COOPERATION AND VERIFICATION MECHANISM WITH REGARD TO BULGARIA AND ROMANIA

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Background information
INTRODUCTION AND EU REPORTS

European Commission has a webpage dedicated to CVM (Mechanism for cooperation and verification) Mechanism for cooperation and verification for Bulgaria and Romania (http://ec.europa.eu/cvm/index_en.htm)

The reports on progress in Bulgaria and Romania (http://ec.europa.eu/cvm/progress_reports_en.htm)
Key documents (http://ec.europa.eu/cvm/key_documents_en.htm)

Introduction: "When they joined the EU on 1 January 2007, Romania and Bulgaria still had progress to make in the fields of judicial reform, corruption and organized crime.

To smooth the entry of both countries and at the same time safeguard the workings of its policies and institutions, the EU decided to establish a special "cooperation and verification mechanism" to help them address these outstanding shortcomings.

In December 2006, the Commission set criteria ("benchmarks") for assessing progress made on these issues (consult the reports: http://ec.europa.eu/cvm/progress_reports_en.htm).

The decision to continue assessing Bulgaria and Romania shows the EU's commitment to see the two countries develop the effective administrative and judicial systems they need to deliver on the obligations of membership as well as enjoying the benefits.

Progress on judicial reform, corruption and organized crime will allow Bulgarians and Romanians to enjoy their full rights as EU citizens."

LEGAL BASIS

Romania: Decision of 13/12/2006 [C(2006) 6569]

SELECTION OF ARTICLES

The Cooperation and Verification Mechanism for Bulgaria and Romania – second wave / TNS Political & Social, Flash Eurobarometer 406, Jan 2015

Beyond the carrots and sticks paradigm: rethinking the Cooperation and Verification Mechanism Experience of Bulgaria and Romania / Linka Toneva-Metodieva, In: Perspectives on European Politics and Society, v. 15, no. 4, 2014

1 The non-exhaustive list of selected publications covers a period from 2009 to 2014. A part of the information for this list has been provided by the European Parliamentary Research Service.


It was not possible to link directly to the article, please go to page 623.


Romanian politics: Struggling with the grass roots and digging for democracy / Agnes Nicolescu, Politics and Institutions, European Policy Institutes Network Papers, Aug 2012, 11/29

Europeanization and Effective Democracy in Romania and Bulgaria / Mihaela Racovita, In: Romanian Journal of Political Science, v. 11, n. 1, 2011

EP Library - Brussels, S 12.20.04 EUE FIG 12>
Book can be borrowed in EP Library

See chapter 6. The 2007 accession of Bulgaria and Romania: ritual and reality / Kalin Ivanov

The Cooperation and Verification Mechanism Three Years Later: What Has Been Done and What Is Yet to Come / Dimitar Markov, Friedrich Ebert Foundation, Office Bulgaria, Bulgaria reports 1/2010

On High Stakes, Stakeholders and Bulgaria's EU Membership / Antoinette Primatarova, Affiliation Centre for Liberal Strategies, European Policy Institutes Network Papers, Apr 2010, 21

Safeguarding the rule of law in an enlarged EU the cases of Bulgaria and Romania / Susie Alegre, Ivanka Ivanova, Dana Denis-Smith, Centre for European Policy Studies (Bruxelles), Brussels; CEPS, 2009

Cooperation and Verification Mechanism, Eu inside, collection of articles.
REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

On Progress in Romania under the Co-operation and Verification Mechanism

{SWD(2015) 8 final}
1. INTRODUCTION

The Cooperation and Verification Mechanism (CVM) was set up at the accession of Romania to the European Union in 2007. It was agreed that further work was needed in key areas to address shortcomings in judicial reform and, the fight against corruption. Since then CVM reports have charted the progress made by Romania and have sought to help focus the efforts of the Romanian authorities through specific recommendations.

The CVM has played an important role in the consolidation of the rule of law in Romania as a key facet of European integration. Monitoring and cooperating with the work of the Romanian authorities to promote reform has had a concrete impact on the pace and scale of reform. The Commission's conclusions and the methodology of the CVM have consistently enjoyed the strong support of the Council, as well as benefiting from cooperation and input from many Member States.

This report summarises the steps taken over the past year and provides recommendations for the next steps. It is the result of a careful process of analysis by the Commission, drawing on inputs from the Romanian authorities, civil society and other stakeholders. The Commission was able to draw on the specific support of experts from the magistracy in other Member States to offer a practitioner's point of view. The quality of information provided by the Romanian authorities has improved substantially over time – itself an interesting reflection of progress in management of the reform process.

The 2014 CVM report noted progress in many areas, and highlighted the track record of the key anti-corruption institutions as an important step towards demonstrating sustainability. At the same time, it noted that political attacks on the fundamentals of reform showed that there was no consensus to pursue the objectives of the CVM. This report returns to both trends to assess the extent to which reform has taken root.

The importance of the CVM has been borne out by opinion polling of Romanians themselves. A Eurobarometer taken in the autumn of 2014 showed a strong consensus in Romanian society that judicial reform and the fight against corruption were important problems for Romania. The results also showed a substantial increase in those who see an improvement in recent years, and some confidence that this will continue. There is clear support for an EU role in addressing these issues, and for EU action to continue until Romania had reached a standard comparable to other Member States.

Consistency in track record is one of the key ways to demonstrate sustainability in progress towards the CVM objectives, one of the conditions to show that a mechanism like the CVM would no longer be required. The Commission has paid particular attention to this aspect in its monitoring this year. Building strong and durable institutions is an important consideration in the targeting of EU funds to support the CVM objectives, including by effective prioritisation of Cohesion Policy under the thematic objective for enhancing institutional capacity and efficiency of public authorities. With more consistent ownership and effective prioritisation,
Romania can work together with EU partners⁴ to maintain a momentum in reform over the coming year.

2. STATE OF PLAY OF THE REFORM PROCESS IN ROMANIA

2.1. Judicial independence

Appointments

The risk of political interference in senior appointments has been one of the major concerns with regard to judicial independence. CVM reports have underlined the importance of transparent and merit-based selection procedures.⁵ In 2014, there were no appointments required of judges or prosecutors at the highest level. An important test case is coming now with the nomination of a new Chief Prosecutor for the Directorate for Investigation of Organised Crime and Terrorism (DIICOT), following the resignation of the Chief Prosecutor in November.⁶ The procedure includes a strong political element in terms of the role it gives to the Minister of Justice.⁷ The Superior Council of the Magistracy (SCM) is working on an amendment to the law to change this, and to align appointment of prosecutors on the procedures used for judges, in line with the guidance of the European Commission for Democracy through Law of the Council of Europe (Venice Commission):⁸ if this were to be pursued, the next step would be for the government to propose this to Parliament. 2015 provides an important opportunity for Romania to fully commit to transparent and merit based nominations, in time for a number of important appointment procedures for senior positions in the judiciary expected in 2016.⁹

Respect for judges and the judicial process

Previous CVM reports have noted the prevalence of politically motivated attacks targeting judges and prosecutors in the media.¹⁰ Whilst not reaching the scale of attacks of previous years (2012 in particular), this issue remained a problem in 2014, often linked to corruption cases involving influential public figures. Examples reported by the SCM included cases where the media had reported demonstrable untruths or accused magistrates (or their families) of corruption. There were also cases where the Constitutional Court received some strong criticism from certain public figures.¹¹

⁴ Some Member States provide technical assistance to Romania in CVM-relevant areas.
⁶ The resigning Chief Prosecutor of DIICOT is indicted for corruption for deeds preceding her nomination in 2013. In January 2013, the Commission expressed concerns about the ongoing process and recommended that Romania ensures that the new leadership in the prosecution is chosen from a sufficient range of high quality candidates, who meet the criteria of professional expertise and integrity, after an open and transparent process. COM(2013) 47 final, p7.
⁷ This was the source of controversy in respect of appointments to the senior posts of the prosecution in 2012-13.
⁸ European standards as regards the independence of the judicial system from the Venice Commission point to the importance of avoiding too great a role for political figures in appointments to the prosecution.
⁹ General Prosecutor and Chief Prosecutor of the DNA: May 2016, President of the High Court of Cassation and Justice: September 2016, Superior Council of Magistracy: elections in 2016. The President and Vice-President of the National Integrity Agency will also be appointed in April 2016.
¹¹ For example after the ruling on data retention laws.
One of the roles of the SCM is to guarantee the independence of the judiciary. Since 2012, the SCM has a procedure in place, involving the Judicial Inspection, for defending the independence of justice and the professional reputation, independence and impartiality of magistrates. The number of requests to the SCM to trigger this procedure increased in 2014, compared to 2013 – though this could be attributed to the greater credibility of the system, rather than an increase in problems. Despite this increase, the Judicial Inspection was able to reduce the time needed for investigations, allowing the SCM to react faster to the attacks, even within one or two days. This offered a more effective rebuttal.

Whilst recognising the benefits of the procedure set up by the SCM, NGOs and representatives of magistrates' organisations have noted the difficulty in securing an equivalent coverage of SCM statements, as compared to the original accusation. There have been calls for the National Audiovisual Council to play a more active role in sanctioning the media for breaches in professional ethics. More proactively, steps have been taken by the judicial authorities to improve the information available to the media on developments in the justice system.\(^{12}\)

It remains the case that there seem to be no agreed lines to define where political actions interfere with the judiciary and judicial decisions, still less sanctions for exceeding these limits. The 2014 CVM report included a recommendation to "ensure that the Code of Conduct for parliamentarians includes clear provisions so that parliamentarians and the parliamentary process should respect the independence of the judiciary".\(^{13}\) Such provisions are not included in the Code (see repeated recommendation below).

The Constitutional Court and respect for court decisions

The Constitutional Court (CCR) has been instrumental in supporting the balance of powers and respect for fundamental rights in Romania, as well as resolving issues which the judicial process had not resolved. After the entry into force of the new Criminal Code and Code of Criminal Procedures, CCR rulings solved major stumbling blocks. Another important example concerned the law on incompatibility, resolving an issue which had been causing inconsistency in court judgements.\(^{14}\)

Some of the CCR rulings have been challenging for the justice system, requiring adaptations to working methods. Others have required urgent amendment of the laws. The reaction of the judicial authorities and the Ministry of Justice has respected the required deadline. However, there are clear examples where Parliament has not immediately followed up on Constitutional Court rulings relevant to legislation or the rights and obligations of parliamentarians.\(^{15}\)

As for respect for court decisions more generally, there seems to be an increasing acknowledgement and willingness from the justice system to take action to ensure that court decisions are followed up. But important problems remain,\(^{16}\) and businesses and NGOs have pointed to non-respect of decisions by public authorities, who might be expected to set an example.

\(^{12}\) Technical report section 1.1.2.
\(^{14}\) Technical report section 1.1.1
\(^{15}\) For example in the area of incompatibility decisions, there is still reluctance from some institutions, including the Parliament, in applying final decisions against their members. See below, in the Integrity section, and in the technical report.
\(^{16}\) See below with respect to confiscation.
Discussions on a revision of the Constitution were taken forward at the start of 2014, with draft amendments being presented in February 2014. Many of them were ruled unconstitutional by the Constitutional Court and several serious problems were flagged by the Venice Commission. If work resumes, this would be an opportunity for a fresh look at how the Constitution could be used to cement judicial independence.

The process of revision of the Constitution is relevant for the CVM as some amendments touch on justice and the functioning of the Superior Council of Magistracy. The stop-start process so far has been criticised for lacking in transparency, both in the timeframe and the consultation process. The involvement of the Venice Commission has however helped to focus the process, and the full participation of key institutions like the SCM would help to give confidence that any amendments would give full regard to the independence of the Judiciary.

Past CVM reports have touched on the recourse to Government Emergency Ordinances (GEO) as part of the legislative system within which laws on judicial reform and corruption have to be taken forward. Two difficulties have been identified, including in discussions with the CCR. One is the frequent use of GEO, which limits the opportunities for consultation and has led to a lack of legislative clarity – with consequences for the unification of jurisprudence and practice. The second is the opportunity to challenge GEO. The use of GEO can be challenged by the Ombudsman. Past CVM reports have noted the importance of this function in terms of the balance of powers and quality of the legislative process. The current Ombudsman, elected in April with the support of only one party, has expressed the view that the Ombudsman should not get involved in questions that concern the balance of powers between state authorities and focus essentially on individual rights issues. Whilst it is understandable that the Ombudsman has a margin of appreciation as to when to use his power to seize at an early stage the CCR on the constitutionality of emergency ordinances, this self-limitation effectively creates a gap, which in the current institutional setup of Romania cannot be filled by other actors.

2.2. Judicial reform

The fact that Romanian authorities involved the Venice Commission as well as the European Commission in the constitutional reform process is a welcome development. The Venice Commission was also critical on the changes concerning the justice system, in particular shifting responsibility for investigating and prosecuting parliamentarians from the HCCJ. The Venice Commission also called for a more careful look at the status of prosecutors.

This has also been flagged by the Venice Commission.

