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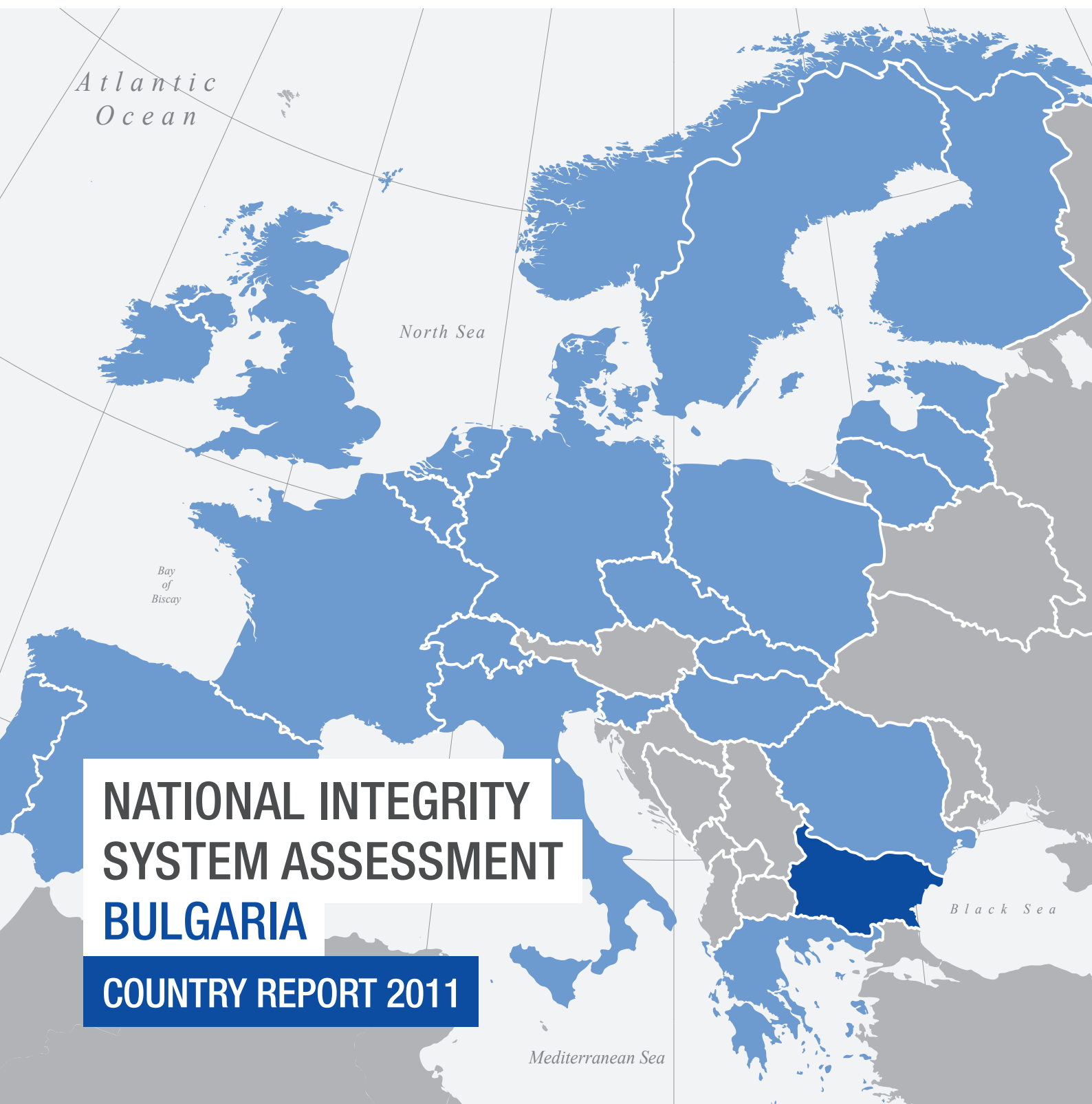
National Integrity System Assessment Bulgaria

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NATIONAL INTEGRITY SYSTEM ASSESSMENT **BULGARIA**

COUNTRY REPORT 2011



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EXECUTIVE SUMMARY

The National Integrity System assessment approach provides a framework to analyse the robustness and effectiveness of a country's institutions in preventing and fighting corruption. The concept has been developed and promoted by Transparency International (TI) as part of its holistic approach to countering corruption. A well-functioning national integrity system provides effective safeguards against corruption as part of the larger struggle against abuse of power, malfeasance, and misappropriation.

