Bulgaria: Building integrity in defence

An analysis of institutional risk factors

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Preface

At the request of the Norwegian Ministry of Defence, the Agency for Public Management and eGovernment (Difi) has prepared this assessment of institutional risk factors relating to corruption in the defence sector in Bulgaria. The report was prepared within the framework of the NATO Building Integrity (BI) Programme.

The current report was written as part of a study covering 9 countries in South-Eastern Europe, 8 of them as a Norwegian contribution to the NATO BI Programme and 1 on a bilateral basis. Difi has prepared a separate methodological document for the study. The latter document provides an in-depth description of the content of international anti-corruption norms and includes a list of close to 300 questions that were used to identify the extent to which the 9 countries in the study had, in fact, institutionalised the norms. The document also provides a rationale for why each of the norms is considered to be important for reducing the risk of corruption.

A national expert in each of the countries involved has collected data in accordance with Difi's methodological document. Three principal types of data sources were used:

- Official documents/statutory texts.
- Interviews with relevant decision-makers and other local experts, as well as representatives of international organisations.
- Analyses and studies already available.

The national experts presented the results of the data collection in a separate report for each country, each one comprising 75-200 pages. The documentation they contained provided a direct response to Difi's approximately 300 questions. A representative for Transparency International UK/Defence and Security Programme (TI/DSP) provided comments to the reports. They were further discussed at three meetings where all of the local experts participated together with representatives from TI, NATO, the Norwegian Ministry of Defence and Difi. At one of the meetings an expert on the topic of corruption/good governance in the EU's expansion processes contributed.

Based on the reports from the national experts, Difi has prepared, with considerable assistance from the EU expert on corruption/good governance, an abbreviated and more concise Difi Report for each country, including recommendations for the Ministry concerned. These reports were then submitted to the Ministry in question for any comments or proposed corrections. The received answers have largely been included in the final reports. However, all evaluations, conclusions and recommendations contained in the reports are the sole responsibility of Difi.

Oslo, October 2015

Ingelin Killengreen
Director General

Abbreviations and acronyms

APIA	Access to Public Information Act
BORKOR	The Centre for the Prevention and Counteraction of Corruption
CHU	Central Harmonization Unit
CIPA	Classified Information Protection Act
CPB	Central Public Procurement Authority
CPC	The Commission on Protection of Competition
CPCFC	Commission for the Prevention and Counter fighting Corruption
CPCFC	Prevention and Counter fighting Corruption
CSA	Civil Service Act
CSD	Centre for the Study of Democracy
CVM	The EU Cooperation and Verification Mechanism
EDA	The European Defence Agency
FM/C	The financial management and control
GERB	The party "Citizens for European Development of Bulgaria"
GRECO	Group of States against corruption
HRM	Human resources management
IDRMS	The Integrated Defence Resource Management System
IMP	The Institute of Modern Politics
IRSPA	The Implementing Regulation of the State Property Act
ISD	The Internal Security Directorate
LSP	The Law of State Property
MEE	The Ministry of Economy and Energy
MMA	The Military Medical Academy
Moi	Ministry of the Interior

MSI	Media Sustainability Index
NAO	The National Audit Office
NIS	The National Intelligence Service
NSPA	NATO Support Agency
OETPCACAAEPC	The Law for Armaments, Ammunitions, Explosives and Pyrotechnical products, the Ordinance Establishing the Terms and Procedure for the Conduct of the Activities Connected with the Armaments, Ammunitions, Explosives and Pyrotechnical products and the Control over them in the Ministry of Defence and the Armed Forces
OJEU	Official Journal of the European Union
PFIA	The Public Financial Inspection Act
PIFC	Public Internal Financial Control
PPA	The Public Procurement Act
PPA	The Public Procurement Agency
PSIAA	The Public Sector Internal Audit Act
RASRI	The Regional Approach to Stockpile Reduction Initiative
RIPPA	The Public Procurement Act
SANS	The State Agency for National Security
SCIS	The State Commission on Information Security
SFI	The State Financial Inspection
SIPRI	The Stockholm International Peace Research Institute
SJC	The Supreme Judicial Council
SNSA	The State National Security Agency
UPMS	The MoD Unified Plan for Material Support

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1 Executive Summary

As a NATO member state, Bulgaria's credibility as an ally is dependent on a functioning public governance and administrative system. This report identifies the shortcomings and areas in need of reform in order to strengthen integrity in the defence sector and lower the risk of corruption.

In regards to parliamentary oversight over the executive, Bulgaria's parliamentary control over the executive is weak and cursory, as in other new democracies. Questions and interpellations are mostly used by those in the opposition to harass ruling parties. The objective of promoting better and more accountable government is generally secondary. Parliamentary control over the executive in defence-related matters suffers from the same weaknesses as the general parliamentary oversight. However, if seen through the MPs questions and answers from the Ministry of Defence, it seems that there is a greater political consensus on improving the military. Although imperfect, the interaction between government and opposition in defence matters has levelled the playing field. Political debate on defence seems to be more constructive and to have national security as a clearer priority. Steps should be taken to remove the basis for suspicion that the intelligence services can be politicized.

The National Audit Office (NAO) is a key control institution. It is well respected and effective despite the fact that it lacks sanctioning powers. The general good quality of its reports and recommendations makes the institution’s contribution essential in the control of the executive. Inexplicably, the staff is not civil servants and consequently their impartiality is not protected by administrative law, which could progressively deteriorate the NAO institutional standing.

The Ombudsman Institution is progressively establishing itself as a respected control institution over the executive. Seemingly it receives few defence-related complaints. The cooperation between the ombudsman and the MoD seems well prepared to bear constructive results.

The legal framework on access to information is complex and unclear in many respects. It entrusts the executive with unrestrained decision-making powers on many issues, which is often conducive to arbitrary secrecy because of political expediency. The legislation does not provide for the establishment of an independent, centralized, specialized institution in charge of protecting the free access to information and other related issues, which would be very useful in such an environment of legal uncertainty. The defence area is no better in this respect than other areas. More transparency would be beneficial for the defence policy and for the armed forces.

In the matter of public procurement the combined action of the NAO, the European Commission and the transposition of every European Union directive on procurement, including in defence, along with better management of procurement processes have been conducive to a steady reduction of the

violations of the procurement legislation. Nevertheless, there is a perception among experts and the general public that public procurement is an area where there are clear risks of corruption. Because of its vulnerability to corrupt deals, the disposal of military surplus has been the object of special attention over the last years. Several mechanisms have been introduced in the MoD to enhance the control and transparency of sales of military assets, and in general these seem to be working well.

The internal public financial control system seems well established and working acceptably well. The functions of the internal auditors should be demarcated well in relation to those of inspectors in order to reduce conflicts of attribution. The inspectorates belong to a long tradition in all former communist countries, as the administrative self-control system was organized around them. Because of their long tradition, they are well respected. They have evolved to become a managerial instrument in the hands of the heads of institutions. Administrative legal framework (Art. 46 from the Administration Act) provides for the active involvement of inspectorates in the administrative control activities, for prevention and elimination of violations of a disciplinary rule, misconduct and misbehavior, an objective and independent assessment of the administrative activity, and improvement in the overall performance of the administration. The inspectorates should be kept and redefined, as is already the case for many of them, towards becoming key instruments to control the quality of public services and compliance with integrity-related and ethics rules. The independence of the internal inspectorates should be strengthened, and the transparency and accountability of their activity improved. Moreover, their activity should be promoted and actions undertaken ex officio supported. In addition, inspectors should receive consistent training in all new and innovative methods and tools (for example the newly introduced risk assessment methodology) so they will be able to act proactively and propose adequate, complex measures to address the identified risk factors.

In the case of Civil Service and Human Resource Management Bulgaria has taken some steps to address corruption, but overall progress has been limited and remains fragile, calling for more consistent checks and dissuasive sanctions for conflicts of interest. There is also a need to ensure better co-ordination among anti-corruption institutions and shield them from political influence.

Fighting corruption has since the beginning of the 1990s been a central political issue. Yet, the results of previous efforts to fight corruption have been very limited. The general image is that of a weak and uncoordinated response to what is a systemic problem throughout the public administration. Shortcomings identified in previous EU Cooperation and Verification Mechanism (CVM) report remain.

There is no anticorruption agency in Bulgaria in the sense of articles 5 and 6 of the UN Convention against Corruption. The recently created Centre for the Prevention and Counteraction of Corruption (BORKOR) is a consultative body. Perhaps the current approach on addressing anticorruption through a number of different bodies coordinated from BORKOR is an adequate one, but its effects remain to be seen as the body is still very new. The mechanisms established in the defence area to control corruption seem to be working acceptably.

2 Introduction

The performance of NATO member countries as reliable allies within the organization depends on a number of factors, including the actual functioning of the overall governance and administrative system. Evaluating these capacities requires scrutinizing the main institutional settings and working arrangements that make up the public governance systems of these countries in order to assess the resilience to corruption of governments and public administrations. This report carries out such an analysis of Bulgaria.

The point of departure for the analysis is the observation that a holistic approach to security sector reform is increasingly called for.[1] Pro-integrity reforms internal to the defence sector should be set in a wider reform perspective including appropriate instruments within civilian policy sectors. The current report mainly focuses on the Bulgarian Ministry of Defence (MoD), and not the armed forces. It treats the Ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across national systems of public governance and impacting the MoD as any other ministry.

To a large extent the report concentrates on checks and balances in the public sector; *i.e*. mechanisms set in place to reduce mistakes or improper behaviour. Checks and balances imply sharing of responsibilities and information so that no one person or institution has absolute control over decisions. Whereas power concentration may be a major, perhaps *the* major corruption risk factor, a system of countervailing powers and transparency promotes democratic checks on corruption/anti-integrity behaviour.

We look at the integrity-promoting (or integrity-inhibiting) properties of the following main checks and balances:

a. Parliamentary oversight;
b. Anti-corruption policies;
c. Specialized anti-corruption bodies;
d. Arrangements for handling conflicts of interests;
e. Arrangements for transparency/freedom of access to information;
f. Arrangements for external and internal audit, inspection arrangements;
g. Ombudsman institutions.

In addition to examining the checks and balances, this gap analysis focuses on two high risk areas susceptible to corruption/unethical behaviour:

h. Public procurement (or alternatively: disposal of defence assets);

[1] See for instance OECD (2007) *The OECD DAC Handbook on Security System Reform (SSR) Supporting Security and Justice*, Paris France.

i. Human resources management (HRM).

Both areas are of particular importance in the defence sector. Defence sector institutions are responsible for large and complex *procurements* that may facilitate corruption. In most countries, the MoD is one of the largest ministries in terms of number of staff and is responsible for a large number of employees outside the Ministry. *Human resources* are central to the quality of performance of defence sector organs.

The report mainly concentrates on the same areas as those listed in NATO's Building Integrity Programme launched in November 2007, whose key aim is to develop "practical tools to help nations build integrity, transparency and accountability and reduce the risk of corruption in the defence and security sector".

The report identifies a number of areas in need of reform in order to strengthen the protection of integrity in public life and to reduce vulnerability to corruption. The report is action oriented: based on its analysis it proposes a number of recommendations for reform action to be undertaken by the government.

3 Parliamentary oversight over the executive and independent bodies reporting to Parliament

3.1 Introduction

In this section we analyse the functioning of Parliament in relation to its constitutional role of control of the executive. Bulgaria is a parliamentary democracy where the Constitution allots many powers to Parliament, notably legislative and control functions. We will analyse the direct parliamentary instruments (inquiries, questioning, etc.) as well as the way in which Parliament uses the reports of those institutions which, while being independent, report to Parliament, for example the Ombudsman, the Commission on Conflicts of Interest, and the National Audit Office (NAO).

3.2 Direct parliamentary oversight over the executive

Direct parliamentary oversight is carried out through parliamentary questions and interpellations or through votes of confidence. During the period January 2011-July 2013, some 42 questions on various issues concerning defence-related matters were raised by MPs, which does not show a high level of questioning. One of the most highly disputed issues was the acquisition of helicopters, which was finally turned down because of financial constraints. The use of these parliamentary mechanisms may have influenced the adoption of the 2011 National Security Strategy, the National Defence Strategy and the Ministerial Guidance on Defence Policy for 2011–2014, where national defence priorities were established.

Two parliamentary standing committees deal with defence matters: a) the Budget and Finance Committee and b) the Defence Committee. In addition, the National Assembly can establish ad hoc committees on issues of specific interest. No ad hoc committee was set up during the 2009–2013 period. Subsequent to legislative elections, an ad hoc committee was established in early 2013 to inquire into allegedly corrupt actions of the previous government (known as the "Crew Flight 28" case). The committee finally submitted a dossier to the state prosecutor. Unlike most documents, the information and documents of the Defence Committee containing classified data are not publicly available on the official website of the parliament.

Overall, the resources available to Parliament are considered sufficient, even if lately there has been a decrease of its budget (to some 27 million Euros) due to financial constraints. The number of parliamentary expert staff engaged in policy analysis seems to be limited, although no information on their exact numbers or their specific expertise is publicly available. There are no particular rules governing the recruitment of these staffers, beyond the general labour code. A number of them are seconded civil servants or academics, or otherwise quite well known experts. Some representatives of NGOs have also been recruited to provide advice to the Parliament on a consultative basis, but

controversy has surrounded some parliamentary invitations to NGOs, as there are no clearly pre-established criteria regulating the selection of external advisors.

According to the regular monitoring reports of the Institute of Modern Politics (IMP)[2], an independent think tank, a formal system for the overall parliamentary control of the executive is in place. It finds positive tendencies in the increase of the number of questions and interpellations as well as in the number of deputies involved in parliamentary control. However, it seems that the use of parliamentary control is mainly oriented towards embarrassing political opponents rather than improving national policies, including in defence. Party discipline prevents MPs from carrying out their control-related functions over the executive to a significant degree. It is usual that all party members vote *en bloc.*

As in other new democracies, parliamentary control over the executive is weak and cursory. Questions and interpellations are mostly used by those in the opposition to harass ruling parties. The objective of promoting better and more accountable government is generally secondary.

3.3 Control of the military and intelligence services by Parliament and by the Executive

The State National Security Agency (SNSA) which is directly subordinate to the Prime Minister, was established in 2008 to combat corruption and organized crime, including high-profile political corruption. It has, however, no investigative powers. The Agency has increasingly concentrated its activities on the security and intelligence sector. The notion has taken hold that the SNSA may be used for party political purposes. One of the latest controversies involving the Agency was the appointment of its new chair, Mr. Delyan Peevski which attracted international attention.[3]

The SNSA is regulated by law and is subject to parliamentary control. The Parliamentary Committee for the Electronic Communications Control Act is in charge of carrying out the parliamentary oversight of the SNSA. Due to lack of information it is difficult to assess the extent and nature of the oversight which is actually carried out. However, it is argued that it may be more nominal than real.

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[2] http://www.modernpolitics.org/wp-content/uploads/2012/08/IMP-report-07-12.pdf. Members of IMP Board of Governors and experts involved in IMP's activities encompass a diversified range of individuals including academics, policy-makers, former MPs, the media, NGOs, legal practitioners, political science researchers. The IMP focuses on monitoring legislation and producing independent and rigorous analysis of critical good governance and human rights issues; promoting debates about significant developments in legislative affairs and about the context and content of policy responses; shaping new ideas to decision-makers and on how to implement full scale principles of good governance.

[3]According to Breaking up with Peevski (2013, 20 September), *The Economist*, http://www.economist.com/blogs/easternapproaches/2013/09/bulgaria, Mr Peevski, a MP, controls large swathes of the media. Mr Peevski's group controls six of the 12 largest-circulation newspapers as well as newspaper distribution and digital television channels. Mass protests took place on the streets against this appointment. Finally he resigned.

The National Intelligence Service (NIS) was established in 1990. The 1991 Constitution defines its position within the Bulgarian system of government, its subordination to the President of the Republic and the Council of Ministers, and its subjection to Parliamentary control. A 1991 Government Decree regulates some specific NIS activities. The NIS is a legal entity funded from the State budget. The 1995 LDAF declared the NIS as a part of the Armed Forces and therefore part of the national security system. The Classified Information Protection Act recognizes the NIS as a security service and specifies its functions in this respect. The 2011 National Security Strategy, adopted by parliamentary decision, defines the intelligence community as a system of State bodies performing information and analytical tasks in order to assess the risks and threats affecting the national security, and planning and undertaking counter-actions to avert them.

The current 2009 LDAF states that the powers of the director and the regulation of staff issues will be governed by the LDAF until a specific regulation is issued. Presently there is no legislation regulating the status, tasks and functions of the NIS and its staff. However, the NIS director has been granted specific powers by legal provisions scattered across various pieces of legislation. Reforms are envisaged to strengthen the control of the NIS by government and Parliament, while keeping its current status as an autonomous State agency. A Military Intelligence Bill is currently under preparation[4].

Since December 2009 the IMP publishes regular quarterly reports on parliamentary activities and legislative developments, which are distributed to institutions, NGOs, and the media. In February 2011, the IMP addressed the European Commission and the European Parliament with a "Special Report on Acts of Government and Security Services in Bulgaria which Threaten or Openly Violate Citizens' Rights and Freedoms". This report had a significant impact on raising public awareness.

In 2012, the IMP found that *"...some of the responses (to the Parliament) provided by the Minister of Defence are formal, bureaucratic, lack depth and completeness. Such responses are related to issues of defence and the state of the armed forces. Other statements are very complete and detailed – these are related to assets of the MoD. In terms of personnel policy of the Ministry, as well as particular cases, the responses are comprehensive and consistent. The type of answers implies that there is no complete vision on the whole sector but more on certain areas, for example that there is a management vision on the modernization of the army and the investment plan. The answers show a strong political will regarding the implementation of defence policies by the MoD. There is also a positive dialogue between the Minister and MPs, who are often satisfied with the answers received. The written answers provided by the Minister are concise and specific..."*
In its 2013 report, the IMP points to *"the excessive corporate influence on the Parliament, which ruins the balance of the interests in the society and alienates*

[4] http://www.president.bg/docs/1352298226.pdf

the public governance subjects from the citizens". The IMP proposes a number of transparency-enhancing measures.

Parliamentary control over the executive in defence-related matters suffers from the same weaknesses as the general parliamentary oversight. However, if seen through the MPs questions and answers from the Ministry of Defence, it seems that there is a greater political consensus on improving the military. Although imperfect, the interaction between government and opposition in defence matters has levelled the playing field. Political debate on defence seems to be more constructive and to have national security as a clearer priority. Steps should be taken to remove the basis for suspicion that the intelligence services can be politicized.

3.4 The National Audit Office (NAO)

The National Assembly is responsible for the democratic control of the policies of the Government including the extent to which Government ensures sound financial management of public funds and how this is accomplished. The National Assembly, through the National Audit Office (NAO) as the independent Supreme Audit Institution, controls whether the public sector organizations have established adequate financial management and control systems. The NAO is a constitutional audit body and functions independently of the executive, legislative and judicial powers. The NAO audits public institutions and reports on its findings and recommendations to the National Assembly for further discussions.