More broadly, the “Strategy for strengthening the public administration” adopted by the Government in October 2014 should help to improve the quality of legislation.

The CVM report of July 2012 had noted: “The Romanian authorities need to ensure the independence of the Ombudsman, and to appoint an Ombudsman enjoying cross-party support, who will be able to effectively exercise its legal functions in full independence.” (COM (2012)410), p.18.

For example, the August 2014 GEO on "political parties migration" was widely considered to raise constitutional issues. The CCR was not seized by the Ombudsman. The law was subsequently declared unconstitutional upon a referral by MPs at a later stage of the procedure, by which time it had already come into force.

The importance of judicial reform in Romania is also recognised in the context of the European Semester, through the Country Specific Recommendations adopted by the Council in July 2014 for Romania, calling for Romania to improve the quality and efficiency of the judicial system (2014/C 247/21).
New Codes

Previous CVM reports underlined the importance of the new legal Codes to the modernisation of the Romanian judicial system.\textsuperscript{23} The implementation of the new Criminal and Criminal Procedures Codes in February 2014 was a major undertaking, and a test of the ability of the judicial system to adapt. The change was successfully achieved, with the key institutions working together to good effect: the Ministry of Justice, the High Court of Cassation and Justice (HCCJ), the SCM, the prosecution and the National Institute for the Magistracy (NIM). The Romanian magistracy proved able to adapt to the new codes without an interruption in its work. Some innovatory measures, such as a possibility for plea bargains, seem to have already been used to good effect.

Some complicated transitional issues did appear. In a number of cases, such as the application of the principle of the most favourable law, solutions were found. For some issues, the government adopted changes through emergency ordinances. For other issues, legislative proposals were made, but parliamentary procedures are still outstanding. Further adaptations will also be needed following rulings of the CCR. For example, the Court ruled in December that some provisions of the Codes regarding judicial control and the preliminary chambers were non-constitutional.\textsuperscript{24} On judicial control, the Ministry of Justice acted to ensure continuity within the accepted time limit. On preliminary chambers, the HCCJ and the SCM immediately started working on practical solutions to allow for the presence of defence lawyers.

A further practical challenge will come with the entry into force of deferred provisions of the civil codes in 2016. However, there is evidence that the civil codes have succeeded in some of their objectives, notably with the decline in the length of trials (about one year and six months on the average). A similar evaluation of the impact of the criminal codes is expected in February 2015.

Strategy for the Development of the Judiciary 2015-2020

The Strategy for the Development of the Judiciary for the years 2015-2020 was approved by the government on 23 December 2014. This document draws heavily on CVM recommendations, as well as on studies developed with the World Bank, in particular the Functional Analysis of the Romanian judiciary.\textsuperscript{25, 26} Drawing on a series of underlying principles based on the rule of law, the strategy defines objectives for further reform in the period 2015-2020 to make the justice more efficient and accountable and to increase its quality. The strategy and its action plan should also be the basis for defining the priorities for EU funding in the area of justice. The approval process for the document was slow, with a first draft already ready in September 2013. Consultation took place in autumn and the Strategy and its action plan should be finalised by April 2015.

Experience suggests that such a strategy benefits from wide ownership and involvement by the key actors. However, the SCM seems to have been working primarily on various projects in parallel.

\textsuperscript{23} COM(2014) 37 final
\textsuperscript{24} See technical report section 1.1.1.
\textsuperscript{25} http://www.just.ro/LinkClick.aspx?fileticket=h7Nit3q0%2FGk%3D&tabid=2880
\textsuperscript{26} The draft in public consultation is based on: Judicial Functional Review; CVM Reports and EC recommendations; Court Optimization; Inputs from MoJ specialized departments, Superior Council of Magistracy, Public Ministry, High Court of Cassation and Justice, National Trade Office, National Administration of Penitentiaries.
Budget and human resources

Despite the pressures on public finances, the Minister of Justice secured considerable increases in funding to facilitate reform. In 2014 the budget increased by 4% and the planned budget of 2015 includes another increase. This has helped to fund new positions in courts and prosecution offices, including 200 new auxiliary positions in courts and prosecutor offices.

The National School of Clerks, the National Institute of Magistracy and the SCM organised training and the competitions for the new posts, and the vacancies were filled in rapidly. Future needs identified include more court clerks, modernizing IT equipment and renovating court buildings, as well as supporting key institutions, such as the Judicial Inspection and the National School of Clerks. EU funding is expected to play a major role in supporting specific projects linked to reform.

Judicial efficiency

Workload is a recurrent problem within the judiciary. This has an impact on the quality of the judicial decisions and the user-friendliness of the judicial system. The Ministry of Justice and the SCM have put forward a number of legislative proposals to address the workload issue. One law (swiftly adopted by Parliament in October 2014) addressed duplication in the enforcement of court decisions, and is estimated to have relieved civil courts of about 300 000 cases. It has proved more difficult to find a consensus on closing small courts, and a law to give more freedom in dividing the roles of judges and court clerks seems to have stalled. Imaginative solutions, like peripatetic courts or breaking the parallelism between courts and prosecution offices, have been suggested as a way forward.

In May the SCM created a working group to define how to measure, analyse and improve the performance of all courts. This seems a valuable step in terms of providing the tools to manage the performance of the justice system, notably in the context of the overall justice strategy. It could usefully include measurement of how the justice system has followed up to ensure the enforcement of their decisions.

The SCM continues to sanction professional misconduct and disciplinary offences of magistrates. The Judicial Inspection has now established itself as the key body to investigate disciplinary offences. The number of disciplinary actions increased in 2014 in comparison to 2013, and decision making has been swifter.

Several opinion polls have shown an increased public trust in the judiciary in Romania, in particular in the institutions pursuing high-level corruption.27 This is an important recognition of progress, but with this comes increased expectations. Lawyers, businessmen, and NGOs still report difficulties in their relationships with the courts.

Consistency of jurisprudence

Another essential element of judicial reform is the consistency of jurisprudence. The HCCJ has further developed its use of preliminary rulings and appeal in the interest of the law to unify jurisprudence. It has also pursued measures to improve the dissemination of court judgements. Similar practical steps have been seen in the prosecution and in the judicial leadership more widely. Thematic inspections conducted by the Judicial Inspection also contribute to consistent practice.

27 Technical report section 1.4.8
Despite these efforts, a number of obstacles remain to consistency. The accountability of the magistracy if they decide to diverge from established practice or case-law still does not seem clear: the SCM had to make clear that the independence of the judiciary cannot be an excuse for non-unitary practice. There is also a responsibility on public administration to accept judgements reached on repetitive issues. This would limit the number of court cases and strengthen legal certainty by avoiding divergent decisions on identical issues.

There has been progress on the publication of court decisions. The Ministry of Justice finalised a project (financed through EU funds) of a portal consolidating existing legislation. The HCCJ has an impressive website. The SCM has also signed a partnership to organise the publication of case law, to start in August 2015.

2.3. Integrity

The National Integrity Agency and the National Integrity Council

The National Integrity Agency (ANI) has continued to process a strong flow of cases in 2014. A high percentage (70%) of ANI's decisions on incompatibilities and conflicts of interests are challenged in court, but about 90% of these cases have been confirmed by the courts. ANI's interpretations of the law have been confirmed in both the CCR and the HCCJ. It can therefore be seen as acting on a sound legal footing. In 2014, the HCCJ also helped by finding ways to accelerate incompatibility cases, despite other calls on its workload. This has helped to deliver certainty and to improve the dissuasive effect of the integrity laws.

However, whilst the borderline between judicial independence and inconsistency is a sensitive area, there were several examples this year of contradictory decisions from different courts (even at the appeal court level) providing different interpretations. This included interpretations which differed from the HCCJ itself.

The follow up of ANI's decisions is perceived to be improving. However, there are still cases where a lack of implementation has forced ANI to send the file to the prosecution (not applying a final decision is a criminal offence) or issue fines. This seems to imply a low level of public understanding of incompatibility rules as a means to prevent conflicts of interest. This is illustrated by the high number of elected officials who are found to be incompatible. As the jurisprudence strengthens the recognition that incompatibility decisions must be enforced, other measures could also be used to ensure that the rules are well known.

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28 The database offers free access to Romanian legislation since 1989 in a user friendly format.
29 Technical Report Section 2.1.3. 638 cases were notified to ANI and 541 started ex-officio. ANI has finalised 514 reports in 2014. Compared to 2013, there has been an increase in cases of conflicts of interest and unjustified wealth, and a decrease of cases of incompatibilities.
30 One of the candidates in the May 2014 EP elections had been subject to an incompatibility decision. His eligibility to run was challenged by ANI, but the Court of Appeal ruled that he could run (although the issue in question was the question of the "same office", on which the HCCJ had already ruled). The Court of Appeal did not refer the case to the HCCJ, so there was no mechanism for the HCCJ to restore its own interpretation of this question.
31 For example, ANI had to fine members of a city council until they eventually applied an ANI decision on conflict of interests concerning one of their peers and removed him from office. ANI even had to consider taking similar steps against a Parliamentary committee.
32 See technical report section 2.1. 294 cases of incompatibility were established by ANI in 2014; 70% concern elected officials.
From a staffing and budget point of view, the situation of ANI has been stable in 2014. ANI has secured the resources to undertake an important new project in 2015. The "Prevent" IT system for ex-ante check of conflicts of interests in public procurement will be fully finalised in mid-2015 and should bring major benefits in avoiding conflict of interest in the first place. The system will cover procurement both with EU and national funds. The necessary implementing law should be adopted in Spring 2015, after consultation.

The National Integrity Council (NIC) has continued to fulfil its role as an oversight body, notably by intervening publicly as well as in front of the Parliament when required. The current NIC's mandate expired in November 2014. The initial process for appointing a new NIC was subject to a number of controversies, including the nomination (in a first phase) of candidates who were themselves subject to ANI proceedings, casting doubts on the full commitment of authorities to support the integrity institutions and suggesting that the goal of integrity is not well understood.

**The integrity framework: Parliament**

The stability of the legal framework on integrity has remained a problematic issue. There have been attempts in Parliament to modify elements of the legal framework. Although none of these passed into law, there was no evidence that the implications for incompatibilities or corruption risks were assessed in advance, and consultation with ANI did not take place. A particular issue concerns rules on incompatibilities affecting locally elected authorities, such as mayors, given their key role in public procurement. Whilst it is notable that there was no repeat of the Parliamentary vote of December 2013, there remains a strong sense that there is no consensus in Parliament in favour of strong integrity laws.

A previous plan to codify all rules on integrity – which would have helped to improve their coherence and clarity – has been put on hold, the reason being concern that the legislative process would water down existing rules. This is a lost opportunity to remove any risk of ambiguity in the rules. It will also be important to cement in legislation the CCR rulings of 2014 confirming the constitutionality of provisions on incompatibilities.

The follow up of ANI's decisions (when confirmed in court) by the Parliament remains inconsistent, in spite of hopes that reforms would bring greater automaticity. In one emblematic case, a solution was only found after the resignation of the Senator. In another case, the Chamber took many months to take a decision, in spite of arguments that the rules now made respect for a final court ruling to be automatic. A new case of a Deputy who has been found incompatible is awaiting decision in the Parliament.

**2.4 The fight against corruption**

**Tackling high-level corruption**

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34 For example the way the legislative proposal amending the Law no 51/2006 on community services or public interests was put forward.

35 In particular, the amendments to the Criminal Code adopted by Parliament in December 2013, declared unconstitutional by the Constitutional Court in January 2014, would have diluted the effectiveness of the integrity framework.

36 Notably on the issue of the "same public office" technical report section 1.1.1

37 The decision was some six months after the CCR ruling, but some 2 years after the HCCJ ruling.
Recent CVM reports\textsuperscript{38} have been able to point to a growing track record in terms of effectively fighting high-level corruption cases, a trend which has been confirmed in 2014. This is the case both at prosecution level by the DNA\textsuperscript{39} and at the trial stage by the HCCJ.\textsuperscript{40} This is also a confirmation that there remains a major problem.\textsuperscript{41} \textsuperscript{42} 

DNA activity in 2014 covered a wide range of high-level cases, in all strands of public offices and involving public figures in a variety of political parties. Indictments and ongoing investigations included serving and former Ministers, parliamentarians, mayors, judges and senior prosecutors.

HCCJ cases included final instance convictions of a former Prime Minister, former Ministers, Members of Parliament, mayors and magistrates. There have also been other important cases, involving influential business figures, concluded at Court of Appeal level. However, it remains the case that the majority of sentences are suspended in corruption cases (although this is less marked at the level of the HCCJ).