The problem of corruption became a central political and social concern in Bulgaria towards the end of the 1990s, and since then has topped the governmental agenda. Despite the prioritisation of the issue, perceptions of corruption in Bulgaria remain high: according to the TI Corruption Perception Index 2011, it is the lowest scoring country in the EU¹. If there is a trend in this regard, it is rather negative, which is formally paradoxical since, due to internal and external pressures, successive governments have introduced a series of institutional reforms and innovations in the field of anti-corruption. Further, in political terms the last decade has been one of the most successful in Bulgarian history: the country had a long spell of uninterrupted economic growth (until 2009), became a member of the EU in 2007, and thus far has weathered the economic crisis better than many other European states.

From this perspective the study of the integrity system of Bulgaria is of particular interest. It raises the issue of the effectiveness of anti-corruption measures in an environment where there are widespread perceptions of corruption and governments feel compelled to make reforms and introduce anti-corruption institutions.

One of the main issues emerging from the research is that there is a systematic discrepancy between the scores for legal framework and actual practice and performance of different institutions in the anti-corruption field. The reasons for this discrepancy can be various, but two stand out in particular. First, the legal framework has to stimulate the emergence of informal practices supportive of a given institution. But not everything can be dictated by law, and where there are discretionary powers, officials should exercise good judgment, and should aim to achieve the best result in the public interest. Unfortunately, this is not always the case. For example, the Supreme Judicial Council – the main body responsible for the personnel policy in the judiciary – enjoys a (comparatively) high level of institutional autonomy according to the law. Yet, in its practice, it has been involved in a series of scandals, which have suggested that there have been external influences on its decisions. In order for such problems to be eliminated, institutional reforms may be insufficient: ultimately, there should be strong professional ethics helping the officials to take a full advantage of the specific possibilities provided by the law.

Second, some institutions are marketed as anti-corruption fighters, when actually their primary functions are different or have changed over time. A case in point is the security agency SANS, which was

¹ See <http://cpi.transparency.org/cpi2011/>

introduced in 2008 primarily with the aim to fight corruption among senior officials and serious organised crime. Gradually, the profile of the agency was changed, and now it is mostly a security agency dealing with intelligence issues. Thus, although it has significant resources, its specific anti-corruption output is limited (which partly accounts for the discrepancy between its scores for legal framework and actual practice). The example shows that governments are under significant pressure to report publicly on the accepted anti-corruption measures and the achieved practical results. Generally, corruption is a favourite topic for the political opposition: in order to counter opposition criticism governments too often make institutional anti-corruption reforms, which may account for a certain proliferation of institutions with overlapping jurisdictions, the coordination among which can become a problem.

Finally, another paradox has been demonstrated by the anti-corruption activities in Bulgaria: the continuing reforms aimed at tackling corruption have not brought back the trust of the people in institutions. This suggests that public opinion forms mostly on the basis of the overall performance of the institutions. Further, corruption has become an umbrella term in Bulgarian public discourse, which covers a wide territory from concrete *quid-pro-quo* illicit transactions to problems of general institutional inefficiency, lack of representation, and even social injustice. In such an environment, institutions face very high public expectations, which often exceed their remit. The discrepancy between institutional roles and public expectations can also partly explain the low public trust in key anti-corruption fighters.

The research for this study has been carried out under a standardised methodology suggested by Transparency International. It relies on the assessment of publicly available sources, as well as a number of in-depth interviews with experts in the field (at least two experts per pillar). The findings have been discussed with representatives of different institutions in two public meetings, and have received feedback in written form from some of the institutions. In addition to the pillar reports, a survey of public opinion on the toleration of corruption was commissioned and conducted by a sociological agency.