The National Audit Office Act, amended in 2010, determines the range of public bodies to be audited by the NAO, which as at February 2013 included, apart from state budgetary bodies, companies with national or municipal participation and political parties. The NAO has no power to sanction mismanagement, but is focused on issues of legality and compliance with accounting standards. Numerous media publications show that the Office has actively detected financial improprieties, but apart from approaching the competent sanctioning authorities, no further action is taken. This is considered a problem associated with the general tendency to shift the responsibility for sanctioning misconduct of the executive branch of government to the judiciary.

The NAO is chaired by a President and two Vice-Presidents appointed by the National Assembly. All other staff are employed under the labour code, in compliance with the requirements of the National Audit Office Act. The terms of the President and the Vice-Presidents are fixed at 6 and 7 years respectively. The president cannot be reappointed in order to protect his independence, but the Vice Presidents can. They do not enjoy immunity. The headquarters of the NAO is in Sofia, but it has offices throughout the country. The work of the NAO is supervised by a Consultative Council made up of the President of the NAO and five members "with professional experience of at least 15 years in the field of audit, financial control, finance or accountancy".

The NAO is considered to have necessary financial, technological and human resources to perform its tasks. The Office recruits staff through competitive

procedures. Applicants must possess a Master's degree and at least 3 years of relevant professional experience. The majority of the staff are economists and lawyers. In early 2012 the NAO had 440 employees: 341 (77%) of them were auditors while 99 (23%) provided administrative support. The majority of auditors held degrees in economics (297) and law (30). There is considerable stability in terms of human resources. The institution offers development and training opportunities to its employees, including a special joint MA programme in auditing at the University of National and World Economy in Sofia, where attendance costs are covered by the NAO.

The NAO determines its yearly programme and the auditing methods it will use independently. It is obliged to carry out up to five special audits per year upon request of the Parliament. According to article 24 (2) of the Rules of Organization and Procedure of the National Assembly, the Committee on Budget and Finance has a permanent Subcommittee on Public Sector Accountability. The NAO Chair is invited to the sittings of this subcommittee.

The NAO is considered to be transparent. The office prepares all the reports required by law. There is no evidence of concealment of documents which are subject to submission to Parliament. The NAO makes public all its reports and most of its internal documents through its website and the media. The review of the publicly available information shows that it is up-to-date and sufficiently detailed. The information is easily accessible via the NAO's website, which is well maintained. Audited agencies can challenge audit results, but only with the NAO itself, and before the completion of the final audit report. Although, there is no publicly available data on how often audited institutions use this mechanism, experts suggest that this is a well-functioning practice.

The NAO is required by law to submit an annual report to the legislature. There are no specific legal requirements on the content of the report. The submission of the report is due by September 30 of the year following the reported annual period. The financial management of the NAO is audited annually by an independent commission which is appointed by the Parliament. The audit report must be submitted to the Parliament, together with the Annual Report of NAO.

Performance audits are rarer than those for legality and regularity of financial management and accounting. The number of financial audits increases each year - about 12 % annually. Simultaneously, the number of performance audits has dropped significantly from 141 in 2007 to 42 in 2011. A large part of the NAO's audit reports could be classified as comprehensive. The reports are regular and up-to-date and are publicly available via the NAO's website. Major audit findings are regularly publicized through the media. In 2011, 42 % of all audited organizations accepted and implemented all the NAO recommendations in full, while 29 % were in an implementation process. Another 29% had failed to implement the recommendations.

The NAO carried out a financial audit of the budget of the Executive Agency – "Social Activities at the Ministry of Defence" – covering the period 30 September 2008-31 December 2009. Inadequate administrative practices were identified, i.a. breaches of principles of economy and sound financial

management. The NAO also found that in tendering and awarding small procurement contracts under article 2-1 of the Small Procurements Ordinance, all dossiers were incomplete and did not contain all the documents required by the MoD internal rules. The NAO called on the Minister of Defence to review two procurements it considered illegal and to implement the recommendations within three months from the receipt of audit report. The Mod accepted all recommendations.

A second NAO audit report at the MoD (No 0200005911) for the period 1 January-30 September 2011 did not find major irregularities, apart from a certain budget imbalance mainly due to the management of the Military Medical Academy. The report identified a lack of adequate procedures for control and cooperation between the MoD structures when it comes to acquisition and disposal of property. The practices detected may undermine the prospects for accurate accounting of the properties managed by the MoD. The report stated that no adequate arrangements have been put in place for the collection of rents from tenants of state property, including tenants of the Military Housing Fund.

In general, the NAO regularly identifies legal violations and misconduct. There are a plethora of media publications about the NAO's disclosure of malpractices and legal offences in the road administration, municipal administrations, the agricultural agencies, ministries and many more. However, the NAO has no sanctioning powers. Measures are within the responsibility of other agencies such as the Prosecutor's Office, the Ministry of Finance, the Public Procurement Agency, the State Financial Inspection, even the European OLAF. Nevertheless, according to the latest (February 2013) Annual Report of NAO, 82 reports on public procurement-related fraud were sent to the State Financial Inspection (SFI). Out of them, 30 resulted in 529 cases of administrative malpractice with corresponding sanctions. The rest were still under review by the SFI. The NAO may identify office-holders responsible for misbehaviour, although it is not an investigation agency. In its recommendations, the NAO may request the discharge of the responsible civil servants in the audited administration, or budgetary cuts if an agency systematically ignores the NAO's recommendations.

Despite the fact that it lacks sanctioning powers, the NAO is a key control institution, well respected and effective. The general good quality of its reports and recommendations makes the institution's contribution essential in the control of the executive. Inexplicably, the staff are not civil servants and consequently their impartiality is not protected by administrative law, which could progressively deteriorate the NAO institutional standing.

3.5 The ombudsman institution

The institution of the Ombudsman is relatively new in Bulgaria. It is regulated i.a. by the Constitution, the Ombudsman Act, and the Rules of Parliamentary Procedures. The Ombudsman is legally bound by the principles of impartiality, independence and due process of law. His decisions shall be based on his personal judgment of the merits of the case, while observing the requirements

of good governance. The Ombudsman cannot be a member of a political party, cannot perform any other State activity or any commercial or business activity, and cannot be part of the management or boards of commercial entities or non-profit legal entities (article 14 of the Ombudsman Act).

The Ombudsman is selected by Parliament by simple majority on proposals from parliamentary parties. Although this selection procedure may raise doubts about the political impartiality of the ombudsman, available information indicates that the institution usually acts independently of external influences. The second Ombudsman, who was elected in 2010, is a former chair of the administrative court. He has reportedly resisted pressure from political parties and appears to be committed to asserting his independence.[5]

The administration of the Ombudsman is managed by a Secretary General and it is organized in Directorates and Departments. The Ombudsman appoints and dismisses the staff and determines their remuneration, the working hours and the office opening hours to the public. Although the staff members are not civil servants, they are subject to the principles of hierarchical subordination, impartiality, transparency and efficiency. The Ombudsman can request assistance from external experts under civil contracts or from volunteers.
In 2009 the NAO reviewed the system for the appointment of external experts with civil contracts. 41 civil contracts were signed in the audited period. The general conclusion of the audit was that the contracting process was not transparent.

Approximately one third of institutions to which the ombudsman made recommendations followed them and changed their practices accordingly. During the mandate of the first Ombudsman, recommendations directed to the Parliament for the improvement of legislation were usually not heeded. The current Ombudsman enjoys increasing responsiveness, but compliance with his recommendations is still inadequate. There are no reported cases of refusal to provide the Ombudsman with information, or of delays beyond the regulated timelines for responses. The Ombudsman has so far never imposed administrative sanctions on uncooperative institutions.

The public attitude, as well as that of public institutions, towards the ombudsman is respectful. There are no appreciable negative social reactions towards the institution. Many people still do not understand its nature, however. The public interest in the ombudsman institution is low. Many people believe he cannot exert real influence on other institutions. Even though his actions and appearances are given wide publicity by the media, these do not attract particular public attention. There is no long-term communication programme for the popularization of the ombudsman's services and activities. Nevertheless, the ombudsman has a well-maintained website. Information on the institutional activities is frequently published and updated. The current ombudsman has

[5] On 28 September 2013, Konstantin Penchev, the current ombudsman, in view of unrelenting social unrest and demonstrations urged politicians to assume responsibility to forge consensus, regain the trust of citizens, and steer Bulgaria in a direction that would guarantee its prosperity. See more at: http://www.novinite.com/view_news.php?id=154060#sthash.z0gLnFmY.dpuf

been very active with the media. His reports, interviews and articles are published on the official ombudsman's website.

The Ombudsman has broad legal powers. The Ombudsman receives and reviews complaints for the violation of rights and freedoms by the State and municipal authorities, as well as those contracted to deliver public services on their behalf. He investigates whether the Government, including the MoD, performs its functions in compliance with the Law and ethical standards. He issues recommendations to the Government or individual State institutions to reverse improper administrative actions. The Ombudsman is entitled to referral to the Constitutional court, a power he uses in practice.

The Parliament, the President, the Constitutional court, the Supreme Judicial Council and the National Audit Office are excluded from the purview of the ombudsman. The Ombudsman Act (article 20) imposes restrictions over the disclosure of information of a confidential nature related to the State, professional or business matters or private in nature. This may pose an obstacle for the ombudsman when claiming access to information in the defence and security sector.

The Minister of Defence issued an Ordinance on 25th October 2007 establishing MoD procedures for dealing with the ombudsman's investigations in the defence area. The Minister, Directors and experts who are requested to cooperate in an ombudsman's investigation must provide information and collaborate, and should provide written statements, documents and oral explanations pursuant to the Law on Protection of Classified Information. If the ombudsman and the ministry settle on an issue under investigation, they sign a protocol accepting the recommendations. The MoD Inspectorate collaborates in drafting the protocol and controls the implementation of the ombudsman's recommendations and suggestions. These are recorded through the automated data system at the MoD and referred for implementation according to the Ordinance. The ombudsman is informed in writing of the measures taken related to the recommendations. The response to the Ombudsman is signed by the Minister.

If no settlement is possible, the officers in charge of the administrative units review and develop a draft response within 14 days from the date of receipt of the order to do so.

The 2011 Ombudsman Annual Report included only a single case concerning the defence sector. The Minister accepted the Ombudsman's recommendation and took steps to correct the disputed matter.

The Ombudsman is accountable to Parliament to which he reports annually by 31 March. The Law describes the type of information the report shall contain, namely: number of complaints received and investigations completed; cases where the Ombudsman's intervention had an impact and those where it did not, and the reasons for that; an account of the proposals and recommendations made, as well as whether these have been taken into account; an account of the respect of human rights and freedoms and the effectiveness of legislation in this

area; an account of expenditure; and a summary. This report is publicly available.

The Ombudsman makes recommendations to institutions which have been subject to investigation for practices violating regulations or citizens' rights. Approximately one third of institutions to which recommendations are addressed comply with them.

In April 2011, Bulgaria ratified the Facultative Protocol to the UN Convention against Torture, a recommendation the Ombudsman had made in his 2007 report. As a result, a special agenda was developed for visits to prisons and other institutions. The Parliament also ratified other important international acts, upon recommendations made in the 2010 Annual Report.

The ombudsman is progressively establishing itself as a respected control institution over the executive. Seemingly it receives few defence-related complaints. The cooperation between the ombudsman and the MoD seems well prepared to bear constructive results.

3.6 Prevention of conflict of interest

The Conflict of Interest legal framework was established in the 1991 Constitution (articles 68, 95, 113, and 147) and in the 2009 Conflict of Interest Prevention and Ascertainment Act. The legal framework obliges the President, Vice President, Prime-Minister, Deputy Prime-Minister, Ministers and Deputy Ministers, MPs, as well as civil servants and other persons holding public office, to file declarations of conflicts of interest upon taking office and upon occurrence of a specific conflict of interest situation. Similar provisions are included in the 1998 Administration Act and the 1999 Civil Servants Act. There are no provisions on whistle-blower protection.

The Public Disclosure of Financial Interests of Officials Holding High State and Other Positions Act (2000), as amended in 2010, requires certain public officials to file annual and periodic declarations regarding their property, income and expenses. The December 2010 amendments created the Commission for the Prevention and Detection of Conflict of Interest, which became operational in 2011.

'Conflict of interests' is legally defined as a situation in which the private interests of a public office holder may influence the impartial and objective discharge of his official duties (article 2–1). Private interest is defined as a pecuniary or non-pecuniary profit for the office holder or connected persons, including all liabilities (article 2–2). The scope of authorities to which the law applies is large (article 3). The incompatibilities with public office are defined in general terms in article 5 where it is stated that a person holding a public office position cannot hold another position or perform activities, which according to the Constitution or a special law, is incompatible with his current position. Article 7 obliges an official to withdraw from a decision-making procedure where his own interests or those of his relatives are at stake. Article 9

prohibits public officials from managing public funds and property, signing contracts with, as well as issuing permits, certificates and so forth to NGOs and companies, in which he or his relatives participate as owners, members of boards, etc. This prohibition also applies if the above-mentioned circumstances were present up to 12 months before his election/appointment. The Law also establishes a one-year cooling-off period after leaving office (article 21).

The compliance control of the conflict of interest regime is assigned to the Standing Parliamentary Committee for Fight against Corruption, Conflict of Interests and Parliamentary Ethics concerning the President of the Republic, MPs, members of the council of ministers and bodies reporting to parliament. For officials in the state administration it is assigned to the Chief Inspectorate with the Council of Ministers. Mayors and municipal councilors are controlled by the respective municipal conflict of interest commissions, judges and magistrates by a commission of the Supreme Judicial Council (SJC). Judicial review of decisions on conflict interest lies with the Supreme Administrative Court in the case of the highest officials, and to administrative courts for lower-ranking public officials. In either case, decisions can be appealed before the Supreme Court.

A Code of Ethics for government members was passed by the Council of Ministers in 2005. The Code provides definitions for accountability, conflict of interests, integrity, personal interest and a list of official position holders who should sign declarations abiding by this Code of Ethics. There is a Code of Ethics for Civil Servants and Employees in the Public administration.

The consequences of conflict of interests, once established by a final court decision, may be dismissal, unless the Constitution provides otherwise for elected individuals. In addition, any private gain rooted in a conflict of interest situation will be confiscated, including the public salary earned under conflict of interest. The chair of the Commission for Prevention and Detection of Conflict of Interest can also impose administrative fines on officials failing to submit conflict of interest declarations within the legal deadline.

The NAO verifies accuracy of asset declarations by crosschecking the asset disclosure statements with information available in the databases of state and municipal authorities that have the duty to register such facts. The verification is considered positive whenever any established discrepancies do not exceed BGN 10,000 (app. EUR 5,000). Where discrepancies exceed this amount, the verification is considered negative. Spouses and children do not file separate declaration forms. Information on their assets is included in the primary filer’s declaration form. The Register of Asset Declarations is kept at the NAO.

The Commission for the Prevention and Detection of Conflict of Interest was set up in June 2011. The Commission is a specialized, independent state body. It is responsible for prevention and detection of conflict of interest of persons under the scope of the Conflict of Interest Prevention and Detection Act, i.e. a total some one thousand hundred officials.

The Commission came under fire soon after its establishment. In July 2013, the Prosecutor pressed charges of malfeasance in office, pursuant to article 282 of the Penal Code, against the Chair of the Commission on Prevention and Detection of Conflict of Interest. The Chair is accused of manipulation of cases such as failure to report the progress of cases, delays in the progress of cases, and repeated failure to inform the prosecuting authority about cases. According to the prosecutor the Chair complied with – unlawful – instructions to strike off, to postpone, to delay, and even to hide cases.[6] The Chair was removed from the position, a removal confirmed by court.

Overall, the legal regime on conflict of interest, assets declaration, and restrictions on shareholding in private companies are applicable to the MoD and the armed forces. The MoD Inspectorate is responsible for the control and monitoring of conflict of interest within the MoD and the Armed Forces, including proposals of disciplinary action.

Within the MoD a clear understanding exists of the specific corruption risks related to personnel in sensitive positions, including officials and personnel in procurement, contracting, and financial/commercial management. In May 2013, the MoD Inspectorate conducted a Corruption Risk Assessment focused on four areas: procurement, budgeting and financial management, human resources management and participation in peacekeeping operations. Three criteria were analyzed: probability of corruption, direct financial loss, negative impact on policies/capabilities/operations. The purpose of the assessment was to identify areas of high corruption risk with a view to undertaking effective preventive counter-measures. On the basis of the Corruption Risk Assessment results, the MOD developed a Roadmap of short-term (up to 6 months) measures and medium-term measures (one-year framework) as well as regular measures to eliminate conditions that might lead to corruption.

The MoD Inspectorate developed a Methodology for Assessment of Corruption Risks within the MoD, the structures directly subordinated to the Minister and the Armed Forces. During recent checks using that methodology, corruption risk was assessed as “low” except in one organization for which the minister has approved seven specific measures for prevention of the corruption, including a strict application of established financial discipline.

An Inter-Agency Working Group under the leadership of the General Inspectorate of the Council of Ministers developed new Methodology of Assessment of the Corruption Risk. It was approved by the Prime Minister of the Republic of Bulgaria in March 2014. On this basis, MOD Inspectorate developed new corruption risk assessment methodology taking into account the specificity of the defence sector.

[6] See more at: http://www.novinite.com/view_news.php?id=152096#sthash.ydG2ODQz.dpuf

Regulations for the Implementation of the Law on Defence stipulate the principle of a maximum 5-year term of office for colonels. The majority of sensitive posts are occupied by personnel with that rank. For procurement and acquisition procedures, there are a number of hierarchical structures, advisory bodies and councils involved which lower the risk for corruption practices. More specifically, the LDAF establishes a three-year cooling-off term for military and civil personnel responsible for management, administration and control at the MoD, at structures directly subordinated to the Minister of Defence and the Army with regard to companies they have contracted during their last year in office or military service.

The MoD adopted a Code of Conduct in 2010. The purpose of the code is to lay the principles of acceptable behaviour of MoD officials, as well as those assigned to subordinated structures of the MoD and the Armed Forces. The guidelines target business contacts, behaviour at the workplace, prevention of corruption practices and conflict of interest. The code considers the promotion of ethics as a managerial responsibility.

The SNSA has also adopted a code of conduct, but it is not publicly available and could not be assessed during the field work for this report. From the general, brief description of the code given in writing by the Agency, we can conclude that it does not cover asset declarations and conflict of interest, gifts and hospitality, or post-employment cooling-off. There is no integrity screening in recruitments either.