For most of 2014, DNA had little success in persuading Parliament to accede to requests from DNA for the lifting of immunity of Members of Parliament to allow for the opening of investigation and the application of preventive detention measures. This trend appears to have changed in late 2014, when the Parliament lifted the immunity of several parliamentarians investigated by DNA in a large corruption case. Parliament’s response to DNA requests seems arbitrary and lacking objective criteria. In contrast, all requests sent to the President of Romania for lifting of immunities of Ministers were accepted.\textsuperscript{43} There have however been no clear rules established to follow up the CVM recommendation to ensure swift application of the Constitutional rules on suspension of Ministers on indictment and to suspend parliamentarians subject to negative integrity rulings or corruption convictions.\textsuperscript{44} The fact that Ministers continue in office after indictment on criminal charges, and parliamentarians with final convictions for corruption to stay in office, raises broader issues about the attitudes towards corruption in the Romanian political world.

The rejection of the amnesty law by the Parliament in November 2014 gave a positive signal in terms of opposing a law which would effectively result in exonerating individuals sentenced for corruption crimes. Nonetheless, the fact that only a week after this vote, the idea of a new draft law on collective amnesty was again floated in Parliament suggests that the debate has not been closed.

\textsuperscript{38} COM(2014) 37 final, p. 9.  
\textsuperscript{39} Technical Report Section 3.2.3. In 2014, DNA registered 4987 new cases, which is a very sharp increase compared to 2013. 246 cases were sent to trial, regarding 1167 defendants, 47 of these defendants were indicted with plea bargain agreements.  
\textsuperscript{40} Technical Report Section 3.1. Between January 1 and December 31, 2014 the Penal Chamber settled, as first instance, 12 high-level corruption cases and the Panels of 5 judges settled, as final instance, 13 high-level corruption cases.  
\textsuperscript{41} Also corroborated by perception studies, such as the Flash Eurobarometer 406, showing that at least nine out of ten respondents in Romania said that corruption (91\%) was an important problem (stable since 2012).  
\textsuperscript{42} This is also recognised in the Country Specific Recommendations addressed to Romania by the Council in 2014 (2014/C 247/21) and in the Anti-Corruption Report (COM(2014) 38 final).  
\textsuperscript{43} Ministers, or ex-Ministers who are not Members of the Parliament at the same time.  
\textsuperscript{44} COM(2013) 47 final, p.7.
The increase of activity also concerns cases of corruption within the magistracy, recognised as a particularly corrosive form of corruption.\textsuperscript{45} According to DNA, this high figure does not reflect an increase of corruption within the magistracy (although the scale of the phenomenon constitutes a cause of concern), but rather an increase in the number of signals from the public.\textsuperscript{46} Such cases are complex and a new special DNA unit has been established with this remit.

\textit{Tackling corruption at all levels}

In recent years, CVM reports have found it difficult to identify a track record in tackling cases of corruption in society at large. However, 2014 saw some signs of progress. The Public Ministry has taken a number of concrete steps to improve the results of the prosecution in this area.\textsuperscript{47} The Anti-Corruption General Directorate (DGA), both in support of the prosecution (DNA and general prosecution) and as an internal anti-corruption body within the Ministry of the Interior, has continued to play a significant role – though plans to extend its competence to other Ministries seem to have been blocked. However, the number of court decisions on corruption cases has decreased in 2014, and the fact that 80\% of convicted persons receive a suspended sentence remains a high proportion.

The National Anticorruption Strategy 2012-2015\textsuperscript{48} has evolved into an important framework for the public administration. The second round of evaluation, based on peer review, took place in 2014 at the level of local public administrations. The concept is based on GRECO and OECD practices. Institutions which are part of the NAS commit to observing a set of 13 legally binding preventive measures and submit themselves to peer review. This work is also supported by concrete preventive projects run by NGOs with the support of EU funds (notably in the Ministry of Health and in the Ministry of Regional Development). Whilst this work remains piecemeal and has to work hard to take root in administrations struggling with limited resources, there are a number of tangible success stories.

Risk assessment and internal controls are key areas for action. Some recent cases have shown substantial bribery cases which might have been identified earlier by careful scrutiny of the records, but which had to rely on a signal by a member of the public.\textsuperscript{49} At a time of pressure on public spending, targeting of high-value areas of both tax and spending would be expected. Lessons might also be learnt in terms of who has to make declarations of assets, and how these are controlled.

Concerning asset recovery, and in particular the recovery of damages, the Romanian authorities have acknowledged that the system needs to be improved. Though one of the problems in this area is the need to improve data-gathering, the recovery rate secured by the National Agency for Fiscal Administration (ANAF) in the execution of court decisions is estimated at only 5-15\% of the assets subject to a court order. This makes the sanctions less dissuasive, as well as perpetuating the loss to the victim (often the state in corruption cases) and providing another example of failure to implement court decisions. The decision by the

\textsuperscript{45} In 2014 23 judges (including four HCCJ judges) as well as 6 Chief prosecutors and 6 prosecutors have been indicted for corruption.

\textsuperscript{46} Reflecting a more general trend of increased public confidence in DNA and judiciary more widely.

\textsuperscript{47} Technical Report Section 4.1.

\textsuperscript{48} \url{http://www.just.ro/LinkClick.aspx?fileticket=T3mlRnW1IsY%3D&tabid=2102}

\textsuperscript{49} An example is a bribery case linked to disability payments, where the scale of disability payments in the locality was out of line with the size of the population.
Ministry of Justice to establish a new Agency to deal with management of seized assets is an opportunity to improve the situation.

Public procurement procedures, especially at local level, remain exposed to corruption and conflicts of interests – a fact widely acknowledged by Romanian integrity and law enforcement authorities. This has had consequences for the absorption of EU funds. However, it is also true that there are many other factors here – including the administrative capacity of public purchasers, the lack of stability and fragmentation of the legal framework, and the quality of competition in public procurement. Renewed structured dialogue between the Commission and Romania in the context of the implementation of the new public procurement directives, and of ex-ante conditionality for European Structural and Investment Funds should help to identify shortcomings, including risk areas for corruption and conflict of interest. The ex-ante check of public procurement designed by the National Integrity Agency seems to be a step in the right direction but would need to be accompanied by other actions to minimise the scope for conflict of interests, favouritism, fraud and corruption in public procurement.

3. CONCLUSION AND RECOMMENDATIONS

The Commission's 2014 CVM report was able to highlight a number of areas of progress, some of which showed a resilience which indicated signs of sustainability. This trend has continued over the past year. The action taken by the key judicial and integrity institutions to address high-level corruption has maintained an impressive momentum, and has carried through into increased confidence amongst Romanians about the judiciary in general, and the anti-corruption prosecution in particular. This trend has been supported by an increased professionalism in the judicial system as a whole, including a willingness to defend the independence of the judiciary in a more consistent way and a more proactive approach towards consistency of jurisprudence. There is now an opportunity to test out this progress at moments of particular sensitivity, notably as concerns senior appointments.

At the same time, there remains a strong sense that progress needs to be consolidated and to be further secured. Whilst the implementation of the Codes has shown the government and judiciary working together in a productive and pragmatic way, one year on, many legislative issues remain outstanding. There continues to be a surprising degree of inconsistency in some court decisions, which will always give rise to concern. Decisions in Parliament on whether to allow the prosecution to treat parliamentarians like other citizens still seem to lack objective criteria and a reliable timetable. Parliament has also provided examples of reluctance to apply final court or Constitutional Court decisions, also a more widespread problem. And whilst the recognition that general corruption needs to be tackled is certainly building inside government, the scale of the problem will need a more systematic approach.

The Commission welcomes the constructive cooperation it has had with the Romanian authorities over the past year. The consensus for reform, and the confidence that progress is taking root, are on an upward trend, which now needs to be maintained. The Commission looks forward to continuing to work closely with Romania to secure the CVM's objectives.

The Commission invites Romania to take action in the following area:

1. Judicial independence
   - Ensure that the nomination of the new chief prosecutor of DIICOT takes place in accordance with a transparent and merit based procedure;
• Conduct a global review of appointment processes for senior positions in the magistracy, with a view to having clear and thorough procedures in place by December 2015, taking inspiration from the procedures used to appoint the President of the HCCJ;
• Ensure that the Code of Conduct for parliamentarians include clear provisions so that parliamentarians and the parliamentary process respect the independence of the judiciary;
• In discussions on the Constitution, maintain judicial independence and its role in checks and balances at the heart of the debate.

2. Judicial reform
• Finalise the necessary adjustments to the criminal codes as soon as possible, in consultation with the SCM, the HCCJ and the Prosecution. The goal should then be to secure a stable framework which does not need successive amendments;
• Prepare an operational action plan to implement the judicial reform strategy, with clear deadlines and with the ownership of both the Ministry of Justice and the SCM, and with all key stakeholders having had the chance to have an input. Equip the judicial management with stronger information tools on the functioning of the justice system (such as statistical tools, case management, user surveys and staff surveys) for better informed decision making and to help demonstrate progress;
• Explore pragmatic solutions to maintain access to courts without keeping the current judicial map of small courts;
• Improve the follow-up of court judgments at all levels to ensure that rulings and financial penalties are properly implemented.

3. Integrity
• Look again at how to ensure that court decisions requiring the suspension from office of parliamentarians are automatically applied by Parliament;
• Implement the ex-ante check of conflict of interests in public procurement by ANI. Ensure closer contact between the prosecution and ANI so that potential offences linked to ANI cases are followed up;
• Explore ways to improve public acceptance and effective implementation of incompatibility rules and prevention of incompatibility.

4. Fight against corruption
• Improve the collection of statistics on effective asset recovery and ensure that the new Agency can improve the management of frozen assets and work together with ANAF to improve effective recovery rates. Other parts of the public administration should be clearly accountable for failure to pursue these issues;
• Step up both preventive and repressive actions against conflict of interests, favouritism, fraud and corruption in public procurement as well as giving particular attention to key areas, such as the judiciary;
• Use the National Anti-Corruption Strategy to better identify corruption-risk areas and design educative and preventive measures, with the support of NGOs and taking advantage of the opportunities presented by EU funds.
• Continue to improve the fight against low level corruption, both through prevention and dissuasive sanctions.
REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

On Progress in Bulgaria under the Co-operation and Verification Mechanism

{SWD(2015) 9 final}
1. INTRODUCTION

The Cooperation and Verification Mechanism (CVM) was set up at the accession of Bulgaria to the European Union in 2007. \(^1\) It was agreed that further work was needed in key areas to address shortcomings in judicial reform, the fight against corruption, and tackling organised crime. Since then CVM reports have charted the progress made by Bulgaria and have sought to help focus the efforts of the Bulgarian authorities through specific recommendations.

The CVM has played an important role in the consolidation of the rule of law in Bulgaria as a key facet of European integration. Monitoring by the Commission and cooperating with the work of the Bulgarian authorities to promote reform has had a concrete impact on the pace and scale of reform. The Commission's conclusions and the methodology of the CVM have consistently enjoyed the strong support of the Council, \(^2\) as well as benefiting from cooperation and input from many Member States.

This report summarises the steps taken over the past year and provides recommendations for the next steps. It is the result of a careful process of analysis by the Commission, drawing on inputs from the Bulgarian authorities, civil society and other stakeholders. The Commission was able to draw on the specific support of experts from the magistracy in other Member States to offer a practitioner's point of view.

The political uncertainties of the past year in Bulgaria have not offered a stable platform for action. This report will point to a number of areas where problems have been acknowledged and where solutions are starting to be identified. These will need to take root for the sustainability of change to be shown. Bulgaria can also do more to collect (and publish) data on the judiciary and law enforcement.

The extent of the challenge has been illustrated by opinion polling of Bulgarians themselves. A Eurobarometer taken in the autumn of 2014 showed a strong consensus in Bulgarian society that judicial reform, the fight against corruption and tackling organised crime were important problems for Bulgaria. The results also showed a concern amongst Bulgarians that the situation had deteriorated, though with hope that this trend might reverse and with strong support for an EU role in addressing these issues, and for EU action to continue until Bulgaria had reached a standard comparable to other Member States. \(^3\) These attitudes underline that continuation of the reforms is crucial for the quality of life of citizens, both because of the impact of corruption and organised crime on the Bulgarian economy and because of the importance of the rule of law for a functioning and free society.

The CVM is designed to monitor longer-term trends rather than take a snapshot of the situation at a particular moment. However, this report seeks to take into account the perspectives put in place by the government which took office in November 2014 and to identify some key landmarks which can illuminate the progress of these policies in the future. In this way, the Commission hopes this report will help in building a new consensus to accelerate reform in Bulgaria. The recommendations set out in this report, well-targeted EU

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\(^1\) Conclusions of the Council, 17 October 2006 (13339/06); Commission Decision establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime, 13 December 2006 (C (2006) 6570 final)

\(^2\) Council conclusions on previous reports: http://ec.europa.eu/cvm/key_documents_en.htm

\(^3\) Flash Eurobarometer 406
funds and the engagement of other Member States to support a renewed effort.