The present study covers the most important institutional pillars of a national integrity system. These include the major branches of power (legislative, executive, judicial), the law enforcement and controlling bodies of the state (the police, the prosecutors and investigatory services, the anti-corruption agencies and the state audit institution), the ombudsman, civil society organisations, the media and business sectors. The comprehensive coverage of the study allows for comparisons among different sectors.

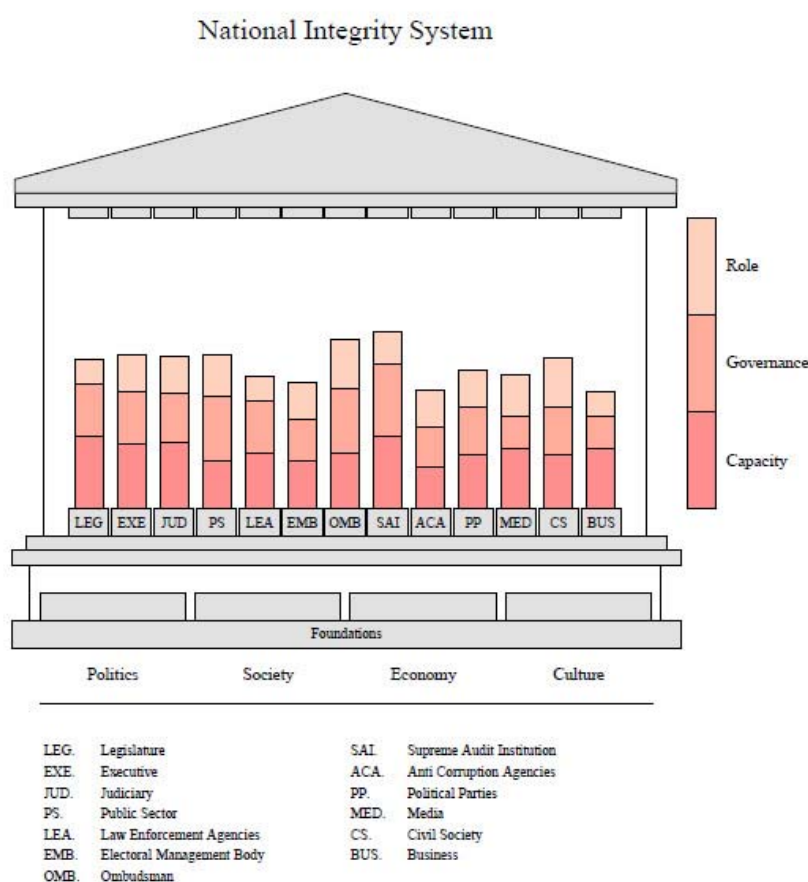
In each of the pillars the researchers have been asked to answer specific questions in three different categories: capacity, governance, and role. The indicators in the capacity section aim to establish whether a specific institution has sufficient resources and guarantees for its autonomy vis-à-vis other authorities or actors. In essence, these indicators reflect the extent to which institutions are independent and efficient policy-making and policy-implementing bodies. The second group of indicators – governance – captures the quality of governance of a specific institution in terms of the transparency of its decisions, the integrity

of its personnel, and the accountability of its actions. Thus, it establishes not only the capacity of a specific institution to perform its tasks, but the extent to which it performs its functions in a transparent and responsible manner. Finally, the last group of indicators targets the output of institutions; the ultimate result of their activity in relation to the fight against corruption. Here, the specific indicators differ according to the profile and specific functions of the institutional pillars: the law enforcement bodies are judged on the basis of the successful anti-corruption cases they produce and the public trust they generate; courts are assessed on similar grounds, but also on the basis of the controlling function that they exercise vis-à-vis the government and the administration, etc.