The LDAF determines that military servicemen may not themselves, or persons related to them, accept or facilitate the receipt of any gifts, donations, trips, hotel accommodation, hospitality, discounts from payments owed, preferential loans or other profits or services, leading to exertion of influence over the fulfilment of their duties in favour of the persons offering the said profit or service. Military personnel may not use their official status for the purpose of deriving benefits for themselves or persons related to them even if those benefits would not influence the fulfilment of their official duties. Military personnel may not give or offer presents or provide other services leading to exertion of influence over the fulfilment of the duties of the addressee. Accepting and offering presents or other benefits on the grounds of official status shall be considered a corrupt practice. Military personnel can accept presents amounting up to 100 BGN (amounting to 50 EUR) once in a calendar year. Similar restrictions apply to the civil personnel assigned to the military or to the MoD.

Since 2006, the asset disclosures of politicians are made public and are available on the internet. Usually media pay close attention when new disclosures go public. Declarations required by the Conflict of Interest Prevention and Ascertainment Act-are also available on the internet and a link is provided on the webpage of the National Assembly. Asset disclosures usually reveal more than required by legislation. Journalist, NGOs and monitoring institutions have exposed loopholes in legislation and malpractices. Many politicians do not make clear the separation between their public and private interest. As a consequence, “revolving door” practices are quite common.

The adoption of the Conflict of Interest Prevention and Ascertainment Act and the establishment of the Commission for Prevention and Ascertainment of Conflict of Interest were undertaken only after the country became an EU member and the subject of high pressure from the EU. Amendments to the Law have been adopted in the first of two parliamentary hearings. The amendments are aimed at increasing the effectiveness of the Law's application and the prevention of malpractices.

The anticorruption industry in Bulgaria is thriving. A number of influential organizations working in this area have flourished during the last two decades. NGOs on anticorruption face several problems. For example, the scarcity or lack of private funding available may jeopardize their independence of state authorities and politicians.

Integrity standards in the Bulgarian media leave much to be desired. This is the lowest scoring indicator in MSI (Media Sustainability Index) 2010 and MSI 2011, and the trend is downward. Low standards of journalistic and ethical integrity dominate the tabloids and some regional and local media outlets, but it is a general feature of all the Bulgarian media. Tabloids, but not only them, explicitly refuse to sign the Ethics code of the Bulgarian media. They do not have internal editorial ethical codes or ethics committees.[7] The right to reply is underdeveloped in these media, leaving their publics exposed to one-sided, non-objective, manipulated information. Trading in influence is a growing practice among Bulgarian journalists, according to the Bulgaria Helsinki Committee.[8] The 2010 Report on human rights in Bulgaria[9] issued by the US State Department considers trading in influence as one of the major sources of concern for the independence of the media in the country. It is a common practice among Bulgarian journalists to accept trips paid for by companies on whose activities and products they report. Together with the corporate pressure exerted by the owners and their political and business friends, these are among the main reasons why some journalists often do not report both sides of an issue. The few investigative journalists that exist are viewed with suspicion and considered to be "troublemakers". They are often pushed to the margins of the profession.

In July 2013, prosecutors charged the chair of the commission with abuse of office on the basis of evidence of politically manipulated investigations. Consequently, Parliament later dismissed the chair from his position. The dismissal was challenged, but was upheld by an appeals court. An MP resigned over the same case.[10] The persistent problems in implementation of the legal regime in the analysed area led to recent changes in the legal basis: a draft amendment law was prepared and passed in the Parliament addressing the

[7] See Bulgaria Media Sustainability Index at http://www.irex.org/resource/bulgaria-media-sustainability-index-msi
[8] http://www.bghelsinki.org/bg/publikacii/obektiv/klub-obektiv/2011-04/mediite-mezhdu-trgoviyata-s-vliyanie-i-monopolite
[9] http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154417.htm
[10] Brussels, 3.2.2014, COM (2014) 38 final.

public concerns and requirements and aiming at reducing political influence over the Commission. The objectives of the amendments are to speed up the procedure and to strengthen the court control. New rules for management and decision making processes have been introduced. The decision on who will be the reporting member per case will be taken by electronic means and following the line in the submission of the respective case document. The rights of persons whose conduct is the subject of the procedure will be better regulated; they will have the right to be represented by an attorney-at-law, to receive all information and documents related to the case in advance, to request new proof to be collected, and to submit new information and documents related to the subject matter of the proceedings.
The scope of the law has also been broadened. It now covers the Deputy Chairs of the Supreme Administrative and Supreme Court of Cassation, Deputy Chief Prosecutor, members of the Consultative Council at the National Audit, etc.

The Administrative Procedure Code and the Conflict of Interest Prevention and Ascertainment Act contain provisions on the protection of whistleblowers' identities, while the Criminal Procedure Code requires citizens, and specifically public servants, to report crime.[11] However, effective administrative arrangements for whistleblowers are not yet in place.[12] In 2011, a police officer was forced to resign after being identified as the source of media reports about donors to the Interior Ministry whose vehicles were allegedly exempt from road checks. Claims that donors to the Interior Ministry included suspects under investigation led the Ministry to introduce rules on donations and to publish an online list of donors, updated every three months[13]. However, no steps were taken to strengthen the protection of whistleblowers. In July 2013, all donations to the Interior Ministry were prohibited to prevent potential conflicts of interest.[14]

3.7 Transparency, free access to information and confidentiality

The right to access and disseminate information is recognized by article 41 of the Constitution. This right is further developed by the 2000 Access to Public Information Act (APIA). The international community played an active role in both lobbying the introduction of the legal framework and providing expertise for further developments. There is no minister responsible for the development of policies and legal frameworks regarding freedom of access to information.

This law introduced the obligation for the heads of executive bodies to publish information related to the powers, structure, functions, responsibilities, legislation issued, information resources, and contact information. It entitles

[11] UNCAC reviewers recommended more comprehensive provisions to protect whistleblowers. http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1187232e.pdf
[12] Bulgaria: Technical Report accompanying the document: COM (2012) 411 Final Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism, p. 24.
[13] http://www.mvr.bg/pravila_darenia.htm
[14] Except for the provision of financing and equipment under international treaties and projects.

citizens to access public information created by and kept by public law bodies and individuals and legal entities whose activities are financed from national budgets or EU funds. In 2008, the law was amended, inter alia, to make the use of the internet mandatory as a vehicle for the dissemination of information.

According to the law, the applicant for information is not obliged to give reasons as to why he needs the information. The information is to be made available within 14 calendar days from the date of the request. Usually, the decision to give or deny access to information is taken by the Head of the public authority, a political figure (or his/her Deputy). The legal framework does not provide for the establishment of an independent, centralized, specialized institution in charge of protecting the free access to information and other related issues. Many observers suggest that there is a need for such a body.

Every chief officer shall prepare an annual report on the applications for access to public information, which shall contain data on the refusals made and the reasons thereof. Such information shall be published on the Internet sites of the administrative structures of the executive.

The law puts forward an uncertain distinction between 'official' and 'administrative' information. Both categories may be classified as confidential. The regulation of active disclosure of information[15] by public bodies is a complex system partly regulated by the APIA and partly by the legal acts of local self-government bodies and the secondary legislation on procedures for publication on the Internet.

One of the restrictions on the right of access to information relates to the so-called *preparatory documents* stipulated by article 13 whereby access to administrative public information may be restricted, if it *"... relates to the preparatory work of an act of the bodies, and has no significance in itself (opinions and recommendations prepared by or for the body, reports and consultations)."* Pursuant to the APIA, these restrictions expire two years after the generation of the information which is subject to protection.

In accordance with art. 13–14, access to administrative public information may not be restricted if there is an overriding public interest. An "overriding public interest" exists whenever disclosure of public information helps to reveal corruption and of abuse of power, and to promote transparency and accountability of the state bodies/officials referred to in Article 3 of the APIA.

State and official secrets are the other main limits to access to information. The term "classified information" was introduced for the first time in Bulgaria by the 2002 Classified Information Protection Act (CIPA). This is a general term that embraces any information representing a state secret, official secret or foreign classified information. Article 25 of the CIPA confines the notion of

[15] Active transparency is used in Bulgaria to refer to the obligation of public bodies to disseminate information without any particular request from a citizen.
[16] For reference, see SAC decision No. 15158 from 10.12.2010 adm. case No. 3051/2010.

state secret to information where three cumulative conditions occur: a) the category of information is provided by law; b) the classification aims to protect the national security, the defence, foreign policy and constitutional order; and c) the disclosure would create a threat of harming the above listed interests.

The official secret is further regulated by article 26 of the CIPA, which states that categories of information subject to classification as official secrets can only be established by law. Heads of administrative structures may approve specific lists of categories of information subject to official secret classification for their units. These lists should be publicly available. The State Commission on Information Security has issued Mandatory Guidelines for the Classification of Information as Official Secret. Classified information generally is that which concerns the territorial integrity, independence and sovereignty of the country, and the correlated policy instruments such as defence, the established constitutional order, foreign policy and international relations.

The classified information protection policy falls within the remit of the State Commission on Information Security (SCIS). According to article 6 of the CIPA, the State Commission on Information Security is a collegiate body comprising five members, including a chair and a deputy chair, nominated by the Council of Ministers upon proposal of the Prime Minister.

Concerning the MoD, two main issues were recognized as problematic by the Programme for Access to Public Information namely the declassification of information, which is not done on a regular basis and is not publicly available on the web page, and the implicit denial of requests from citizens. The following are examples of claims that were raised against MoD as thwarting the right to access to information: a) information about the public procurement procedure for construction works in building the new military cultural centre in Sofia was considered a trade secret; b) the utilization of very old equipment (tanks from the WWII) was considered a state secret; c) a report on the ecological impact of assets disposal was considered an official secret mostly due to sheer political expediency; d) a review of the list of official secrets in the MoD comprises over 2000 items - far higher than seems reasonable.

The Administrative and Information Services Department of the MoD is responsible for the management of public data. According to the LDAF, these responsibilities include providing administrative and technical support and documentary and information services for the MoD; record keeping and archiving at the MoD; preparation of opinions of the minister on draft laws and regulations; managing the library; implementation of the Electronic Government Act at the MoD, its structures and the Armed Forces; assist in implementing IT in the defence area; managing the website of the MoD; and planning and supporting materially, technically and technologically the automated information processing at the MoD.

The MoD discloses information both following a request and proactively on its website. The responsible unit is the Public Relations Directorate (PRD). The unit responsible for classification and de-classification of information within the MoD is the Information Security Directorate. It is headed by an Information

Security Officer who is directly subordinated to the Minister of Defence. The Directorate is responsible for classified information protection within the MoD. It provides guidance and guidelines, elaborates security requirements, etc.

A systematized archive is established and properly maintained at the MoD. The various archive functions are reflected in the MoD regulation on systematization of positions. The number of staff planned and actually employed in the archive unit is sufficient. There are written regulations for filing ministerial papers established at various departments and units depending on the specifics of the respective procedure (public procurement, internal audit, HRM, etc.).

The Defence Budget is actively debated and scrutinized by Parliament. The defence budget is part of the State Budget Act and is accessible to the public and reveals all major items. Additionally, a substantial part of the information related to the defence budget is distributed to international organizations and institutes like NATO, EDA (The European Defence Agency) and SIPRI (Stockholm International Peace Research Institute) for analyses, consolidation, and presentation to the broad world public.[16] The Annual Report on the Degree of Implementation of the Approved Sectorial Policies and Programmes, as well as the respective Half-year and Quarterly reports[17] on the implementation of the Defence budget are published on the MoD official website.

According to article 23 (1) of the State Budget Act (1996), the structure of the State budget shall be defined by a Ministerial decree within one month from the promulgation of the Annual State Budget Act in the State Gazette. The latter is promulgated annually in the State Gazette. There is no explicit provision requiring the public institutions to publish their accounts and to allow citizens to request such information. However, according to article 11 of the Access to Public Information Act (2000), access to administrative public information is not restricted. Definition of the administrative public information is contained in article 11 of the Access to Public Information Act (2000). However, article 49 of the Bulgarian National Bank Act (1997) requires the National Bank to publish its weekly and monthly balance in the State Gazette.

Information about all tenders, including those comprising classified items, is published on the official MoD website. Specific application forms for tenders on classified items (special tenders according to national public procurement regulations) are submitted only to those companies holding the relevant clearance. It should be noted that the procurement procedure is not considered classified from the very beginning and in its entirety, if it is not required by the nature of the contract. This means that a procurement procedure may start as a public tender and subsequently proceed as a partly classified procedure.

The budget of the SNSA, including spending on secret items relating to national security and intelligence services, is published on the webpage of the

[16] http://www.md.government.bg/bg/doc/programi/2013_budget_MO.pdf

[17] http://www.md.government.bg/bg/doc/drugi/20130724_Otchet_budjet_I_polugodie_2013%20pdf%20.pdf

organization.[18] It is a separate budget from that of the MoD. This makes it impossible to tell what percentage of the defence and security budget is allocated to spending on secret items.

The annual reports of the MoD contain a section on information policy. The 2011 report states that the basic principle of the information policy was to provide timely and objective information about the activities of the Armed Forces. All approved, adopted or endorsed strategic documents, concepts, plans, reports and legislation are published on the MoD website. Sociological studies conducted in 2011 showed that the Armed Forces preserve their traditional leading place with respect to trust among the institutions in Bulgaria. In September 2011, the MoD was awarded a Certificate of Honour for its contribution to freedom of information on the occasion of the International "Right to Know" day. The award was for the information provided about the activities of the Central Artillery Technical on testing range "*Zmeiovo*". It was awarded in the category "Institution which organized the provision of information to citizens in the best way possible". The MoD was selected as the most open and transparent central public administration structure in Bulgaria for 2012.

Denial of information can be appealed before the administrative court. The Supreme Administrative Court has not only jurisdictional functions, but the supreme judicial supervision on the uniform application of law in the administrative jurisdiction. Its jurisprudence interprets restrictively the limitations to access to information, since the public interest to information is the general rule and it should prevail. It favours the notion that, in case of doubt, disclosing information serves the public interest better.[19]

In recent years there has been increasing transparency in the administration, but information and data are not yet published from original sources. Most available information is published filtered or embellished by the administration. Primary information is not available. The information is not structured, and details about it are available on a number of dispersed websites and sources. The use of the APIA has become an everyday routine for the media, as well as for citizens. Progress encounters small crises which nonetheless lead to more open information resources and databases, as well as legal changes in favour of open government[20]. However, the Council of Europe Convention on Access to Official Documents has not been ratified yet.

Closely related to access to information is the freedom of media which is protected by Bulgarian law. Although there is a wide variety of media, nevertheless media ownership is increasingly concentrated, compromising

[18] http://www.dans.bg/en/budg-2010-mitem-en/budjdans-062013-mitem-catbul

[19] http://www.aipbg.org/publications/newsletter+print.php?NewsletterID=103462&ArticleID=1000988193

[20] http://www.aipbg.org/en/news/AIP_presented_the_Annual_Report_Access_to_Information_in_Bul/20120517001232/

editorial independence.[21] Media ownership and financing lack transparency, and paid-for coverage is not consistently identified as such. Print media, especially local outlets, depend on the public sector for advertising revenue.[22] To address such concerns, Parliament is considering new legal provisions on the transparency of media ownership. In 2013, the government vowed to streamline procedures for awarding publicity contracts financed by EU funds; statistics suggest such contracts may have been allocated to the detriment of media independence.[23] An increase has been noted in media self-censorship due to corporate and political pressure.[24] Bulgaria has the lowest rank among EU members in the World Press Freedom Index.[25]

The legal framework on access to information is complex and unclear in many respects. It entrusts the executive with unrestrained decision-making powers on many issues, which is often conducive to arbitrary secrecy because of political expediency. The legislation does not provide for the establishment of an independent, centralized, specialized institution in charge of protecting the free access to information and other related issues, which would be very useful in such an environment of legal uncertainty. The defence area is no better in this respect than other areas. More transparency would be beneficial for the defence policy and for the armed forces.

[21] Commissioner Neelie Kroes and EU Member State ambassadors in Sofia have raised concerns about transparency and concentration of media ownership.
[22] http://www.freedomhouse.org/report/freedom-press/2013/bulgaria
[23] http://www.government.bg/fce/001/0211/files/spravka%20EP.pdf.
[24] US Department of State (2012) "Human Rights Report: Bulgaria" http://www.state.gov/j/drl/rls/hrrpt/2012/eur/204270.htm
[25] Reporters without Borders (2013) "World Press Freedom Index: Dashed hopes after spring" http://en.rsf.org/press-freedom-index-2013,1054.html

4 Policies under the responsibility of the executive

4.1 Public procurement and military asset disposal

4.1.1 Public procurement

The public procurement system generally applies to all public procurements funded from public funds. The legislation was harmonized with the EU Directive 2009/81/EC ("the Defence Directive") in 2012. The general public procurement legislation provides for some exemptions regulated by special legal provisions.

The legal framework is made up of:

- the 2004 Public Procurement Act (PPA), as amended several times the last amendment being in 2014 to transpose the European Defence Directive;
- the Rules for the Implementation of the Public Procurement Act (RIPPA);
- the Ordinance on ex-ante Control over Procedures for the Award of Public Contracts financed in whole or in part by EU Funds Contracting Authorities;
- the Ordinance on Carrying-out Urban Development and Investment Design Contests;
- all European Commission Regulations that directly apply and regulate thresholds for awarding public contracts;
- the standard forms for the publication of notices and the Common Procurement Vocabulary.

The Public Procurement Act established the Public Procurement Agency (PPA). It was created on 12 March 2004 by Decree No 56 of the Council of Ministers. The Agency is subordinated to the Ministry of Economy and Energy (MEE). It is the main body responsible for designing and implementing the national policy in the field of public procurement.

The PPA is managed and represented by an Executive Director. It is organized in three directorates: Financial-Economic, Administrative-Legal and Information Activities Directorate; Methodology, Analysis and Control of Public Procurement Directorate; and Register and Monitoring of Public Procurement Directorate. The PPA works in close collaboration with a number of other public bodies[26] to implement the legal framework in the procurement area.

[26] The National Audit Office for the control of the contracting authorities, spending public money; the Public Internal Financial Control Agency on internal audits of public entities as a

The e-procurement system is provided by the Procurement Register and the portal developed by the Public Procurement Agency. The register is an extensive electronic database which contains information about all procedures and allows for the collection, analysis and synthesis of information. It gives the authorized users who have universal e-signatures the possibility for on-line submission of notices through an encrypted connection. It is public and access to it is free via the Agency's website.[27] This portal hosts up-to-date and comprehensive information concerning the whole public procurement process.

The Public Procurement Register has been created to enforce the basic principles of the PPA – publicity, transparency, free and fair competition, equal treatment of all candidates and prohibition of discrimination. It is one of the 20 electronic services which the state administration offers to citizens and business. This is an entirely new electronic database, which was designed to meet the requirements of the new public procurement law. Until 2004, a register existed which contained information only about the procurement notices above the minimal threshold. The new register offers more functions and options.