2. STATE OF THE REFORM PROCESS IN BULGARIA

2.1 Reform of the judiciary

Independence, accountability and integrity of the judiciary

The Supreme Judicial Council (SJC) has wide-ranging powers to manage and organise the Bulgarian judicial system. The 2014 CVM report noted that despite some important steps in terms of managerial reform, the SJC was not widely regarded as "an autonomous and independent authority able to effectively defend the judiciary's independence vis-à-vis the executive and parliamentary branches of government". The work of the SJC in 2014 has continued to be subject to controversy, with several incidents in relation to appointments, dismissals or the control of the application by courts of the system of random allocation of cases. In addition to this, tensions between the SJC and its Civic Council, set up to represent civil society, have developed over time, with claims on the part of civil society actors that their views are not being adequately taken into account. Several organisations, including the largest judges' association, have left the Civic Council as a result. Perhaps partly in reaction, the SJC has developed its communication strategy and has taken some further steps in terms of transparency.

One issue raised by stakeholders linked to independence is the management of the two branches of the magistracy by their peers. Different Member States have different degrees of autonomy for judges and prosecutors within judicial councils. This has become an area of debate in Bulgaria, with several calls for separate chambers within the SJC to determine career and disciplinary decisions concerning judges and prosecutors, with more horizontal issues being dealt with in plenary. The underlying reason for such calls is the different organisational structures and roles of judges and prosecutors, but also the fact that decision making on appointments and disciplinary matters could be used by one constituency of the SJC to pressurise the other.

This idea of a change of the SJC structure has been taken over in the new proposal for a judicial reform strategy adopted by the Bulgarian government and the Parliament. The SJC, without fully opposing the change, has raised feasibility concerns, considering it would require a change of the Constitution, and could not be enacted through a legislative amendment of the Judicial System Act. In addition, the reform strategy touches upon wider issues such as the election of SJC members. Previous CVM reports have already made recommendations which would hold good for the SJC's next elections, to increase transparency and address integrity in the selection procedure, including through "one judge one vote" for the judicial quota of members of the Council. The new strategy also raises the

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4 Some Member States provide technical assistance to Bulgaria in CVM-relevant areas.
5 COM(2014) 36 final, p.3
6 Technical report section 2.1
7 Reports suggest however that this issue was questioned in Parliament on 21 January 2015.
8 COM (2012) 411 final, p.11.
issue of reducing the power of court presidents, raised in the past as an important issue for the independence of individual judges.

The importance of more transparency and objectivity in judicial appointments has been a consistent theme in CVM reports. Although some of the peaks of controversy seen in 2012-13 were avoided in 2014, the question of high level appointments within the magistracy has remained problematic. In particular, the election of the President of the Supreme Court of Cassation (SCC) was postponed on several occasions, despite the fact that candidates with good credentials had applied – with solid experience in the SCC itself – and amidst controversy over the voting system. Nominations of administrative heads of other courts raised concerns about the openness and merit-based nature of the selection procedure. In addition to this, questions submitted to the SJC by NGOs concerning integrity issues of certain candidates do not always seem to have been addressed, even though the SJC carries out a formal integrity check of all candidates – an important part of the procedure since it can lead to a negative opinion. Some procedural improvements have taken place which could lead to greater transparency in the procedures, such as in particular the introduction of a possibility for the judges at the SCC to organise a hearing of the candidates for President of the Court. Such new procedural options can both enhance the credibility of appointments and improve the ownership of rank and file judges in the process.

A key actor in promoting integrity and efficiency within the judiciary has always been the Judicial Inspectorate. The election of its Chief Inspector, after a long vacancy of the position, was considered as a test case by the January 2014 CVM Report. The election has so far not yet taken place. The procedure in Spring 2014 attracted candidates who seemed well qualified for the post, but a lengthy process meant that Parliament did not reach the stage of a vote. As a result, the Inspectorate has remained without the strong independent leadership foreseen in the Constitution. This will remain an important test case in 2015 of the ability of the Bulgarian institutions to carry out transparent and merit-based appointments to high-level offices in the judiciary.

Another recommendation of the 2014 Report was a thorough and independent analysis of the system of random allocation of cases, to ensure it is secure, and that administrative heads of courts are made to account in full for any decision not to use random allocation. The SJC has taken some steps to analyse potential vulnerabilities and drew up plans to modernise the system in the context of a longer term e-Justice project. The allocations can now be collected centrally, facilitating checks. However, this interim solution does not appear to have improved security. Specific shortcomings identified in a March 2013 audit of the Supreme Administrative Court and the Sofia City Court were not followed up. As a result, a series of scandals concerning case allocation in the Sofia City Court broke out in autumn 2014. These problems were not identified by the SJC – the issues had to be raised by outside actors.

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11 The National Assembly has re-started the procedure with a deadline for nomination of candidates on 30 January 2015.
13 Notably in relation to the allocation of bankruptcy procedures in two emblematic cases. See technical report section 4.1.
Whilst delays in the preparations for a longer-term solution are unfortunate, the more important issue is the reaction to evidence of transgressions. The reaction of the SJC in autumn 2014 suggested that this is a low priority for the Council, in spite of the potential for criminal as well as disciplinary offences. It seems likely that the reputation of the judiciary in Bulgaria will continue to be damaged until a fully secure system is in place. Using external IT security expertise to test the new system would help to reassure that this is on the right track.\(^{14}\)

**Reform strategies for the judicial system**

Steps have been taken by the Ministry of Justice with first the roadmap for addressing the 2014 CVM recommendations (although its current status and deadlines are to be clarified) and then in the autumn with the presentation of a long awaited judicial reform strategy.\(^{15}\) This comprehensive document would replace the 2010 strategy, which has been only partially implemented. The Strategy was adopted by Decision of the Council of Ministers on 17 December 2014 and broadly endorsed by Parliament on 21 January 2015.\(^{16}\)

Consensus and ownership has been pursued by encouraging a debate on the text.\(^{17}\) The Prosecutor-General and the SJC have reacted in detail. The text includes many elements called for by civil society and professional organisations,\(^{18}\) and indeed points raised by previous CVM reports. Its goals are to ensure the good governance of the judicial authorities and improve human resource aspects, but also more broadly to modernise criminal policy and improve the protection of fundamental rights. The strategy has introduced a degree of clarity and urgency into the debate on judicial reform – this will now need to be carried through into implementation.

From the side of the prosecution, there has been significant progress with the implementation of the action plan put forward by the Prosecutor-General in 2013. Partly sparked by the judicial reform strategy, the Prosecutor-General also made new proposals in November 2014 for the decentralisation of the prosecution and for providing additional guarantees of non-interference in the work of prosecutors.\(^{19}\)

Work on a new criminal code has progressed, but still lacks a consensus. Experts and practitioners have expressed divergent views about whether a complete rewrite is needed, or just amendments – and about the overall rationale. The current intention seems to be to follow a two track approach, with a first stage consisting of swift amendment of parts of the criminal code (and possibly of the criminal procedure code) on certain more urgent issues, including provisions related to the fight against corruption and organised crime. In a second stage and on the basis of thorough impact assessment and public consultation, the need for a new

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14 This could be expected to be a good area for the support of EU funds.
16 It appears that some elements of the strategy were questioned in Parliament.
17 Under the interim government in October 2014, the text was put forward as a draft.
18 See most notably the above-mentioned proposals for a division of the SJC into chambers for decisions concerning appointments and disciplinary matters.
19 The concrete proposals presented by the Prosecutor-General, aiming at a more decentralised, transparent and accountable prosecution office, could also be considered in the context of broader changes to the Criminal Procedure Code and the Judicial Systems Act.
criminal code would be determined. This could be part of a broader reflection on future criminal policies, which needs time in order to build consensus.20

Efficiency of the judicial system

Work has continued within the SJC on a methodology for the assessment of the workload of magistrates and judicial bodies.21 One of the goals is to set up rules on how to measure and allocate workload, taking into account the complexity as well as the scale of cases. Differences in the workload today are seen as a significant cause of inefficiency in the system. All regional courts will be reviewed, taking into account socio-economic as well as demographic factors and the imperative of guaranteeing access to justice, with a view to presenting a proposal for a new judicial map for the regional courts before the end of 2015. There have already been concrete steps taken in rationalising military courts. A solid methodology would offer the right basis to assess whether it is justified to close down courts with very little workload (or instituting a system of "mobile courts"), while redistributing resources towards other overburdened courts. Work on a broader reform of the judicial map is likely to take longer, notably as the SJC would need to coordinate with a wider range of stakeholders,22 even if the final decision rests with the SJC.

In terms of broader human resource management, appraisal and promotion systems as well as the quality of training are key factors. Here the Government's judicial reform strategy sets out some elements for future improvements. The National Institute of Justice continues to develop its repertoire of training for judges.23

Disciplinary action has been another area highlighted in CVM reports. Problems have included a lack of consistency (and clear standards to deliver this), with a high proportion of decisions being overturned in appeal. The SJC has recently adopted some steps including general guidelines in this area, though this does not appear to have been based on a clear analysis of shortcomings. It is too early to say if the measures taken will be sufficient to avoid continued controversy over disciplinary proceedings in the future.

Another issue which CVM reports have urged to address is the effective implementation of court judgements and notably the problem of convicted criminals having been able to escape justice and abscond. Some work has been done, and some managerial steps followed through an interagency action plan for 2014. However, the response of the authorities continues to lack conviction. The issue has not been looked at comprehensively, so it is difficult to assess the extent to which one-off measures (such as the use of electronic monitoring) will fill the gaps.24

20 The preparations that have been ongoing since 2009 in this area should provide a rich basis in terms of analytical input.
21 Partly in response to CVM recommendations (see for example COM(2014) 36 final, p.10), the analytical work which is currently being carried out within the SJC could also further improve the basis for assessments, for example by better accounting for workload and developing a clearer basis for the regular appraisal of magistrates.
22 There are implications for the territorial organisation of other public services.
23 Technical report, section 4.2.
24 See technical report, section 6.2.
2.2 Corruption

Corruption remains a serious issue in Bulgaria. In the recent Eurobarometer survey, almost all respondents identified corruption (97%) as an important problem.\textsuperscript{25}

It has been a long standing recommendation of the CVM that Bulgaria reviews and updates its national anti-corruption strategy.\textsuperscript{26} The first informal results of a recent evaluation of the impact over past years of the Bulgarian anti-corruption strategy, carried out by the Bulgarian authorities, appears to constitute an important contribution in terms of an honest assessment of the shortcomings of the strategy. These include a piecemeal approach, the insufficient use of risk assessments, and an absence of monitoring and evaluation. Though ministerial inspectorates have developed a culture of improved control, the absence of a centralised structure or common benchmarks results in different ministerial inspectorates acting in an uncoordinated way. Arrangements at local level seem to show major gaps. As for the structure assigned by Bulgaria to perform risk analysis (BORKOR), this does not seem to have delivered results in proportion to its costs, and in any event can only be seen as providing analytical input. This body is not designed to provide political direction.\textsuperscript{27}

This assessment of the shortcomings of the current anti-corruption system could be the starting point of a long-awaited reform. A consultation of all stakeholders would allow experience to be taken into account and build ownership for the exercise. Civil society has developed useful experience in the field of anti-corruption, which should be used to the full.

Preventive measures seem in their infancy in most cases. Some lessons have been learned in particular areas,\textsuperscript{28} but these reflect piecemeal efforts. There is no evidence of a structure to exchange best practice or to give credit to successes. The public administration does not have a comprehensive system of compulsory monitoring of anti-corruption activities and reporting to a central point.

As set out in successive CVM reports, public procurement is a high risk area in terms of corruption. Systems to check the procedures can be strengthened, in line with the recent strategy for the Bulgarian public procurement system which has been developed in response to recommendations from the Commission services.

Regarding conflicts of interest and illicit enrichment, the Commission on the Prevention and the Ascertainment of Conflicts of Interest (CPACI) has been awaiting legislative changes as well as nominations at managerial level. Both are important to the effective operation of the Commission,\textsuperscript{29} and the forced resignation of the former Chairman following evidence of trading in influence\textsuperscript{30} would suggest there is a degree of urgency to put the Commission back on a sound footing. However, these decisions have now been pending throughout 2014. This is the responsibility of Parliament, and the delays run the risk of increasing the impression

\textsuperscript{25} Flash Eurobarometer 406
\textsuperscript{26} Similarly, the EU Anti-Corruption Report 2014 highlighted a number of challenges in Bulgaria (COM (2014) 38 final). Corruption (as well as judicial independence) are also noted as challenges for Bulgaria in the 2014 country specific recommendations in the context of the European Semester of economic policy coordination. (OJ 2014/C 247/02).
\textsuperscript{27} COM(2014) 36 final, p. 7; technical report section 5.4.
\textsuperscript{28} Such as avoiding the handling of cash by customs officers and border guards, or rotating staff.
\textsuperscript{29} Technical report section 5.4.
\textsuperscript{30} This has been the subject of criminal proceedings.
that decisions where integrity concerns should predominate are being taken on political grounds. In terms of corruption prevention, a better use might be made of asset declarations submitted by public officials in terms of identifying risk areas and possible cases of illicit enrichment.

