgaria is further complicated by the fact that some media outlets found to be in violation of journalistic ethics standards are actually also beneficiaries of EU funds, which they receive in order to promote EU programmes.

In addition, self-assessment mechanisms have not been applied to the EU institutions themselves. The discussions regarding the Union's accession to the Council of Europe's Group of States Against Corruption (GRECO), which would allow for regular scrutiny of its institutions, have not yet led to any meaningful results. As epitomised by 'Brexit', this state of affairs highlights that there is an urgent need to regain and strengthen citizens' confidence in the EU institutions. Consequently, increased efforts should be made to promote both unity across the EU and ambition within the EU institutions themselves in the fight against corruption.

While the task in the case of Bulgaria is to create a model of prevention and combating of corruption that is capable of eliminating the influence of oligarchs and organized crime on the Bulgarian institutions, the aim in the case of the EU institutions is to ensure conformity with common anti-corruption rules within the EU Member States and, more importantly, to ensure an effective application of anti-corruption rules and standards within the EU institutions themselves.

The Bulgarian Presidency of the Council of the European Union is therefore a perfect opportunity to take a critical look at the functioning of the anti-corruption systems to date in both Bulgaria and the EU and to call for increased ambition in the fight against corruption at both levels. The EU has so far played an important role in pushing for reform in Bulgaria and now Bulgaria should take advantage of its position in the Council Presidency to do the same within the EU institutions themselves.

***Comparative Results of EU Member States in Transparency International (TI)
Corruption Perceptions Index***

<i>Country</i>	<i>TI Corruption Perceptions Index (0 - max. 100)</i>	<i>Ranking in the world</i>
<i>Denmark</i>	<i>90</i>	<i>1</i>
<i>Finland</i>	<i>89</i>	<i>3</i>
<i>Sweden</i>	<i>88</i>	<i>4</i>
<i>Netherlands</i>	<i>83</i>	<i>8</i>
<i>Germany</i>	<i>81</i>	<i>10</i>
<i>Luxembourg</i>	<i>81</i>	<i>10</i>
<i>United Kingdom</i>	<i>81</i>	<i>10</i>
<i>Belgium</i>	<i>77</i>	<i>15</i>
<i>Austria</i>	<i>75</i>	<i>17</i>
<i>Ireland</i>	<i>73</i>	<i>19</i>
<i>Estonia</i>	<i>70</i>	<i>22</i>
<i>France</i>	<i>69</i>	<i>23</i>
<i>Poland</i>	<i>62</i>	<i>29</i>
<i>Portugal</i>	<i>62</i>	<i>29</i>
<i>Slovenia</i>	<i>61</i>	<i>31</i>
<i>Lithuania</i>	<i>59</i>	<i>38</i>
<i>Spain</i>	<i>58</i>	<i>41</i>
<i>Latvia</i>	<i>57</i>	<i>44</i>
<i>Cyprus</i>	<i>55</i>	<i>47</i>
<i>Czech Republic</i>	<i>55</i>	<i>47</i>
<i>Malta</i>	<i>55</i>	<i>47</i>
<i>Slovakia</i>	<i>51</i>	<i>54</i>
<i>Croatia</i>	<i>49</i>	<i>55</i>
<i>Hungary</i>	<i>48</i>	<i>57</i>
<i>Romania</i>	<i>48</i>	<i>57</i>
<i>Italy</i>	<i>47</i>	<i>60</i>
<i>Greece</i>	<i>44</i>	<i>69</i>
<i>Bulgaria</i>	<i>41</i>	<i>75</i>





Introduction

Corruption is considered a serious threat in modern societies across the globe because it violates the rule of law, impedes social and economic development, perpetuates unjust privilege, increases the concentration of power and undermines citizens' trust in democracy.

However, government responses both in Bulgaria and within the European Union institutions in dealing with corruption reveal a disconnect between the urgency and scale of the problem and the ambitions of those in power to take action.

In 2017, Bulgaria remains the EU country with the lowest result in the Transparency International Corruption Perceptions Index. It was ranked 75th in 2012, 2016 and 2017, 77th in 2013, and 69th in 2014 and 2015. The 2013 Global Competitiveness Report lists corruption as the most problematic factor for doing business in Bulgaria².

In addition, according to the 2016 Transparency International Global Corruption Index, the share of the households that paid a bribe when accessing basic services in Bulgaria was 17%, which is much higher than the average for Western European countries (UK, Sweden, Netherlands, France, Portugal, Germany, Spain are all between 0-3%, while in Italy the figure is 7%).

Turning to Eastern Europe, the index shows large discrepancies between different countries. The lowest level of corruption is observed in Slovenia (3 %), followed by Estonia, Poland and Czech Republic (all between 5% and 9 %), while the highest levels are still worse than those observed in Bulgaria. In Romania 20% of households declare to have paid bribes, in Hungary it is 22%, and in Lithuania it rises as high as 24%.

Bulgaria has made considerable progress in the last 17 years, and the country has many years of experience in making and implementing policies to prevent and fight against corruption. The first National strategy for countering corruption was implemented in the period 2001 - 2005. Since then, legislation has been passed and specific anti-corruption bodies created in order to implement and coordinate Bulgaria's anti-corruption activities but a more comprehensive and consistent approach is still needed, and the focus needs to be shifted back to once again include prevention. Particularly worrying is the lack of whistleblower protection and the restrictions on press freedom in the country.

At a European Union (EU) level, some efforts have been made to adhere to international anti-corruption instruments and to legislate in relation to important corruption-related issues in the Member States but there is little ambition to establish comprehensive anti-corruption monitoring mechanisms at either Member State or EU level.

This said, the European Commission has been keen to monitor the progress of Bulgaria in anti-corruption policies and legislation under the Mechanism for Cooperation and Verification (CVM) that has been established since 2007. However, it is far less ambitious when it comes to tackling corruption inside the EU institutions themselves.

Firstly, it has failed to conduct its own self-assessments or to properly apply the anti-corruption mechanisms included under the UN Convention Against Corruption or the standards set by the Council of Europe's Group of States Against Corruption (GRECO).

2. See page 138 of http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

Secondly, whistleblowers within the EU institutions are still subjected to harassment, inadequate procedures and a lack of effective protection in practice.

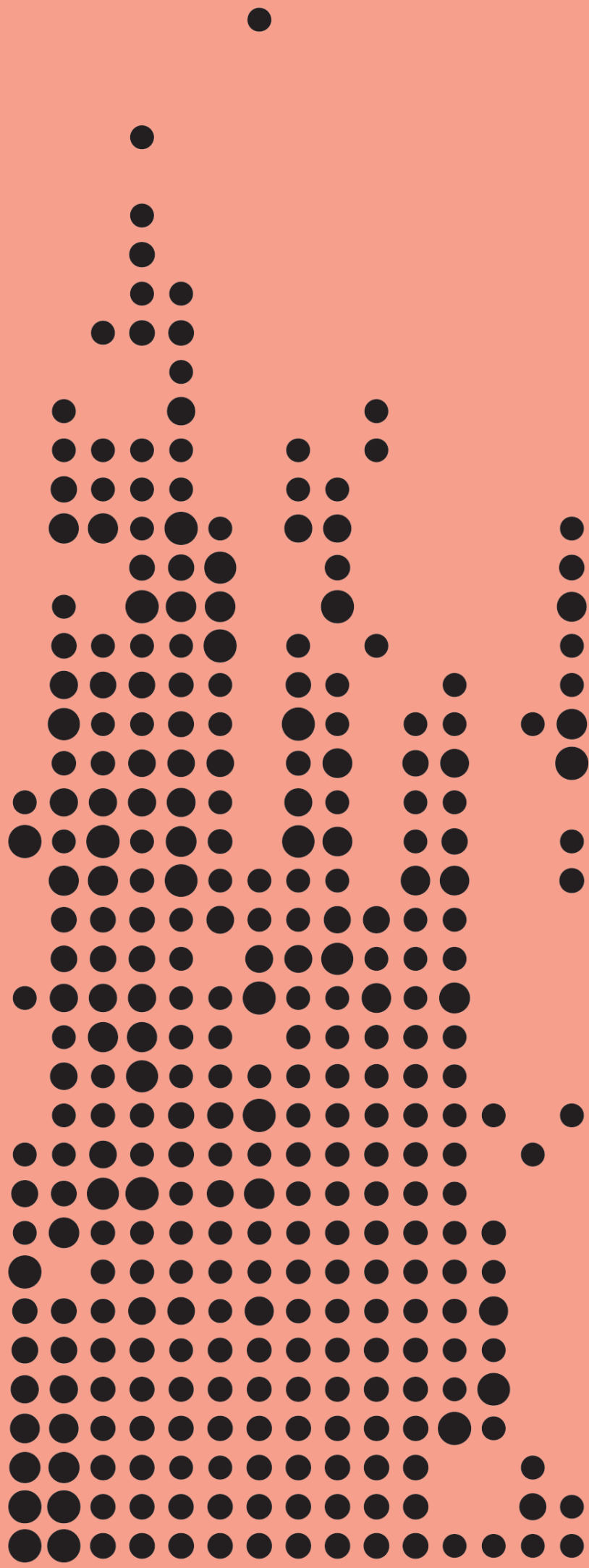
Finally, although the Commission published one report measuring the progress of the EU Member states on the prevention and fight against corruption which was generally welcomed, it was also criticized for lacking a chapter focused on assessing the same issues within the EU institutions themselves. To make matters worse, the Commission later abandoned the whole idea of producing annual anti-corruption reports and shelved the second edition.

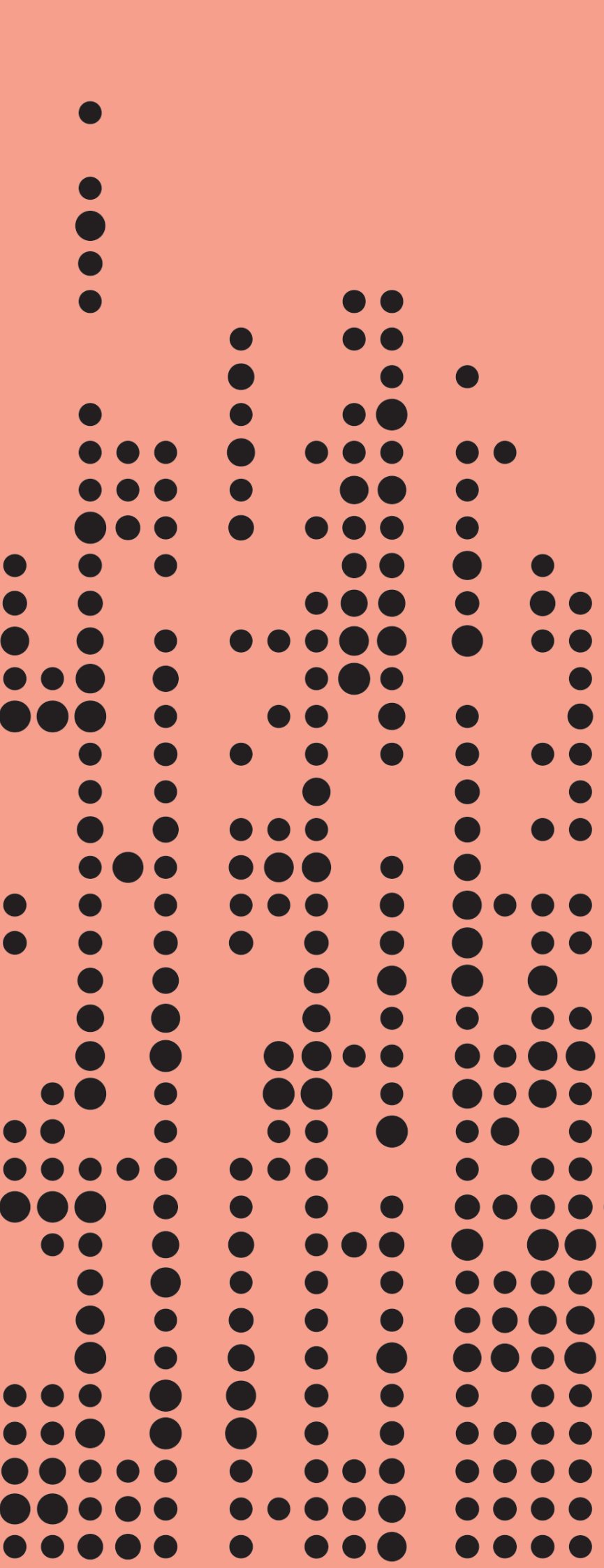
The European and Global political context has changed in recent years, with the UK voting for Brexit, the regimes in Poland and Hungary raising concerns about the ability of the EU to protect human rights and uphold the rule of law, and countries such as Russia and Turkey, both neighbours of Bulgaria, trying to play a more active role in regional and world politics.

Given this context, in these times it is more important than ever to strike the right balance between the fight against corruption, which is usually performed by law enforcement, and the protection of fundamental rights and freedoms. This is particularly the case in countries with communist totalitarian pasts, where there is an ongoing risk of reviving old practices of oppression, secret surveillance, and the witch-hunting of political and ideological opponents.

The European Union and Bulgaria therefore both need to increase their ambitions in the fight against corruption, and to push each other to do more in this area. Bulgaria could use its position leading the Council of the European Union to prioritise the fight against corruption in the EU institutions themselves, thus becoming the subject rather than the object of the EU's anti-corruption efforts, since traditionally the EU has demanded much of Bulgaria whilst failing to apply its own stringent anti-corruption measures internally.

This report examines the measures that should be taken by Bulgaria and by the European Union in order to comply with international standards in the fight against corruption and thus contribute more effectively to its eradication.





*Scope of Work,
Content and
Methodological
Approach*

For the purposes of the current research, an assessment of the Bulgarian national legislation and administrative practices in the field of anti-corruption was conducted. The research also covers shortly the rules that apply to the legislative and judiciary branches of power and the bodies that implement them.