The Public Procurement Portal is a centralized information system which provides access to all aspects of public procurement. It contains systematized information on various thematic fields oriented to the specific interests of the main user groups. The Portal also provides updated information about the Public Procurement Agency structure and activity, procurement rules and regulations, as well as the practice in the public contracts area. The aim is to improve publicity and transparency on procurement-related issues and to raise public awareness on this matter.

An e-tendering procedure has been developed recently and allows for the upload of contract documents by the contracting authority at their own website or at the Agency website, and also the download of the full set of documents by interested contractors. The contracting authority can upload the tender documents on its website with a link to the website of the Public Procurement Agency.[28] There is an option to order the tendering documentation sent electronically. The contracting authority can upload the tender documents on its website with a link to the website of the Public Procurement Agency. The possibility to download documents is available only to interested contractors. The software allows for multiple downloads by the same candidate. When the contracting authority has declared the documents of the particular contract or a part of it as confidential, the system must explicitly notify him/her of the confidentiality of the documents before allowing the interested contractor to download the documents. An electronic exchange of questions and answers using e-signatures has been developed. It is developed in both directions –

form of ex-post control; the Commission on Protection of Competition on appeals of public procurement contracts; the Supreme Administrative Court concerning appeals.

[27] www.aop.bg

[28] With the changes in PPA from 2014 regarding art. 22b, the contracting authority must upload all documents related to public tenders on its website in a "Customer profile".

asking questions upon request for clarifications and answering questions. A mechanism similar to the Internet forums is used.
Contracting authorities only rarely translate the procurement documentation and additional information, even in cases where major international companies are targeted as contractors. As a result, interested foreign companies are prevented from preparing the correct documentation.

The defence sector purchases of non-classified goods and services must follow the general procedures of the PPA. The adoption of the European Defence Directive in 2011–12 meant the repealing of the PPL provisions on special procurement procedures for contracts on defence and national security, containing classified information, or needing special security measures.
The thresholds for defence and security tenders are higher than those for regular procedures. Therefore most of them have to be published in the OJEU (Official Journal of the EU). Where there are any discrepancies between the information published in the Public Procurement Register and in the Official Journal of the European Union, the information promulgated in the Official Journal shall be considered genuine.

According to article 8b of the PPL, contracting authorities are obliged to adopt internal regulations for the assignment of public procurement orders, which shall describe the procedure of planning, organizing and implementing the procedures and of monitoring of the implementation of public procurement contracts. The order for planning and organization of the procurement procedures for award and control of procurement contracts is regulated by MoD internal rules adopted through order of the minister[29] In 2014 MoD adopted new internal regulations regarding the implementation of the new PPA.
The defence public procurement is organized on the basis of the MoD Unified Plan for Material Support (UPMS), which in turn should reflect the MoD needs and financial resources, as agreed by the Programme Council and approved by the Minister. The UPMS contains information about the planned procurements, the type of procedure to be used, the indicative budget, the technical specifications according to European standards, planned deadlines, etc. On the basis of the UPMS, an annual Plan for delivery of goods and services is developed and approved by the Minister. The MoD Defence Investments Directorate is responsible for the acquisition of goods and services, while the

[29] The current rules governing 1. The planning, preparation and procurement under the Public Procurement Act (PPA), coordination between the administrative structures in the Ministry of Defence in the implementation of these activities and the interaction between the administrative structures of the Ministry of Defense and the Central Public Procurement Authority (CPB) according to Decree No.112/04.06.2010, amended and supplemented., 35 of 08.05.2012; 2. Duties and responsibilities of the administrative structures in MO and their employees in connection with the procurement; 3. Storage and access to documents created and collected in the course of carrying out the procedures and organization of public procurement; 4. Overseeing the implementation of contracts for procurement. These rules are intended to create the conditions for a lawful and effective spending of budget funds, as well as openness and transparency in planning, implementation and procurement at the MoD. These rules apply to public works/construction services, supply of goods and provision of services to meet the needs of the MoD, the secondary authorizing officers who are not legal persons (SLSUs) and legal persons ch. l.60d the Law on Defence and Armed Forces of the Republic of Bulgaria, where contracts for their needs are to be awarded by the Minister of Defence.

Defence Infrastructure Directorate is in charge of construction works. According to article 60e of the LDAFL, the procedures for awarding contracts, within certain thresholds, may be also organized by secondary budget holders.

The technical specifications of the equipment are developed at the Defence Institute by relevant experts. After preliminary discussion they must be accepted by the Council for Armaments and approved by the Minister. The technical specifications shall guarantee equal access to all bidders and shall not raise groundless obstacles to the competition. The technical specifications shall not be determined by indicating a specific model, source, process, trademark, patent, type, origin or production, which would lead to a position of privilege or to the elimination of certain persons or products. Exceptionally, where it is impossible for the subject of the procurement to be described precisely and clearly in any other way, such indication is admissible, provided there is an obligation to add the wording "or an equivalent".

Information about all public procurements is available on the official webpage of the MoD. This information is updated on a daily basis. The MoD sends information to the PPA within one month of the completion of the public procurement contract or after its premature termination, as the case might be. The MoD sends summarized information for the year on a form approved by the PPA regarding all funds spent for public procurement orders before 31 March of the following year. Information on public procurement contracts with classified information in the field of defence and security is not entered in the Public Procurement Register, and the MoD need only give the PPA reasons for this for statistical purposes.

The PPA requires that the notice for public procurement and the documentation for participation in the procedure should contain the selection criteria, including minimum requirements for the economic and financial status of the candidate or the participant, or his/her technical capacities and qualification, as set by contracting authority, and an indication of the documents submitted as proof. In case of procedures of negotiation with notice and competitive dialogue procedures, the contracting authority should also include in the notice a restriction of the number of candidates, who shall be invited to present offers, to negotiate or to take part in a dialogue, provided that there are a sufficient number of candidates meeting the requirements. The contracting authority shall not include groundless terms or requirements in the decision, notice or documentation which give privilege or restrict the participation of persons in the public procurement. The selection criteria and the documents required for their fulfilment must correspond to and be in compliance with the cost, complexity and the subject of the public procurement. The selection criteria set out by the contracting authority, must be the same for all participants in the procedure.

According to the MoD, the deadlines for submitting applications are sufficient for the potential contractors to prepare their offers. They are in accordance with the requirements of the Public Procurement Act. The PPA requires that the notice for public procurement and the documentation for participation in the procedure should contain the place and time period for receiving applications or

offers. For determination of the time limit the contracting authority must take into consideration the complexity of the procurement and the time required for preparation of applications for participation or of offers.

Establishing a tendering committee is legally mandatory. The contracting authority shall appoint a commission (either of three or five members) for holding a public procurement procedure, determining its members and reserve members. In the case of open procedure, the committee shall be appointed upon expiry of the time limit for accepting the offers. In the case of limited procedure, competitive dialogue or negotiated procedure, the committee shall be appointed upon expiry of the time limit for accepting the applications for participation. The contracting authority shall set a time limit for the conclusion of the work of the committee which must be in accordance with the specific nature of the public procurement. This may not be longer than the period of validity of the offers. All expenses related to the committee activity shall be paid by the contracting authority. The committee members shall receive remuneration for their work, determined by the order of appointment, unless the law provides otherwise. The committee must include at least one qualified lawyer, and the remaining members shall be persons with adequate professional qualifications and practical experience in the field of the tender.[30]

The members of the committee or expert consultants shall declare their compatibility, namely that: a) they have no material interest in the assignment of the public procurement to a definite candidate or participant; b) they are not "affiliated persons" with an applicant or a participant in the procedure or with subcontractors appointed by him/her, or with members of their management or control bodies; c) they have no private interest within the meaning of the Law on Prevention and Establishment of Conflict of Interests with regard to assigning the public procurement.

The contracting authority shall award the bid on the grounds of an assessment of the offers against one of the following criteria, indicated in the notice: a) the lowest price; b) the economically most favourable offer.
If the chosen criterion is the most economically favourable offer, the contracting authority shall be obliged to determine the indices, their relative weight and methodology for determining the assessment by each index and its evaluation within limits set in advance. The final decision for the selection of a contractor is taken at the MoD by the task authority after submitting a protocol from the work of the committee with a justified proposal for the evaluation and decision.

The quality control is carried out through two procedures, namely a) the contract implementation monitoring assigned to the MoD Administrative, and b) the internal audit conducted regularly by the by the MoD “Internal Audit” Directorate. The Public Procurement Agency is also permanently informed by the contracting authorities on the performance of already awarded contracts.

[30] According to article 34 of the PPA, 50 per cent of committee members must be professionals in the field of the tender.

The authorities of the European Union have the right to inspect and audit the accurate performance of contracts. The contractor is obliged to provide the contracting authority with a monetized collateral upon signature of the contract. The contracting authority shall determine the terms and the amount of the warranty as a percentage of the value of the public procurement, which may not exceed 5 percent of the procurement's value.

The competent authorities for appeals on public procurement procedures, including the awarding of the contract or the premature termination of the procedure, are a) the Commission on Protection of Competition (CPC), which is a specialized administrative body empowered to enforce the Protection of Competition Act, the Public Procurement Act and the Concessions Act and 2) the Supreme Administrative Court which is the highest instance for solving public procurement disputes. The executive director of the PPA has some competences foreseen in PPL. He addresses the competent authorities to control legal compliance. An international arbitration may be agreed with regard to the contract performance. The relations that arise between the parties for implementation of the contract are subject to the general contractual rules, therefore there is no reason for restrictions on international arbitration agreements.

The staff responsible for procurement in the MoD is sufficient, taking into account the volume of contracts awarded and implemented. The professional profile of officers varies from position to position, but seems aligned with the required competences. The personnel of MoD units responsible for PP implementation, namely the Defence Infrastructure Directorate, the Defence Investments Directorate, and the Legal Affairs Directorate participate in training courses organized by the PPA, the Military Academy and the Ministry of Economy and Energy.

Offset agreements,[31] which were the subject of a special regime before 2012, are now regulated by the general legislation. The Ministry of Economy and Energy, which coordinates the offset policy, is preparing a special regulation on procurements including offset clauses. It will contain specific mechanisms for monitoring deadlines, delivery place and payment documents for contracts including offset clauses. The information about the implementation of contracts with offset clauses are kept and filed in a specialized entity within the MoD.

According to the PPL, when handling the situation of a single supplier the contracting authority shall carry out the public procurement procedure through competitive dialogue, without open or restricted procedure, only when the procurement is particularly complex, or when the competitive procedure has ended because of lack of sufficient offers. This also applies to exceptional

[31] Offset contracts are procurement contracts whereby the supplier undertakes an additional obligation to make certain investments in Bulgaria or purchase certain goods or services from Bulgarian suppliers thus providing some additional benefits to the Bulgarian economy as a whole, such as for example: investments in priority sectors and projects approved by the Minister of Economy, Energy and Tourism; supply, services or works provided by resident persons; provision of technical equipment and/or technologies to resident persons, granting of licenses to resident persons for the use of industrial property rights or transfer of intellectual property rights.

cases, when the nature of the supply, service or works, or the risks attached thereto, do not permit prior overall pricing. The same is the case, when the nature of the service to be procured is such that the technical specifications cannot be established with sufficient precision to permit the award of the procurement according to the rules governing open or restricted procedures.

In the same vein, a negotiated procedure without publication of a contract notice is only possible where an open or restricted procedure has been terminated because no offers have been submitted or none of the offers are sufficient. Finally, the negotiated procedure without public notice is also acceptable if additional deliveries by the initial contractor are required, which are intended either as a partial replacement of normal supplies or as the extension of existing supplies. This also applies if a change of contractor would oblige the contracting authority to acquire goods having different technical characteristics resulting in incompatibility or technical difficulties in operation and maintenance, etc.

In addition, contracting authorities carrying out activities in energy, transport and postal services (sector contracting authorities) are entitled to hold directly negotiated procedures without notice.

The negotiated procedure without prior publication of a notice is not well understood by contracting authorities. This conclusion arises from analysing the NAO audits: the fact is that only 12 % of the audited cases were considered lawful. In the remainder, the NAO found several weaknesses and inconsistencies with the law, the major weakness being attempting to represent as unforeseen circumstances that should have been foreseen by contracting authorities even at the stage of awarding the main contract. This has led to many proposals to strengthen ex ante controls on public procurements.

At the MoD, the use of a "single source" is applied solely in individual cases depending on the specifications of the defence product. Only in exceptional cases may a contract with a "single source" contractor be concluded. Two reasons prevail: firstly, only one suitable contractor has appeared because the rest of the companies either do not have interest or do not meet the requirements; secondly, in the performance of the procedures for awarding the maintenance of already delivered armaments, equipment or systems, only one contractor can perform the service concerned. The internal rules do not allow the selection of a contractor without a competitive procedure (bid), nor do they allow signing so-called single source contracts with the exception of the cases stated above.

The contracting authority takes the decision to open a procedure for public procurement,[32] whereby it approves the announcement and the documentation required for participation in the procedure. The final decision of the MoD on

[32] In general, the decision-making process is implemented by the evaluation committee, while the decision taking is carried out by the Head of the Contracting Authority. The usual situation is that the Head of the Contracting Authority signs the decision, thus approving the proposal of the evaluation committee decision.

the type of procedure is made by the task manager. This may be the Minister of Defence, Deputy Minister or a Director depending on the indicative price of the procurement procedure in question. While the decision-making processes are implemented by the respective officers from various MoD departments (finance, legal, planning, staff), this stage is concluded when the decision to invite tenders is signed. The final decision is taken after consultations on proposals by experts from the Defence Investments Directorate, Defence Infrastructure Directorate, Legal Affairs Directorate and other concerned Directorates depending on the type of the procedure. The decision and the notice are sent to the PPA for entry into the Public Procurement Register (in electronic form as well).

In addition, the contracting authority may publish a "voluntary transparency notice". The voluntary transparency notice is an individual administrative act, containing at a minimum the name of and information about the contracting authority, a description of the subject of the contract, a justification of the grounds, and the name of and information about the selected contractor. If the contracting authority uses a voluntary transparency notice, it shall forward it to the Public Procurement Register for publication. If the procurement value is equal to or exceeding those fixed in article 45a- 2 of the PPL, the notice shall also be sent to the Official Journal of the European Union.

The Corruption Risk Assessment Methodology is used by the Ministry of Defence, as well as by bodies directly subordinated to the Minister of Defence and to the Armed Forces. This is a step in the right direction to ensure transparency within the entire system of the MoD. In addition an Integrity Pact[33] signed by the MoD and the participants in public procurement tenders was introduced to decrease corruption risks in public procurement at the MoD.

2011 saw a decrease in the number of reported violations of the Public Procurement Act. As a result of the consistent policy line of the NAO and other regulatory bodies in the field of public procurement, there was a steady decrease in some of the most serious violations, such as the splitting of tenders or failure to launch procedures. The tightened requirements on the spending of EU funds, the strict compliance with statutory requirements on public procurement, and the strengthened ex-ante control all had a positive impact on the work of contracting authorities. However, the use of restrictive compliance conditions and subjective tender evaluation methodologies, which fail to provide specific evaluating guidelines for each indicator, persisted as problematic.

In 2011, deviations from the fair competition principle were identified. They concerned the awarding of small public contracts under article 2 (1) of the Ordinance on the Award of Small Public Contracts (now repealed) based on three bidders. No provisions were made to guarantee selection from a minimum

[33] The Integrity Pact assures that both sides are aware of the importance of the competitive character of the PP organized on the basis of integrity and free competition, excluding entirely abuse of any kind: http://www.md.government.bg/en/doc/anticorruption/20110728_IntegrityPact.pdf

of three bidders. Often a single invitee submitted a bid. Once again the highest share of deviations and violations in the award of public contracts was found among municipalities. The reasons were once more related to the setting up of the committees for examination, evaluation, and ranking of bids. Outsourced consultancy services were not always sufficiently qualified and did not guarantee the required level of legal compliance. The negative practices identified by the NAO and the need of correction formed the basis of the 2011 amendments to the legal framework of public procurement, in force as from 26 February 2012.

There are no signs of reduced corruption in public procurement, including EU-tenders. Public procurement remains the most common source of political corruption. The current economic crisis has increased the competition for public contracts and thus further reinforced both the supply of and demand for bribes. Moreover, the crisis has sharply reduced the total value of domestic public contracts and made EU tenders the main source of corruption.

Political corruption is facilitated by an over-bureaucratization of public procurement procedures. The high number of bidding requirements and the subsequent audits create a non-transparent milieu, which makes independent supervision very difficult and may induce the participants to seek political patronage in order to circumvent requirements and rules. A comparison between the documentation portfolios required for participating in tenders in Sofia and in Brussels revealed that the administrative burden in Bulgaria is on average four times heavier, a fact which entails more risks of corruption. Systematic efforts are needed to simplify tendering procedures and to increase transparency. In the area of public procurement a simple and codified legal framework is lacking, resulting in a complicated legal and regulatory landscape which creates uncertainty for operators.[34]

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

These proposals were prompted in part by popular perceptions that a few companies dominate the procurement market in areas such as road construction. 73% of the general population surveyed in the 2013 Eurobarometer survey say that the only way to succeed in business is through political connections (EU average

[34] 2014 EC Recommendation on Bulgaria's 2014 national reform programme and delivering a Council opinion on Bulgaria's 2014 convergence (14).

56%). In the 2013 Eurobarometer business survey, 58% of Bulgarian respondents (the highest in the EU) said that corruption had prevented them from winning a public tender or procurement contract over the last three years. Bulgarian respondents from the business sector perceive the following practices as being widespread in public procurement: involvement of bidders in the design of specifications (36%), unclear selection or evaluation criteria (49%), conflicts of interests in the evaluation of the bids (57%), specifications tailor-made for particular companies (58%), abuse of emergency grounds to justify the use of non-competitive or fast-track procedures (33%) and collusive bidding (41%). 66% considered that corruption is widespread in public procurement managed by national authorities (EU average: 56%) and 78% thought this was the case with local authorities (EU average: 60%). At the end of 2011, the Bulgarian Industrial Association calculated that corruption in tenders and EU funding applications increased from 66% to 75% year-on-year, i.e. affecting 75% of all tenders in 2011, according to a survey of 500 managers from various sectors of the Bulgarian economy. These indicators, while not necessarily directly related to corruption, illustrate risk factors that increase vulnerability to corruption in public procurement procedures.[35]

The combined action of the NAO, the European Commission and the transposition of every European Union directive on procurement, including in defence, along with better management of procurement processes have been conducive to a steady reduction of the violations of the procurement legislation. Nevertheless, there is a perception among experts and the general public that public procurement is an area where there are clear risks of corruption.