The indicators are usually divided into two groups: law and practice. This division captures the difference between the law on the books and the actual situation in a specific field. It is a basic fact of socio-legal studies that practice never fully corresponds to existing normative frameworks. As mentioned already, however, the study highlights a significant discrepancy between normative commitments and realities.

Temple graphic

According to Transparency International, the national integrity system could be regarded as a Greek temple supported by pillars and foundations based on political, socio-economic and cultural character. Each integrity system is built on several key institutional pillars which are interdependent and equally important for the sustainability of the 'temple': executive, legislative and judiciary, public sector, the main independent supervisory agencies (the supreme audit institution, law enforcement agencies) and political parties, media, civil society and business.



Main findings

The study suggests that all pillars of the integrity temple in Bulgaria are standing, although their overall strength is around the middle of the scoring table (50). Leaving aside the methodological bias towards average scores in the overall design of the study, scores around 50 reflect well the general perception of citizens and analysts of the state of anti-corruption activities and integrity mechanisms in Bulgaria: a lot has

been done, but still there are important deficiencies and lasting problems.

More interestingly, the institutional pillars in our study (which are presented below both in a tabular and graphic format) could be divided into four different groups. The best scoring institutions are the State Audit Office (state audit institution) and the ombudsman, whose overall scores are around the mark of 60. A large group of institutions and sectors comes next, including the executive, the public sector, the judiciary, the legislature, and civil society organisations, which score slightly over 50. The third group contains political parties, the law enforcement agencies, and the media, which all stand at slightly above 45. And finally, the group of laggards includes the electoral commission, the anti-corruption agency, and the business sector (they are closer to the 40 mark).

The differences between group two, three, and four are not so pronounced as to allow seriously different treatment. In all these three groups more work is necessary for strengthening their contribution to public integrity. The low scores for the anti-corruption agency are largely due to the fact that under this category the State Agency of National Security (SANS) was analysed, which has not operated as a typical anti-corruption body, as it is more of an intelligence agency. Especially telling, however, is the low score for the business sector: apparently, the anti-corruption drive is left entirely to public bodies, while the private sector is either rather inert or reluctant to introduce integrity practices in its own affairs. Against this background, the existence of relatively vibrant civil society organisations in the anti-corruption field is a positive sign.

Over the last decade, a lot of public funds have been invested in strengthening the public integrity of institutions. This is clearly shown by the high scores in the capacity column of the table below. The message here is that resources are available and that there is sufficient institutional capacity for much higher overall scores. Yet, the public investment of funds has not translated into similarly high scores for integrity and anti-corruption output, which is captured primarily by the indicators under 'Role' in the last column of the table. There are particularly striking mismatches in the major institutions of the country, starting with the legislature (75 capacity: 25 role); the judiciary (68,75:37,5); the executive (66,66:37,5); and law enforcement (58,33:25). Even the leader – the State Audit Office – has this problem: in terms of resources it stands much better than its integrity role. This mismatch suggests that in the pursuit of public integrity these institutions are not cost-efficient: unfortunately, they seem to waste public resources. A similar mismatch is typical of the business sector, although here the resources are private: the sector has a lot of resources and capacity, which are apparently not put in the service of integrity. In terms of cost efficiency, the ombudsman and civil society stand better: the resources they have better match their role as a public integrity pillar.

The next major finding is that the governance of the major governmental institutions has improved significantly in terms of transparency and accountability: the scores are consistently higher than the overall

scores for most of the pillars. The most apparent exceptions from this trend are the judiciary and the electoral management body. The problems around the Supreme Judicial Council and its personnel and disciplinary practices account for most of the exceptions in the judiciary in this regard, while for the electoral management body the problems in part relate to its institutional set up, and in part to the complexity and lack of clarity of the new Electoral Code.

Finally, the low score of the law enforcement bodies (mostly the prosecutors and the police) in terms of their role in anti-corruption cases corresponds well to the general view of the public and the analysts that the efficiency of these bodies and the coordination among them is unsatisfactory. It is no surprise that they are not able to generate significant public trust and that they are often at the receiving end of criticism from European partners.