The European Union's (EU) internal and external commitments to counteract corruption are also covered in this report. The list of commitments is accompanied by a short analysis assessing to what extent the EU and particularly the European Commission has proactively attempted to comply with international standards.

The analysis is based on the GRECO evaluation framework, modified, simplified and shortened for the purposes of this research. The evaluation related to preventive measures for public administration overlap to great extent with the relevant provisions of the UN Convention against Corruption (UNCAC). The basis of this evaluation are the Guiding principles # 9 and 10 of Resolution (97) 24.³ The scope of the reference framework is broad enough to cover also the administrative provisions, which are applicable specifically to those exercising public office and which thus supplement national legislation.

3. Available at: [https://www.kpk-rs.si/upload/datoteke/ResC-M_97_24E_01\(1\).pdf](https://www.kpk-rs.si/upload/datoteke/ResC-M_97_24E_01(1).pdf)



A. Legal Framework

Compliance with international legal frameworks
Discussions on the new anti-corruption law
Analysis of the new Anti-Corruption law

B. Anti-Corruption Strategy

Anti-corruption strategy: Monitoring and Evaluation

C. The Bulgarian Anti-Corruption Institutional Framework**D. Conflicts of Interest**

Legal framework
Assets and conflict of interests declarations
Monitoring procedures

E. Codes of Ethics/Conduct

Codes in legal framework
Applicability/ dimensions of codes of ethics

F. Gifts

Legal provisions
Sanctions

G. Reporting of Corruption: by Officials and Whistleblowers

Reporting obligations
Protection of whistle-blowers

K. Proceeds of Corruption

Legal basis and scope

I. Legal Persons and Corruption

Liability
Sanctions

Conclusions



1

*Review of
the Relevant
Bulgarian
Anti-Corruption
Legislation*

Bulgaria has actively participated in international anti-corruption initiatives, signing all the major international conventions, and gradually introducing them into law. However, implementation is still weak and until very recently there was no specific Anti-Corruption Law in place, with most efforts remaining rather sectoral and fragmented in nature.

The much-awaited Anti-Corruption Law was adopted by the Parliament in December 2017 and then vetoed by the President on 2nd January 2018 due to its many deficiencies, but the veto was overturned by the Parliament and the law was adopted without changes on the 12th January.

This law attempted to introduce some improvements but actually also raised serious concerns about the protection of whistleblowers, even taking a step back in the current levels of protection and opening the doors for further legal prosecution of those reporting on corruption offences.

In addition, despite promises that the anti-corruption law would provide a comprehensive framework for the prevention and sanctioning of corruption, the Commission that was established to enforce this lacks competences in many important areas, thus raising further questions about the implementation of the law in practice. The draft law does not include preventive measures against corruption and instead has a worrying focus on the confiscation of assets, including for crimes totally unrelated to corruption, as detailed in the sections below.

A. Legal Anti-Corruption Framework

» Compliance with International Legal Frameworks

On the 26th January 1999, the Bulgarian government notified the Secretary General of the Council of Europe of its consent to take part in the Council of Europe's Group of States against Corruption (GRECO), in which it has remained a member to this date.

Bulgaria ratified the Council of Europe Criminal Law Convention on Corruption (in force since July 2002) and the Council of Europe Civil Law Convention on Corruption in 2000 (in force since November 2003).

The UN Convention against Corruption was ratified by Bulgaria in May 2006, and the Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union was ratified in January 2007.

The accession to the European Union in 2007 led to Bulgaria's adherence to the *Acquis Communautaire*, but in addition, Bulgaria (together with Romania) was placed under the EU's Mechanism for Cooperation and Verification (CVM) due to the need to improve its institutional framework, specifically in the fight against corruption and organised crime.

In order to ensure compliance with the international anti-corruption instruments, the Criminal Code (CC) has been gradually amended in the past years to cover a wider scope of corruption crimes. Eighteen years ago the definition of "foreign public official" was incorporated in the CC with regards to bribery, thus complying with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Over the last 17 years, the CC was progressively amended and the scope of criminal offences connected with corruption grew. Bribery was extended to include both material and non-material advantages. In addition, bribery in the private sector was criminalised, and so was trading in influence, as well as bribery of arbiters and defending lawyers.

However, it was only in 2017 that a specific anti-corruption law was debated in Bulgaria.

» Discussions on the New Anti-Corruption Law

Discussions on a complete anti-corruption bill began following the recommendations from the European Commission's CVM reports on Bulgaria. However, the process of drafting the law was not based on an in-depth analysis of the current situation and the draft law does not address

many of the problems that have already been encountered in the implementation of the existing sectoral laws.

Previous efforts in the period 2015 – 2017 to adopt a specific anti-corruption law ended in failure. Draft laws were introduced in the Parliament but not passed in 2015 and again in 2016. The Parliament's resistance at the time was due to the unclear provisions on the functions of the proposed anti-corruption body and the fear that in the lack of checks and balances it could turn into a monster fulfilling repressive political tasks.

In 2017, the Government introduced in Parliament a new draft law and after public consultation in August it was approved at first reading in the last week of October 2017. In December 2017, the law was formally adopted by the Parliament and then sent to the President for promulgation. The latter announced publicly he was going to veto the law, which he did on 2nd January 2018. However, on the 12th January 2018, the law was passed again by Parliament without amendments, meaning that it should soon enter into force.

The President argued that the veto was necessary because the new law excludes the criminal responsibility of officials involved in corruption from its scope and focuses instead on other measures, such as the confiscation of property from anyone who has committed crimes. The President argues that this would lead to ineffectiveness in addressing issues of corruption involving officials, while at the same time creating opportunities for attacking political opponents. That problem is exacerbated by the politicized appointment procedure with respect to the new anti-corruption body, whose members will be elected by a simple majority vote.

» *Analysis of the New Anti-Corruption Law*

The new Anti-Corruption law⁴ proposes that an Anti-Corruption Commission be established with a mandate to collect and monitor the declarations submitted by officials. The assets and the interest declarations will finally be combined into a uniform document, which is a welcome improvement. The Commission will monitor all the declarations submitted for the first time and will also act on information disclosed by individuals.

However, in many respects the bill actually constitutes a step backwards in comparison with the existing legal regime. For example, the Parliament removed any protection of whistleblowers during the second hearing and thus fell far below the level of protection created in the last eleven years. The rationale behind the decision to abandon the proposed protection was that whistleblowers should bear legal responsibility when they present information that may lead to the initiation of proceedings against an official. Unfortunately, throughout the debate, the distinction between good will and malicious reporting was never even discussed.

The lack of comprehensive measures to prevent corruption was one of the main criticisms of

4. **Registered** with n° 702-01-26 on 06 October 2017. The Counteracting Corruption and Confiscation of Illegally Obtained Act is referred in the text as "the anti-corruption law [bill]".

the new anti-corruption bill. This is because it is focused mainly on the confiscation of property. In addition, many participants in the public discussion criticized the fact that the broad scope of the law embraces confiscation for crimes that are entirely unrelated to corruption.⁵

Furthermore, the Anti-Corruption Commission will be able to collect any information about officials based on the suspicion of “corruptive conduct” and will have the power to use secret surveillance to gather information about about suspected officials, but it will not be possible to use the obtained information for criminal investigations. In cases of discrepancy between the income declared and the property found to be possessed by a certain official, the Commission is able to initiate confiscation proceedings.⁶ However, despite the insistence of the opposition Socialist Party, the Commission is not expected to perform functions that overlap with police activities in investigating crimes.

The law is also flawed because some definitions are vague⁷, while others are entirely missing.⁸ Notably, the definitions of *corruption*, corruptive behaviour and *conflict of interest* are unclear and overlapping to a great extent. As regards the policies on prevention of corruption, the broad definition of corruption is not that problematic, but when it comes to the repressive measures, and especially to the criminal responsibility and deprivation of property, a clearer definition should be laid out.

In addition, several public bodies and NGOs emphasized the lack of analysis of the existing legislation. A number of influential NGOs raised concerns about the consistency of the proposed bill with the existing anti-corruption framework and its capacity to enhance it. A significant criticism with respect to the bill is that it merely combines several existing laws without adding any value to their content⁹.

Although this approach could have led to better coordination of the work performed by different institutions up until now, the different functions still remain isolated from each other and lack a real anti-corruption focus. Indeed, it is even expected that the new Anti-Corruption Commission will be led by the members of the current Confiscation Commission, which is furthest away from the field of anti-corruption.

Finally, investigations on conflicts of interest will not extend to private individuals or even to companies, which means that the functions of the new anti-corruption body will be even narrower than those of the existing Conflicts of Interest Commission. It will have the power to check and sanction only high-ranking officials (around 7000), but it will not have these powers in relation to civil servants, of which there are around 120,000 working in the public bodies.

The authority to verify, discipline, and sanction civil servants will be left to the appointing bodies and to the inspectorates in the respective institutions, which means that, in many cases, the fight against conflicts of interest and corruption will be in the hands of those who act in collaboration with the suspect.

5. **Supreme Bar Council**, Anti-Corruption Fund and others.
6. **Proceedings are initiated** in the case of “significant discrepancy”, i.e. exceeding the amount of 100 000 BGN (approximately 75 000 EURO).
7. **Eg.**, the definitions of ‘corruption’ and ‘conflict of interest’, as raised by AIP in the discussion.
8. **Eg.**, there is no definition of corrupt conduct, as pointed out in the statements of the Supreme Bar Council and AIP.
9. **TI Bulgaria** raised the issue of lobbying not being regulated, while AIP stressed the absence of stronger obligations to publish interest declarations of civil servants and to perform periodical anti-corruption risk analysis in the public administration, and raised concerns about the narrowing of the scope of public officials subject to scrutiny for conflict of interest.

B. Anti-Corruption Strategy

Over the years, Bulgaria has adopted and implemented several Anti-Corruption strategies, each seeking to push forward the Anti-Corruption agenda and to comply with international standards and with the recommendations made by the European Commission.

On the one hand, the existence of a high-level government strategy focusing specifically on the fight against corruption is significant because it demonstrates a strong political commitment, and because it serves to guide the public administration by charting the future direction of government action in the field.

On the other hand, these Anti-Corruption efforts still lack a comprehensive and consistent approach. For example, the responsibilities of the different bodies and their capacity for coordination remain vague and messy. There are also no straightforward monitoring mechanisms that would help to measure the results and to strategically plan future improvements in Bulgaria's Anti-Corruption policies.

In addition, while in the period 2006-2008 the transparency and integrity of public administration were part of the focus of Bulgaria's anti-corruption efforts, after 2009 these priorities were left aside as a separate policy area, while the prevention and eradication of corruption became more narrowly perceived as part of the fight against organized crime.

» Anti-Corruption Strategy: Monitoring and Evaluation

The current strategy for the Prevention and Eradication of Corruption, which covers the period 2015-2020, was adopted in 2015. A separate Strategy for the Development of State Administration was adopted for the period 2014-2020, which also includes issues related to the prevention of corruption in the public administration. In addition, in 2013, the Supreme Judicial Council (SJC) adopted a new Strategy for the Prevention and Eradication of Corruption.

The National Council for Anti-corruption Policies was created in 2015 and is now tasked with coordinating the implementation of the current Anti-Corruption strategy. The Anti-Corruption measures in the public sector include the prevention of corruption in the higher ranks of government, the transparent financing of political parties, additional anti-corruption measures in the local administration, transparent and efficient management of the health and education systems, good quality public (administrative) service, the creation of institutions for the independent control and restriction of political and administrative corruption, and increasing the effectiveness of criminal policies against corruption.

The inspectorates in the Ministries are responsible for the monitoring of the Anti-Corruption Strategy in their specific areas (Ministries) following the 2006 amendment to Article 46 of the Law

on Public Administration. They report to the General Inspectorate (GI) with the Council of Ministers on a regular basis (but at least every 6 months) and provide it with necessary information.

On a regional level the anti-corruption policies are supposed to be elaborated and subsequently monitored by the Regional Anti-corruption Public Councils (RAPCs), which in the beginning of 2007 existed in all 28 regions. However, there is no information on whether the RAPCs are still doing any active work nowadays.

C. The Bulgarian Anti-Corruption Institutional Framework

There are a number of bodies implementing different activities and roles in the prevention of and fight against corruption in Bulgaria.¹⁰ However, an analysis of the existing bodies shows that some of them have overlapping functions, while others lack independence, thus raising questions about the efficiency of the system as a whole.

In Bulgaria, administrative investigations on cases of conflicts of interest are conducted by the Commission on Prevention and Ascertainment of Conflicts of Interest, but the Ministries' inspectorates are also in charge of conducting such investigations with regards to civil servants, and the General Inspectorate of the Council of Ministers (CoM) is responsible for handling such cases in relation to Ministers.

In addition, the latter is actually a Directorate of the Council of Ministers and, therefore, its leader does not have the required political and legal power to exert control over top officials within the executive.

The Public Prosecution is expected to have a crucial role in criminal investigations on corruption. In 2015, the Prosecutor General's Office announced the creation of a specialised unit focused on that matter, but then refused to provide any information concerning its structure and composition. This provoked journalists to appeal the refusals in court and the Administrative Court in Sofia City then ordered the release of the requested information.¹¹

Consequently, in March 2016 it became public that 15 public prosecutors, 4 investigators, and 7 technical assistants work in the unit on 43 criminal cases and 144 other files. Within one year they introduced 8 indictments in the courts and won one of the cases in which the court sentenced three defendants with suspended imprisonment (the case is still pending). The media compare these outcomes¹² with the results achieved by the Romanian specialised anti-corruption prosecutor's office, which in 2015 produced 1250 criminal charges against public officials, including against a Prime-Minister, five ministers, 16 MPs, five senators, and 97 mayors and deputy mayors.¹³

In Bulgaria, the Commission on the Prevention and Ascertainment of Conflicts of Interest (CPACI) is composed of five commissioners elected by Parliament. Today the current number of the Commission members is three. In 2014, its former President Mr. Zlatanov was charged and found guilty

10. For further details, see Annex I.

11. Two cases were taken by the journalists Lora Fileva from Dnevnik and Krassen Nikolov from Mediapool.

12. See Article of Krassen Nikolov in Mediapool, available at: <http://www.mediapool.bg/antikorupsion-noto-zveno-na-tsatsarov-za-ed-na-godina---edna-prisada-na-par-va-instantsiya-news246766.html>.