4.1.2 Military Asset Disposal

The disposal of surplus defence assets is considered a sensitive area in the defence sector and highly vulnerable to corruption. The MoD adopted an action plan on the implementation of the general recommendations made by the Bulgarian self-assessment peer review report in the framework of NATO Building Integrity Initiative[36]. The action plan outlines measures to address identified corruption risks and to prevent corruption practices and unethical behaviour, to cooperate with NATO Support Agency (NSPA) and to intensify the participation in the Regional Approach to Stockpile Reduction Initiative (RASRI) on training and exchange of experience. Contracts have to be registered in the Property Registry in order to make the ownership title (or the limited property right) of the acquirer opposable against third parties.[37].

According to the Bulgarian legislation – there are two types of property-real estate property and movable property. The real estate property of the state

[35] 2014 EU Anti-Corruption Report, Chapter on Bulgaria.
[36] http://www.mod.bg/en/doc/anticorruption/20110520_ActionPlan.pdf
[37] Special rules are provided for power plants, allowing construction rights for their development to be established against remuneration, according to the provisions of the Republic of Bulgaria Defence and Armed Forces Act (art. 317–319). The proceeds go to the MoD budget.

is made up of two types- private state property and public state property. As the report states the sale of real estate property is regulated by the Law of State Property (LSP) and the Implementing Regulation of the State Property Act (IRSPA). The disposal of excess armaments, ammunitions and equipment and other movable property is regulated by the same provisions and an Ordinance №7 establishing the sale of Movable Private State Property from 14 November 1997 and the Law for Armaments, Ammunitions, Explosives and Pyrotechnical products, the Ordinance Establishing the Terms and Procedure for the Conduct of the Activities Connected with the Armaments, Ammunitions, Explosives and Pyrotechnical products and the Control over them in the Ministry of Defence and the Armed Forces (OETPCACAAEPC).

Asset surplus disposal in the MoD is regulated by the Privatization and Post-privatization Control Act and the Law of State Property (LSP) according to which a tender procedure is prepared for the sale of each of the real estate property of the respective legal unit. A public announcement should also be made.

As per the IRSPA, the Minister of Defence shall adopt a decision for sale of state owned marketable real estate in the military or defence area. The method of sale (i.e. public tender or auction) should be determined by the Minister of Defence in the decision, which is published in at least one central mass media and one local media. In the case of sale of state-owned real estate with a tax assessment over BGN 500,000 (approx. Euro 256,000), a decision of the Council of Ministers is required determining the selling method and conditions, based on which the tender procedure shall be carried out. The rights over the sold real estate are transferred by virtue of a written sale agreement (i.e. a public notary deed is not required).

There is a special regulation of the sale of immovable residential property – apartments, garages, studios, etc. As this kind of real estate is part of the residential fund of the Ministry of Defence, apartments, garages and studios are sold only if there is no active branch of the Bulgarian army in the specific region in the country. The sale procedure is carried out according to the provisions of article 319 (2) of the Republic of Bulgaria Defence and Armed Forces Act and the Ordinance for the Sale of Apartments, Studios and Garages Part of the Residential Fund of the Ministry of Defence according to which there is a specific categorization of citizens with the right to buy specific real estate property. Generally a right to buy such a property is granted to people working or retired from work in the Ministry of Defence and the Bulgarian Army based on legal criteria, and the person with most points has the right to buy the residential real estate. After the price has been paid by the appointed person, the Ministry of Defence concludes a sale- purchase contract which is registered in the Property Registry. The price shall not be less than the tax assessment of the real estate property.

According to the legislation there are two types of movable property:

1) Property which does not come under the scope of the Law for Armaments, Ammunitions, Explosives and Pyrotechnical products.

Generally there are no specified regulations for this type of property. According to the above-mentioned LSP and Ordinance №7 such property can be sold by auction, on the Stock Exchange or in special shops. Movable property is sold on the Bulgarian Stock Exchange and the provisions of LSP and IRSPA apply. A Commission agent/ stock-broker carries out the preparation and conduct of the sale. This agent is chosen after a public procurement process has been carried out. After the last public procurements the Commission agreement was signed with Supply and Trade- MoD Ltd., wherein the State is a single shareholder of the capital, represented by the Minister of Defence.

2) For property which comes under the scope of the Law for Armaments, Ammunitions, Explosives and Pyrotechnical products the provisions of LSP and IRSPA do not apply as the above-mentioned Ordinance OETPCACAAEPC is applicable. The Minister of Defence/the competent commander of a specified unit appoints a commission of experts to assess the market price of the property. This property can be sold either directly by MoD/structure or by a commission agent/broker/. In case of direct sale by MoD/structure the notice of sale is published on the website and in one major news medium 5 days after the assessment of the property is made. Generally the decision is made to sell the property using the second method – through a commission agent. The above-mentioned commission agent, chosen through public procurement / Supply and Trade- MoD Ltd. is used for the sale of this kind of property. Before signing the purchase-sale agreement, the commission agent shall require that the purchasers have permission to conduct certain activities according to the provisions of the Defence-Related Products and Dual- Use Items and Technologies Export Control Act or permission in accordance with the provisions of the Law for Armaments, Ammunitions, Explosives and Pyrotechnical Products.

A Long-term Investment Plan-Programme covering the period up to 2020 with clearly defined priorities and respective projects is in place.[38] In addition, the Defence Investments Directorate organizes procedures for utilization/disposal of excess armaments, ammunitions and equipment in compliance with the Public Procurement Law and the Law for Armaments, Ammunitions, Explosives and Pyrotechnical products.

Every semester, the MoD puts together a list of the real estate whose sales procedures have been prepared. A very common way of disposing of surplus is the authorization of a stock-broker on the Bulgarian Stock Exchange. Finally, many unused military land and assets are transferred to other public authorities for free in accordance with the provisions of LSP, IRSPA and Ordinance OETPCACAAEPC. The latter is done through an agreement and protocol for transmission of the property or assets.

[38] Utilization Plan for utilization of Ammunitions 2012 - 2015 is published at MoD web site: http://www.mod.bg/bg/doc/programi/20130321_Plan_utilisation_2012_2015.pdf

At the Ministry of Defence, the activities related to selling real estate are organized by the Defence Infrastructure General Directorate. The real estate is sold in accordance with the relevant Bulgarian legislation in place, namely the Law on State Property (LSP) and the Internal Rules of Procedure of the MoD. Pursuant to the provisions of the LSP, a tender procedure is prepared for the sale of each real estate object listed on the MoD website. All procedures are also published on the website of the MoD. The MoD has a list of 15 assessors to assess the property to be sold. Their professional conditions and qualification requirements are established in law. Those currently on the list were appointed through competitive mechanisms.

The State Audit Institution conducted a number of audits within the MoD institutional system. Reports on the findings were subsequently published. Some audits focused on asset disposal. The reports include recommendations. Their implementation is mandatory for the respective institutions and subject to a follow up to check the proper implementation of the recommendations. Some recent recommendations include that in contracts for construction works the requirements for a double signature should be applied, according to the Law on financial management and control in the public sector and Chapter IX of the approved Accounting Policy in the MoD and the Army. This recommendation was implemented. Now a double signature (an ex post control mechanism) is used in the MoD system. Another recommendation concerned discontinuing procurement procedures. The decision should state the reasons and set forth the facts and the justifications to terminate the procedure prematurely. The recommendation was accepted and incorporated into the practice of the MoD.

The Order No.OX-352/13.06.2011 of the Minister of the Defence establishes a Budget Methodology on budget expenditure for 2011, including control procedures and responsibilities for the implementation of the Uniform Financial Plan for material and technical provision and the Unified List of objects for construction works. Detailed directions were provided to the MoD sections dealing with financial affairs and budgeting on how to account for assets and their acquisition and disposal.

Because of its vulnerability to corrupt deals, the disposal of military surplus has been the object of special attention over the last years. Several mechanisms have been introduced in the MoD to enhance the control and transparency of sales of military assets, and in general these seem to be working well.

4.2 Internal Financial Control and Inspector General

4.2.1 Internal Financial Control

The legal framework for internal financial control and audit is made up of the following pieces of legislation: The National Audit Office Act of 14 December 2010, as amended in January 2011; the Public Sector Internal Audit Act of 31 March 2006; the Public Financial Inspection Act of 21 April 2006, as amended in July 2006 and in force as from the date of entry into force of the Treaty of

Accession of the Republic of Bulgaria to the European Union on 1 January 2007, several times amended; and the Financial Management and Control in the Public Sector Act of 10 March 2006.

These laws were developed and adopted in the process of the Bulgaria's EU accession. They were prepared on the basis of a SIGMA independent 'peer review assessment' of May-June 2004 and in compliance with the recommendations given in the Final Report of 26 May 2005, as well as with the recommendations of the DG Budget of the European Commission for the future development of Public Internal Financial Control (PIFC). The responsibilities of managers in public sector organizations were clarified by this legal framework. The tasks of the internal auditors and of state financial inspectors were differentiated, with the aim of improving the control environment and achieving sound financial management of public funds, including EU funds.

The PIFC system adopted by the country has three major pillars or goals: 1) Strengthening the financial management and control through a normative regulation of the managerial accountability in the public sector. 2) Establishing an independent internal audit division in the organizations spending public funds to provide an objective assessment of the financial management and control (FM/C) systems and to give recommendations for their improvement. 3) Establishing a Central Harmonization Unit as part of the Ministry of Finance, which will coordinate and harmonize the FM/C Systems and the internal audit in the public sector.

Internal Control Directorates were first introduced with the implementation of the "Strategy for Development of the PIFC in the Republic of Bulgaria" of 16 June 2005. Thereby the Minister of Finance proposed amendments to the Regulations on the structure of the Ministry of Finance and the PIFC Agency. The decree of 12 September 2005 of the Council of Ministers established an "Internal Audit" Directorate within the structure of the Ministry of Finance. The main functions of the Directorate are as follows: to coordinate and harmonize the implementation of the legislation on internal control and enhance the culture of financial management and develop skills thereof; to issue regulations, instructions, guidelines, standards, manuals and standard working documents in the control area; to monitor and assess systematically the effectiveness of the implementation of the internal control mechanisms; to liaise with the NAO. The Directorate was strengthened by the formation of a Central Harmonization Unit (CHU) which took over all the functions on harmonization of the financial management and control and internal audit, which were previously held by the "Methodology of the budget control" Department (acting as CHU/FMC) and by the "Harmonization and methodology of the audit activity" Directorate of the PIFC Agency (acting as CHU/IA).

According to the Financial Management and Control in the Public Sector Act the responsibility for financial management and control in spending the budget funds rests with the budget spenders. The spender of budget appropriations is responsible for sound financial management. Managers of the organizations have the obligation to ensure the implementation of the ex-ante control function in their subordinate spenders and structures.

Numerous methods and manuals have been developed to assist and harmonize the internal audit. The internal auditor assesses independently the state of play of the financial management and control (FM/C) systems established by the manager of the organization, and reports directly his/her findings to that manager and provides him/her with recommendations, which have to be followed up in order to improve the effectiveness of the financial management and control systems (FM/C Systems). Two Departments in the MoD are responsible for financial control, namely the Financial Control and Material Checks Unit, and the Internal Audit Directorate.

The Internal Audit Directorate is directly subordinated to the Minister of Defence and carries out internal audit pursuant to the Public Sector Internal Audit Act (PSIAA). The Directorate has the following functions and tasks under the LDAF: a) Planning, carrying out and reporting on the internal audit; b) Developing, on the basis of risk assessment, a three-year strategic plan and an annual internal audit activity plan; c) Establishing an audit plan for each audit assignment and subsequently reporting to the Minister of Defence; d) risk assessment; e) legal compliance evaluation; f) providing advice on training on risk assessment; g) proposing measures to improving the adequacy and efficacy of financial management and audit etc.

The Financial Doctrine of the MoD describes[39] in every detail the system of financial management and control implemented within the MoD and the structures directly subordinated to the Minister of Defence and the Armed Forces. It is developed in compliance with the Doctrine of the Armed Forces and is based on the Integrated Defence Resource Management System[40] (IDRMS). The Financial Doctrine formulates and regulates on a programme basis the general principles of resource planning and financial provision for operations.

The Financial Doctrine and the IDRMS set a clear financial management system at the MoD, with a distribution and management of the financial resources provided by the budget, and the interrelations between various levels budget holders within the MoD. Three levels of budget holders were introduced by the IDRMS: the first level is the Minister of Defence assisted by the Planning, Programming and Budget Directorate and Finance Directorate; the second level budget holders are established by a Decree of the CoM; and the third level budget holders are the military units. According to the MoD, an important accomplishment has been the introduction and implementation of programme-based budgeting, as well as the optimization of the number of sectorial policies at first level budget holders.

[39] The Doctrine describes the processes of resource planning and financial provision of operations, as well as the programming process.
[40] The IDRMS is a system for the implementation of medium-term planning activities within a six-year planning period.

The defence expenditures are grouped into four basic sectors depending on their purpose: a) Personnel; b) Operations and maintenance of the military formations; c) Combat training; d) Capital expenditures (investments).

Financial controllers at the MoD are governed by the Financial Management and Control in the Public Sector Act, the methodological guidelines and the instructions of the Minister of Finance for its implementation and the internal regulations of the Ministry, i.e. the Ministerial Order of 17 March 2009 which spelled out the internal rules for ex-ante control of the Ministry of Defence. In 2013, some activities were specifically subjected to ex-ante internal control at the MoD, mostly concerning the availability of budgetary allotments earmarked to the relevant expenditure as well as the authority of the person ordering the spending in the following areas: procurement, including contracts and payments; acquisition of assets; costs of travelling within the country and abroad; and asset disposal, including movable property.

The Internal Audit Directorate directly reports to the Minister of Defence. Its staff is 14-strong.[41] It performs internal audit of all structures, programmes, activities and processes at the Ministry of Defence. These include the spenders of EU funds and funds under other programmes, and lower level budget spenders under the Minister of Defence, which are structures without their own internal audit units. The responsibilities and functions of the Directorate are specified in the LDAF and the internal financial control legislation. Its functions overlap, to a great extent, with those of the administrative inspectorates (see below).

At the MoD, there also is a Financial Control and Material Checks Unit. Its staff is 9-strong. The Financial Control and Material Checks Unit has the following functions and tasks under the LDAF: a) Carrying out ex-ante control for legality under Art. 13, Para. 3, Item 5 of the Financial Management and Control in the Public Sector Act over all documents and activities related to the financial activities at the Ministry of Defence[42]; b) checking accountable persons at the MoD, its dependent structures and in the Armed Forces regarding the collection, storing, spending and accounting for assets, in accordance with article 31 of the Public Financial Inspection Act (PFIA); c) documenting the results of the checks performed incorporating them in Reports and Deficit Deeds.

The Minister and other officials are obliged to cooperate with internal auditors in the performance of their activities and shall give access to any assets of the organization. The Minister can set up an audit committee made up of persons external to the organization with appropriate qualifications and experience in the field of financial management and control, internal or external audit. The Minister of Finance is responsible for the coordination and harmonization of internal audit. In the performance of his/her functions under this Act, the

[41] The MoD considers this number of auditors insufficient, taking into account the number of audits yearly conducted, both planned and unplanned.
[42] http://www.mod.bg/en/ministry_dir_fkmp.html

Minister of Finance is supported by an Internal Audit Central Harmonization Unit directly reporting to him/her.

The internal public financial control system seems well established and working acceptably well. The functions of the internal auditors should be demarcated well in relation to those of inspectors in order to reduce conflicts of attribution.

4.2.2 The general inspectorates

The system for administrative control is based on the inspectorates attached to the ministries. These inspectorates are directly subordinated to the Ministers and their power extends to secondary administrators of budget funding (article 46 of the Act for Administration). Checks for administrative violations following the Administrative Violations and Sanctions Act and violations of the Code of Conduct of employees, checks for the detection of conflict of interests, as well as the obligation to evaluate corruption risks and to propose measures for their limitation, fall under the responsibility of the inspectorates.

Administrative inspectorates have been established within the Ministries in keeping with the Administration Act. The main task of the inspectorates is to ensure legal compliance so that legislation is observed in administrative practice. The specific functions of the inspectorates are regulated by the "Regulations on the Structure" of all Ministries. To a great extent, the inspectorates' functions overlap with those of the PIFC Agency.

The Administration Act created the Inspectorate General, which is part of the administration of the Council of Ministers and is directly subordinated to the Prime Minister (article 46a). Its role is to coordinate the work of the inspectorates, to develop state policy in the area of evaluation of the effectiveness of the work of the administration and to pre-empt administrative violations, conflict of interest and corruption. The legislation prescribes two types of internal control institutions to monitor the lawfulness of the administration's actions, namely the disciplinary council and the inspectorate.

The Inspectorate at the MoD is 28-stong and is directly subordinated to the Minister of Defence. It is headed by the Chief Inspector of the MoD. The organization of the activities of the Inspectorate, the types of recommendations, and the terms of reference and procedure to be followed are determined through an order of the Minister of Defence. The responsibilities of the inspector, and his/her powers, are determined by the LDAF. In summary, those include: investigation of suspicions of misconduct, follow-up of the implementation of the Ombudsman's recommendations, assessment of and adequacy effectiveness of the ministry; follow up on the implementation of the Minister's orders, and assessment of the operational capabilities of the Armed Forces.

The Internal Security Directorate (ISD) within the Ministry of the Interior (MoI) investigates corruption cases within the MoI. The results achieved by the ISD in 2011 show that the impact of their anticorruption efforts is far greater than those of other law enforcement agencies in the country. Despite this effort,

however, several shortcomings limit the effectiveness of law enforcement since radical measures to combat police corruption are lacking. The MoI Inspectorate is 10-strong, which is too low a workforce. It lacks an efficient system to manage complaints or signals of misdemeanours.

The legislation provides sufficient mechanisms for making employees in the public sector accountable. The principles of openness and publicity have been introduced in the work of the institutions responsible for monitoring the legality of the work of the administration. Information on the supervisory and control activity is provided to the National Assembly but also to the general public. In most cases, the access to information is ensured through the legal obligation to maintain an electronic registry.

Employees in the public administration are subject to checks and investigations given any indication of wrongdoing, and can be subjected to both disciplinary and criminal charges. Legal, administrative and inspectorial supervision have been introduced. The administrative supervision is conducted by the respective executive authority. In the public administration, an inspectorial supervision has been introduced. Some legal changes and amendments were introduced in 2010 in relation to the monitoring of compliance with the Act for Administration and the Civil Servant Act in the wake of the shutting down of the Ministry of State Administration and Administrative Reform.

The inspectorates belong to a long tradition in all former communist countries, as the administrative self-control system was organized around them. Because of their long tradition, they are well respected. They have evolved to become a managerial instrument in the hands of the heads of institutions. Administrative legal framework (Art. 46 from the Administration Act) provides for the active involvement of inspectorates in the administrative control activities, for prevention and elimination of violations of a disciplinary rule, misconduct and misbehavior, an objective and independent assessment of the administrative activity, and improvement in the overall performance of the administration. The inspectorates should be kept and redefined, as is already the case for many of them, towards becoming key instruments to control the quality of public services and compliance with integrity-related and ethics rules. The independence of the internal inspectorates should be strengthened, and the transparency and accountability of their activity improved.[43] Moreover, their activity should be promoted and actions undertaken ex officio supported. In addition, inspectors should receive consistent training in all new and innovative methods and tools (for example the newly introduced risk assessment methodology) so they will be able to act proactively and propose adequate, complex measures to address the identified risk factors.