Overall scores for the thirteen pillars (in descending order)

Pillar	Overall Score	Capacity	Governance	Role
1. Supreme audit institution	61.11	75	75	33.33
2. Ombudsman	58.33	58.33	66.66	50
3. Executive	52.77	66.66	54.16	37.50
4. Public sector	52.77	50	66.66	41.66
5. Judiciary	52.08	68.75	50	37.50
6. Civil society	52.08	56.25	50	50
7. Legislature	51.38	75	54.16	25
8. Political parties	47.91	56.25	50	37.50
9. Law enforcement agencies	45.83	58.33	54.16	25
10. Media	45.83	62.50	33.33	41.66
11. Electoral management body	43.05	50	41.66	37.50
12. Anti-corruption agencies	40.41	43.75	40	37.50
13. Business	40.28	62.50	33.33	25

Strengths and weaknesses

Legislature

The parliament is by definition an institution with a high degree of transparency. Yet, there are obvious deficiencies in its work in two areas: first, it has failed to pass a code of ethics for MPs or a law on lobbying. Second, the policy expertise of the legislature is rather limited, which prevents it from being an effective check on or an instrument of review and improvement for the legislative initiatives of the government. Hence regardless of the consistent improvements both in the legal framework and the practices, which guarantee independence, transparency and accountability, the role of the Bulgarian parliament in promoting and assuring integrity is still rather limited.

Executive

The Council of Ministers and the state agencies comprising the Bulgarian executive have undergone major administrative reform, paralleled by substantial resource cuts caused by the austerity measures of the government in 2010 and 2011. The streamlining of the role and influence of the 'political cabinets' of ministers and the prime minister is a positive development. Positive also is the trend to increase transparency of the decision-making process, although improvement is still needed if the highest standards are to be met.

A formal integrity framework for ministers is being introduced. Nevertheless, recent developments and media disclosures show that conflicts of interest and 'shuttling' of cabinet members between their public roles and private business are eroding the integrity of the executive. Anti-corruption legislation and policy measures have lost momentum since concerns pertaining to the economic crisis and reforms in key policy areas are dominating the government agenda.

Judiciary

The judiciary is one of the least trusted institutions in Bulgaria. From a legal point of view the judiciary (which comprises the prosecutorial offices as well) enjoys a very high level of independence and autonomy, ensured in the composition of the Supreme Judicial Council (SJC), the tenure of judges and prosecutors, and its relative budget independence. Yet, practice does not live up to the normative commitments of the system, and there have been a series of scandals suggesting possible external influence in the decision-making of magistrates (the most serious being an appointment scandal in the SJC).

In terms of resources the system is well provided for, as its budget has been prioritised by successive governments. Improvements in the area of transparency and personal integrity have been registered with the introduction of an ethical code, as well as asset declaration mechanisms. Further, there are various commissions and bodies responsible for the personal performance and integrity of magistrates. The biggest weakness of the system is in the actual results in the fight against corruption. Although output indicators are very difficult to establish in this area, there is a virtual consensus by internal and international observers that the results of the system as a whole are unsatisfactory.

Law enforcement agencies

An overall assessment of law enforcement agencies is difficult because they include two constitutionally independent branches – on the one hand, the prosecutorial office and investigators (which under the Constitution are part of the judiciary) and on the other, the police and the bodies of the Ministry of Interior (which are part of the executive branch).

Improvements in this area include the adoption of asset disclosure rules and rules against conflicts of interest. Further, the resources in the system appear to be more or less satisfactory, although there remains a dispute on this matter. Generally, the budgets of both the prosecutorial office and the Ministry of Interior were prioritised by the last government, and the personnel of these institutions are rather extensive. The main weakness remains the anti-corruption output, which is judged by commentators as low. Further, there are weaknesses in the enforcement of certain rules or at least controversial interpretations of conflicts of interest standards, as the case of the private donations to the Ministry of Interior suggests.