13. See the Romanian Anti-corruption Directorate 2015 Activity Report at: http://www.pna.ro/bilant_activitate.xhtml

of committing a crime related to his position. It was proven that he had abused his position as Commission President to manipulate the proper processing of cases considered by the Commission.¹⁴

In one case, his omission prevented the public announcement of the termination of proceedings related to a high-ranking public official, thus favoring him, while in another, the right of a person to seek protection of her reputation was prevented to her detriment by a failure to inform her of the Commission's action. The personal diary of Mr. Zlatanov demonstrated that he had taken notes on whom to attack and whom to protect, as well as on whom among the ruling party's highest politicians to consult.¹⁵ He was initially sentenced to three and a half years in prison, but in 2015 the Supreme Court of Cassation suspended the sentence, lowering it to three years.

With regards to policy-making, the Combating Corruption, Conflict of Interest and Parliamentary Ethics Committee (CCCIPEC) is designed to formulate and update anti-corruption policies, but it has neither enough support, nor a clear assignment to assess the implementation of the current Anti-Corruption policies. It lacks both staff and resources and does not have the capacity nor the sufficient expertise to perform information collection and analysis in the field of anti-corruption.

For its part, the Centre for Preventing and Counteracting Corruption and Organised Crime (also known as BORKOR) is placed within the executive branch and is entrusted with the responsibility to carry out analytical work and tools development, but not to monitor policy implementation periodically. In addition, the BORKOR is subdued to the top executive because the Director of the Center is appointed by the Prime Minister, based on a decision of the Council of Ministers.¹⁶

To complicate matters further, the cooperation between BORKOR and the CCCIPEC is not provided for by law and there is no public information available to confirm that coordination meetings on anti-corruption matters between the legislative, executive and judicial branches have actually taken place during the present parliamentary mandate.

As regards the criminal investigation of and sanctioning of corruption offenses, the borderline between the competences of the State Agency of National Security (SANS) and the Organised Crime Directorate at the Ministry of Interior is also not very clear.

Alongside overlaps, there are also deficiencies in the current system. Although there are inspectorates and audit units functioning in each Ministry, little effort is made to assess the anti-corruption *risks* because this task is not clearly assigned to them, and there are no clearly developed tools and reporting conditions for this important preventive activity.

In the past, the Ministry of State Administration and Administrative Reform was in charge of public administration, including the development of its integrity, and the elaboration of tools for the prevention of corruption, including a methodology for check-ups (audits) and model risk assessments. After it was closed down in 2009, its functions were not entirely transferred to a single or even to multiple bodies within the current institutional framework and in fact no Ministry has overall responsibility for Anti-Corruption policies in the public administration today.

14. **The facts** established by the hearing of 32 witnesses and several experts were not objected by the defence in the case. See Article in *Praven svijat*, available at: <http://legalworld.bg/35280.deloto-sresh-tu-filip-zlatanov-trygna-po-sykratenata-procedura.html>

15. **Article** by Dorothea Dachkova in *Sega* daily of 15 May 2014 available at: <http://www.segabg.com/article.php?id=698625>

16. **See** Decree n° 158 of 29 July 2010 of the Council of Ministers.

D. Conflicts of Interest

» *Legal Framework*

The measures to prevent conflict of interest situations and incompatibilities are provided for in the Prevention and Ascertaining of Conflict of Interests Act, in force since 2009. Incompatibilities are listed in Article 7, paragraph 2 of the Civil Servants Act. A declaration on incompatibilities is submitted by everyone who is running for a civil servant position. Civil servants are obliged to notify about incompatibilities within 7 days of their occurrence.

The control on the implementation of the law is exerted by the Commission on the Prevention and Ascertaining of Conflict of Interests, though this function will be transferred to the new Anti-Corruption Commission under the new Anti-Corruption law. The existing Commission hears individual cases upon complaint or on request by the respective official or civil servant. Complaints can also be presented by private citizens.

The Commission has the power to determine that a conflict of interest exists and then to impose a penalty in the form of a fine, with the maximum fine in some cases reaching up to 15.000 BGN (approximately 7.500 EURO) for individuals and 20.000 BGN (roughly 10.000 EURO) for legal entities.¹⁷

Similar provisions exist in the new Anti-Corruption law. However, the law provides that the anti-corruption commission will collect and monitor only the declarations of high-ranking officials of which there are roughly 7000. In comparison, the existing Commission on the Prevention and Ascertaining of Conflict of Interests had the power to monitor not only officials, but also around 120,000 civil servants in cases of public complaints. Consequently, the scope of action of the newly-created body will be substantially narrowed, thus paving the way for inconsistent and uncoordinated practices all over the country when it comes to dealing with conflicts of interest in the civil service.

Another key difference with the new Anti-Corruption law is that, previously, those reporting on conflicts of interest were protected and could not be prosecuted for providing information. However, as detailed in Section H, the majorities in the Bulgarian Parliament voted against whistleblower protection in a move that could undo the current provisions.

» *Assets and Conflict of Interests Declarations*

Interest declarations of officials and civil servants are submitted on a yearly basis under the Prevention and Ascertaining of Conflict of Interests Act. In the conflict of interest declaration,

17. See Articles 39-40 of the Prevention and Ascertaining of Conflict of Interests Act.

every year before the end of March, public officials and civil servants are obliged to declare any commercial, financial or other business-related interest that they or the people connected with them have in relation to the administrative structure they work in. Civil servants are also obliged to annually declare their property until the end of March (Article 29 of the Civil Servants Act).

In the case of high-ranking officials, income and assets are to be declared under the [Public Disclosure of the Assets of Persons Act](#) by the 30th April every year, as well as within one month after taking and also respectively after leaving office. The obligation extends to the spouse's and underage children's assets as well.¹⁸ The declarations should be submitted to the President of the National Audit Office, who maintains a public register. Declarations of civil servants are submitted to the head of the public body they work for, while those of high-ranking officials are deposited within the Combating Corruption, Conflict of Interest and Parliamentary Ethics Committee. These procedures remain the same with the new anti-corruption law.

The interest declarations of magistrates are monitored by the Inspectorate at SJC. Sanctions may be applied in cases of incorrect declarations.

All the conflict of interest declarations should be made public by the respective public body.¹⁹ However, according to the annual survey of the NGO Access to Information Program, in practice only 32% of the public authorities comply with this obligation.²⁰ Later in October 2017, the Commission on Prevention and Ascertaining of Conflict of Interests reported that the number of published interest declarations had increased following a campaign launched by the Commission during the summer.²¹

»» *Monitoring Procedures*

After the amendments to the [Public Disclosure of the Assets of Persons Act](#) made in 2006, the data submitted by high-ranking officials are checked by the NAO and then cross-checked with data from the National Revenue Agency. This check is conducted 6 months after the deadline for submission of the declarations. There is a general right of the public to access the declarations since the 2006 and 2007 amendments to the law and the assets declarations of high-ranking officials are publicly available online. However, the law still does not provide a procedure for investigating the assets declarations when there are inconsistencies in reporting.

Both interest and assets declarations submitted by ordinary (not high-ranking) civil servants are monitored by the inspectorates within the relevant administration. The General Inspectorate in the Council of Ministers monitors conflict of interests issues related to high-ranking officials.

Unlike the asset declarations, the conflict of interests declarations of both high-ranking officials and civil servants are checked by the Commission on Prevention and Ascertaining of Conflict of Interests on the basis of reporting of inconsistencies or following a request by the respective official. Some progress has been made under the new anti-corruption law by combining the two

18. See Art. 2, para. 3.

19. Art. 17, para. 2 of the Prevention and Ascertaining of Conflict of Interests Act

20. See the comparative statistics of the 2015 and 2016 audit on 565 institutional websites performed by AIP, Comparative Tables of 2015-2016 results, page 45, Chart 77, available at: http://store.aip-bg.org/surveys_eng/Appendix_1_2016.pdf. The comparative results of the 2015-2017 audits on the issue of the conflict of interest declarations publication, Comparative Tables of 2015-2016 results, page 28, Chart 39 are available in Bulgarian at: http://store.aip-bg.org/surveys_bg/2017/03_Budget_finance.pdf

21. See <http://www.cpaci.bg/news?start=10>

types of declarations into a unified one. However, the new anti-corruption commission will focus only on checking the declarations of high-ranking officials, while those of civil servants will be dealt with by the respective bodies' inspectorates. With that respect the new law is a step back as the model of separate bodies exercising oversight over the declarations of different groups [officials and civil servants] had already proved to be ineffective in the period 2009-2011.²²

Submission of false data in declarations is criminalized under Article 313, paragraph 1 of the Criminal Code. In addition, failure to submit declarations is subject to administrative and disciplinary sanctions.²³

E. Codes of Ethics/ Conduct

»» Codes in the Legal Framework

In addition to the Prevention and Ascertaining of Conflict of Interests Act, the Civil Servants Act includes the obligation to behave in a manner that does not impair the civil service's prestige and that complies with the Code of Conduct of Civil Servants (Art.28, para.1). However, there are no specific procedures in place for monitoring compliance with these codes of conduct in practice. The codes are also not subject to regular review and update.

»» Applicability/ Dimensions of Codes of Ethics

The Council of Ministers was responsible for adopting the Code of Conduct of Civil Servants (Art.28, para.2) and it passed it in 2004.²⁴ A separate Code of Conduct was adopted for high-ranking officials within the executive (2005). Some public administrations have developed and adopted their own codes of conduct as well (e.g. Ministry of Interior) so there are also other sectoral codes.

Non-compliance with the rules of the Code of Conduct of Civil Servants is subject to disciplinary sanctions. The disciplinary sanctions are remark, reproach, postponement of promotion in rank, and also dismissal²⁵. In cases of disciplinary proceedings, the civil servant could be temporarily removed from office, while in cases where criminal proceedings are instituted, this removal is obligatory²⁶. The civil servants are also responsible for damages caused to the state or citizens and are liable for compensation payment²⁷.

Within the judiciary, codes of ethics are adopted separately for judges, public prosecutors, investigators and the judicial administration.

- 22. This argument** was explicitly raised in the motivation of the President's veto on the anti-corruption law passed in December 2017, available in Bulgarian at: <https://www.president.bg/news4154/prezidentat-rumen-radev-na-lozhi-veto-varhu-zakona-za-proti-vodeystvie-na-koruptsiyata-i-za-ot-nemane-na-nezakonno-privobito-to-imushtestvo.html>
- 23. See** <http://www.bulnao.government.bg/en/articles/public-registry-914>.
- 24. Published in** State Gazette no 53 of 22 June 2004
- 25. See** Art.89, para.2, subpara.5 of the Civil Servant Act.
- 26. See** Art.100, para.2 of the Civil Servant Act.
- 27. See** Art.101 of the Civil Servant Act.

Regarding the implementation of the codes of conduct, there is no regular monitoring and no single body is in charge of ensuring compliance. Some parts of the monitoring fall within the competences of inspectorates (e.g. conflict of interests, gifts) while the other is under the general authority of Secretary Generals. When action is taken is it usually on the basis of reports from the public and it is usually punitive.

With regards to the implementation of Codes of Conduct by the judiciary, the ethics codes are perceived as moral guidelines rather than as rules with binding legal effects. In reality a disciplinary sanction exists in cases of breaches of the code (Art. 168, Para. 1 of the Judicial System Act), but in practice the application of this sanction does not occur frequently. It is also not clear who is responsible for monitoring the codes of conduct within the judiciary, and for ensuring their regular review and update.

F. Gifts

>> Legal Provisions

According to the Code of Conduct of Civil Servants, they may not request or receive gifts, services, monetary benefits or other advantages that could influence the exercise of their duties or their decision-making, or which could be perceived as a reward for exercising their official duties. Similarly, receiving gifts or services that could raise a reasonable suspicion within society, is prohibited by the Code of Conduct for High-ranking Officials.²⁸

Only customary gifts received by relatives or other gifts worth an amount not exceeding 200 BGL (100 EUR) per year are permitted. Gifts received in official capacity are registered by the Secretary General of the respective administration (Art.12, para.3).

A prohibition to receive gifts or other benefits is regulated also by the Codes of Conduct of judges and Public Prosecutors.

Members of the Parliament are permitted to receive gifts worth an amount that does not exceed 1/10 of their salaries²⁹ or otherwise they become part of the parliamentary budget and should be declared in a respective public register.³⁰

28. **This Code** is not published, despite being developed over more than 10 years.

29. **The monthly salary** of an MP varies between 3100 – 4800 BGN (approximately 1550 – 2400 EUR)

30. **Art. 149, para.1** of the 2017 Regulations for organization and activities of the National Assembly.

>> Sanctions

As stated above (see I, 24) non-compliance with the Code of Conduct of Civil Servants, including the rules on gifts is subject to disciplinary sanction (Art.89, para.2, subpara.5 of the Civil Servant

Act). Disciplinary sanctions are not a constraint to impose administrative or criminal sanctions as well. However, high-ranking officials are not subject to legal sanctions for a breach of the Code of Conduct when they are not appointed as civil servants.³¹ This legal regime remains unchanged under the new anti-corruption law.

As regards Members of Parliament (MPs) the maximum sanction applied could be the prohibition of attending up to three Plenary meetings of the Parliament, in which case they lose the right to vote.³² In these cases the MPs would also forfeit their per diems. In 2017, such sanctions were imposed on four MPs in six cases. In five of those cases the MPs were from the socialist party, which is currently in the opposition.