[43] 2014 Report on Progress in Bulgaria under the Co-operation and Verification Mechanism, http://ec.europa.eu/cvm/docs/com_2014_36_en.pdf

4.3 Civil Service and Human Resource Management

The civil service reform began with the adoption of the 1998 Administration Act and the 1999 Civil Service Act (CSA). The Administration Act regulates the structures of the administration and the fundamental principles of organization. The Administration Act provides for the division of the administration into specialized units (political cabinets, directorates, departments, sectors) and general units (chancellery, finance, legal and normative activities, etc.); the duties and appointment of the general secretaries; the future establishment of organizational rules; the position of administrative units within the administration; and the central and regional bodies of executive power and their administration.

The CSA defines the civil servant fairly loosely as a person who has a permanent civil service job within the administration. It delegates the determination of civil service positions to the classification to be adopted by the Council of Ministers. Therefore, the law does not define the scope of the civil service, but entrust the government to do so. This could explain why important authority functions are not attributed to civil servants, as for example the external financial control (NAO) or the ombudsman staff. The members of the political cabinets, the deputy regional governors and the deputy mayors of the municipalities, and persons implementing technical functions in the administration are not considered civil servants. The governmental definition of the civil service can be detrimental to the professional autonomy and impartiality expected from the civil service in a democracy.

According to the CSA, the civil servants are divided in three groups, namely management officials, experts, and technical positions. The functions of managers include managing, planning, organizing, controlling and coordinating the respective administration or organizational unit. They are responsible for implementing the tasks of the respective administrative structures, reporting the activity of administration to the respective state body; and operationally managing the work of the officials in the respective administrations.

Experts are mainly assigned to positions with analytical or control functions. The CSA regulates the eligibility criteria and recruitment procedures for positions in the civil service (citizenship, clean criminal record, education, competition, etc.); working time (eight hours a day, five days a week); subordination; entitlements (salary, holidays, promotion, training, social welfare, opinions, trade-union, etc.); responsibility and discipline (sanctions, disciplinary board, termination, etc.); dispute resolution (functions/role of the state administrative commission and the supreme administrative court). The CSA refers to secondary legislation to further determine status, the adoption of a unified classification of positions, and the organizational code of the state administrative commission.

According to the Administration Act (article 14), a certain qualification is required for recruitment to the civil service. Qualification comprises both education and time worked (experience). Based on these provisions, the CSA determines the procedure and terms for recruiting civil servants. Written tests

and interviews are mandatory. The best ranked candidate is selected following detailed procedures outlined in a Government'

Promotion to a higher rank shall be effected on the basis of the annual evaluation of the execution of office by the civil servant: upon two or three successive annual evaluations for the junior ranks and upon three or four successive annual evaluations for the senior ranks, under terms and according to a procedure established by the ordinance referred to in Article 76 (11) of the Civil Service Law.[44]

Over the past 15 years the Bulgarian civil service legislation has been notoriously unstable. The Civil Service Law which was first adopted in 1999[45] was subject to a total of 32 amendments in the period up to 2012,[46] which means that on average it was altered two to three times a year. Frequent changes in the civil servant regulations negatively affect the legal security of civil servants and cause problems in the implementation of regulations. Bearing in mind that the objective of the civil service legislation is to ensure the stability of the civil servants' position, frequent changes may undermine this purpose. There is a risk – experienced in some other countries – that civil service managers ignore the existing regulations expecting that their current misgivings may be addressed in new revised regulations.[47]

Over the past four years, the number of civil servants has been reduced by 14%. However, the proportion of employees in general administration remains relatively high – over 30%. The efficiency of many structures remains low. Bulgaria should optimize the activities covered by the general administration (IT, HR, finance, etc.) *i.a*. by implementing a system of shared services. Modern technologies may facilitate this process.

[44]A civil servant may be promoted to the next higher rank prior to the expiry of the minimum periods, subject to the condition that the said servant received the highest annual evaluation of the execution of office. After early promotion of a civil servant to a higher rank, the subsequent promotion thereof to a higher rank may be effected only under the conditions and within the periods referred higher up.

[45] Civil Service Law, Official Gazette, No. 67 of 27 July 1999.

[46] Numerous amendments of the Bulgarian Civil Service Law of 1999 were published in the following Official Gazette numbers: No. 1 of 4 January 2000; No. 25 of 16 March 2001; No. 99 of 20 November 2001; No. 110 of 21 December 2011; No. 45, of 30 April 2002; No. 95 of 28 October 2003; No 70 of 10 August 2004; No 19 of 1 March 2005; No 24 of 21 March 2006; No. 30 of 11 April 2006; No. 102 of 19 December 2006; No 59 of 20 July 2007; No. 64 of 7 August 2007; No. 43 of 29 April 2008; No. 94 of 31 October 2008; No. 108 of 19 December 2008; No. 35 of 12 May 2009; No. 42 of 5 June 2009; No 74 of 15 September 2009; No 103 of 29 December 2009; No.15 of 23 February 2010; No. 46 of 18 June 2010; No. 58 of 30 July 2010; No.77 of 1 October 2010; No 91 of 19 November 2010; No. 97 of 10 December 2010; No. 1 of 4 January 2011; No. 18 of 1 March 2011; No.100 of 20 December 2011; No. 15 of 21 February 2012; No. 20 of 9 March 2012; No. 38 of 18 May 2012; No 82 of 26 October 2012.

[47] Such situation occurred, for example, in Serbia where the Law on Civil Servants was revised on several occasions to extend the timeline for filling vacant top level positions through competition. While the last specified timeline for filling vacant top level positions expired at the end of 2010, not all top level positions were filled, as a new revision was expected to allow for that.

Senior members of the civil service are required to file an asset disclosure form, under the Public Disclosure of Financial Interests of Officials Holding High State and Other Positions Act, by April 30 each year, as well as within one month after they take and leave office. The obligation extends to the assets of close relatives such as spouses and children above 18. A public register is maintained at the National Audit Office to keep asset declarations. The declared data is subject to verification and check-ups. Submission of false data in declarations is criminalized under article 313-1 of the Criminal Code. Failure to submit declarations is also subject to administrative and disciplinary sanctions. Citizens can access the asset disclosure records of senior civil servants through the web page of the NAO.

A formal ban of gifts and hospitality to civil servants has been introduced by the Conflict of Interest Prevention and Ascertainment Act and in the Code of Conduct of State Administration Employees.

Article 8 of the Law forbids civil servants to request or receive gifts, services, monetary benefits or other advantages that could influence the exercise of their duties or decision making or could affect their professional attitude. The code also prohibits the receipt of benefits that could be considered as a reward for official duties (bribes). Only customary gifts received by relatives or other gifts not exceeding 200 BGN (US$138) per year are permitted. Gifts received in an official capacity are recorded by the secretary general of the relevant institution. Specific rules have been developed to prevent such corrupt practices in some sectors. For example, the 2010 LDAF establishes formal guidelines regarding gifts and hospitality in the defence area.

In addition, acceptance of gifts for doing or omitting to do something required by duty is punished as bribery by the Criminal Code (article 301–1). Civil servants convicted of corruption are barred from future government employment. When a civil servant is convicted of an intentional crime, his contract is terminated and the person may not be appointed to another position within the administration.

The CSA contains provisions requiring an impartial, independent and fairly managed civil service. A Civil Servant Ethical Code is also in place and regulates the professional behaviour of the staff of state institutions. There are regulations to prevent nepotism, cronyism, and patronage within the civil service. The Civil Servants Act refers to the Code of Conduct of State Administration Employees. The Code explicitly prohibits nepotism, cronyism, and patronage in the civil service.

Civil servants have various mechanisms available to redress grievances. They may appeal disciplinary decisions to the administration and then before the court. Some administrations have special ethics committees to decide on ethics dilemmas.

Although the legal framework stipulates that civil servants are appointed and evaluated according to professional criteria, there are concerns that actual practices in the civil service may deviate from what is formally prescribed.

According to a statement issued by the Professional Association of Civil Servants on 28 January 2014 there is a trend towards a deterioration in the performance of civil servants and a need to reduce alleged undue interference by political staff in the work of civil servants.[48] There are media allegations and public perceptions that professional considerations play a reduced role in the appointment of senior civil servants. However, reliable independent surveys on the topic are lacking. In 2011–2012 the media shared a concern that civil service management (e.g. employment, dismissal, promotion, etc.) is based on nepotism, cronyism, or patronage. The previously mentioned Reports on the State of Administration (2009–2011) show that the majority of cases of violations of the Civil Servants Act, including employment decisions, concern civil service management where various ways to circumvent legal requirements had been used.

Remuneration of the civil service is regulated by the Civil Servants Act. The basic salary for civil servants is determined by the Council of Ministers. In the case of each and every position, the Council of Ministers determines additional amounts according to the rank and category of administration. The Civil Service Act regulates the guaranteed minimum salary, which cannot be lower than three times the minimum salary for the country. Salaries are paid in two parts, in advance and the final payment determined by the appointments body at the end of each month. The Civil Servants Act also regulates payments for additional temporary work, holidays and paid leave of absences. As can be inferred, this system does not underpin objectivity in remuneration and puts the loyalty of civil servants to the principle of legality into question as well as their impartiality.

The general civil service legislation applies in full to the MoD. In addition, the HRM policy of the MoD is in compliance with the Defence System Transformation Processes and the goals and priorities set in the White Paper on Defence and the Armed Forces. Considerable attention has been paid in recent years to military behaviour and discipline. A 2011 assessment reveals that military behaviour and discipline generally meet the requirements of legislation, Armed Forces rules and regulations and the Standard Operating Procedures.

A number of non-civil servants, officers with technical tasks and functions, are assigned to the MoD under Labour Code contracts. At 31 December 2011, 89 % of the MoD personnel, including subordinated structures and Armed Forces occupied permanent full-time positions. The number of personnel at the MoD is 44 100 (of whom 34 500 are military). A total of 5 700 military personnel and 1300 civilians should be discharged before 2015,

Efforts to facilitate social adaptation were directed at providing support to discharged servicemen on their transition and adaptation to civilian life. 727 group and individual counseling sessions and discussions took place. In order to support those discharged from military service, in May 2011 a cooperation

[48] Declaration of the Professional Association of Civil Servants, available at, http://pods-bg.org/?p=1643.

agreement was signed between the MoD and the National Employment Agency under the Minister of Labour and Social Policy. A document titled "Joint Guidelines" is aimed at easing the implementation of this Agreement.

In recent years, a far-reaching reform has taken place at the MoD and the armed forces in order to prevent duplication of functions between the ministry, its subordinated structures and the armed forces. These reforms, focused on developing an integrated management concept in the MoD and the armed forces, were made through the 2011 amendments of the LDAF, the adoption of the Law on the Military Police and the Law on the Reserve of the Armed Forces. All these created the legal basis for the reforms, in force since August 2011. These reforms, while removing duplication of functions and tasks, reinforced synergies between the military and civilian expertise. In order to increase efficiency in decision-making processes, a Risk Management Model in Defence Planning and Armed Forces was developed.

In parallel, a reorganization of the operational level command structure took place. It encompassed the newly created Joint Forces Command, the Services Commands and the structures directly subordinated to the Minister of Defence. Transforming those structures into second-level budget spenders and giving them a legal personality promoted greater efficiency in the daily activities of the armed forces and, especially, in managing real estate property. It also reduced the administrative burden and personnel expenditure, which decreased from 75 % in 2009 to 66% in 2011.

In 2011-2012, the social dialogue intensified between the MoD and the staff trade union on issues such as remuneration policy, safety and health at work, remuneration of harsh working conditions, status, the layoff of civilian personnel, and the perspectives of the superior military schools.

Active work continued on the improvement of the interaction between the MoD and public organizations working in the area of defence. A new stage of cooperation was the unification into a Public Council on Defence. Some 19 NGOs working on different defence issues were brought together under one roof.

The HRM policies of the MoD in recent years aim at improving the systems and procedures for recruitment, training, qualification, preparation, social status and security of military personnel and their families. The backdrop of these policies is the professionalization of the army, realising its personnel's full potential, and motivating the staff, while attracting talented individuals with the appropriate qualifications and experience.

The pay rates for all MoD personnel are defined by a CoM Decree No. 86 /2010 for the salaries of the military and civilian personnel at the MoD[49], as last amended in January 2013. Paid annual leave at the MoD is a maximum of 40 days (30 days for the newly appointed). For the sake of comparison, the paid leave for all civil servants is 32 days, and for the servants in the Ministry of

[49] http://www.ciela.net/freestategazette/OpenDocument.aspx?id=2135678971

Internal Affairs 52 days (42 for the newly appointed). The MoD civil servants receive 20 monthly[50] salaries upon their retirement on a pension. By comparison the figures for all civil servants are 10 monthly salaries and 15 monthly salaries for those in the Ministry of Internal Affairs.

Reappointment and dismissal of military personnel, as well as their rotation to different positions, are determined and executed by strict rules, depending on the career development path. The rotation is necessary to acquire experience, since senior officers pass through various positions at one or more command levels. Military personnel are evaluated in keeping with that rotation requirement. Points of reference for appraisal include the characteristics of their personality, the achievement of agreed-upon professional goals, the extent of the duties, professional qualities and experience. In 2011, the system for selection of candidates for the Military Information Service was improved as well as the procedures guaranteeing transparency in the selection of military personnel to pursue education abroad and to participate in international missions and operations.

[50] The appointing authority may terminate the civil-service relationship, giving the civil servant one month's notice, in any of the following cases:
1. upon closure of the administration wherein the civil servant has been appointed;
2. upon elimination of the position;
3. upon acquisition of entitlement to contributory-service and retirement-age pension;
4. upon existence of the conditions referred to in Article 68 of the Social Insurance Code, where the civil-service relationship was formed after the appointed civil servant had acquired and exercised the entitlement to pension thereof.

In the cases referred to in Items 1 and 2 the civil servant affected shall be entitled to compensation for up to two months of the time of removal from work. An act of the Council of Ministers may provide for compensation for a longer period. Should the said civil servant enter another civil service with a lower salary during that period, the said servant shall be entitled to the difference for the actual duration of removal.

In the cases referred to in Item 3, the civil servant shall be entitled to compensation in the amount of 50 per cent of the basic monthly salary thereof, as fixed at the time of termination of the civil-service relationship, for each year worked in civil service, but not exceeding ten basic monthly salaries. Should at the time of termination of the civil-service relationship the civil servant have worked at the same administration during the last preceding ten years, the said servant shall be entitled to receive six basic monthly salaries, and where the said servant has worked during less than ten years, the said servant shall be entitled to receive two basic monthly salaries, should this be a more favourable option. Such compensation shall be available on a single occasion. Compensation shall furthermore be due where the civil-service relationship is terminated unilaterally by the civil servant or by mutual consent and at the time of termination the said civil servant has acquired entitlement to contributory-service and retirement-age pension. This compensation shall not be due where the civil servant has received compensation by reason of acquiring entitlement to pension on the grounds of a special law.
For non-compliance with the notice period by the appointing authority, compensation equivalent to the basic salary for the notice period as non-complied with shall be due to the civil servant.
In the cases referred to in Item 4, the appointing authority may obtain ex officio from the National Social Security Institute information regarding the existence of an exercised entitlement to pension by the civil servant. The National Social Security Institute shall provide the information at no charge within fourteen days after receipt of the request.

The army is based on professional enlistment, not conscription. In a professional army the search for adequate training, advancement, management, administration, use and preparation of human resources in the Reserve Force, and equipment of the Armed Forces, is of the utmost importance. In this context, the mission of the reserve forces is crucial, as they have to promptly provide trained personnel and equipment with which to increase the capabilities of the Armed Forces' formations and, when required, carry out their tasks both in peace and in wartime. The manning of the reserve began in 2012, but the general public are still unaware of service in the reserve. At the same time, it is planned that the procedures for enrolling in the reserve will take place three times a year. The reserve is divided into two categories, the voluntary and the mandatory reserve. In 2011, with assistance from the US FMF Programme, work continued on developing the Project "Human Resources Management Automated System". New system modules on "Reserve Resources Accountability", "Candidates" and "Labour Safety Regulations" were developed as well.

In 2011-2012 the MoD Standing Committee on Anti-Corruption concentrated its efforts on preventing corruption by increasing the defence policy transparency and accountability to the Bulgarian society. In 2011 the Standing Committee adopted a MoD Action Plan aimed at introducing measures for the elimination of corruption risks throughout the defence establishment levels where defence policy is formulated and implemented. All MoD structures and structures directly subordinated to the Minister of Defence were tasked to apply the measures set out in the Action Plan. In compliance with the Action Plan, a pilot course on prevention and countering corruption was conducted in "G.S. Rakovski" Defence Staff College. From 2012 on, the course became an integral part of the College's curriculum.

Bulgaria has taken some steps to address corruption, but overall progress has been limited and remains fragile, calling for more consistent checks and dissuasive sanctions for conflicts of interest. There is also a need to ensure better co-ordination among anti-corruption institutions and shield them from political influence.[51].

5 Anticorruption policies and the anticorruption agency

5.1 Anticorruption Policies and Strategies

Corruption was a central political and social issue in Bulgaria at the beginning of the 1990s with the change of political system. It remains one of the most

[51] 2014 EC Recommendation on Bulgaria's 2014 national reform programme and delivering a Council opinion on Bulgaria's 2014 convergence (14).

important policy issues today.[52] Although most political parties and political coalitions during the last decades have expressed their will to fight corruption, it is a widespread perception that little has been done in practice. The first priority of the ruling political party manifesto was to prevent and counter corruption at the highest levels of Government. Anticorruption has been prominent in all electoral manifestos of political parties since 2000.

Among the political parties currently present in parliament, only one – the GERB ("Citizens for European Development of Bulgaria") – has a clear recognition of the fight against corruption and organized crime in its political programme which includes an elaborated policy, including priorities, activities and measures to address the problem. The GERB has developed [53] four main directions on anti-corruption and the fight against organized crime: a) Preventing and combatting corruption and organized crime; b) Reform of the judiciary; c) New Style in the work of administration and introduction of e-governance; d) Internal Order and Security. In each of these strands, priorities, sub-priorities, activities, and results are proposed. All citizens' movements and coalitions, which are not represented in the current parliament, clearly recognize corruption and organized crime as major issues with some differences in priorities and measures to address them.

While all political parties mention the problems of the judiciary and organized crime, only some of them propose measures in their election manifestos in relation to the EU Cooperation and Verification Mechanism (CVM). These are political parties established before the last elections. It is worth noting that some political parties[54] have supported enlarging the CVM as to include areas currently not dealt with, such as the media, and to allow the EU to maintain a high degree of attention on the problems of the functioning of democracy in the new member states. Other parties[55] put more emphasis on the anticorruption national effort than on the European involvement.