Supreme audit institution

The Bulgarian National Audit Office (NAO), the highest scoring in the report, is an important institution for the independent external audit of public finance. The National Audit Office Act determines the range of public bodies to be audited by the NAO, which at present include – apart from the budgetary bodies – companies with national or municipal participation and political parties.

Although the NAO performs relatively well, the office does not play an active role in improving financial management; there is in principle an opposition to the idea of empowering the NAO to sanction misbehaviour. A review of the office's reports shows that they focus on legality and compliance with accounting standards, rather than the expedience of financial management. Numerous media publications show that the office is actively detecting misbehaviour, but apart from approaching the competent sanctioning authorities, no further action is taken. This is a problem in view of the general reluctance of the Bulgarian administration to impose sanctions, and its tendency to shift responsibility to the judiciary.

Ombudsman

The ombudsman is relatively new in Bulgaria, but its activity is well regulated by the Constitution and additional legislation. The ombudsman's work is ensured through sustainable but low financial resources. The law provides sufficient backing for the ombudsman's independence, but there are no criteria for professionalism during the selection of the ombudsman candidates. Candidates are selected on the basis of a political nomination process by political parties, and the election is conducted by a simple majority, whereby naturally the ruling party(ies)' candidate wins.

The law requires the ombudsman to report annually to the parliament and introduces requirements for when the report has to be submitted and the type of information it should contain. However, it provides no sanctions for the failure to conform to the accountability requirements. The available public information provides evidence that the ombudsman has made attempts to act independently of any external influences.

Anti-corruption agencies

Despite the many structures dedicated to the fight against corruption in Bulgaria, there is no specific anti-corruption agency that fits the concept applied in this study. However, among the plentiful departments, directorates and commissions both at the national and the local level, the national security agency (SANS) deserves special attention. It is a strong institution and among its competences is the counteraction of high-profile political corruption. The main arguments for its introduction in 2008 were grounded in the fight against corruption and organised crime. Yet, SANS has gradually refocused its activities on the security and intelligence field; some experts are even inclined to limit its functions exclusively to intelligence.

SANS has no investigative powers, and as a security agency it is neither independent nor fully transparent. Although it has a high level of resources, it scores poorly in all other areas, mainly due to its secretive nature. It should be stressed however, that this assessment considers the role of SANS as an anti-corruption agency and does not assess its work as a counter-intelligence secret service.

Public sector

Although the funding is generally adequate, there is no transparency of the finances dedicated to the maintenance of the public administration. The municipal authorities are strongly dependent on the will of politicians at the central level in terms of the allocation of resources for the local authorities' duties. The maintenance of the local administration is a delegated government duty and the dedicated funds are determined at the central level. On the whole, Bulgarian legislation provides sufficient regulations to ensure the independence of the administration from unlawful political and economic actions. A Publicity of Assets of Senior Public Officials Act, an Access to Public Information Act and a Protection of Classified Information Act have been passed. There is, however, no normative framework for the transparency of the management of public property and there are gaps in the framework regarding control and sanctions in relation to the obligation to announce public information.

Transparency in the work of the public administration is improving; legislation includes rules for integrity in the work of the employees and institutions. These improvements are to a large extent in compliance with the existing international standards and laws are harmonised with the European legislative norms. Regardless of the large degree of provision by legal norms, the effectiveness of detection and sanctioning of corrupt practices in the public administration is not at the expected level. For instance, there is consensus among commentators and analysts that the area of public procurement remains vulnerable to widespread corrupt practices.

Political parties

After the critical parliamentary elections of 2001 the party system transformed from a two-bloc system into a multi-party system with considerable fragmentation of the vote, easy access for new-comers, and

volatile party affiliation. On the one hand, the fact that newly-created parties are able to win elections and form a government (as happened in 2001 and 2009), qualify the political environment as sufficiently pluralistic and inclusive. On the other, the pattern of frequently and dramatically changing majorities is not conducive to the emergence of a stable set of accountability and integrity mechanisms. The anti-corruption vigour of the ascending parties loses steam during their time in office, and is gradually replaced by the anti-corruption rhetoric of a new power claimer.