Within the judicial system, breaches of the ethics rules is a disciplinary offence, which is subject to disciplinary proceedings and responsibility (Art. 168, para. 1 of the Judicial System Act).

G. Transparency and Press Freedom

Transparency and the right of access to information is important for the fight against corruption because it serves as a deterrent that increases the risks of getting caught, and it is also a key tool for journalists and NGOs to uncover potential cases of corruption or systemic corruption risks, thus also contributing to the sanctioning of corrupt behavior.

» Access to Information

In Bulgaria, the right of every natural or legal person to obtain information held by the state and local self-governance authorities, and their obligation to provide that access, is enshrined in Article 41 of the Constitution. The law is well developed and often used by civil society and journalists alike, although the appeals procedures require improvement.

The Access to Public Information Act (APIA) was adopted by Parliament in June 2000 and subsequently amended, twice in 2007 and again in 2015.³³ Public information is defined therein as information that enables citizens to form opinions on the activities of government, and the law applies to all three branches of state power. Archival information is excluded from the scope of the act.

The right of access to information extends to information rather than being restricted to existing documents, so it has a broader scope than the analogous EU rules. In addition, entities receiving money from the state budget and the so-called public law persons are also obliged to provide information.

In Bulgaria, there is no Commission, Ombudsperson, or similar body exercising oversight on the implementation of APIA. However, refusals are subject to court review and access to information litigation has a history of bringing positive changes to the transparency of Bulgarian public bodies.³⁴

31. Political appointments, such as ministers and heads of agencies, or those who are directly elected, such as mayors, do not have the status of civil servants. However, secretary generals in public bodies, who in many cases are considered high-ranking officials, are civil servants.

32. Ibidem, Art. 156, para. 6. In these cases the MPs obviously lose the ability to vote.

33. Available at: <http://www.aip-bg.org/library/laws/apia.htm>

34. Information of the court cases is available at www.aip-bg.org. There are also five books published also in English "Litigation under APIA", ed. by the Access to Information Programme, authors Alexander Kashumov and Kiril Terziyski.

35. Information of the FOIA cases supported by AIP see on: <http://www.aip-bg.org/court.htm>

In practice, the right of access to public information is exercised in Bulgaria relatively often. The *Access to Information Programme (AIP)*, an NGO working in that field, has provided legal help in more than 5000 requests since 2000. During the years following the adoption of the APIA, the number of court cases to defend the right of access to information increased. The *Access to Information Programme* alone has provided legal assistance on more than 100 court cases against refusals, most of which were successful, meaning that exemptions to transparency have gradually been applied more restrictively in Bulgaria.³⁵

Journalists have also been very active in this process, notably since 2004.³⁶ Some landmark cases have been launched by journalists, such as *Alexey Lazarov v. the Council of Ministers* (for access to minutes of Cabinet meetings), *Zoja Dimitrova v. the President* (for access to the security services' report on Bulgarian companies' trade with Iraq during the UN embargo; still pending), *Hristo Hristov v. Minister of Interior* (for access to former State Security documents related to the case of the BBC journalist Gerogi Markov, killed in London in the 70s).³⁷ In 2017, journalists from the weekly newspaper *Capital* published the book "The KTB State," telling the story of government omissions and corruption practices that led to the bankruptcy of the 4th biggest Bulgarian commercial bank in 2014. A significant part of the facts which are analysed in this book were obtained through access to information requests.

>> *Press Freedom*

In this area Bulgaria once again achieved the worst score out of all EU Member States, this time ranked 109th in the 2017 Reporters Without Borders *World Press Freedom Index*.³⁸ This assessment is largely due to the poor existing practices when it comes to press freedom, rather than because of the quality of the legislation itself. For example, the press is not regulated by a special law and everyone can freely start a newspaper by means of a simple registration. That said, serious and immediate improvements need to be made in Bulgaria if the press are to be able to report freely on corruption crimes.

Criminal defamation exists in Bulgaria although proceedings are not initiated *ex officio*, but on the initiative of the plaintiff and the prescribed sanction is a fine. In some cases, the fine can reach up to 15,000 levs (7500 euro).

Criminal courts should apply the standards established by Article 10 of the ECHR, but unfortunately this is not always the case in practice, with disclosure of corruption in the media sometimes leading to legal responsibility, especially vis-à-vis journalists in the country. Several judgements of the European Court of Human Rights have found Bulgaria to be in violation of the rights of journalists to exercise their freedom of expression.³⁹

In addition, media freedom is jeopardized by the existence of links between certain media groups, businesses, and politicians, as well as by bad law enforcement practices. For instance, the media group known to be under the control of Mr Delyan Peevski, a businessman and politician who is usually referred to as one of the oligarchs in Bulgaria and whose appointment as a Member of Parliament sparked the 2013 Bulgarian protests against the cabinet, often produces publications that are far below media ethics standards.⁴⁰

36. See the book, published by Access to Information Programme Access to Information Litigation in Bulgaria, by Alexander Kashumov and Kiril Terzijski, Sofia 2005, p.11.

37. A short overview of these and other journalist cases see *ibidem*, p.14 – 16. The documents of the case *Hristov*: pp. 85 – 126.

38. See <https://rsf.org/en/ranking/>

39. See judgments of the European Court of Human Rights versus Bulgaria for violation of Article 10 of the Convention in the cases *Kasabova*, *Bozhkov* and *Marinova* and others (applications nos. [22385/03](#), [3316/04](#) and joint applications nos. [33502/07](#), [30599/10](#), [8241/11](#) and [61863/11](#)).

40. Publications in these media are often found to be in a violation of journalists' ethical standards by the Journalist Ethics Commission, whose decisions are available at: <http://mediaethics-bg.org/category/reshenia/page/3/>

Such publications are used to attack political opponents, or influential speakers in favour of legal reform, democracy and the rule of law, or critics of Mr Peevski's circle.⁴¹ This media group was financially supported in 2009-2010 by a big commercial bank, KTB, in which a large amount of the state-owned companies' money was deposited at the time. This triangle between a media group, the government and a private bank is itself representative of the media's potential involvement in grand corruption schemes. Despite the bankruptcy of KTB in criminal circumstances in 2014⁴², this media group continues to expand.

Furthermore, in recent years, it has benefited from public financing allocated to promote EU programs or government projects.⁴³ This is because the only criteria for the allocation of these funds is the public outreach capacity of the media outlet, thus leaving aside the important matter of media ethics.

On the other hand, a number of other media do work hard to fulfill the typical watchdog role in society. Journalistic investigations, published in *Capital*, *SEGA*, *Dnevnik*, *Mediapool*, *OffNews*, *Bivol*, and other outlets, have revealed important information about corruption.

Many investigations by the two biggest broadcast stations in the country also aim to expose corruption and wrongdoing. However, there are serious attempts to intervene in their work through the use of repressive measures by certain public bodies, such as the Commission of Financial Control, the Public Prosecutor's Office, and the Commission on the Protection of Fair Competition. A recent illustrative example of the use of political interests to oppress media freedom occurred in December 2017, when the Commission on Confiscation froze the property assets of the owner of *Capital* and *Dnevnik*.

To give a concrete example of the double standard in media reporting, the mentioned media which perform in-depth investigations often criticize the Attorney General, Mr Tsatsarov, while the media group connected with Mr Peevski remain completely uncritical to him and to other high-ranking officials and present them exclusively in a positive light.

These examples raise serious concerns about the state of press freedom in Bulgaria and it is clear that urgent action should be taken to should be taken at both national and EU level to remedy the situation.⁴⁴

H. Reporting of Corruption: by Officials and Whistleblowers

» Reporting Obligations

Every public servant is under the obligation to immediately report criminal offences they have witnessed to investigating authorities, as well as to take the necessary steps to preserve any evidence of criminal behaviour (criminal behavior under the Criminal Procedure Code). The Ins-

41. See Media Pluralism Monitor 2016: Monitoring Risks for Media Pluralism in the EU and Beyond written by Orlin Spassov, Nelly Ognyanova, Nikoleta Daskalova <http://cmpf.eu.eu/media-pluralism-monitor/mpm-2016-results/bulgaria/> and *A Comparative analysis of media freedom and pluralism in the EU Member States*, Study for the Libe Committee 2016 (pp 88-98) [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571376/IPOL_STU\(2016\)571376_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571376/IPOL_STU(2016)571376_EN.pdf)
42. See more on the KTB case on the website <http://www.ktbfiles.com/> maintained by the NGOs Center for Liberal Strategies, Access to Information Program and Transparency International-Bulgaria.
43. See White Paper on Media Freedom in Bulgaria published in January 2018, available in English at: <https://www.dnevnik.bg/file/3109972.pdf>
44. See the speech of the chairman of the Union of Publishers in Bulgaria Mr. Theodore Zahov at the presentation of the White Paper on Media Freedom in Bulgaria on 10th, available in English at: https://www.enpa.eu/sites/default/files/inline-files/PR_White_Paper_ENG.pdf

pectors, who are entrusted with exercising control over the implementation of legislation in the civil service, are also obliged to notify the public prosecutor about any violations found during their inspections.

The internal audit units also have the obligation to inform the head of their administration when they find data on fraud committed during their inspections, and if no action is taken afterwards they must inform the public prosecutor. The NAO is obliged to inform the public prosecutor if the performed audit reveals information about crimes committed. In such cases, the audit report and other materials are submitted to the public prosecution office by decision of the NAO.

Also, there is a specific obligation for everyone, including members of the public, to report cases of corruption, abuse of office, wrongdoings or malpractice of public administration⁴⁵ as well as cases of conflict of interests.⁴⁶

However, reporting obligations are not part of the Code of Conduct of Civil Servants or the Code of Conduct for High-ranking officials. Only the Ministry of Interior has a reporting obligation. Therefore, reporting corruption is not yet part of the culture of civil servants. Connecting this with the fact that reporting to the superior is seen as a bad habit (due to the context of the past) this lack of a culture of reporting is certainly problematic when it comes to tackling corruption.

»» *Protection of Whistle-blowers*

Under the Administrative Procedure Code and the Prevention and Ascertaining of Conflict of Interests Act, the identity of the whistle-blower should be kept confidential if they are reporting on conflicts of interests cases. If so, they are protected against disciplinary dismissal and are entitled to compensation in cases of psychological or physical harassment. However, in practice their protection has not been strong enough.

For example, there are cases in which the people who are the subject of a whistle-blowers' alert on corruption or other criminal offenses or misconduct have actually initiated legal proceedings against the one who blew the whistle. Some criminal courts have applied criminal defamation laws to those reporting on corruption and in several recent cases, the European Court of Human Rights has found Bulgaria to be in violation of the fundamental right to freedom of expression for criminalising the reporting of corruption, notably in the cases *Kasabova vs. Bulgaria* (2011), *Bozhkov vs. Bulgaria* (2011), *Marinova and others vs. Bulgaria* (2016).⁴⁷

To make matters worse, recent developments have further eroded the possibility of whistle-blowers to report corruption offences.⁴⁸ Under the new anti-corruption law, the identity of whistle-blowers should initially be kept confidential", but the Parliament made it clear that they should be also liable for their reporting. This is a result of the voting on the anti-corruption bill in the Parliament on 15th of December 2017 where the majority rejected proper legal protection for whistle-blowers. The paragraph that was voted down stated the following:

45. See Art. 107, para.4 of the Administrative Procedure Code

46. See Art.24 of the Prevention and Ascertaining of Conflict of Interests Act

47. See judgments of the European Court of Human Rights in the cases *Kasabova vs. Bulgaria* (2011), *Bozhkov vs. Bulgaria* (2011), *Marinova and others vs. Bulgaria* (2016).

48. See Art. 108 of the Administrative Procedure Code and Art.32 of the Prevention and Ascertaining of Conflict of Interests Act.

“A person who has lodged information [сигнал] for corruption or conflict of interest of a person obtaining high-ranking position, cannot be held responsible and be subjected to negative consequences only on that ground.”

In practice, this would mean that at the time that the Commission is examining the information provided by the whistleblower, there should be temporary protection of the identity of the person who reported corruption. However, once the Commission decides to close the proceedings and if it rejects the application [сигнал] the protection would be considered as unfounded. This would then allow the lawyer of the affected person to bring a civil or criminal action for defamation and to ask the court to request information about the reporter’s identity from the Commission.

Bulgaria was found to be in violation of Article 10 by the European Court of Human Rights in the case *Marinova* and others in 2015 precisely for penalizing people who report corruption and wrong-doing. Now that the Parliament has clearly expressed its intention that whistleblowers should be legally responsible for their reporting, Bulgaria’s systems for the prevention of corruption are exposed to a very serious vulnerability. As recommended under the UN Convention Against Corruption, a specific whistleblower protection law should be put in place in Bulgaria as a preventive measure. This could also be achieved if the EU were to adopt a whistleblower protection Directive that would apply in all EU Member States.

I. Proceeds of Corruption

» Legal Basis and Scope

The confiscation of the proceeds of crime is a mandatory sanction for aggravated cases of passive bribery (Art.302b of the Criminal Code). In contrast with this sanction, forfeiture is a deprivation measure which is applied notwithstanding criminal responsibility (Art.307a therein).

The Measures against Money Laundering Act was adopted in 1998, and subsequently amended several times.⁴⁹ The law obliges 30 categories of bodies and persons to monitor financial transactions and report in cases of suspicion of money laundering. The law transposed the EU anti-money laundering directive.

In 2012, the Forfeiture of Illegally Acquired Assets Act was adopted.⁵⁰ Measures under this law are to be undertaken when it is established that property above 100 000 BGL, approximately 50 000 Euros, was acquired by one or more criminal offenses as determined by the law. The scope includes 25 categories of crimes including bribery. The law also applies in cases where there is a considerable inconsistency (more than 150 000 BGN or 75 000 Euros) between the income declared and the acquired property.⁵¹

49. Published in State Gazette n° 85 of 24 July 1998, ;ast amendment published in State Gazette no 81 of 14 October 2016.