Effective prosecution and final convictions are central to the credibility of any anti-corruption strategy. There are so far very few final convictions in cases involving substantial corruption, despite the scale of the problem. Positive steps have been taken in the General Prosecution to prioritise corruption, and there has been an increase in the number of cases initiated and the speed with which they progress. A few of these cases concern individuals in high-level positions. As in the case of organised crime, monitoring of the evolution of corruption cases at court level is essential to identify aspects of court practice which can be manipulated to delay the course of justice. Cases sometimes appear to stall for a substantial amount of time at court level before being sent back to the prosecution with a short deadline to perform supplementary tasks.

A small specialised structure has been put in place by the Prosecution, staffed by prosecutors and investigators from the State Agency for National Security (SANS), to more effectively investigate corruption in the public administration. The unit has so far mostly been targeting cases of local corruption, which could not be handled at local level given local relationships and pressures. The model of specialised structures to fight corruption appears to have seen some early results, but the test will come with more high level cases and a development of operational capacities. It will also be important that structural changes to SANS do not undermine the effectiveness of this work.

Another problem appears to lie with deficiencies in rules in the Criminal Code to fight corruption, and in particular "high-level corruption", trading in influence and the differentiation of active and passive corruption. There seems to be an acute need to modernise the Code in this area, which could benefit from rapid amendments, in parallel to a broader reflection on criminal policy and a new code.

2.3 Organised crime

Organised crime remains a problem in Bulgaria. This is recognised in public attitudes, and high-profile recent cases of public shootings and the murder of a witness have provided a clear reminder of the severity of the situation. Whilst the number of cases initiated by the prosecution seems to have increased substantially in 2014, the number of cases that have reached final conclusion remains low. Authorities working in this area have reported to the Commission concerns over pressures at local level hampering effective investigation of crime and corruption. The intimidation of witnesses remains a serious problem, and there may be ways to encourage witnesses to accept more readily witness protection programmes.

31 SANS' report on its activities for 2014 was able to point to much more activity on organised crime than on anti-corruption.
32 It is perceived as an important problem by 96% of Bulgarian citizen surveyed in the recent Flash Eurobarometer 406.
34 In a recent case of the murder of a witness in an emblematic case, the witness has declined to participate in a witness protection programme.
The specialised prosecution and court put in place two years ago are slowly starting to yield some results, with a few final convictions, and some evidence of swifter procedures. But their action remains hindered by an unfocussed attribution of tasks and very formalistic provisions of the Criminal Procedure Code. The Prosecutor-General made proposals in November to address some of these issues.

Despite substantial efforts, asset forfeiture and confiscation still do not seem sufficiently targeted against organised crime groups. Interim freezing measures are ordered by the Prosecution when urgent and passed on to the Assets Forfeiture Commission. This Commission continues to achieve significant results, in spite of a burdensome legal framework. The last CVM report noted question marks with regard to the new legal framework for asset forfeiture\textsuperscript{35} – these issues remain outstanding.

The Ministry of Interior has own capacities for forensic, DNA, ballistic and graphology, but other fields of expertise require using experts accredited to courts, raising questions of availability, competence, costs and – possibly – impartiality. Bulgaria does not have a bureau of experts or similar mechanism. Observers have raised this issue as one potential reason for the failure of cases to progress in court\textsuperscript{36}.

The new Bulgarian government has announced its intention to remove the investigation of organised crime from the mandate of the SANS, reversing the controversial merger of the former police directorate on organised crime – GDBOP – with SANS in 2013\textsuperscript{37}. The previous reform in this area resulted in several months of operational disruption in organised crime cases, including in cooperation with other Member States' security services. Concerns have been expressed that a new reorganisation of the services responsible for investigating organised crime risks similar disruption, but the government has made clear that it is conscious of this risk and will take measures to facilitate the transition.

3. CONCLUSIONS AND RECOMMENDATIONS

Since the Commission's last report in January 2014, progress in terms of addressing judicial reform and making concrete advances on corruption and organised crime has been slow. The fact that the period covered by this report saw three different governments and a deadlocked parliamentary situation has clearly contributed to a lack of resolve to reform. However, the foundation stone for taking reform forward is to acknowledge the problems and identify measures to remedy them. The current government has taken an important step by adopting a judicial reform strategy with an impressive level of precision. There are also indications that the forthcoming analysis of the existing anti-corruption measures will provide a helpful input to reflections on a future strategy. The next phase would be to show that reform is genuinely a political priority by rapidly taking these frameworks forward, building consensus and identifying precise actions with specific milestones – and then to ensure their implementation. This would require a further change in political culture, and a real sense that these issues are at the top of the agenda.

\textsuperscript{35} COM (2014) 35 final, p.8
\textsuperscript{36} Technical report section 6.1.
\textsuperscript{37} COM (2014) 35 final, p.8
Some of the key institutions have continued to develop managerial changes which should support the effort to carry reform through into change on the ground. In addition to accelerating reform in line with the strategy, more systematic and professional gathering of data, and more transparency about putting information in the public domain, would also help build confidence in the professionalism and commitment of the authorities.

The credibility of progress will also depend on the reaction to specific controversies and on progress in respect of specific cases. Past CVM reports have noted how public scepticism about reform has been fuelled by controversy in areas like transparency and merit in judicial appointments, or the reaction to transgressions like the abscording of convicted criminals or evident failures in random case allocation. The Bulgarian authorities' reactions in such cases continue to lack conviction, fuelling doubts about judicial independence. It remains the case that the number of final court judgments on high-level corruption and organised crime cases is very low. These shortcomings in terms of the key measures of change also lie at the heart of Bulgarians' scepticism about reform so far, as shown by opinion polling.38

The Commission invites Bulgaria to take action in the following areas:

1. Independence, accountability and integrity of the judiciary

The judicial reform strategy includes many proposals designed to address weaknesses in this area. Such measures need to be backed up with an awareness that the credibility of the system relies on the authorities showing a determination to maximise objectivity and to ensure that transgressions are handled robustly.

- Pursue reform of the organisation of the SJC, involving the professional associations and other relevant stakeholders, including looking ahead to procedures for the next elections to the SJC which can command confidence;
- Apply objective standards of merit, integrity and transparency to appointments within the judiciary, including for high level offices, and make these appointments in a timely manner. Integrity issues are of particular importance and those responsible for appointments have to show that any questions have been followed up;
- Swiftly resolve the impasse on the nomination for the post of Chief Inspector;
- Improve rapidly the security of the system of random allocation of cases and accelerate ongoing work on its modernisation; perform rigorous and impartial investigations into all cases where suspicions of possible tampering with the system are raised.

2. Reform of the Judicial System

The judicial reform strategy constitutes a solid basis for future action and the debate it has sparked has shown bodies like the General Prosecution making a constructive response.

- Implement the new judicial strategy as adopted by the government, as well as the detailed ideas proposed by the prosecution;
- Address the critical areas in the criminal code which need urgent improvement to improve the fight against corruption and organised crime;
- Agree on a detailed timeframe for longer term reflection on the fundamental goals of a new criminal code.

38 Flash Eurobarometer 406.
3. **Efficiency of the judicial system**

The Supreme Judicial Council has been taking some important managerial steps which now need to be followed through.

- Complete the methodology for the assessment of workload of magistrates and courts and consult all key stakeholders to offer an objective basis for the reform of the judicial map (if necessary, disassociating the courts from other public service maps);
- Enforce clear procedures and standards for penalties to ensure consistent disciplinary rulings;
- Implement work to close loopholes in the effective implementation of court decisions, such as absconding to evade prison sentences or failure to apply financial sanctions defined in court.
- Make concrete progress on e-justice as a mean to improve the judicial process.

4. **Corruption**

The forthcoming evaluation of Bulgaria's anti-corruption strategy should provide a useful analysis of the challenges facing Bulgaria. It can help both in defining a new strategy and in starting concrete steps to begin to tackle the problems, both in terms of prevention and effective prosecution.

- Entrust a single institution with the authority and autonomy needed to coordinate and control the enforcement of the anti-corruption activities; create a uniform set of minimum standards for the public sector in terms of control bodies, risk assessment and reporting obligations;
- Put in place a solid national anti-corruption strategy, starting with publication of the analysis of the shortcomings of the current strategy;
- Ensure a determined follow-up to the public procurement strategy adopted in July 2014;
- Finalise the nomination procedures for the remaining members of the CPACI and the legislative changes to the conflicts of interest law;
- Assess how the system of assets declarations can be put to a better use (such as targeting checks through risk assessment);
- Reinforce the capacity of the prosecution to pursue high-level corruption cases;
- Monitor the progress of high level corruption cases and define and take steps to avoid the exploitation of procedural loopholes to delay the process of justice.

5. **Organised crime**

It remains the case that the large number of outstanding cases and the few examples of progress cast a shadow over work to address organised crime and to improve the professionalism of law enforcement in this area.

- Create the necessary conditions for the Specialised Court for Organised Crime and the attached Prosecutor's Office to be able to concentrate on high profile, complex cases;
- Monitor the progress of high level organised crime cases and define and take steps to avoid the exploitation of procedural loopholes to delay the process of justice;
• Ensure that necessary safeguards are taken to prevent high-level defendants absconding from justice or managing to hide criminally acquired property before a final court decision, with a clear assignment of the responsibility for any failings;
• Ensure that any changes to the structures involved in the investigation of organised crime are carried out in such a manner as to ensure operational continuity.
Flash Eurobarometer 406

THE COOPERATION AND VERIFICATION MECHANISM FOR BULGARIA AND ROMANIA
SECOND WAVE

SUMMARY

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This document does not represent the point of view of the European Commission. The interpretations and opinions contained in it are solely those of the authors.

Flash Eurobarometer 406 - TNS Political & Social
The Cooperation and Verification Mechanism for Bulgaria and Romania - second wave

Conducted by TNS Political & Social at the request of the European Commission, Directorate-General for Communication

Survey co-ordinated by the European Commission, Directorate-General for Communication (DG COMM “Strategy, Corporate Communication Actions and Eurobarometer” Unit)
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**INTRODUCTION**

The Cooperation and Verification Mechanism (CVM)\(^1\) was set up following the accession of Romania and Bulgaria to the European Union in 2007 to help the two countries deliver improvements in their judicial systems and to tackle corruption. In Bulgaria's case, the CVM had the additional purpose of assisting the country in combating organised crime.

Since then, the Commission has reported regularly on the two countries' progress\(^2\), delivering the most recent progress report in January 2014.

In the case of Bulgaria\(^3\), the Commission found that since its last report in July 2012 this country had made some progress. The report noted that there had been some degree of improvement in appointment procedures and some useful managerial steps taken in the prosecution service and the judiciary. However, it concluded that overall progress was not yet sufficient and was still fragile, and that public confidence had been eroded by appointments aborted due to integrity issues and the escape from justice of convicted leaders of organised crime, as well as by a succession of revelations about political influence on the judicial system.

The report also found that there were still very few cases where crimes of corruption or organised crime had been brought to a conclusion in court. The report concluded by setting out a range of recommendations for Bulgaria to improve the functioning of its judicial system as well as its performance in the fight against corruption and organised crime.

The findings on Romania\(^4\) showed that progress had been made in many areas since the previous CVM reports. The report showed that the record in the key judicial and integrity institutions had remained positive and that necessary and long-awaited legislative changes were still on track. However, the report also highlighted concerns about judicial independence and noted that there were many examples of resistance to integrity and anti-corruption measures at political and administrative levels. The report found that this mixed picture had consequences for the extent to which the reform process in Romania could be seen as sustainable, given an absence of consensus about the objectives of the CVM, though it nevertheless noted that the resilience of the key anti-corruption institutions in the face of sustained pressure had shown that the reform approach had taken root in significant sections of Romanian society. The report concluded by proposing a range of recommendations for Romania designed to make judicial reforms more sustainable and resilient and step up the fight against corruption.

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2. The progress reports are available here: [http://ec.europa.eu/cvm/progress_reports_en.htm](http://ec.europa.eu/cvm/progress_reports_en.htm)
Alongside the Commission’s regular progress reports, which reflect the Commission’s own assessment of development in the two countries, this Flash Eurobarometer gauges the opinion of the general public in the two Member States about the judicial system, corruption and, in Bulgaria’s case, organised crime, as well as the EU’s action in this field.

An important aim of the survey is to track public opinion on these issues over time. This report follows an earlier survey conducted in May 2012, and wherever possible it draws comparisons between the respondents’ current views on these matters and those expressed two and a half years ago.

As well as asking respondents how much importance they attribute to issues of corruption and judicial reform, the survey asks whether they think the situation in their country has improved over the last five years in the areas under discussion.

It also asks the respondents to consider whether the EU should play a role in attempts to tackle corruption, organised crime and judicial shortcomings in their country; whether the EU has had a positive impact through these efforts; and whether the EU should continue to be involved in the future.

The survey also gauges general awareness of the CVM in the two countries concerned.

This edition of the Flash Eurobarometer also includes a new question which asks respondents whether they expect the situation to improve over the next five years.

This is also an important time politically for both countries: voters in Bulgaria elected a new Parliament in October and voters in Romania a new President in November.