After various amendments of the party law, parties now are generously funded by the state, and subject to financial control by the State Audit Office. Remaining problems are the lack of oversight bodies to control observance of party and campaign regulations (especially during elections). A further problem has been caused by the allocation of the public subsidy: more transparency in this area is highly recommended.

Electoral management body

The new Electoral Code, approved by the parliament in December 2010 (in force since 28 January 2011) set up a permanently functioning Central Election Commission (CEC) with a five-year mandate. Generally, over the last decade the quality of the administration of the electoral process has somewhat deteriorated. The legislation was fragmented, not cohesive and subject to frequent changes. In the absence of a permanent CEC the election administration underperformed, was unable to build on previous experience and often acted as an office of the ruling majority. The slip in standards was caused by a combination of deliberate strategy by the ruling majorities to introduce new and soft legal provisions in the election laws and the subsequent inability of the respective CEC to come up with instructions to clarify the grey areas of implementation.

The following issues emerged as most important: lack of control over out-of-country voting, registration of parties/ coalitions, the application of absentee certificates, the increasing number of reports/ evidence of vote buying and the unofficial campaign budgets allocated for that purpose. The presidential and local elections in 2011 were the first to be carried out under the new legislative framework and although it is premature to make judgments on its efficiency, the above mentioned problems remain. Due to the new regulations and the increased legal safeguards, which made the procedure cumbersome, the administration of the electoral process was impeded. This led to delays in the publication of the official results, numerous allegations of maladministration, and court proceedings for the cancellation of the electoral results, some of which are still pending.

Media

Although the legislative framework is relatively adequate and supports the development of a diverse media, the specialised legislation with respect to broadcast media is out-dated and chaotic due to multiple *ad hoc* legislative amendments. Nevertheless, the main problems in the sector come from applying the

legislation, since a majority of the players in the media do not conform with it. A major flaw with respect to the regulation of the press, is the lack of clear rules on transparency of the ownership of press media outlets. There are no specific regulations with respect to vertical and horizontal media concentration: the general anti-trust legislation is applied to the sector, without paying any attention to the specific nature of the media or recognising the dangers an excessive concentration in this field present for reducing pluralism and independence.

The work of the main regulatory body in the sector – the Council for Electronic Media (CEM) – is often criticised because of the dependence of its members, who are politically appointed. Another source of its dependence is funding, which is predominantly state-guaranteed (through a state subsidy). The long-established practice of pre-term termination of its mandate still continues, further substantiating the concerns of political dependence. The lack of special education and qualification requirements for journalists, coupled with their relatively large number, compromises the quality of the journalistic output and increases their dependence, as they are viewed as easily expendable. Self-censorship remains an issue. The reasons for this include: economic dependence of the crisis-stricken media on the state and potent economic groups. Investigative journalism is weak, with some coverage of minor problems that do not pose a threat to the interests of the media owners and their business and political friends.

Civil society

Bulgarian civil society is involved in anti-corruption activities and there are a number of influential organisations working in this area. Notwithstanding, there are several remaining problems, which include limited funding (especially private), a risk of overtaking of the NGO sector by civil servants and politicians, a generally low level of transparency of funding, remaining suspicions of conflicts of interest and low administrative capacity. Civil society organisations – or at least some of them – could still function as a check to the government, as a source of new ideas and initiatives, yet there are increasingly questions about the responsibility and accountability of the NGOs for the policies they sponsor.

Business

The private sector is faced with a relatively good framework of laws and regulations with respect to ensuring the integrity of the actors involved. However, the implementation and enforcement of this framework leaves a lot to be desired. It does not create conditions favouring people with integrity and does not sanction people found to be involved in dubious activities. This is especially true for internal integrity mechanisms. At the same time, while claiming anti-corruption policy engagement and putting corruption consistently among the major problems to be addressed by political and policy actions, Bulgarian businesses rarely leave the realm of rhetoric and are very passive in engaging or supporting civil society efforts in fighting corruption.