50. Published in State Gazette n° 38 of 18 May 2012, last amendment in State Gazette no 103 of 27 December 2016.

51. Section 1, subpara.6 of the Additional Provision of the law.

The new anti-corruption bill focuses on confiscation of property obtained by illegal means. There is a presumption that in cases of discrepancy of 150 000 BGN or more the property was obtained illegally. The confiscation regime applies not only to criminal offences related to bribery, embezzlement and influence trading, but also to theft, murder, robbery, etc. This approach does not focus specifically on anti-corruption issues but rather broadens the activities to include any crime.

This is problematic given recent events which show how the confiscation and property freezing procedures contain a serious risk of abuse of power against the freedom of the media. In December 2017, the Confiscation Commission applied for the freezing of the property of the owner of the media *Capital* and *Dnevnik*, which is known to be critical of the government's policies. In its justification, the commission referred to a privatization deal that was concluded more than 15 years ago.

It is recommendable that general confiscation not be mixed with the confiscation of the proceeds of corruption and the right balance needs to be made between the powers of the state and the protection of fundamental rights.

J. Legal Persons and Corruption

>> Liability

By amendments to the Law on administrative offences and sanctions (2005 - 2015), the liability of legal persons was introduced, thus closing a significant loophole. It is of an administrative character, implemented in the form of fines which are imposed in cases in which the respective legal person benefited from enumerated criminal offenses, including bribery. The administrative liability is in place in cases in which the criminal offense was committed by a natural person who represents the legal entity, or who takes the decisions on its behalf, or who is a member of its advisory/ control body, or who is an employee (Art.83a).⁵²

>> Sanctions

The amount of the fine that could be imposed on a legal person for benefiting from a crime amounts to a maximum of 1,000,000 BGL (around 500,000 Euros) and in cases in which the benefit is not of material character or its amount cannot be established, the fine ranges from 5000 (approximately 2500 EUR) to 100 000 BGL (approximately 50 000 Euros). The benefits themselves are also subject to confiscation if they are not to be returned to the victim.

52. The provisions were generated by amendments published in State Gazette no 79 of 4 October 2005, last amendment published in State Gazette no 81 of 20 October 2015.

The new anti-corruption law does not touch upon the provisions related to sanctions for legal entities thus failing to provide any improvement in that very important area. This is also a failure to apply international standards properly and to stick to the public promises that this new Anti-Corruption law would be comprehensive and robust.

Conclusions

There has clearly been the political will in Bulgaria to adopt stronger legislation against corruption which demonstrates progress, particularly given the spotlight shone onto this issue by the EU institutions throughout the accession process and up until now.⁵³

However, the 2017 Anti-Corruption law creates a number of problems. It focuses on the confiscation of property obtained through any crime rather than on the prevention of corruption. It defines *corruption* and *conflict of interest* in a vague and broad way and opens the door for secret surveillance on officials which provides clear opportunities for the new Anti-Corruption Commission to use the collected information in a politicized manner. The right balance between the power of the State to combat corruption and the protection of Human Rights is not well established. Furthermore, the bill does not provide any protection of whistleblowers, thus taking a step backwards in comparison with the existing legal regime.

The proposed Anti-Corruption body does not have the clear authority to monitor the implementation of the national Anti-Corruption Policy, nor does it provide tools for periodic assessments of corruption risks within governmental organizations. In addition, the monitoring of interests declarations is seen more as a form of administrative investigation with the subsequent imposition of sanctions rather than as a basis for the thorough assessment of integrity risks and the strategic development of preventive rules and practices.

The integrity of public administration is currently not regarded as an important part of the prevention of corruption. Programs and provisions to enhance the transparency, accountability and integrity of public administration are not directly linked with the policies designed to counteract corruption. There is no Minister directly responsible for Anti-Corruption policies in the public administration who can also ensure that links are made with other ongoing efforts to prevent and combat corruption.

The new Anti-Corruption Law even deepens the problem as it separates interests declarations of civil servants from those of officials. Monitoring and investigations of conflicts of interests among civil servants is entrusted to the respective public bodies such as the Ministries' inspectorates. At the same time there is no guarantee that the latter are independent from the officials at the top of the institutional hierarchies. In this sense the 2017 Anti-Corruption Law departs from the current situation where the Commission on conflict of interests exercises oversight on all the interest declarations of both officials and civil servants.

In addition, in the Bulgarian context the public administration is not well protected against political

53. As upheld also in the 15 November 2017 CVM Mechanism Report of the European Commission on Bulgaria.

influence and oppression, and is arguably more politicized than it is in the other EU countries. Another task that was not implemented by the 2017 anti-corruption bill is to ensure public access to all the interests declarations. Although there is some progress in the publication of the conflict of interests declarations in practice, this openness is still insufficient because there is no centralized registry in which this data is published. It should be noted that the Minister of Justice found the recommendation to establish such a centralized public register as justified, but has done nothing in this regard.⁵⁴

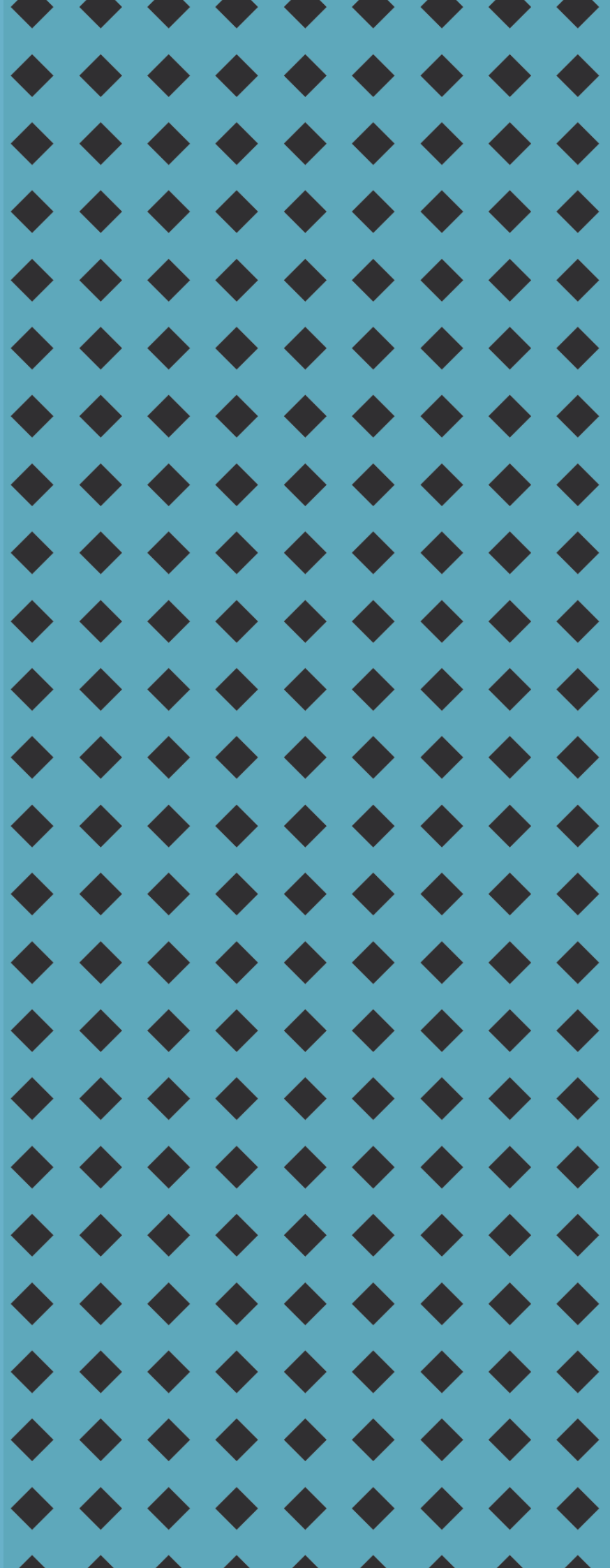
Finally, the combination of preventive and repressive functions in one body without ensuring that there is a clear distinction between the two could undermine the effectiveness of the work of that body. At the same time, linking the confiscation of any property obtained in an illegal manner, rather than focusing on public officials guilty of corruption over-extends the notion of “corruption”, thus bringing with it the risk of neglecting truly corrupt behavior. Moreover, there are recent examples of potential political abuse of the confiscation regime.⁵⁵

54. The question was publicly raised by the Access to Information Program and addressed by Ms. Tzatcheva, Minister of Justice at the Parliamentary public hearing conducted on 1st September 2017.

55. On 14 November 2017 the media reported on the potential initiation of confiscation proceedings against the family of the owner of Capital Weekly, allegedly following its publication in October 2017 of its investigation into the bankruptcy of KTB (4th biggest commercial bank) in 2014, including the name of the oligarch and politician Delyan Peevsky.



- A. Internal Commitments
- B. External Commitments
- C. Conclusions





2

*Anti-Corruption
Commitments
of the EU
Institutions*

In this section a brief overview of the international Anti-Corruption instruments and policies that are most relevant to the fight against corruption at EU level are presented. This is not intended to be an in-depth analysis. What it shows is that the EU has in principle signed up to different anti-corruption initiatives that it is not applying properly in practice, at least not within the EU institutions themselves. Although the EU has been instrumental in pushing Bulgaria to adopt more ambitious reforms, it has not matched this ambition internally. To its credit, the European Union has created legislation that is relevant to the fight against corruption, but it is sectoral in nature and there is no comprehensive anti-corruption directive or regulation under discussion to date.

A. Internal Commitments

These are the commitments in the fight against corruption that have arisen from documents or mechanisms devised at EU level.⁵⁶ As such, the obligations they create with respect to the EU institutions are predominantly connected with ensuring that Member States adopt and incorporate the established anti-corruption policies, and with monitoring the implementation of these strategies.

One of the prominent internal documents directed specifically at resolving the ongoing issue with corruption across Member States is the Convention on Fighting Corruption Involving Officials of the European Communities or Officials of the Member States of the EU⁵⁷, which entered into force on 28.09.2005. This Convention's significance is that it qualifies all acts of active or passive corruption carried out by officials as criminal offences, punishable by criminal penalties including deprivation of liberty in the most serious cases. Moreover, the document introduces criminal liability for heads of businesses and any other persons authorized to make decisions or exercise control within a business in cases in which a subordinate official has, actively or passively, engaged in corrupt practices in their professional capacity. However, the EU has encountered issues with the accession to the Convention by certain Member States, notably the Czech Republic and Malta.

Another important Act is the Council Framework Decision 2003/568/JHA of 22.07.2003⁵⁸ which deals with the issue of corruption in the private sector across Member States. This Framework Decision criminalizes active and passive corruption in the private sector, as well as the instigation, aiding, and abetting thereof, for both profit and non-profit entities, while ensuring that legal persons can also be held accountable for such offences. It also introduces penalties in the form of imprisonment for a period of 1-3 years for natural persons and appropriate sanctions for legal persons, such as temporary or permanent disqualification from the practice of commercial activities. Although having a highly laudable objective, the Framework Decision uses rather broad language when it comes to implementation. This could be seen as a contributing factor to its slow incorporation by Member States. The 2007 European Commission report on the implementation of the Framework Decision concluded that only two Member States had correctly transposed the relevant provisions into their domestic legislation.⁵⁹ Even though the second report on the subject, produced by the Commission in 2011, showed a considerable improvement in the instrument's transposition by Member States, no evidence was gathered to evaluate the level of enforcement of the adopted obligations in practice.⁶⁰ Moreover, certain Member States, notably Spain, did not provide any feedback on the implementation of the Framework Decision for either of the two Commission reports.⁶¹

A subsequent instrument designed to address corruption within the EU is Council Decision 2008/852/JHA of 24.10.2008.⁶² Its significance is that it established a contact-point network of communication and cooperation for combatting corruption, which did not formally exist until that time. The idea was to enable Member States to exchange information on effective remedies for the prevention of corruption by holding regular discussions that could also include representatives of the Commission, Europol, and Eurojust.

- 56. The Convention on the Protection of the European Communities' Financial Interests** (the PIF Convention) has not been included in this report due to its less direct relationship with the subject of corruption. It should be noted here that the PIF Convention has now been replaced by Directive (EU) 2017/1371 which entered into force in August 2017, although the PIF Convention still remains in effect for Denmark and the UK who are not bound by the new Directive.
- 57. Available at** <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133027>
- 58. Available at** <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32003F0568>
- 59. First Report** from the EU Commission to the Council on the implementation of Framework Decision 2003/568/JHA, COM (2007) 328 final.
- 60. Second Report** from the EU Commission to the European Parliament and the Council on the implementation of Framework Decision 2003/568/JHA, COM (2011) 309 final.
- 61. Ibid.**
- 62. Available at** <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008D0852>

Furthermore, in 2011 the European Commission adopted an anti-corruption tool package, which expanded on previous efforts to introduce measures in this field mainly by creating the Anti-Corruption Report, a mechanism for annual assessments of the progress in the fight against corruption in Member States. Currently, one report has been produced in the fulfilment of this initiative, providing country-specific analyses on the most challenging issues within local contexts and including recommendations for future reform. The benefits of this mechanism are the regularity of assessment and the close focus with respect to each Member State.

The potential criticism is that the scope of the initiative does not include the EU institutions themselves. Therefore, the establishment of effective tools for monitoring and preventing corruption at supranational level is necessary.

Moreover, in a letter dated 25.01.2017 to the chairman of the EU Parliament's civil liberties committee⁶³, MEP Claude Moraes, the First Vice-President of the European Commission Frans Timmermans stated that a second anti-corruption report will not be published, explaining that it would be more appropriate to shift the anti-corruption monitoring process to the framework of the European Semester.⁶⁴ This decision has attracted criticism from civil society organisations and Members of the European Parliament given the unsatisfactory efforts of the Commission to date, especially with regards to tackling corruption within the EU institutions themselves.⁶⁵ Country-specific material which has been commissioned from academics for the second Anti-Corruption Report has still not been published to date.