While some political parties support the EU political monitoring of Bulgaria or other EU member states in relation to problems with the rule of law, others fear that the political monitoring could lead to a pessimistic diagnosis for Bulgaria without it being conducive to effective remedies. They support the development of "an entirely new concept for communication with the European Commission on this issue" that should be developed at national level first by experts and then be proposed at European level".[56] The argument is heard that recently the fight against corruption has become less politically important.

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[52] The country has continuously demonstrated high levels of corruption. The most affected areas are the customs administration; public procurement, political parties; the health and the education systems; finance and police, prosecutors and the judiciary. The TI Corruption Perception Index (2012) ranks Bulgaria second to the lowest scoring country (Greece) in the EU. Although, the trend in 2012 (as it was defined in the TI 2012 report) is not so negative for the country and the efforts of both politicians and administration finally achieved some noticeable results, the image of the country is rather negative despite the continuous internal (civil society) and external (EU and international organizations) pressures.

[53] http://www.gerb.bg/uf//documents/Programa_za_evropeisko_razvitie_na_Bulgaria.pdf

[54] National Movement Bulgaria for Citizens, Greens Party, Democrats for a Strong Bulgaria.

[55] Democrats for a Strong Bulgaria.

[56] http://www.euinside.eu/en/subjects/cooperation-and-verification-mechanism-bulgaria-2012

The government has a two-pronged approach to anticorruption. On the one hand there is an overall anti-corruption strategy adopted by the government and, on the other hand, there are sectorial strategies (such as the Action Plan for Defence) adopted by specific institutions. A salient issue of the anticorruption strategic planning is the EU integration effort. It strongly influenced the design and implementation of anti-corruption policy (anti-corruption was clearly recognized by all the governments as a precondition for EU accession).

Once Bulgaria became a member of the EU in 2007, it became apparent that lack of judicial reform jeopardized the fight against corruption and organized crime. This could in turn prevent an effective application of EU laws, policies and programmes. Eventually it could also prevent Bulgarians from enjoying their full rights as EU citizens (e.g. their exclusion from the Schengen zone). The European Commission undertook through the Cooperation and Verification Mechanism a regular assessment against six benchmarks, assuring a broad reform of the judicial system and the fight against corruption and organized crime for which a long-term political commitment is needed. Pressure from the European Commission was instrumental in encouraging the Government to produce the National Strategy. The anti-corruption policy was an important part of the Accession Partnerships. The Commission provided increasing assistance for the development of anti-corruption policy.

Corruption and anticorruption policy have been noticeable political issues since 1997, when the EU accession process started. A new Government took office in 1997 on a political platform that for the first time ever included the fight against corruption as one of its main priorities. The Government took steps to limit the influence of organized crime on the economy. A number of laws were passed, in particular the Administration Act, Civil Servants Act, Public Disclosure of Financial Interests of Officials Holding High State and Other Positions Act, and Access to Public Information Act, as well as amendments to the Criminal Code criminalizing corruption. Yet changes in the Criminal Code were ineffective because the amendments affected only the material criminal law, not the procedural law. This, along with the poor efficiency of the unreformed judiciary, thwarted the anticorruption effort. An issue with negative effects during the period 1997–2001 was the lack of anticorruption strategic planning and the poor coordination of the anticorruption efforts.

The first well-elaborated National Strategy for Fighting Corruption[57] comprising all institutions in charge, anticorruption measures, and deadlines was adopted by the Council of Ministers on 1 October 2001. The main institution in charge was the Minister of State Administration, a minister without portfolio. This was the first attempt to place anticorruption efforts within a systematic framework. The Government set up an Anti-corruption Coordination Commission, chaired by the Minster of Justice. A second thrust was the Governmental *Action Strategy for Transparent Governance and Prevention and Counteraction of Corruption* for the period 2006–2008, which is a strategy paper focused on preventing and combating corruption at the

[57] http://www.right2info.org/resources/publications/asset-declarations/bulgaria_nationalanticorruptionstrategy_2001

highest levels of Government, transparency in the financing of political activity, and penal policy against corruption.

Since mid-October 2009, after the changeover of government, a new *Integrated Strategy for the Prevention and Combatting Corruption and Organized Crime*[58] was adopted. It is a basic document. The emphasis in the new strategy was on developing a methodology for corruption risk assessment and the creation of a new institution: the Centre for the Prevention and Counteraction of Corruption (BORKOR) – a consultative body at the Council of Ministers (see below). It is designed as a State-funded think tank with the main task of developing strategies to counter corrupt activities. This body became operational in 2012. An independent impact assessment of the implementation of the Strategy was undertaken in 2012[59] following the recommendations of the CVM report of the EC. Some legislative measures and managerial steps have been taken such as the adoption of laws on the disclosure of assets of politicians, magistrates and public servants, financing of political parties, and additional criminalizing of corrupt practices. Yet the reform of the judiciary and that of the criminal procedure are still pending. There are public, very detailed reports on the implementation of the action plans. The latest, on 2011, was released in February 2013. Within the central public administration, several managerial measures have been introduced such as a telephone hotline for corruption; units for prevention and combat of corruption; as well as some whistleblowing protection measures.

Anticorruption committees established within the Parliament in the various parliamentary terms since the changeover of the political regime are: 38th National Assembly (1997–2001) - Parliamentary Committee for Combating Crime and Corruption; 39th National Assembly (2001–2005)- Commission for Combating Corruption; 40th National Assembly (2005–2009) - Commission for Combating Corruption; 41th National Assembly (2009–2013)- Anti-Corruption, Conflict of Interests and Parliamentary Ethics Committee; 42th National Assembly (2013-onwards)- Anti-Corruption and Conflict of Interests Committee.

The structures under the executive established after the adoption of the second Anticorruption Strategy were the Commission on Prevention and Combating Corruption (February 2006); Coordination Council of the Anticorruption Commissions (April 2006); Inspector-General at the Administration of the Council of Ministers; Inspectorates have been established at all ministries and government agencies, although the legislative framework did not regulate their powers in detail. A common issue was also the insufficient human resources. The Ministry of Defence (MoD) has established a Military Police Service; In the Ministry of Interior "Combating Organized Crime" and "Internal Security" Directorates; Regional Public Councils for Counteracting Corruption have been functioning at all regional administrations.

[58] http://mpes.government.bg/Documents/Anticorruption/AnticorrupStrategy-2009.pdf
[59] http://anticorruption.government.bg/publication.aspx?p=79

The structures for Control and Combating Corruption within the Judicial System in operation have been: the Commission for Combating Corruption at the Supreme Judicial Council and Inspectorate; the Inspectorate of the Supreme Prosecutor's Office of Cassation was established in 1999; the National Investigation Service had specialized departments to investigate cases with particular factual and legal complexity, crimes committed abroad, requests for legal assistance, and investigation of other cases provided by law, including corruption. Units to combat corruption were also established at all district investigation departments.

A key role in the development of the anti-corruption debate has been played by Coalition 2000, a group of civil society organizations set up in 1998 as an anti-corruption initiative. Coalition 2000 has worked to facilitate cooperation between the Government, NGOs and other institutions in the area of anti-corruption policy, and currently operates a Corruption Monitoring System through regular public opinion surveys. Coalition 2000 drafted an Anti-corruption Action Plan, which was endorsed by the first Coalition 2000 Policy Forum in November 1998, an event which was attended by over 150 Government officials, business leaders, NGOs and international organizations.

Some concrete steps in the establishment and implementation of the anti-corruption policy including the elaboration of two National Strategies for Prevention and Counteraction of Corruption and a number of legislative changes, mainly amendments of already adopted laws, were undertaken in the period 1997–2011.

Positive assessments of the efforts to reduce administrative corruption were reported by Centre for the Study of Democracy (CSD) in their last Corruption and Anti-corruption in Bulgaria[60] 2011–2012. Following a period of improvement (2009–2010), administrative corruption experienced by citizens was once again on the rise in 2011-2012, although still below the levels observed under the previous government (2005–2009). The average monthly number of corrupt transactions in 2011 was approximately 150,000. Administrative corruption experienced by businesses declined in 2011–2012, reaching the lowest levels on record. Although this decline has not been deep enough to produce a marked improvement in the past three years, the positive fundamental changes that took place in the business environment, and increased anticorruption pressure after Bulgaria's EU accession seem to have effected positively the reduction of corruption. After 2009, the government's efforts were mainly focused on tackling administrative corruption at mid and low levels of the administrative hierarchy. However, the CSD reported that no progress on reducing political corruption had been achieved since 2005.

Another systemic problem identified by the CSD report is the politicization of the civil service and law enforcement bodies. The report expresses concerns that "*the lack of space for independent actions by the police, the customs and revenue agencies (without an intervention from the top of the political pyramid)*

[60] Policy Brief No. 35, June 2012. At http://www.csd.bg/artShow.php?id=16123

renders political flavour to the law enforcement and penal process and limits the efficiency of anticorruption measures. Due to the politicization of the state administration, investigation of administrative corruption most often triggers political interests. To prosecute these cases, law-enforcement bodies need political sanctions".

The CSD report notes that the media's role in anticorruption has been impaired: "*Professional media standards have fallen victim to economic interests and political affiliations. Investigative journalism is often abused as a tool to discredit business and political rivals. A large share of the electronic and print media are now owned or controlled by oligarchs. These trends accelerated with the emergence of some new media groups and with the sale of previously foreign-owned media outlets to local businessmen. Reports of politically important events, including corruption scandals and/or anticorruption efforts, are used as bargaining chips by media owners to trade in influence: securing public procurement deals, tolerating illegal business practices and/or tax fraud*".

Despite the multitude and diversity of media outlets, one striking feature of the Bulgarian media is the lack of true diversity. On the one hand, there is a growing concentration of media ownership in the hands of a few major players in the field – some political parties or individuals related to them, and commercial banks. This was pointed out as a major factor reducing media pluralism. On the other hand, the media themselves, especially in recent years, started to produce tautological content, identical media formats, etc. - thus although there is a superficial diversity of content, the actual differences are only apparent and marginal: the content is similar.

The European Commission releases yearly reports on progress on anticorruption and organized crime in the framework of the Cooperation and Verification Mechanism (CVM). The 2012 report assesses the developments that have occurred since 2007. The overall conclusion is that there has been some progress, but the objectives of the CVM have not yet been met and the benchmarks have not been satisfactorily fulfilled. Reform is neither sustainable nor irreversible, since "*Bulgaria's accession shows important progress in the basic legislative framework but Bulgaria's results against organized crime have been 'limited'*." The report recommends that Bulgaria should now focus on filling the gaps of its legal and institutional framework and on implementing all laws in an effective way, especially concerning judicial reform and corruption of high level officials.

The EU report also highlights a number of key shortcomings. As regards the management of the judiciary, weaknesses exist in pursuing judicial integrity, in the consistency of disciplinary practice and in transparent and objective judicial appointments, appraisals and promotions. Regarding the fight against corruption, the coordination of different authorities is still insufficient and reforms require more direction and commitment to achieve results. The steps taken in the fight against high-level corruption and organized crime still lack convincing results.

At the intersection between corruption and organized crime lies the laundering of the proceeds of crime. Organized crime in Bulgaria continues to use corruption as an instrument to facilitate criminal activities and to evade criminal prosecution. There is strong evidence that over the past several years corruption related to drugs and prostitution markets has substantially declined. The illicit cigarettes trade and VAT fraud generate significant corruption within law enforcement bodies, state and local administration, and local level political parties. The revenues from criminal activity remain high despite the worsened economic conditions. The majority of the criminal networks in Bulgaria also operate legal business structures, which facilitates the legalization of criminal proceeds. The level of penetration of organized crime into the legal economy is significantly higher than the levels in Western Europe.[61]

During the last two years, the MoD has been affected by some corruption cases. A senior civil servant from Bulgaria's Defence Ministry, Heni Shiyakova, has been confirmed by the Sofia Administrative Court as having been in a conflict of interest in her dealings with a private firm, Bereta Trading. The Court confirmed a ruling of the Bulgarian Commission on Conflict of Interest, which found earlier that Shiyakova took a trip to the exotic resort island of Bali that was paid for by Bereta Trading.[62] Heni Shiyakova, whose work at the Bulgarian Defence Ministry included supervision of the public procurement orders executed by Bereta Trading, accepted from the firm a voucher for an exotic vacation in "Bali and Singapore, or another destination by choice". Shiyakova's potential conflict of interest was first investigated in 2010 when she was referred to the Conflict of Interest Commission; in 2011, the Sofia Military Prosecutor's Office opened an inquiry. Shiyakova appealed the initial ruling of the Conflict of Interest Commission which led the Sofia Administrative Court to confirm the ruling.

Another much discussed case related to the purchase of combat aircrafts without using standard procurement procedures but through direct negotiations. The decision to open direct negotiations for a contract of approximately 356.2 million euro was taken by the Government and approved by the Parliament. The EC sent a letter in this respect to the Government of Bulgaria to express their concern (also to Romania and the Czech Republic) about purchases without public procurement procedures and the procedure was subsequently cancelled. In May 2013, business leaders called for greater transparency in defence procurement.[63]

The latest Transparency International report (February 2013) about the risk of corruption in the defence sector ranks Bulgaria with a moderate risk of corruption: BAND C- Moderate Risk (16 countries): Argentina, Brazil,

[61] General Atanas Atanassov, a member of Bulgaria's Parliament and former chief of the Bulgarian counterintelligence, stated: "Other countries have a mafia, in Bulgaria the mafia has a state" recently quoted by Moises Naim in an article that had tremendous impact on civil society in Bulgaria http://www.foreignaffairs.com/articles/137529/moises-naim/mafia-states

[62] Bereta Trading is a private Bulgarian firm specializing in ammunition utilization. Bereta Trading is also known to have won public procurement tenders of the Defense Ministry for the utilization of munitions, including from the notorious Chelopechene military depot near Sofia, which exploded in July 2008.

[63] 2014 EU Anti-Corruption Report, Chapter on Bulgaria.

Bulgaria, Chile, Colombia, Croatia, Czech Republic, France, Greece, Hungary, Italy, Japan, Latvia, Poland, Slovakia, and Spain.

Bulgaria has been the scenario of numerous institutional initiatives in the fight against corruption since 1997. Sometimes reforms have been introduced under pressure from external bodies, such as the European Commission. Some reforms have been reversed either because of constitutional concerns (such as the proposal for the removal of the Prosecutor General by the National Assembly, for instance), or because they have come to be seen as counterproductive, for example the granting of a limited investigative role to the State National Security Agency (SNSA). Some of the institutions introduced may be considered an oddity by international comparison: a case in point is the Inspectorate of the Supreme Judicial Council (SJC), whose members are appointed by a 2/3 majority by the National Assembly (a higher majority than that required for the members of the SJC itself. These dynamics partly explain the emerging anticorruption fatigue within official circles, in contrast with the activity of the non-governmental sector.

While public attention has focused on corruption of ministers and senior officials, for ordinary citizens corruption appears to be most widespread in customs, public education and health systems, the police and local branches of the State administration, with the latter presenting a particularly serious problem. The existence of a large grey economy, extensive smuggling networks and active (although weakened compared to the period before EU accession) organized crime groups has exacerbated the problem of corruption and made fighting it more difficult.

The EU Cooperation and Verification Mechanism (CVM) sets Bulgaria and Romania as separate category member states. This does not reflect the real situation in the EU where both countries are not an isolated and eccentric phenomenon. Actually, the recent developments in Hungary[64] and Croatia[65] raised the concerns of the EU and gave grounds for the introduction of a Common European Rule of Law Mechanism. The establishment of the Common European Rule of Law Mechanism to protect the rule of law must be seen as a step in the right direction. In the Bulgarian context, the Common EU Mechanism is seen as a more sustainable and fairer mechanism than the Cooperation and Verification Mechanism due to its applicability not only to Bulgaria and Romania – two member states with recently established and still vulnerable democracy, but to all member states[66] as an early warning mechanism when the independence of the judiciary is harmed. The need for the establishment of such common EU mechanisms is more apparent when taking into account the dynamics in the area of the fight against corruption.

[64] http://www.euinside.eu/en/analyses/the-ec-draws-a-bead-on-hungary-because-of-the-central-bank-and-the-judiciary
[65] http://www.euinside.eu/en/news/croatia-lex-perkovic-viviane-reding-deadline
[66] Claims that corruption is an isolated Bulgarian phenomenon do not correspond to the facts and thus suggest the implementation of double standards which weakens the motivation for implementation of consistent anti-corruption policy of no compromise.

Some other examples are the recently published GRECO (Group of States against corruption) "Interim Compliance Report on Germany",[67] and the Transparency International's Corruption Perception Index[68] for 2012[69] (which set Greece to 94th position, when Bulgaria is ranked 75th, Italy at 72nd, and Romania at 66th (upgraded from the 75th in 2011). According to TI's 2012 ranking, Ireland dropped in 2012 six slots to 25th position in 2012, Malta fell four slots to 43rd and Austria, in the top 20 in 2011, dropped nine slots to a tie with Ireland in 25th. In fact, corruption mechanisms and schemes used by criminal groups in Bulgaria do not differ significantly from those used in other European states. Some EU Member States register different levels of corruption activities in organized criminal groups. For instance, some 17 % of the criminal groups in Spain use corruption as an influence-peddling tool. In Belgium there is an indication that 23 % of the criminal groups use some form of influence mainly targeting the private sector, the police and the customs. In Bulgaria, almost 45 % of the criminal groups use some form of corruption influence. Nevertheless, even in the context of the so-called "landmark cases" against organized crime, the use of corruption is not investigated.[70]

As Viviane Reding, Vice-President of the European Commission and EU Justice Commissioner stated in her speech "The EU and the Rule of Law – What next?"[71] "*The European Commission has to pay attention (when called upon to act) not to fall into the trap of a certain "anti-Eastern" bias in some of the current rule of law discussions.*"

Whatever the case might be, to maintain progress the European Commission invited Bulgaria to take action in the following areas, on the basis of recommendations designed to help Bulgaria to focus its efforts in preparing for the Commission's next assessment of progress under the CVM at the end of 2013: judicial and prosecutorial services reform; reinforcing the independence, integrity and accountability of the judiciary; reforming the judicial procedures, especially the criminal procedural code; reinforcing certain mechanism to combat corruption and organized crime. No parliamentary debate followed the release of the European Commission Report.