In the course of this survey, 2,010 European citizens aged 15 and above were interviewed by telephone (fixed-line and mobile phone) by the TNS Political & Social network between 13 and 15 October 2014 in Bulgaria and Romania, at the request of the European Commission’s Directorate-General for Communication. The methodology used is that of surveys as carried out by the Directorate General for Communication (“Strategy, Corporate Communication Actions and Eurobarometer” Unit). A technical note on the methodology for interviews conducted by the institutes within the TNS Political & Social network is annexed to this report. This note indicates the interview methods and the confidence intervals.

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6 The results tables are included in the annex. It should be noted that the total of the percentages in the tables of this report may exceed 100% when the respondent could give several answers to the same question.
1. PERCEPTIONS OF JUDICIAL SHORTCOMINGS AND CORRUPTION IN ROMANIA AND BULGARIA AND ORGANISED CRIME IN BULGARIA

- At least nine out of ten respondents in both countries thought that corruption and judicial shortcomings, and organised crime in Bulgaria, were important problems -

Roughly nine out of ten respondents in Romania said that corruption (91%, -2 pp. compared with May 2012) and shortcomings in the judicial system (90%, -1 pp.) were important problems. A large proportion of respondents said these issues were very important (78% for corruption, and 64% for judicial shortcomings).

Almost all respondents in Bulgaria (97%, +1pp.) thought that corruption was an important problem, with 90% saying it was very important. An increasingly large proportion of respondents (96%, +4 pp.) felt that shortcomings in the judicial system were an important problem: of these, 87% said they were very important. A very high proportion of respondents (96%, no change) also thought that organised crime was important, with 85% saying it was very important.

The results for both Romania and Bulgaria have remained relatively stable compared with May 2012.

In both countries, respondents who left education aged 20 or over and employees were more likely than other respondents to identify these issues as important.
2. CHANGES IN PERCEPTIONS OF JUDICIAL SHORTCOMINGS AND CORRUPTION IN ROMANIA AND BULGARIA AND ORGANISED CRIME IN BULGARIA OVER RECENT YEARS

- Respondents in Romania were more optimistic about the improvements over the last 5 years than in 2012, while respondents in Bulgaria were more pessimistic -

Roughly a third of respondents (34%, +14 pp.) in Romania thought that the situation concerning shortcomings in their country’s judicial system had improved compared with five years ago – up from only two out of ten (20%) who said this in May 2012. Around a quarter of respondents (27%, -3 pp.) said that the situation had stayed about the same. Over a third (35%, -10 pp.) thought that the situation had got worse.

Over two out of ten respondents (22%, +9 pp.) thought that the situation regarding corruption had improved compared with five years ago. Around three out of ten respondents (31%, no change) thought that the situation had stayed about the same. More than four out of ten respondents (43%, -10 pp.) believed the situation had got worse.

In Bulgaria, around a quarter of respondents (24%) thought that the situation regarding organised crime had improved compared with five years ago – down from 38% who said things had improved in May 2012. A third of respondents (33%, +5 pp.) said that the situation had stayed about the same and over a third (35%, +7 pp.) believed the situation had got worse.

When asked about the shortcomings in their country’s judicial system, 13% of respondents said the situation had improved compared with five years ago – down from a third (33%) who said this in May 2012. Just under four out of ten respondents (38%, +5 pp.) said that the situation had stayed about the same. But more than four out of ten (44%, +17 pp.) thought that the situation had got worse.

Only a tenth of respondents (10%) in Bulgaria thought that the situation regarding corruption had improved compared with five years ago – down from 27% in 2012. Around four out of ten respondents (38%, +1 pp.) thought the situation had stayed about the same. Nearly half (48%, +17 pp.) felt that the situation regarding corruption had got worse.

In both countries, men were more likely than women to think that the three situations had improved over the last five years.

In Romania, respondents aged 55 or over were also more likely to share these views.
Q2. Compared to 5 years ago would you say the situation has improved a lot, has improved slightly, has stayed about the same, has got worse slightly or has got much worse as regards to?

**Shortcomings in the judicial system**

- It has improved a lot: RO 1%, BG 1%
- It has improved slightly: RO 19%, BG 12%
- It has stayed about the same: RO 30%, BG 31%
- It has got worse slightly: RO 16%, BG 15%
- It has got much worse: RO 29%, BG 28%

**Corruption**

- It has improved a lot: RO 1%, BG 3%
- It has improved slightly: RO 19%, BG 12%
- It has stayed about the same: RO 31%, BG 33%
- It has got worse slightly: RO 14%, BG 15%
- It has got much worse: RO 30%, BG 30%

FL406 Oct. 2014
FL351 May 2012

Q2. Compared to 5 years ago would you say the situation has improved a lot, has improved slightly, has stayed about the same, has got worse slightly or has got much worse as regards to?

**Organised crime**

- It has improved a lot: RO 3%, BG 2%
- It has improved slightly: RO 22%, BG 26%
- It has stayed about the same: RO 30%, BG 30%
- It has got worse slightly: RO 15%, BG 14%
- It has got much worse: RO 14%, BG 16%

**Shortcomings in the judicial system**

- It has improved a lot: RO 1%, BG 3%
- It has improved slightly: RO 12%, BG 8%
- It has stayed about the same: RO 30%, BG 38%
- It has got worse slightly: RO 16%, BG 37%
- It has got much worse: RO 28%, BG 13%

**Corruption**

- It has improved a lot: RO 1%, BG 2%
- It has improved slightly: RO 8%, BG 18%
- It has stayed about the same: RO 26%, BG 37%
- It has got worse slightly: RO 18%, BG 13%
- It has got much worse: RO 30%, BG 16%

FL406 Oct. 2014
FL351 May 2012
3. CHANGES IN PERCEPTIONS OF JUDICIAL SHORTCOMINGS AND CORRUPTION IN ROMANIA AND BULGARIA AND ORGANISED CRIME IN BULGARIA IN THE COMING YEARS

- Respondents in both countries were more likely to think that situations would improve than get worse over the next five years -

Over four out of ten respondents (43%) in Romania thought that the situation regarding their country’s judicial shortcomings would improve. Around a quarter (26%) thought the situation would stay about the same, while 16% said that things would get worse.

Roughly a third of respondents (34%) in Romania said that the situation regarding corruption in their country would improve over the next five years. A similar proportion of respondents (32%) thought the situation would stay about the same. Two out of ten respondents (20%) thought that the situation would get worse.

Respondents in Bulgaria were most confident that the situation regarding shortcomings in their country’s judicial system would improve (42%). Over a quarter (28%) thought the situation would stay about the same, while about two out of ten (19%) said that things would get worse.

Nearly four out of ten respondents (39%) thought that the situation regarding organised crime in Bulgaria would improve. Three out of ten (30%) thought the situation would stay about the same. Just over two out of ten respondents (21%) expected the situation regarding organised crime to get worse.

Roughly three out of ten respondents (31%) felt that the situation regarding corruption in their country would improve over the next five years. Most respondents (37%) thought the situation would stay about the same, while nearly a quarter (23%) expected the situation to get worse.

In both countries, older respondents were more likely than the younger respondents to think that the situation would improve over the next five years regarding all three problems (organised crime only in Bulgaria).

Also, respondents who thought that the situation had improved over the last five years were more inclined to say that it would improve over the next five years.
4. THE ROLE OF THE EU IN TACKLING JUDICIAL SHORTCOMINGS AND CORRUPTION IN ROMANIA AND BULGARIA AND ORGANISED CRIME IN BULGARIA

- In both countries there was strong and growing support for the EU to have a role in tackling these problems -

In both countries, over three-quarters of respondents (79%, +3 pp. compared with May 2012) agreed that the EU should have a role in tackling corruption and judicial shortcomings. Just 17% (-3 pp. for both) of respondents did not agree that the EU should have a role. 4% of respondents in each country could not answer the question.

In both countries, respondents who regarded these as important problems were more likely to feel that the EU should play a role, with regard to the three issues (organised crime only in Bulgaria).
A majority of respondents in Romania, but not in Bulgaria, knew that the EU was monitoring progress via the Cooperation and Verification Mechanism -

Over half of the respondents (56%) in Romania knew that the EU was helping their country to tackle corruption and judicial shortcomings through the CVM – up from 52% who knew about this in May 2012. The remaining 44% (-4 pp.) did not know about this.

However, in Bulgaria the picture is somewhat different, with only a minority of respondents (44%) saying that they knew the EU was assessing the country’s progress via the CVM in reaching the standards to tackle corruption, organised crime and shortcomings in the judicial system in their country. This is a substantial decline compared with May 2012, when 61% of respondents said they knew about the CVM. Now, 56% of respondents said they did not know about it (+17 pp.).

Older respondents and those who finished their education aged 20 or over were more likely to know about the CVM than respondents who finished their education aged 15 or under.

- More respondents in Romania, but fewer in Bulgaria, felt that the EU had had a positive impact through the CVM than did so in 2012 -

In Romania, over seven out of ten respondents (73%) thought that the EU had had a positive impact on judicial shortcomings – up from 65% who felt this way in May 2012. Just 16% (-2 pp.) of respondents thought the EU had had a negative impact.

Roughly two-thirds of respondents (67%, +8 pp. compared with 2012) said the EU had had a positive impact on corruption. Slightly more than two out of ten respondents (21%, -4 pp.) thought the EU had had a negative impact on corruption.
In Bulgaria, over six out of ten respondents (61%) thought that the EU had had a positive impact on judicial shortcomings – down from 71% in May 2012. 15% (+3 pp.) of respondents thought the EU had had a negative impact and one person in eight (12%, +6 pp.) said spontaneously that the EU had had no impact at all.

The same pattern can be seen for both organised crime and corruption. In the case of organised crime, 54% of respondents thought the EU had had a positive impact – down from 65% in May 2012.

Two out of ten respondents (20%, +2 pp.) thought the EU had had a negative impact on organised crime and one person in seven (14%, +6 pp.) said spontaneously that the EU had had no impact at all.

Respondents who finished their education aged 20 or over were more likely than those who finished aged 15 or under to think the EU had had a positive impact.
A substantial majority of respondents in both countries wanted the EU to continue its action through the CVM.

In Romania, nearly three-quarters of respondents (73%, +1 pp. compared with 2012) thought that the EU should continue its action through the CVM until Romania was at a standard comparable to other Member States. 13% (no change) would like the EU to phase out its action over the coming years, while less than a tenth (8%, -1 pp.) thought the EU action via the CVM should be stopped now. 6% (no change) were unable to answer.

In Bulgaria, over three-quarters of respondents (78%, no change) believed that the EU should continue its action through the CVM until their country reached a standard comparable to other Member States. A tenth of respondents (10%, -2 pp.) said that the EU should phase out its action over the coming years, while just 6% (no change) wanted the EU action to be stopped now. 6% (+2 pp.) could not answer.

Respondents who thought that these were important issues were more likely to want the EU action to continue, whereas those who did not regard these as important issues were more likely to be unable to answer.
ANNEXES
TECHNICAL SPECIFICATIONS
FLASH EUROBAROMETER 406
“The Cooperation and Verification Mechanism for Bulgaria and Romania”
TECHNICAL SPECIFICATIONS

Between the 13 and the 15 of October 2014, TNS Political & Social, a consortium created between TNS political & social, TNS UK and TNS opinion, carried out the survey FLASH EUROBAROMETER 406 about “The Cooperation and Verification Mechanism for Bulgaria and Romania”.

This survey has been requested by the EUROPEAN COMMISSION, Directorate-General for Communication. It is a general public survey co-ordinated by the Directorate-General for Communication (DG COMM “Strategy, Corporate Communication Actions and Eurobarometer” Unit).

The FLASH EUROBAROMETER 406 covers the population of the respective nationalities of Bulgaria and Romania, resident in Bulgaria and Romania and aged 15 years and over. The survey covers the national population of citizens in Bulgaria and Romania as well as the population of citizens of all the European Union Member States that are residents in these countries and have a sufficient command of the national languages to answer the questionnaire.

All interviews were carried using the TNS e-Call center (our centralized CATI system). In every country respondents were called both on fixed lines and mobile phones. The basic sample design applied in all states is multi-stage random (probability). In each household, the respondent was drawn at random following the “last birthday rule”.