A final anti-corruption tool that should be noted in this section due to its relevance to the Bulgarian context is the Cooperation and Verification Mechanism (CVM). The CVM was devised in December 2006 as a transitional measure for Bulgaria and Romania which were joining the EU at the time. Its objective is to ensure that the two states fully adhere to the EU legislative and institutional standards, particularly in the areas of judicial reform, corruption, and organized crime. Their progress in this regard is regularly assessed by the European Commission against a number of criteria connected with these topics.

While the context-specific design of the CVM and the frequency of progress evaluations make this mechanism one of the better ones devised at EU level, commentators have criticized it for setting benchmarks that are too technical and costly.⁶⁶ Another criticism that has been put forward is that the CVM fails to take into account the cultural specificities of Eastern European societies, which leads to undesirable situations in which the EU recommendations are implemented in theory, but not in practice.⁶⁷

B. External Commitments

These anti-corruption commitments stem from intergovernmental bodies and international organisations of which the EU has become a member.

The Council of Europe has established some of the most prominent legal standards in the area of anti-corruption, contained within the Criminal Law Convention on Corruption, the Civil Law

63. Available at <http://transparency.eu/wp-content/uploads/2017/02/20170130-Letter-FVP-LIBE-Chair.pdf>

64. **The European Semester** is an initiative launched in 2010 with the objective to ensure cooperation and coordination of the economic policies across Member States.

65. **EU Observer**, "EU commission drops anti-corruption report", 02.02.2017, available at <http://transparency.eu/wp-content/uploads/2017/02/20170130-Letter-FVP-LIBE-Chair.pdf>

66. **Georgi Dimitrov**, Kaloyan Haralampiev, Stoycho Stoychev, and Linka Toneva-Metodieva, 'The Cooperation and Verification Mechanism: Shared Political Irresponsibility between the European Commission and the Bulgarian Governments', 2014.

67. **Ibid.**

Convention on Corruption, and the Twenty Guiding Principles for the Fight against Corruption.⁶⁸ These three documents cover a range of topics, including bribery of officials in the public and private sector, money laundering, corporate liability, protection of employees, and compensation and damages. The body entrusted with the task of overseeing the implementation of all encoded provisions is the Group of States against Corruption (GRECO).

In recent years, there have been discussions regarding the EU's full accession to GRECO as an international body, initiated by GRECO itself, but also by institutions within the Union, such as the Justice and Home Affairs Council. This would be a significant step towards opening EU institutions to scrutiny and putting in place effective measures to combat corruption at Union level. For this reason, the fact that accession has not happened yet has attracted criticism about the EU's reluctance to perform self-assessment and revise its own policies.

Another important international document designed to combat and prevent corruption is the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.⁶⁹ The EU participates in the overall work of the OECD and in the formulation of its programmes, which is significant because it gives the Union access to regular OECD reports on its economic and social policies, thus giving it the opportunity for self-analysis and improvement. However, with regard to the issue of corruption, it should be noted that the focus of the abovementioned Convention is very narrow, since it only deals with qualifying foreign bribery as a crime.⁷⁰

As a result, it cannot provide for a comprehensive strategy for combatting corruption and the EU should therefore employ a set of additional mechanisms to ensure the adequate addressing of corruption practices within its jurisdiction. In addition, the 2012 annual report of Transparency International on the implementation of the OECD Convention shows that enforcement levels in Member States have been very poor over a continuous period of three years – only seven countries have actively enforced the Convention.⁷¹ In its recommendations on the subject, the organisation calls for stronger political support for enforcement on the part of state governments.⁷²

The United Nations Convention against Corruption (UNCAC)⁷³, which entered into force in December 2005, is also among the prominent international initiatives for combating and preventing corruption. UNCAC is significant for its comprehensive focus, covering corruption practices both at national level and in international cooperation. The EU acceded to UNCAC in September 2008 and committed to its Review of Implementation Mechanism. However, the Union has recently been criticized for failing to implement UNCAC by delaying the assessment of its own anti-corruption policies.⁷⁴

This has undermined the capacity of the EU to monitor and harmonize anti-corruption strategies among its Member States. The EU Commission has argued that the UNCAC may not have appropriate applicability within its jurisdiction, as it might overlook policy areas of interest to the EU and as it includes state parties that put forward lower anti-corruption standards than the EU.⁷⁵

68. Criminal Law Convention on Corruption, available at <https://rm.coe.int/168007f3f5>; Civil Law Convention on Corruption, available at <https://rm.coe.int/168007f3f3>; Twenty Guiding Principles for the Fight against Corruption, available at <https://rm.coe.int/16806cc17c>.

69. Available at https://www.oecd.org/daf/anti-bribery/ConvCombat-Bribery_ENG.pdf.

70. Supra note 72.

71. Transparency International, Exporting Corruption? Country Enforcement of the OECD Anti-Bribery Convention, Progress Report 2012, available at http://issuu.com/transparencyinternational/docs/2012_exportingcorruption_oecdprogress_en?mode=window&printButtonEnabled=false&shareButtonEnabled=false&searchButtonEnabled=false&background-color=%23222222.

72. Ibid.

73. Available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

74. The Guardian, 'Pro-Brexit minister attacks EU over anti-corruption measures', 25.05.2016, available at <https://www.theguardian.com/politics/2016/may/25/pro-brexit-minister-raab-attacks-eu-over-anti-corruption-measures>.

75. Supra note 72.

C. Conclusions

As can be perceived from the brief indications in the preceding sections, some of the core issues at EU level associated with the fight against corruption are: insufficient or ineffective monitoring mechanisms regarding the enforcement of anti-corruption measures in Member States; lack of anti-corruption policies targeting EU institutions and lack of appropriate self-assessment tools; and the lack of a comprehensive legal instrument that would set unified anti-corruption standards for all Member States.

The conclusion is that there is a mismatch between the EU's close monitoring of anti-corruption in countries like Bulgaria and their own internal ambitions in this field.

1. Ineffective mechanisms regarding the enforcement of anti-corruption measures

Ensuring the enforcement of anti-corruption measures in Member States has proven to be a long-lasting and difficult challenge for the EU. To illustrate, the mere transposition of Council Framework Decision 2003/568/JHA in Member States has been an incredibly slow process, while its implementation has yet to be adequately assessed. Moreover, there have been instances of a total gap in communication between the EU and a Member State, such as in the case of Spain on the subject of the same Framework Decision.

Another example pointing to the serious issue with enforcement is the cessation of the Anti-Corruption Report (ACR) in January 2017. Considering the fact that only one report has been produced in the fulfillment of this initiative, it can safely be stated that the EU has failed to deliver on its promises. In addition, it has remained rather unclear how the monitoring functions of the ACR will be translated into the framework of the European Semester.

The recommendation for remedying the issue with enforcement is to devise a mechanism that will focus on performing assessments at frequent and regular intervals and set context-specific benchmarks on the basis of each assessment. The Cooperation and Verification Mechanism for Bulgaria and Romania, regardless of its imperfections, can serve as a good model for designing a larger-scale monitoring tool for all Member States.

2. Lack of appropriate self-assessment tools

The second serious issue with anti-corruption at EU level is related to the lack of self-assessment mechanisms for EU institutions. In this regard, there have been ongoing discussions regar-

ding the Union's accession to GRECO in its capacity of a unified international body which would allow for regular scrutiny of its institutions. The fact that this project has not yet been realized has raised suspicions about the potential reluctance on the part of the EU to subject its structures to periodic assessments.

This belief has been reinforced by the EU's delay in implementing UNCAC given the fact that it has not yet performed a self-assessment of its anti-corruption practices. This record of avoiding scrutiny is certainly not well-received by EU citizens and could lead to loss of confidence in EU institutions, as emphasized by high-level politicians and civil society organizations.⁷⁶

Moreover, the trust in EU governing bodies is further eroded by the lack of transparency in its decision-making process. The problem of transparency and accountability is in close focus at present, as the Court of Justice of the European Union is deciding whether information related to MEP allowances should be disclosed, as journalists from all 28 Member States have argued.

It is evident that the EU needs to adopt not only repressive measures against corruption, but also preventive ones, connected with promoting the transparency of its institutions. This is one area in which Bulgaria can, as President of the Council of the EU in 2018, push for the introduction of effective reforms based on the country's own experience.

Furthermore, the EU needs to develop anti-corruption policies targeting its own structures and to implement a planning and review cycle mechanism to ensure continuous progress in combating corruption.

3. Lack of a Comprehensive Legal Instrument on Anti-Corruption

The lack of a unifying legal instrument on the subject of corruption is the third issue at EU level identified in this report. In its entire history of addressing anti-corruption across Member States, the EU has always adopted a piecemeal approach and concentrated on specific issues, overlooking the possibility to develop an overarching framework for combatting corruption.

Following the entry into force of the Lisbon Treaty, the EU has been empowered to adopt criminal legislation in the form of directives that introduce definitions and appropriate sanctions for various criminal offences.⁷⁷ This newly-conferred competence has already been executed in practice, for instance in 2014 when the EU adopted Directive 2014/62/EU on the protection of the euro and other currencies against counterfeiting, which replaced Council Framework Decision 2000/383/JHA.⁷⁸ A similar initiative could be undertaken with respect to the issue of corruption, aiming to develop a comprehensive legal instrument that would set unifying clear-cut standards for all Member States.

76. See note 78.

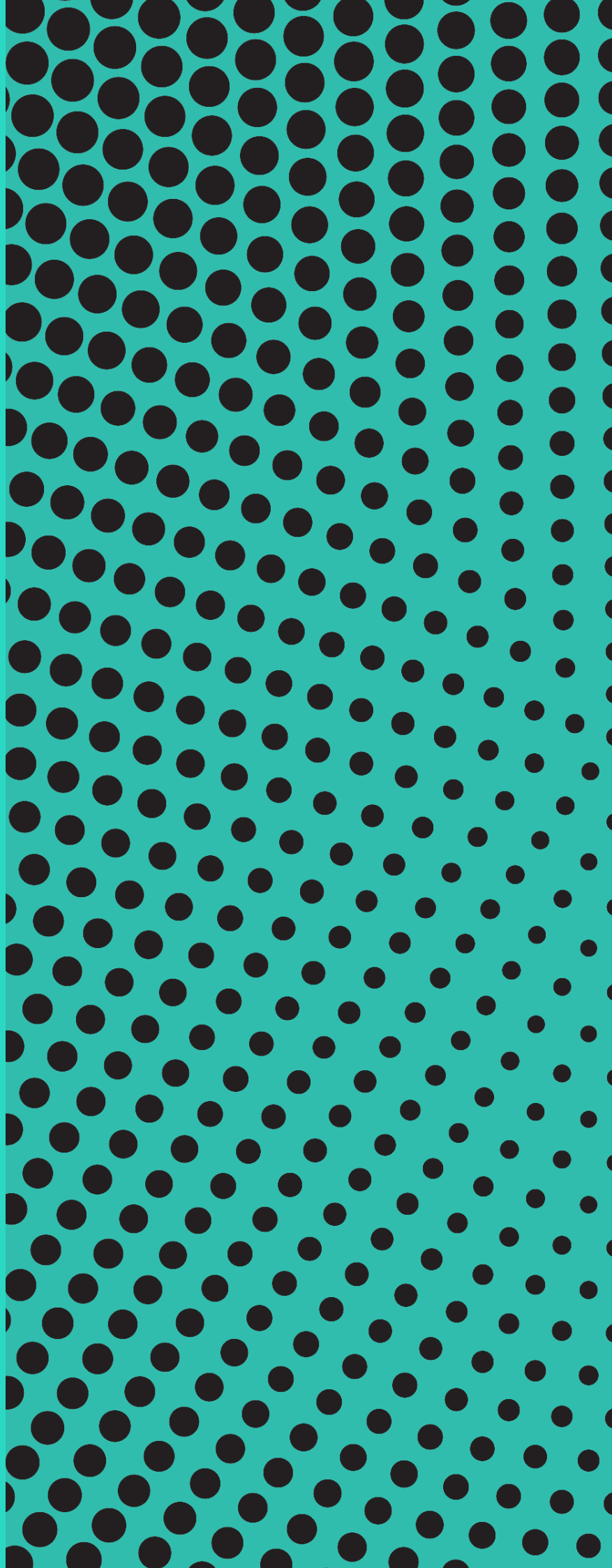
77. Art. 83(1) TFEU.

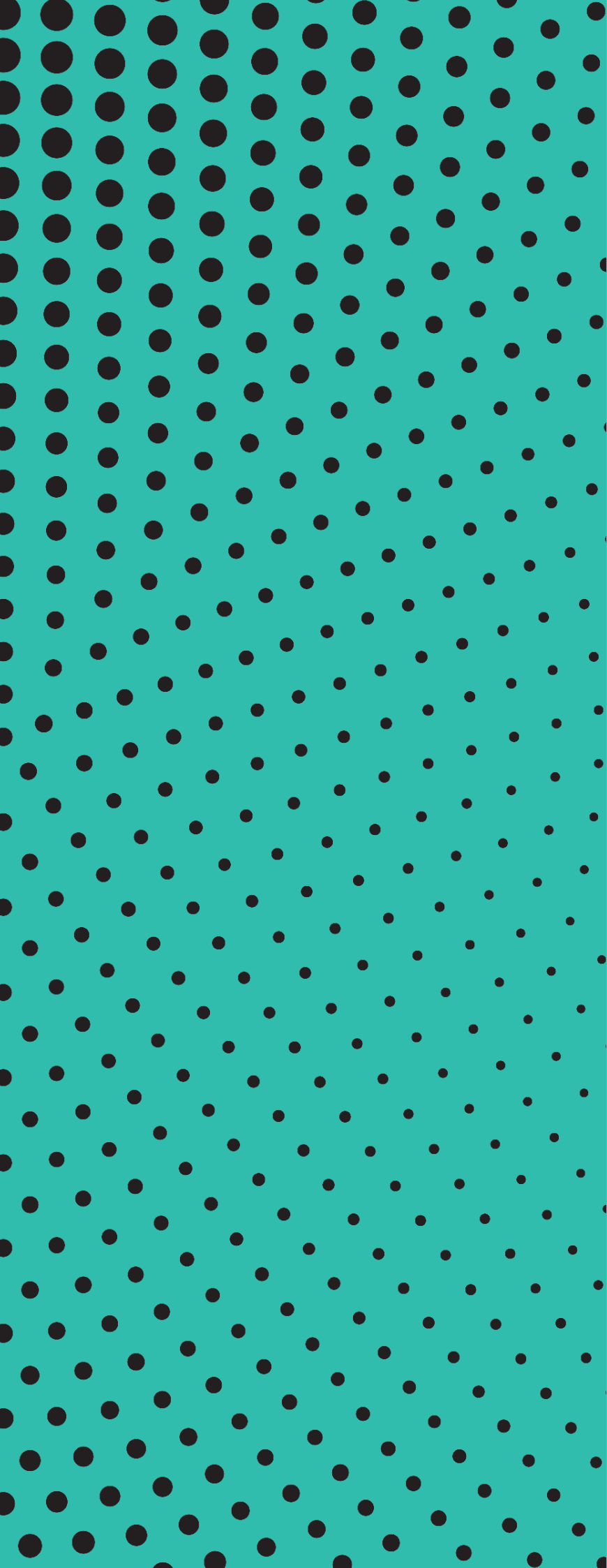
78. The Directive is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0062>.