Since the EU Commission's latest report in July 2012 Bulgaria has taken a few steps forward. The 2014 CPV Report[72] shows that overall progress has been not yet sufficient, and is fragile. Public confidence is conditioned largely by key moments when decisions or events are of sufficient importance to warrant more general interest. Widespread corruption is perceived as a major problem and poses a significant challenge for the Bulgarian authorities.[73] It has clear

[67] http://www.spiegel.de/international/germany/germany-too-lax-on-fighting-political-corruption-says-watchdog-a-869763.html
[68] http://cpi.transparency.org/cpi2012/results/
[69] http://www.spiegel.de/international/world/transparency-international-ranks-greece-as-most-corrupt-in-eu-a-871074.html
[70] Center for the Study of Democracy (2012), "Serious and organised crime threat assessment 2010–2011", Sofia, Bulgaria.
[71] http://europa.eu/rapid/press-release_SPEECH-13-677_en.htm?locale=en
[72] SWD (2014) 36 final.
[73] Center for the Study of Democracy (2013) "Corruption and anti-corruption in Bulgaria (2012–2013)", *Policy Brief* No. 43. also http://www.transparency.org/cpi2013

consequences for the willingness of businesses to invest in Bulgaria.[74] An anti-corruption strategy was adopted by the previous government and it is now being updated – it could usefully involve independent outside expertise in this work. Most such events over the last 18 months – a period during which Bulgaria has had three different governments – have been the source of concern rather than reassurance, with appointments having to be aborted due to integrity issues, the escape from justice of convicted leaders of organized crime and a succession of revelations about political influence on the judicial system. There remain very few cases where crimes of corruption or organized crime have been brought to conclusion in court.[75]

Overall, the results of previous efforts to fight corruption have been very limited. The general image is that of a weak and uncoordinated response to what is a systemic problem throughout the public administration. Shortcomings identified in previous CVM report remain.

5.2 The anticorruption agency

The Standing Parliamentary Ethics Committee was reformed in 2009, expanding its focus also to anticorruption, conflict of interests and ethics. The Standing Committee introduced mechanisms to handle complaints against the decisions and actions of individual MPs. The Committee's composition guarantees parity between all parliamentary political parties: each party may have only one representative, regardless of its number of seats. There is a rotating chairmanship giving each party an equal opportunity to preside over the sittings of the Committee. Nevertheless, because of the existing legislative vacuum (the Code of Ethics drafted in 2002 has not been passed yet), the sanctions are decided on an ad hoc basis, which makes the Committee ineffective and undermines its authority.

There is no ministry directly responsible for anticorruption. A Commission for the Prevention and Counter fighting Corruption (CPCFC) was established as a specialized central governmental unit. It is chaired by the Minister of the Interior and the Deputy Chair is the Minister of Finance. Members of the Commission are the Ministers of Justice, Education, Health, Economy, and Regional Development, and the Chair of the State National Security Agency (SNSA). For the Committee meetings, the following are also invited: the Chair of the Parliamentary Committee for Fighting Corruption, the Chair of the Supreme Judicial Council, the Chair of the Supreme Administrative Court, the Attorney General, the Chair of the NAO, and the Ombudsman.

The mechanisms and institutions established to combat corruption failed to ensure timely and effective prevention, detection and punishment of corruption practices. Due to their failure, a new central unit, the Centre for Prevention and

[74] The 2013 Global Competitiveness Report lists corruption as the most problematic factor for doing business in Bulgaria:
http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf p. 138
[75] 2014 EC Report on Progress in Bulgaria under the Co-operation and Verification Mechanism.

Countering Corruption and Organized Crime was created in 2011, as a platform for the implementation of the government BORKOR project. BORKOR, which started operations in mid-2012, is tasked with increasing transparency and addressing corruption within the public administration at all levels.[76] BORKOR is a consultative body at the Council of Ministers. The goal of the BORKOR project concept is "the development of innovative solutions and models for a systematic and efficient application of the governmental strategy for Prevention and Suppression of Corruption and Organized Crime."[77]

The purpose of BORKOR is to support the anticorruption efforts of the legislative, judicial and executive. It must develop specific intervention systems to coordinate the fight against corruption and organized crime. The intervention should be a panoply of measures, components and packages aiming at efficient results, mostly focused on the prevention of corruption. The Centre collects and registers information from all domains sensitive to corruption, evaluates the data and identifies corruption vulnerable points using complex analyses. It has an analytic and a consultative function by developing System Secure Solution Models on demand. In this way the Centre supports all institutions dealing with actions vulnerable to corruption. There are more than 50 scientific methods being applied. Some of them have been developed especially for action in Bulgaria.

All BORKOR activities are under the direct control of the Consultative Council, which includes representatives of Parliament, Government, the Judiciary and government agencies as well as the Director of the Centre. The Council makes sure that the political will is faithfully followed and political and civil society priorities are respected. Decisions of the Consultative Council are to be documented and made accessible to all project partners. The Consultative Council, which takes its decision on consensus, provides methodological support and is responsible for the activities of the Centre. Its Chairman is the Minister of the Interior. Among the methods used is the standard of the German Government (V-Modell XT®), especially customized for the working procedures of the BORKOR. Partner collaboration is a main feature of the so-called "BORKOR Concept". Sharing experience of various project partners from the civil society, state institutions, business, economy and media contributes to a higher level of transparency. The BORKOR concept assumes that transparency and continuous collaboration and open minded ways of working together underpin the re-establishment of civil trust in government actions concerning the prevention and suppression of corruption.

The Centre has adequate premises and budget. The organizational structure combines the linear structure of the general administration and project-based teams. The number of the staff is 155 people, with 40 permanent staff and 115 temporarily employed from other administrations. The salaries of the temporary staff are covered by the administration from which they are seconded. Most

[76] Bulgarian authorities and the Minister of Justice, which were criticized by the European Union for the delay of important trials and lack of severe penalties, also considered the establishment of a specialized court to deal with corruption practices, but this idea was rejected.
[77] http://borkor.government.bg/en/page/11

experts come from the state administration institutions on a two-year secondment extendable to another similar term. BORKOR is still a new establishment and is not fully operational, but it is expected that the model becomes fully operational in 2013. The Centre has been involved in setting up the operational system and staff training. The establishment of BORKOR was received with scepticism from the public. Assumptions exist that it will gain legitimacy only if it produces quick results. This alone will justify its existence.

There is thus both public and political pressure that BORKOR shows results. The media is very critical towards BORKOR as well and they have been focusing on the slow start of the actual activities of the Centre, and the lack of visible and measurable results. This is a common problem with any anticorruption bodies: everybody expects immediate "tangible" results, which those bodies are not able to deliver given the magnitude of the tasks ahead of them. The absence of results in turn dooms these bodies to failure.

Other mechanisms for independent control of administrative and political corruption are the National Audit Office (NAO), which controls the use of public funds, the National Ombudsman institution, and local public mediators.

In 2013, an overhaul of the security apparatus transferred the Interior Ministry's Directorate-General for Combating Organized Crime to the State Agency for National Security (SANS). Control over surveillance was transferred from the Interior Ministry to the Council of Ministers. The outcome of these reforms remains to be seen. As noted in the January 2014 CVM report, personnel changes since May 2013 have reinforced concerns about the political independence of officials responsible for fighting corruption and organized crime, and about continuity in the law enforcement sector.[78]

Parliament's fast-track amendment of the State Agency for National Security Act [79] in 2013 and the election of a controversial MP as head of the SANS raised concerns in Bulgaria and beyond. The European Commission urged the authorities to make key appointments in the fight against corruption and organized crime on the basis of merit and integrity, and following extensive consultation.[80] The controversial appointee was withdrawn and replaced. An appointee for deputy minister of interior was also withdrawn.

Established at the Council of Ministers in 2010, the Centre for Prevention and Countering Corruption and Organized Crime is charged with assessing risks across public institutions, focusing on procurement.[81] Its annual budget is EUR

[78] http://ec.europa.eu/cvm/docs/swd_2014_36_en.pdf pp. 21–22. Center for the Study of Democracy (2013) "Corruption and anti-corruption in Bulgaria (2012–2013)", *Policy Brief* No. 43, p. 11, http://csd.bg/fileSrc.php?id=21643, notes that: "Such degree of sudden politically-motivated personnel changes within law-enforcement and civil service, coupled with premature and hasty restructuring of the law-enforcement institutions, has significantly weakened the state's capacity to counter organised crime, corruption, and the grey economy".
[79] National Assembly of the Republic of Bulgaria, Law on Amending and Supplementing the Law establishing the State Agency for National Security http://parliament.bg/bg/bills/ID/14377/
[80] http://europa.eu/rapid/press-release_SPEECH-13-561_en.htm
[81] http://borkor.government.bg/en/

2.5 million. In January 2013, the Centre's first interim report presented software (BORKOR) developed to identify corruption risks, and listed the number of vulnerable areas without identifying them.[82] The head of the Centre was dismissed in 2012 for insufficient results, and its deputy head was removed without explanation in 2013. The new government has not yet confirmed its plans for the Centre. Concrete results of BORKOR are yet to be seen. The Commission for Prevention and Ascertainment of Conflict of Interest became operational in 2011.[83] It has not yet succeeded in acting systematically and independently to prevent or uncover risks of political corruption. Instead, there are indications of an arbitrary and formalistic approach. An example is a probe into a former minister of economy, energy and tourism on his resignation in 2012. The commission established a conflict of interest based on dividends drawn on company shares nominally worth about EUR 140.54 In July 2013, prosecutors charged the chair of the commission with abuse of office on the basis of evidence of politically manipulated investigations. An appeals court upheld his dismissal. An MP resigned over the same case.[84]

The MoD has a Standing Anti-Corruption Committee. Its membership includes the MoD Chief Inspector General, the Director of the HR Management Directorate, the head of the Legal Directorate, the Deputy Chief of Defence, the Military Police Director, and the Internal Audit Director. The purpose of this Committee is to monitor the effect of the anticorruption measures already approved and underway as well as to suggest measures to improve the legal framework. The other major goal of this Committee is to establish better accountability and transparency in developing and implementing defence policies, including releasing quality information to the public and media, as well as providing opportunities for interested stakeholders to express their opinion and be involved in the policy making process. In 2011, the Standing Committee adopted a MoD Anticorruption Action Plan. It also adopted an "Integrity Pact", a document which was signed by the MoD and by all participants in the MoD's public procurement tenders.[85] By doing so the parties declared that they shall not allow any conflict of interests or abuse of position-in-office.

The MoD Inspection Directorate (the Anti-corruption Unit "Counteraction to corruption" was established on 1 of December 2012) developed a "Corruption risk assessment methodology" to be used by the MoD itself, the structures directly subordinated to the Minister of Defence and the Army. Inspections were carried out on the implementation of the methodology. The corruption risk during the period was assessed as "LOW", the exception being the Military Medical Academy (MMA) where the risk was assessed as "HIGH". In the face of it, the Minister of Defence approved specific measures for the prevention of "high risk" corruption and measures on violations of financial discipline.

[82] Centre for Prevention and Countering Corruption and Organised Crime (2013), "Първи доклад на ЦППКОП относно проекта „Модел на решение в областта на обществените поръчки"
[83] http://cpaci.bg/images/reshenia/109_16.08.pdf
[84] 2014 EU Anti-Corruption Report, Chapter on Bulgaria.
[85] http://www.md.government.bg/en/doc/anticorruption/20110728_IntegrityPact.pdf

The MoD issues monthly reports describing irregularities and facts and conditions engendering corruption. These reports are included in the reports on the "Fulfilment of the Government and Judiciary schedule of urgent measures and activities on the implementation of progress indexes in judiciary reform, the struggle against corruption and organized crime". No violations with respect to conflict of interest and no cases of corruption were identified. The MoD reports that a policy of transparency and accountability regarding the actions and activities of the MoD was implemented. Full public access was constantly provided with respect to the MoD procurement and tender procedures. The information on open public procurement procedures and their implementation is updated constantly. This allows equal opportunities for all companies willing to participate, and introduced transparency throughout the whole process. In July 2011, an active bilateral dialogue between the MoD and various non-governmental organizations (NGOs) was initiated by issuing Regular Standing Committee on Anti-Corruption Bulletins. These bulletins inform the general public about the anti-corruption measures taken and the results achieved through their implementation.

The Armed Forces' Development Plan,[86] and the White Paper on Defence and Armed forces of the Republic of Bulgaria, which are the main strategic documents for the development of the defence policy and armed forces, contain fighting corruption and transparency as fundamental principles, especially in the white paper. In addition, an Action Plan on the Implementation of the Anticorruption Policy at the MoD for 2012 was developed and is available on the MoD official website.[87] The Action Plan comprises well elaborated measures addressing various core areas, such as public procurement, public information, human resources management, etc. It also determines the departments which are assigned responsibility for the implementation of those measures.

In 2010 the MoD completed the Self-assessment Questionnaire of the "Building Integrity Initiative" and was subsequently subject to a peer review conducted by a team of NATO and Transparency International representatives. The final report was published on the Ministry's website.[88] Based on the results of the peer review, the joint team provided recommendations, which have been incorporated into the Action Plan of the MoD, listing 14 concrete practical steps in applying anticorruption policies, along with the deadlines for their implementation.[89]

Overall, the MoD has shown commitment in fighting corruption – the actions are transparent and visible – documents are published on the website of the Ministry, and the Ministry has been actively approaching stakeholders and counterparts in consultative processes. The ministry is one of the most active in implementing proactive measures to fight corruption in various administrative

[86] http://www.md.government.bg/en/doc/misc/20110207_AFDP_ENG.pdf
[87] http://www.md.government.bg/en/doc/anticorruption/20120319_Action_Plan_2012_Engl.pdf
[88] http://www.md.government.bg/en/doc/anticorruption/20110131_Doklad_Integritet_EN.pdf
[89] http://www.md.government.bg/en/doc/anticorruption/20110520_ActionPlan.pdf

areas and processes. This reveals a higher institutional culture than what prevails in the Bulgarian public administration. It could be due to two main reasons: 1) the defence sector operation is built on a solid legal basis,[90] and 2) the MoD developed detailed rules and procedure manuals for implementation of various administrative operations, as well as an effective monitoring mechanism. The administrative capacity of the MoD is higher than the average in Bulgaria also due to the earlier NATO accession that allowed the defence sector to start the reform of systems and structures earlier than other Bulgarian institutions.

There is no anticorruption agency in the sense of articles 5 and 6 of the UN Convention against Corruption. The recently created BORKOR is a consultative body. Perhaps the current approach on addressing anticorruption through a number of different bodies coordinated from BORKOR is an adequate one, but its effects remain to be seen as the body is still very new. The mechanisms established in the defence area to control corruption seem to be working acceptably.

[90] The Government has elaborated and the Bulgarian Parliament already adopted respective amendments to the Law on Defence and the Armed Forces to guarantee the reforms.

6 Recommendations

6.1 General observations

As we noted in the introductory chapter of this report, a holistic approach to security sector reform is increasingly called for. In order for integrity and professionalism to imbue the defence area, these values must be rooted in the overall government system of the state, and defence sector institutions must be seen as integral parts of this system and not as something detached from it.Pro-integrity reforms internal to the defence sector should be set in a wider reform perspective. In line with this approach we will present two sets of recommendations. One concerns only the MoD, the other involves Bulgarian authorities generally. Arguably, in order for the proposed reforms internal to the MoD to give effect and for already completed reforms in the MoD to be sustainable, general reforms along the lines suggested below should be implemented simultaneously.

6.2 Recommendations for the MoD

1. Freedom of access to information

There is a need to focus on the issue of how the balance is struck between free access to information on the one hand and on the other protection of personal and confidential data. More transparency would be beneficial for the MoD and the armed forces. The MoD is advised to:

- declassify information on a regular basis and make the declassified material publicly available on the Ministry's website;
- organize training and other competency building measures regarding access to information for MoD officials;
- consider the establishment of a separate unit with the responsibility to coordinate all efforts regarding public access to defence-related information.

2. Public procurement

Although there has been a reduction of violations of the procurement legislation, there is a need to further professionalize and reform procurement. The MoD is advised to:

- Strengthen and systematize training and other competency building measures for procurement officials. These efforts must adequately reflect the inter-disciplinary nature of public. Thus, i.a. legal, managerial, and economic topics should be included in competency building activities. Generally, the change from a mainly budgetary to a more business-oriented approach should be further pursued.

3. Human resource management

There is a need to strengthen the professionalism and integrity of the Bulgarian public service. The MoD is advised to

- take steps to support the implementation the performance-based remuneration system for civil servants that was introduced in 2013;
- prepare a procedures manual regarding defence-related HRM. The manual should describe i.a. division of tasks, decision-making procedures and deadlines.

4. Corruption risk management.

There is a need to strengthen the system for corruption risk management. The MoD is advised to:

- further develop the methodology for assessing corruption risks within the MoD and the armed forces;
- use the risk assessments actually undertaken as basis for a comprehensive effort to improve the integrity framework in the defence area;
- further strengthen the capacity of the MoD inspectorate to implement risk assessments, develop adequate action plans, and to continuously monitor the performance of the MoD risk management system.

6.3 General recommendations

1. There is a need to further strengthen Parliament's capacity to effectively control the government, including defence and security institutions.
2. Steps should be taken to further safeguard the professionalism and integrity of the officials of the National Audit Office.
3. The promotion of more transparency at every level of government and in the functioning of every public institution should be tirelessly and permanently pursued. Legal frameworks and administrative arrangements which are instrumental for ensuring access to public information need strengthening. More specifically:

    - Bulgaria should sign and ratify the Council of Europe Convention on Access to Official Documents;
    - all exceptions to the principle of free access to information should be adequately regulated;
    - there is a need for a separate body to monitor and supervise the enforcement of the Access to Public Information Act.

4. Legal frameworks and administrative arrangements regarding public procurement give rise to concerns. Efficient implementation is hindered by overly complex regulations and by lack of capacity in contracting authorities and inadequate control and review mechanisms. Although individual amendments to the legal framework could each be well founded, the frequency of such changes may not be conducive to legal reliability and predictability. Therefore a new, simpler and more

consistent legal framework is needed as well as more professional administrative systems of public procurement.

5. The civil service needs to be depoliticized and professionalized by clearly implementing the merit system and the principle of equal access in all human resources management decisions.

6. Overall, progress in preventing and combatting corruption remains fragile. The anti-corruption strategy, which was adopted in 2009, is now being up-dated. In order to be effective the plan should include a comprehensive action plan specifying as concretely as possible measures to be undertaken, deadlines, and allocation of resources and responsibilities.

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Abstract:
This report assesses the institutional risks of corruption in the defence area of Bulgaria. It uses a holistic approach to security sector reform. Pro-integrity reforms internal to the defence sector are set in a wider reform perspective including appropriate instruments within civilian policy sectors. The current report mainly focuses on the Bulgarian Ministry of Defence (MoD), not the armed forces. It treats the ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across the national system of public governance and impacting on the MoD as on any other ministry.

Key words: Parliamentary control, control of intelligence and security institutions, ombudsman, freedom of access to information, internal and external audit, conflict of interest, anti-corruption bodies, anti-corruption policies, human resources management, public procurement, asset disposal, corruption, integrity, good governance, corruption risks.

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