TNS has developed its own RDD sample generation capabilities based on using contact telephone numbers from responders to random probability or random location face to face surveys, such as Eurobarometer, as seed numbers. The approach works because the seed number identifies a working block of telephone numbers and reduces the volume of numbers generated that will be ineffective. The seed numbers are stratified by NUTS2 region and urbanisation to approximate a geographically representative sample. From each seed number the required sample of numbers are generated by randomly replacing the last two digits. The sample is then screened against business databases in order to exclude as many of these numbers as possible before going into field. This approach is consistent across all countries.
Readers are reminded that survey results are estimations, the accuracy of which, everything being equal, rests upon the sample size and upon the observed percentage. With samples of about 1,000 interviews, the real percentages vary within the following confidence limits:

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ANNEX

ROMANIA

to the

EU Anti-Corruption Report

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1. **INTRODUCTION – MAIN FEATURES AND CONTEXT**

**Anti-corruption framework**

**Strategic approach.** The most recent national anti-corruption strategy 2012-2015 was adopted by the Government and endorsed by Parliament in 2012. It is based on a wide consultation process and was welcomed by most stakeholders. The strategy takes a multi-disciplinary approach and requires the development of sector- and institution-specific anti-corruption strategies across the board. A peer-review mechanism, involving civil society, was put in place to monitor its implementation. Cooperation platforms grouping various categories of stakeholders were also set up. Monitoring is carried out through evaluation rounds by topic. The activities undertaken within the monitoring process and the assessments made are published on a dedicated portal. Implementation is ensured within the limits of the fiscal budgetary strategy for 2012-2014. The national anti-corruption strategy follows a project-based approach: i.e. a number of measures are covered through specific projects while others are considered not to require additional funding and should consequently be covered by the regular budgets of the institutions concerned. The latter category represents 80% of the foreseen measures. While some progress was made on combating high-level corruption, the fight against petty corruption has not yielded sufficient results, while the prevention side remains rather weak both at central and at local levels. The Council recommended to Romania, in the context of the 2013 European Semester for economic policy coordination, to fight corruption more effectively.

**Legal framework.** The legal framework is largely in place, including recent steps taken to reform the criminal code and the criminal procedure code, which are due to enter into force in early 2014. These reforms aim at fine-tuning the legal framework, strengthening law enforcement authorities and anti-corruption institutions and ensuring increased efficiency and coherent practice of the judiciary in dealing with high-level corruption cases. However, a number of the most recent legislative initiatives of Parliament in December 2013, which, among others, would have narrowed the scope of corruption offences and criminal law provisions on conflicts of interest have seriously called into doubt the stability of the current legislation and the political commitment to see the anti-corruption reforms through. The above-mentioned legislative amendments were declared unconstitutional by the Romanian Constitutional Court in January 2014. Other considerable challenges remain, including on the implementation of the new codes. The instability of these legislative acts and a number of legal problems identified by practitioners which may require amendments of the codes or interpretative guidelines before their entry into force raise additional difficulties.

**Institutional framework.** Romania has set up a comprehensive institutional anti-corruption framework. The National Anti-Corruption Directorate (DNA), a specialised prosecution office, is tasked to investigate high-level corruption cases. The DNA has established a solid track record of non-partisan investigations into allegations of high-level corruption. The successful

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1. [http://www.just.ro/LinkClick.aspx?fileticket=T3mlRnW11sY%3D\&tabid=2102](http://www.just.ro/LinkClick.aspx?fileticket=T3mlRnW11sY%3D\&tabid=2102)
2. Independent agencies, law enforcement and judiciary; local administration; ministries; business sector; civil society.
3. [http://sna.just.ro/PaginaPrincipală.aspx](http://sna.just.ro/PaginaPrincipală.aspx)
7. For more details on the track record see the section on 'Prosecution of Corruption'.
investigations it has carried out in the last decade revealed corrupt practices involving high-level politicians and public officials, members of the judiciary, law enforcement officials, and people from a wide range of sectors: transport, infrastructure, healthcare, extractive industries, energy, agriculture, sports, etc. For a long time the judiciary had been less effective in dealing with high-level corruption. A change was noted over recent years; the High Court of Cassation and Justice in particular set an example by increasing efficiency in the adjudication of complex corruption cases. The service known as the Anti-Corruption General Directorate (DGA) within the Ministry of Home Affairs is a specialised police structure mainly responsible for investigating corruption within the police, while also covering other sectors. The National Integrity Agency (ANI) checks conflicts of interests, incompatibilities and personal wealth of public officials. Since its establishment in 2008, the ANI has shown good results overall. In the past five years, the confirmation rate of the ANI's decisions on incompatibilities, as well as the administrative decisions on conflicts of interest exceeded 80%. Following the ANI's decisions, over EUR 1 million in unjustified personal wealth was confiscated on the basis of final court decisions. However, over time the follow-up of the ANI's decisions encountered considerable difficulties. The political will to support the independence, stability and capacity of the anti-corruption institutions and the judiciary has not been constant over time.

**Opinion polling**

**Perception surveys.** According to the 2013 Special Eurobarometer on Corruption, 93% of Romanian respondents agreed that corruption is a widespread problem in their country (EU average: 76%), while 42% say that they were personally affected by corruption in their daily lives (EU average: 26%). 82% consider that bribery and use of connections are often the easiest way to obtain certain public services (EU average: 73%).

**Experience of corruption.** 25% of the Romanian respondents to the 2013 Special Eurobarometer on Corruption admitted that over the past 12 months they had been asked or expected to pay a bribe for services. This is the second highest percentage in the EU and compares to an EU average of 4%.

**Business surveys.** In the 2013 Eurobarometer Business survey on corruption, 81% of Romanian businesses said that favouritism and corruption hamper business competition in Romania (EU average: 73%). 65% of the respondents believed that corruption was a problem for their company doing business in Romania (EU average: 43%), while 64% considered that patronage and nepotism did so (EU average: 41%).

**Background issues**

**Cooperation and Verification Mechanism (CVM).** Romania has been subject to CVM monitoring since its accession to the EU. Its performance is measured against four benchmarks covering the areas of justice reforms, integrity, high-level corruption, and prevention and fight against corruption in the public sector. The Commission Decision establishing the CVM requires all benchmarks to be 'satisfactorily' fulfilled. In 2012, five years after accession, a stock-taking exercise was carried out. The assessment concluded that many of the 'building blocks' required by the CVM benchmarks were in place, yet that sustainability and irreversibility of the reforms was

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9 2013 Special Eurobarometer 397.
10 2013 Flash Eurobarometer 374.
still questionable and a track record of implementation which would be required for the Commission to decide to end the CVM was not yet present. The most recent assessment of the state of play of January 2014, which took stock of more recent developments, highlighted that 'progress is not straightforward, so that advances in one area can be constrained or negated by setbacks elsewhere'.

**Private sector.** In the Global Corruption Index 2013-14 of World Economic Forum, corruption is mentioned as the second most problematic factor for doing business in Romania, after tax rates. Romania has fully transposed the provisions of Framework Decision 2003/568/JHA concerning the liability of legal persons and penalties applicable to legal persons. However, the second implementation report regarding the Framework Decision noted that further clarifications were needed as to how the Romanian legislation treats third-party advantages resulting from active bribery in the private sector. The shadow economy was estimated to be 29.6% of GDP in 2012, which is the second highest percentage in the EU.

**Financing of political parties.** High-profile corruption cases show vulnerabilities in the supervision of party and electoral campaign financing, as well as in the prevention of electoral fraud. In its compliance report of December 2012, GRECO pointed out that 10 out of its 13 recommendations on party funding are still not fully implemented. Legislative amendments are being prepared and, if adopted, will fill a number of existing gaps, notably on access to annual financial statements of political parties. Moreover, existing provisions are not being properly implemented.

**Whistleblowing.** Romania has had dedicated legislation in place since 2004 on protection of whistleblowers in the public sector. The law requires public employees to report corruption in connection with the public service. Apart from protection against retaliation, the law also provides for protection of the whistleblowers’ identity. However, the effectiveness of this legal framework remains to be established. In a 2009 study on protection of whistleblowers in 10 EU Member States, Transparency International noted that implementation of the legislation is uneven and pointed out that in 40% of the cases monitored in Romania various forms of retaliation took place against whistleblowers. A more recent report of Transparency International published in November 2013 noted that some steps were taken to further improve whistleblowers’ protection. Improving the mechanisms that ensure whistleblower protection and better implementation of the existing legislation are also among the objectives of the national anti-corruption strategy.

**Transparency of lobbying.** Lobbying is not regulated in Romania. There is no mandatory registration or obligation of public servants to report contacts with lobbyists. The Romanian authorities were of the view that such new legislation is not necessary since the risks related to lobbying are already covered by the existing rules on conflicts of interest and incompatibilities applicable to public officials. One draft law regulating lobbying is currently discussed by the Chamber of Deputies. In 2010, a Romanian Lobbying Association was set up, with the aim to

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further promote lobbying activities and possibly ensure self-regulation. However, so far its impact has been limited.

**Media and access to information.** Objective reporting has deteriorated over the past years and journalism is ‘often overruled by the vested interests and political affiliations of the media outlets’ owners’, including at times intimidation of magistrates or anti-corruption actors. Limits on media freedom further reduced access to information countrywide. This is compounded by the fact that Romania has the lowest rate of internet coverage in the EU. Poor implementation of legislation regulating access to information also affects the capacity to prevent and control corruption. Freedom House’s Freedom of the Press 2013 index ranked Romania with a score that qualifies it as ‘partially free’.

### 2. Issues in Focus

**Prosecution of corruption**

A central autonomous specialised anti-corruption prosecutor’s office was set up in 2002. In its first years, it did not establish a track record of high-profile cases. It was reorganised in 2005, with reshaped powers and staffing, and renamed National Anti-Corruption Directorate (DNA). The focus was shifted to high-level and particularly complex cases. The DNA now investigates cases of high and medium-level corruption, and offences against the EU’s financial interests. Apart from the central office, it also has 15 regional services and four territorial offices.

With a new leadership and political will to advance the fight against corruption, after 2006, the DNA started building what is today an impressive track record of high-level corruption cases. The CVM Report of July 2012 stated that ‘the performance of DNA in the investigation and prosecution of high-level corruption cases can be considered one of the most significant advances made in Romania since accession. [...] Since 2007, cases at the highest levels of political life and within the judiciary have been raised by DNA against people from all major political parties’. Key to the DNA’s success has been the fact that its structure incorporates not only prosecutors, but also judicial police and specialists in economics, finances, banking, customs and IT.

While progress was made in bringing high-level corruption cases to court, the judiciary’s capability to handle such cases came under scrutiny. The CVM reports have extensively analysed the reasons for serious delays in court proceedings in high-level corruption cases, some of which incurred the risk of becoming time-barred. Still, the rate of adjudicated high-level corruption cases in courts has noticeably risen in the last two years, particularly as a result of efforts made by the High Court of Cassation and Justice. Reports of the judicial inspection service analysing the length of proceedings and reasons for significant delays in a number of high-level corruption cases

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23 The high and medium-level corruption cases are identified based on three alternative criteria: the value of the bribe or undue advantages exceeds EUR 10 000 or the damage exceeds EUR 200 000 or the alleged offender is a high-level official (including elected and appointed) or an official at mid-management level.


confirmed that the number of delayed decisions has decreased. It remains to be seen whether this is a lasting trend. In a number of pending high-level cases more than six years have passed since the alleged offenders were indicted.

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**Good practice: the DNA’s achievements in high-level corruption cases**

From 1 January 2006 to October 2012, the DNA indicted 4,738 defendants, of whom 2,101 held important positions. In the past seven years, the confirmation rate of DNA indictments through final court decisions has reached 90.25%. In this period, 1,496 defendants were convicted in final court decisions, of which almost half held political office (including: one former prime minister, one minister, 8 MPs, one state secretary, 26 mayors, deputy mayors and prefects, 50 directors of national companies and public institutions, 60 officials from control authorities). Between 1 January and 15 November 2013, the track record was maintained, with indictments against 823 defendants and 179 final court decisions issued against 857 defendants.

Over the last two years, the number of cases closed with a judgment has risen sharply. The number of final convictions issued in the first three quarters of 2012 was almost double the number of the previous year and four times higher than the conviction rate seven years ago. In 2011, over 230 border police and customs officers from six border crossing points were prosecuted for bribe-taking and participation in an organised crime group, mainly in connection to cigarette smuggling. Among the most notable DNA cases, mention should be made of two cases of a former prime minister who served an imprisonment sentence on charges of illegal funding for his presidential electoral campaign and who is also currently serving time in prison for another conviction on corruption charges. Other notable DNA cases covered the entire political spectrum: a former mayor of Cluj indicted for bribe-taking in exchange for securing public contracts who was investigated in pre-trial arrest at a time when he was an influential member of the ruling party; a minister in office (now former) convicted at first instance for abuse of office for deeds allegedly committed in a previous capacity; an MP who was given prison terms in two corruption cases following final court decisions (aiding and abetting abuse of office in connection with illegal property swaps involving land owned by the Ministry of Defence and bribery involving the players of a football club).

As regards petty corruption, for 2013 the Public Ministry has reported an increase in the number of resolved cases by about 9% compared to a similar period of reference in 2012. The number of indictments went up by about 15%. However, while some progress can be noted over the recent years as regards petty corruption cases investigated by the prosecutor’s offices across the

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30 Media monitoring project co-financed by the EU which follows all stages of criminal proceedings in a number of high-level corruption cases and keeps public records thereof: [http://anticoruptie.hotnews.ro/](http://anticoruptie.hotnews.ro/)


32 These included one former prime minister, nine ministers, five state secretaries, 23 MPs, 105 mayors and deputy mayors, eight presidents and vice-presidents of county councils, eight directors of national agencies, 40 directors of national companies and autonomous administrations and 42 Financial Guard officers, and 48 legal entities.