Recommendations:

Bulgaria

The EU





3

Recommendations

Bulgaria:

- Both the Anti-Corruption legislation and its implementation should focus on the subject of corruption as it is understood under the international standards and under the established monitoring mechanisms such as GRECO and CVM, rather than shifting to fighting organized crime (and related confiscation), which is a separate area;
- The core definitions in the area of corruption should be clarified in order not to mix “corruption”, “conflict of interests” and “confiscation”;
- There should be a clear distinction between preventive and repressive measures and public bodies should have concrete functions in each of those spheres;
- Administrative reform including issues such as openness, accountability and integrity should be considered as part of the prevention of corruption in public administration and should not be separated from the main anti-corruption efforts. In this regard, the internal inspectorates in the public administration should be strengthened, as also proposed in the 2017 CVM reports on Bulgaria. Those structures should also be clearly linked to the newly established Anti-Corruption Commission;
- The institutional framework should be designed to work effectively against corruption avoiding both overlapping functions and gaps;
- The new anti-corruption commission should be empowered to act comprehensively in all the areas of the corruption prevention. It should work in coordination with the bodies in the judiciary, which is not the case now, and with the Ministries and regional/ local authorities.
- The Public Prosecutor’s office should be transparent its progress in high-level corruption cases as suggested by the 2017 CVM reports. It should also ensure accountability regarding its integrity and its capacity to properly investigate high-level corruption. It should address the recommendations put forward in the independent analysis of the structural and functional model of the Prosecutors Office.
- Conflict of interests declarations of civil servants should be checked by independent bodies. Consistent and unified practices in this area should be provided and it should be the responsibility of the Anti-Corruption Commission to develop these.
- The government should respect media freedom in view of the crucial role of media as a public watchdog. The power of the State should be directed at the real suspects rather than used to attack critical opinions and freedom of expression. Efforts should be made to prevent the concentration of media ownership;
- Whistleblowers should be guaranteed better protection against prosecution for reporting corruption and other wrongdoing. This important recommendation, made a long time ago

within the frame of GRECO monitoring, was not just left unaddressed, but in the 2017 anti-corruption law the provision prohibiting such a prosecution was intentionally rejected by the parliament with the clearly stated aim of ensuring that¹⁷ that whistleblowers can still be faced with subsequent legal actions. The lack of adequate protection puts Bulgaria below the international standards established by legal instruments such as the UNCAC.

- As a core tool in the area of prevention, the government should put in place risk-based measures to address corruption in high risk sectors within the public administration as recommended also in the 2017 CVM reports. Ministries and local authorities should be obliged to conduct regular risk self-assessments using tools developed by the Anti-Corruption Commission;

The EU:

- The EU should put more effort into monitoring the implementation of anti-corruption strategies in the Member States and into ensuring the public visibility of the results. The 2017 EU Anti-corruption report should be published as soon as possible, and the European Commission should consider enacting a wider assessment for all EU Member States based on the CVM methodology;
- The EU should take full advantage of the existing anti-corruption mechanisms and finally complete its accession to GRECO;
- The EU needs to develop anti-corruption policies targeting its own structures and to implement them. Regular self-assessments of the situation within the EU institutions in the fight against corruption should be undertaken and also reported to the European Parliament and the European Court of Auditors.



A. Introduction**B. Anti-Corruption Bodies within the executive**

National Council on Anti-corruption Policies (NCAP)

General Inspectorate at the Council of Ministers

Inspectorates in the Ministries

State Agency of National Security (SANS)

Police and General Directorate to Combat Organised Crime

Center for Preventing and Counteracting Corruption and Organised Crime

C. Independent bodies

Commission for Prevention and Ascertainment of Conflict of Interests

National Audit Office (NAO)

Ombudsman

D. Anti-Corruption bodies within the Legislative

Combating Corruption, Conflict of Interest and Parliamentary Ethics Committee (CCCIEPEC)

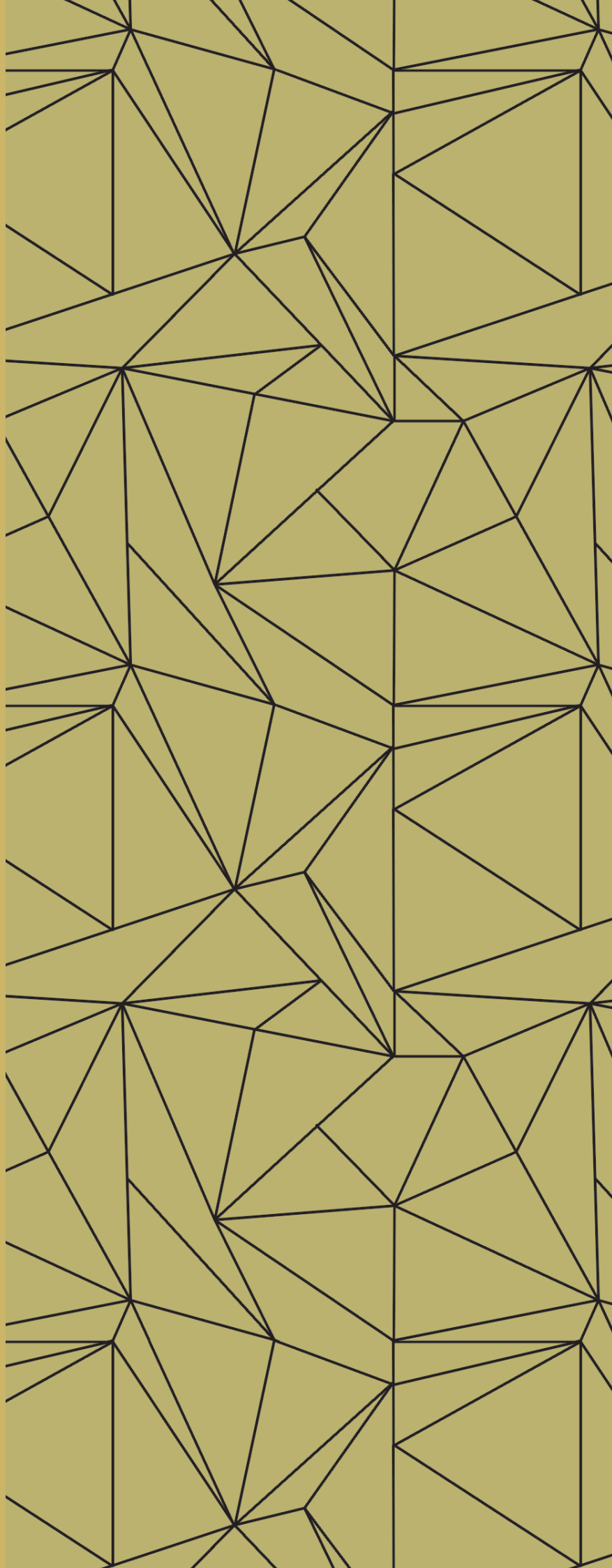
E. Anti-Corruption bodies within the Judiciary

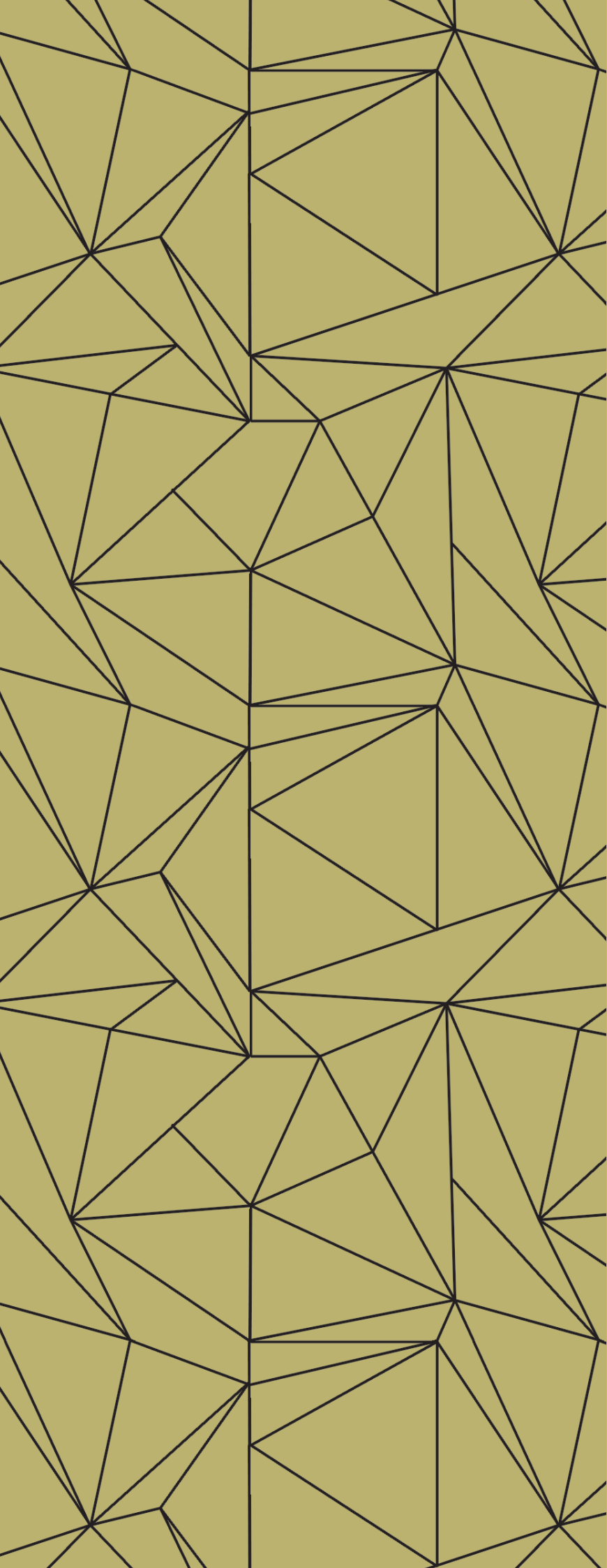
Inspectorate to the Supreme Judicial Council

Supreme Judicial Council

Specialised unit for Combating High-Level Corruption

Specialised Criminal Court





*Annex I.
Overview
of the Main
Anti Corruption
Bodies in
Bulgaria*

Introduction

The short overview presented below embraces public bodies (and structures) within all branches of power that perform either preventive or repressive functions related to the fight against corruption.

Each public body (or structure) is briefly presented with its specific functions and information on to whom it reports. Public bodies are established and assigned with duties under the law, while structures are organisational units within a certain public body. For example, the inspectorates in the Ministries or the parliamentary Anti-Corruption Commission are organisational units, but not public bodies.

A. Anti-Corruption Bodies within the Executive

1. National Council on Anti-corruption Policies (NCAP)

NCAP is established on the legal basis of a Council of Ministers' Decree.⁷⁹ Its functions are regulated by the same Decree.

In accordance with the 2015 – 2020 National Strategy for Preventing and Counteracting Corruption (National AC Strategy), NCAP is designed to be the responsible body within the executive for the preparation and elaboration of the main policy documents in the field of preventing and counteracting corruption, as well as for the discussion of the results of their implementation and the subsequent preparation of measures to improve the efficiency of the current policies.

NCAP is chaired by the Deputy Prime Minister responsible for the coordination of European policies and institutional matters. The Minister of Justice is the vice-president of NCAP. Members of NCAP are the deputy ministers of justice, finance, interior, and the economy, the deputy Prosecutor General, the deputy Head of the State Agency of National Security (SANS), a representative from the Supreme Judicial Council (SJC), and the Head of the General Inspectorate at the Council of Ministers (CoM). This body replaced to a great extent the previous Commission on Preventing and Counteracting Corruption (CPCC) which in turn inherited the functions of the preceding Commission for Coordinating the Activity for Combating Corruption.

In comparison, the previous CPCC comprised more representatives from public bodies, including the Ministry of State Administration and Administrative Reform (closed in 2009), the Ministry

79. See note 78.

of Education and Science, the Ministry of Health, the National Audit Office, the Public Internal Financial Control Agency, the Financial Intelligence Agency (within the Ministry of Finance at the time), the National Revenue Agency, the Customs Agency, the Secretary of the Security Council to the Council of Ministers, and a couple of Directorates within the Council of Ministers' administration.

Based on the priorities of the National AC Strategy, the NCAP is responsible for implementing two basic functions:

- The formulation and amendment of the government anti-corruption policy within the executive, including:
 - The development of strategic documents, programs, and plans for preventing and counteracting corruption;
 - The definition of priorities and measures for combating corruption;
- Reviewing the implementation of the anti-corruption policy including:
 - Control over AC policy implementation and discussion on the results
 - Collection of information and discussion of concrete problems with the implementation of AC policy;
 - Designing analyses and research on anti-corruption matters;
 - Proposing legislative amendments;
 - Communication of the results of AC policy implementation to the public.

NCAP interacts with a citizens' council on the problems of combatting corruption consisting of representatives of NGOs functioning in the field of preventing corruption, as well as representatives of businesses selected by order of the NCAP president.⁸⁰

2. General Inspectorate at the Council of Ministers

The General Inspectorate is established by the Public Administration Act.⁸¹ Its functions are further detailed by secondary legislation.⁸² This body coordinates the implementation of the Anti-corruption Policy. In the past, it served as a secretariat of the CPCC, providing it with administrative and technical support.⁸³ Today the General Inspectorate does not carry out such a function and mainly focuses on the coordination of the ministries' inspectorates that perform administrative check-ups, supplying them with tools such as methodologies and

80. Decree no 136 dated 29 May 2015.

81. See Order no P-161 of 29 July 2015.

82. See Art. 46a of the Public Administration Act, published in State Gazette no 130 of 5 November 1998, last amendment published in State Gazette no 85 of 24 October 2017. **Section IV, Art. 62** of the Structural Regulations of the CoM and its Administration.

83. See Decision No 61 from 2 February 2006 of the Council of Ministers, item 19.

corruption prevention procedures and assessing their performance in the area.⁸⁴ It is also in charge of administrative investigation of ministers and heads of government agencies for involvement in corruption.⁸⁵ The Head of the General Inspectorate reports to the Prime Minister.

The main responsibilities of the General Inspectorate Directorate are to:

- Coordinate, assess, and support by developing methodological guidelines the inspectorates in their work;
- Coordinate and support the implementation of the government anti-corruption policy;
- Perform risk assessment of the CoM administration and develop measures for improvement;
- Undertake administrative investigations in response to complaints regarding corruption by ministers and heads of agencies, as well as for conflict of interest cases;
- Report to the Prime Minister about the implemented administrative investigations;
- Perform other functions on delegation by the CoM or the Prime Minister.

3. Inspectorates in the Ministries

The Ministries' inspectorates are established under the Public Administration Act.⁸⁶ They are directly subordinated to the relevant minister. The main functions of the ministries' inspectorates include risk assessment, analysis, and check-ups on breaches of law, inefficiency, corruption, and conflict of interest within the ministries' administrations. The heads of the ministries' inspectorates report to the respective minister.

The main responsibilities of the General Inspectorate Directorate are to:

- Perform risk assessment of the organisation and develop measures for improvement;
- Perform planned audits of the state of the organisation;
- Undertake administrative investigations (check-ups) on complaints regarding corruption, breaches of law, inefficiency, and conflict of interests;
- Impose administrative sanctions and propose disciplinary measures;
- Inform the public prosecution office when criminal offences are discovered.

In principle, inspectorates are functioning also in other public bodies within the executive, i.e. executive agencies, state agencies, and state commissions. The secondary legislation regulating the functions of each public body further details their responsibilities. The administrations of the governors of the 28 regions in the country are not supplied with inspectorates or inspectors. There are administrative control departments in the larger regional government administrations. A financial controller could also be assigned to the largest ones.

84. Art. 62, para.2, subpara. 1 of the the Public Administration Act.

85. See Art. 46 of the Public Administration Act.

86. Published in State Gazette no 109 of 20 December 2008, last amendment published in State Gazette no 105 of 30 December 2016. The law came into force on 1 January 2008.

4. *State Agency of National Security (SANS)*

SANS was established in 2008 as an intelligence service with some functions related to criminal investigation. It was partly created to tackle organized crime and high level corruption, but after harsh parliamentary debate the legislative branch became reluctant to afford it all the instruments of criminal investigation.

Its functions as defined by the SANS Act⁸⁷ include inter alia activities aiming at the protection of national security against actions detrimental to the national interest, independence and sovereignty of the state, its territorial integrity, fundamental rights and freedoms of citizens, democratic functioning of the state and its institutions and the established constitutional order deriving from the corrupt behavior of high ranking public officials.⁸⁸ The Agency is also responsible for counter-intelligence, for the fight against terrorism and arms trafficking, for anti-constitutional activities and for the protection of classified information and strategic objects and places. It operates mainly through monitoring, information collection and analysis, and secret surveillance. It is the public prosecutor in charge who can assign SANS with the task to fulfil certain duties related to crime detection.⁸⁹

The president of SANS is obliged to provide information equally to the President, the Chair of Parliament and the Prime Minister. Its activities are subject to parliamentary oversight implemented by a special parliamentary committee. Some decisions and actions of SANS are subject to judicial review by the courts. The president of SANS reports to the Council of Ministers on an annual basis. The latter introduces the report in Parliament which has to approve it.

5. *Police and General Directorate to Combat Organised Crime*

The police are involved in the preliminary investigation of crimes. They are part of the system within the Ministry of Interior and they collect evidence in criminal cases under the instructions of the responsible public prosecutor. The General Directorate of Combat against Organised Crime is a unit within the Ministry of Interior dealing with investigation of criminal groups in the fields of corruption, money-laundering, terrorism, cybercrime, drug-trafficking, cultural objects trafficking, contraband etc.

6. *Center for Preventing and Counteracting Corruption and Organised Crime*

The Center (known also as BORKOR) was established in 2010 as an analytical unit developing

87. **Art. 4, para.1**, subpara. 4 of SANS Act.

88. **See Art. 196, para.1**, subpara. 6 of the Penal Procedure Code as amended in 2008.

89. **See Decree no 158** of 29 July 2010 of the Council of Ministers.

90. **See Decree no 158** of 29 July 2010 of the Council of Ministers.

91. **The law** was published in State Gazette no 94 of 31 October 2008, last amendments published in State Gazette no 62 of 9 August 2016. It came into force on 1 January 2009.

92. **Art. 91, paras. 1- 2**. The Constitution was published in State Gazette no 56 of 13 July 1991, last amendments published in State Gazette no 100 of 18 December 2015. The National Audit Office was re-established by the 1991 Constitution as it was created in the 19th century and closed during the communist regime in the 1940s.

93. **Published in State Gazette no 38** of 9 May 2000, last amendment published in State Gazette no 85 of 24 October 2017.

preventive anti-corruption tools for the executive.⁹⁰ It is entrusted with the task to analyse, plan, and elaborate measures for the prevention of corruption and organised crime and supports public bodies in the formulation of anti-corruption policies and in enhancing cooperation and coordination with other bodies, civil society organisations, media, and businesses. The Director of the Center is appointed by the Prime Minister based on a decision of the Council of Ministers.⁹¹

B. Independent Bodies

7. Commission for Prevention and Ascertainment of Conflict of Interest

The Commission was established under the Conflict of Interest Prevention and Ascertainment Act (CIPAA).⁹² The Commission has operated since 2009 and is an independent collective body responsible for the ascertainment of conflict of interest situations with regard to persons occupying public office.

The Commission considers individual cases and establishes whether there was a conflict of interest involving a person undertaking public office. The decisions are subject to appeal before the administrative courts. The Commission is entrusted with the power to impose sanctions in cases of the failure of civil servants subject to the law to declare or report conflict of interest situations, or in cases of other breaches of the law. It reports on an annual basis to the Parliament.

8. National Audit Office (NAO)

NAO is established by the Constitution⁹³ with the mission to exert control over budget expenditure. Its functions are further detailed under the NAO Act (2000).⁹⁴ Its main functions are: to conduct audits of the state budget and other public budgets, such as the municipal budgets, the National Health Fund budget, the social security budget, budgets of high schools, universities, and academies; to monitor the spending of money from EU funds (Art.5 of the NAO Act); to exert financial control over the activities of political parties (Art.33 of the Political Parties Act of 2005). NAO keeps the public register of assets and incomes declared by high ranking officials and exercises control over the veracity of the declared data as provided by the Publicity of the Assets and Incomes of High Ranking Officials Act.⁹⁵ The NAO reports to the Parliament.

94. 2000, last amendment in force since 1 Jan 2007.

95. Published in State Gazette no 35 of 2 May 2017.

9. *Ombudsman*

The Ombudsman considers complaints against actions and omissions of public bodies and public utilities that violate individual rights and freedoms. It issues recommendations to restore the state of affairs prior to the violations of individual rights and freedoms, as well as recommendations to tackle the causes and conditions for such violations. The Ombudsman can also mediate between the respective public body involved and the affected individuals. Furthermore, the Ombudsman is among the public officials that are entitled to submit cases to the Constitutional Court and comments on legislative proposals that involve human rights.

The Ombudsman is selected by Parliament for a period of five years and reports to the Parliament on an annual basis.

C. Anti-Corruption Bodies within the Legislative

10. Combating Corruption, Conflict of Interest and Parliamentarian Ethics Committee (CCCIPEC)

CCCIPEC is one of the 23 permanent parliamentary committees at the National Assembly established by the 2017 Regulation on the Organization and Activities of the National Assembly (ROANA).⁹⁶ The CCCIPEC is in charge of considering complaints against corruption and conflict of interest cases involving MPs.⁹⁷ It is entitled to collect information and conduct hearings on such complaints, as well as to impose disciplinary sanctions as directed by the ROANA. CCCIPEC has adopted its own internal procedural rules in accordance with the delegation provisions of ROANA.⁹⁸

CCCIPEC collects and registers the conflict of interest declarations submitted by high-ranking officials. It cooperates with the Commission for Prevention and Ascertainment of Conflict of Interests by providing information necessary for the handling of pending individual cases.

CCCIPEC is empowered to provide comments and statements in cases when it is established that certain legal norms generate conditions for corruption and conflict of interest. Moreover, the Committee collects information on the efficiency and the implementation of existing legislation and analyses the reasons and conditions for conflict of interest situations and corrupt behaviour. However, it lacks both staff and resources and does not have the capacity to develop tools and the expertise to perform information collection and analysis.

96. Section II, Art. 142 – 154 of ROANA.

97. Adopted by Decision no 1 of 18 May 2017.

98. According to para. 120 of the Transitional and Final Provisions (2011).

The Committee is also responsible for representing the legislative branch in coordination meetings on anti-corruption matters with representatives of the other two branches of government – the executive and the judiciary. However, there is no public information that any such meetings have happened yet during the present parliamentary mandate.

D. Anti-Corruption bodies within the Judiciary

11. Inspectorate to the Supreme Judicial Council

The Inspectorate to the Supreme Judicial Council (SJC) is in charge of performing check-ups on judges, public prosecutors, and investigators for conflict of interest, breaches of integrity, and harming the prestige of the judiciary; as well as for failure to declare conflict of interest situations. Based on its findings, the Inspectorate can urge either of the two colleges of the SJC to declare a conflict of interest situation and/ or initiate disciplinary proceedings against the relevant magistrate (judge or prosecutor).

12. Supreme Judicial Council

The Supreme Judicial Council consists of a Plenary and two colleges – regulating judges and public prosecutors, respectively. The division into two separate units is in line with discussions concerning the independence of judges from public prosecutors and vice-versa, and the subsequent amendments to the Constitution in 2015, reflected in the Judiciary Act in 2016. The actual separation of the two colleges was executed in 2017. In September 2017 a new SJC was selected and its mandate began in October.

The SJC Plenary deals with some common matters, while the two colleges are in charge of assignment and promotion, work assessment, disciplinary proceedings, and other specific professional matters. Disciplinary sanctions are imposed by the administrative superior or by the respective college of the SJC in more serious cases. The SJC Plenary is in charge of sanctioning its own members.

The SJC is responsible for the adoption and development of ethical codes.⁹⁹ Two commissions support the work of both colleges. These are the Commission on Work Assessment and Competitive Employment and the Commission on Professional Ethics.

99. According to para.120 of the Transitional and Final Provisions (2011).

13. Specialised unit for Combating High-Level Corruption and Specialized Public Prosecution's Office

The Specialized unit for Combating High-Level Corruption was created on 24 March 2015 as a response to the then Minister of Justice Hristo Ivanov's call to establish an independent anti-corruption public prosecutor's office, following the model of Romania.

The unit was supposed to carry on the work of a previously existing body, created in March 2006 by the Prosecutor General and called the **Specialised unit for "Counteracting organised crime and corruption"**, which was responsible for preliminary investigation procedures related to these areas.

The specialised unit created in 2015, just like its predecessor, was lacking any legislative support arming it with legal power and tools, procedures, and a clear scope of work. It was established by an isolated organisational decision of the Prosecutor General. This weakness combined with the limited capacity and support for the unit predetermined its lack of efficiency even before it started functioning.

The Specialised Public Prosecution Office was established in 2012 with the aim to combat high-level and organised crime. In 2017 the scope of its power to investigate corruption crimes committed by high-ranking officials was extended¹⁰⁰. The effectiveness of the Public Prosecutor's office in Bulgaria to investigate Organised crime and corruption cases was criticised and a number of recommendations were made in an analysis by the Structural Reform and Support Service in 2016.¹⁰¹ However, the recommendations have not yet been addressed.

14. Specialised Criminal Court

By virtue of amendments to the Penal Procedure Code (PPC) in 2017, the Specialised Criminal Court was granted competences to rule on cases of bribery, embezzlement, forging of documents, waste of public means, and other crimes related to corruption committed by MPs, ministers, regional governors, judges, public prosecutors, investigators, and other high-ranking officials.¹⁰²

100. By amendment in the Criminal Procedure Code published in State Gazette no 63 of 4th August 2017.

101. See <http://www.mjs.bg/Files/Executive%20Summary%20Final%20Report%20BG%2015122016.pdf>

102. Art. 411a, para. 1, subpara. 4 of the PPC.



*The messy fight against corruption in Bulgaria
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