33 A study commissioned by FRONTEX on anti-corruption measures in EU border control estimated that the network in question brought the implicated border guard roughly EUR 500 in bribes per person per day. While this case illustrated the effectiveness of law enforcement in detecting large-scale corruption schemes of this kind, it also exposed the level of infiltration of corruption at the borders and its links with organised crime: [http://www.frontex.europa.eu/assets/Publications/Research/Study_on_anticorruption_measures_in_EU_border_control.pdf](http://www.frontex.europa.eu/assets/Publications/Research/Study_on_anticorruption_measures_in_EU_border_control.pdf)
country, overall these have not yet reached a convincing track record. Each prosecutor’s office has designated at least one prosecutor to handle corruption cases. Most of the cases sent to court by the prosecutor’s offices in the country concern police officers, which may also be a result of the effectiveness of the General Anti-Corruption Directorate within the Ministry of Home Affairs. However, the overall number of other petty corruption cases sent to court is rather low.

DNA’s drive to investigate high-level cases has also benefited from political circumstances that enabled it to act impartially and independently. A decisive element for the DNA’s efficiency concerns the appointment of its leadership. As highlighted by the January 2014 CVM Report, ‘the nomination of the General Prosecutor and of the leadership of DNA and the Directorate for Investigating Organised Crime and Terrorism (DIICOT) was a protracted process.’ The procedure through which the leadership of these institutions was eventually appointed, while also including some figures with established track record, ‘was essentially a political choice, rather than the result of a procedure designed to allow scrutiny of the candidates’ qualities and a real competition.’

More recently, as stressed by the January 2014 CVM Report, the decisions taken in early October 2013 in relation to the appointments of the heads and deputy heads of section in the DNA raised additional difficulties. Delegations to ad interim positions were abruptly cancelled, and nominations were made by the Minister of Justice which had not fully followed the procedure of consulting the head of DNA. The timing also created concerns that a link was being made with DNA decisions on cases relating to political figures. Following public criticism, including by the Superior Council of Magistracy, new nominations were later on made following consultations with the head of DNA. Following the appointment of the new leadership, the DNA maintained the previous pace of investigations. It is important to keep this trend in the longer term.

**Accountability and integrity of elected and appointed officials**

Romania has developed the requisite framework both for the prosecution of high-level corruption and for independent verification of wealth, potential conflicts of interest and incompatibilities of public officials, all of which are key elements of anti-corruption policy. High-level officials are subject to strict asset disclosure obligations and their asset declarations are publicly accessible. However, political support for the current integrity framework, both from a legislative and institutional point of view, has been inconsistent.

Since 2008, the ANI identified more than 469 incompatibilities, 194 administrative and criminal conflicts of interest, 46 cases of unjustified wealth, 346 cases of potential criminal offences and applied more than 5 200 fines for breach of asset disclosure legislation. Among the officials investigated by ANI: 50 MPs, 12 presidents and vice-presidents of country councils, 10 ministers and state secretaries and over 700 local elected officials, managers of public agencies, police officers, magistrates, etc. Over the last five years, more than 80% of the ANI’s decisions on

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34 Between 2012 and the first semester of 2013, there were 432 indictments concerning 722 defendants. Among these: police officers, officials within local administration, doctors, employees of state agencies, etc. 25% of these cases where indictments were issued started ex officio. In the same reference period, 266 final court decisions concerning 332 defendants were rendered in corruption cases (conviction rate of 92.77%). Only 20.78% of the sentences are to be served in prison.


36 According to Romanian law, the heads of the DNA, of the General Prosecutor’s Office and the Directorate for Investigating Organised Crime and Terrorism (DIICOT) are appointed by the President of Romania, based on a proposal of the Minister of Justice, followed by a consultative opinion of the Superior Council of Magistracy. The Minister of Justice has the prerogative to propose any prosecutor, but nothing prevents making the proposal on the basis of a procedure that follows criteria of transparency and professionalism.


38 Idem.

39 See statistical data mentioned at the beginning of this section.

incompatibilities and conflicts of interest remained final. Nevertheless, there were also notable cases in which the follow-up of its decisions has not been satisfactory. 41

Parliament has shown a lack of consistency in taking decisions related to integrity issues, including on the follow-up of the decisions of the ANI on conflicts of interest or incompatibilities. Once these decisions are final, they should lead to termination of office of the elected official in question. Since mid-2012, however, the judiciary had to refer twice to the Constitutional Court following unwillingness of Parliament to terminate mandates as a result of final court decisions on incompatibility of MPs. The most recent case dates from the autumn of 2013 and concerns the ANI’s decision on the incompatibility of a senator confirmed by the High Court of Cassation and Justice which was left unenforced by the Senate. The Constitutional Court had therefore to intervene once more, ruling on the constitutional conflict between the legislative power and the judiciary. 42 Since then, the Senate has not taken any action.

Parliament’s failure to implement some of the ANI’s final decisions affected the credibility of its commitment to the fight against corruption. Moreover, elected officials have frequently and seriously undermined the institutional stability of the ANI through legislative proposals.

Recently, there has been wide public debate concerning the possible amendment of the legislation on incompatibilities applicable to local elected officials. This regarded in particular the ban on participation in supervisory boards of local state-owned or state-controlled companies and inter-community development associations which are responsible for contracting public utility services for a number of city halls. The issue came to the fore when the ANI discovered a number of breaches of these legal provisions. The incompatibility rules regarding the boards of state-owned or state-controlled companies are important elements that address potential corruption and conflict of interest risks in public procurement and supervision of public contracts and at the interface with political party or electoral campaign financing.

Furthermore, Parliament’s decisions to lift immunity have so far been unpredictable. 43 MPs do not have immunity from criminal investigation, although they do enjoy immunity from pre-trial arrest and search. However, MPs who are or were ministers enjoy immunity for offences committed in relation to their ministerial duties, and particular difficulties seem to arise in such cases. Procedures for lifting immunity do not require Parliament to motivate its decisions. In three recent cases in 2012 and 2013, the Chamber of Deputies voted against lifting the immunity of former ministers from criminal investigation into allegations of corruption, economic crimes and electoral fraud.

In January 2013, Parliament adopted amendments to the statute of MPs. However, as these were challenged before the Constitutional Court, they did not take effect until July 2013, and the implementing regulations and a new code of conduct 44 had not yet been adopted at the time of writing. While some of the proposed new provisions are welcome, notably as regards the

43 Between 2007 and mid-2012, DNA, through the General Prosecutor, filed 7 requests to Parliament for lifting immunity for investigation of MPs and 3 to the Romanian President with regard to the investigation of ministers and former ministers. Parliament approved 5 of these 7 requests and dismissed the rest, while the President approved all requests. In another case regarding an MP (and former minister), the extension of the criminal investigation to other offences was dismissed by Parliament. As far as search is concerned, Parliament rejected a request against an MP (and former minister). Since 2007, until mid-2013 there were three requests for preventive arrest of MPs: in one case the request was dismissed and in two other cases accepted.
44 The President of the Chamber of Deputies sent a draft of the code for consultation to the European Parliament in December 2013.
enforcement of final decisions on incompatibility, their effectiveness will need to be assessed over time.\textsuperscript{45}

In early December 2013, Parliament adopted a number of amendments to the criminal code which, among others things, excluded MPs, the President and the liberal professions from the scope of the definition of public officials. This meant that these categories could no longer be charged with corruption offences in the public sector. Moreover, a number of amendments were passed which considerably narrowed the scope and application of criminal law provisions on conflicts of interest. These recent amendments raise serious concerns as to the level of integrity and anti-corruption standards to which elected officials are committed. In January 2014, the Constitutional Court found all these amendments unconstitutional.\textsuperscript{46}

**Integrity of the judiciary**

The DNA indicted 23 judges and 30 prosecutors between January 2006 and the fourth quarter of 2012. Final convictions on corruption charges were rendered in the same reference period for 12 judges and 11 prosecutors. In recent years, six cases concerned judges of the High Court, including heads of sections. They were charged with bribery, trading in influence and complicity to other criminal offences.\textsuperscript{47} Two members of the Superior Council of Magistracy were indicted on corruption charges. Further monitoring is needed to assess the dissuasiveness of sanctions applied.\textsuperscript{48} The most recent cases concerned various levels of the judiciary and revealed networks involving judges, attorneys and defendants trading in influence to secure favourable court decisions, or prosecutors shielding certain criminal networks from investigation. In one case the alleged level of the bribes was as high as EUR 1 million. In another case, two prosecutors,\textsuperscript{49} one judge and one police officer were indicted on charges of being complicit to, instigating and participating in the unauthorised use of classified information belonging to the police intelligence service in exchange for money, services and other undue advantages related to leading positions in the DNA and the Prosecutor-General's Office. The Superior Council of Magistracy has reacted promptly to these cases, endorsing in due time requests for search and pretrial arrest, suspending from magistracy the defendants in question and requesting various checks, for instance to see whether the random distribution of cases system was being manipulated.

At the end of 2011, the Superior Council of Magistracy adopted a strategy for integrity within the judiciary and a corresponding action plan aiming, among others, at enhancing integrity rules and improving disciplinary liability mechanisms.\textsuperscript{50} The judicial inspection, now an autonomous body, was strengthened and took steps to improve its methodology. New legislation on disciplinary liability of magistrates allows for more effective disciplinary procedures.\textsuperscript{51} It has also introduced the possibility of suspending magistrates pending disciplinary investigation. In August 2013, the Superior Council of Magistracy endorsed a legislative proposal by the Ministry of Justice to eliminate the special pensions\textsuperscript{52} for magistrates who have incurred final convictions on charges of corruption or offences related to the exercise of their office when committed with intent or any

\textsuperscript{46} http://www.ccr.ro/noutati/COMUNICAT-DE-PRES-75.
\textsuperscript{47} Notably offences related to disclosing information on authorisation of search, arrest or interception of other magistrates.
\textsuperscript{49} Of whom one member of the Superior Council of Magistracy at the time and one advisor in the same Council.
\textsuperscript{51} Law no. 24 of 2012 amending Law 303 of 2004 on the statute of judges and prosecutors and Law 317 of 2004 on the Superior Council of Magistracy.
\textsuperscript{52} These pensions are restricted to magistrates and are exempt from the general pension rules. They are considerably higher than the general norm.
other offences that harm the reputation of the judiciary. The legislative proposal was approved by the Government in August 2013 and is currently tabled for adoption in Parliament.

Public procurement

Public procurement represents an important share of the Romanian economy. Public works, goods and services constituted 24.6% of GDP in Romania in 2011. The value of calls for tender published in the Official Journal as a percentage of total expenditure on public works, goods and services was 30.9% in 2011. While the legislative framework for public procurement is in place, frequent changes and lack of a uniform practice or guidance from the institutions concerned are a source of uncertainty for stakeholders. If nothing else, these successive modifications generated confusion about the scope of public procurement legislation with regard to state-owned and state-controlled companies. Furthermore, the consistency of decisions by courts and review bodies could be improved further. The use at national level of the negotiated procedure without publication of a tender notice is well above the EU average (it amounts to about 15% of the total number of procurement procedures, while the EU average is about 5%).

According to the 2013 Eurobarometer business survey on corruption, Romanian respondents from the business sector perceive the following practices as being widespread in public procurement: involvement of bidders in the design of specifications (49%), unclear selection or evaluation criteria (56%), conflicts of interest in the evaluation of the bids (57%), specifications tailor-made for particular companies (59%), abuse of emergency grounds to justice the use of non-competitive or fast-track procedures (51%) and collusive bidding (53%). 64% considered that corruption is widespread in public procurement managed by national authorities (EU average: 56%) and 59% in the case of local authorities (EU average: 60%). A 2012 study by the Romanian Institute for Public Policy (IPP) showed that 90% of Romanian respondents viewed the public procurement process as corrupt due to its lack of transparency, fairness and competitiveness. These are among the highest percentages in the EU. These indicators, while not necessarily directly related to corruption, illustrate risk factors that increase vulnerabilities to corruption in public procurement procedures.

As shown by a number of external audits, as well as surveys and studies, the Romanian national public procurement system is hampered by numerous irregularities, conflicts of interest and high corruption risks. Among the most frequent irregularities that could indicate higher risks of corruption include insufficient transparency at all stages of procurement, excessively short deadlines for submitting tenders, changes to the initial information of the tender procedure that are published only at national level, excessively strict selection criteria and irrelevant or artificial algorithms for evaluation of tenders. Other negative practices noted in external audits and

54 There is a high frequency of Government Emergency Ordinances (GEO) and amendments to the legislation in this area that create legal instability and lead to inconsistencies in implementation. An example of this is GEO 34/2006 concerning public procurement which was amended four times between December 2012 and June 2013 (i.e. by GEO 77/2012, GEO 31/2013, GEO 35/2013 and Law 193/2013).
55 Data concerning 2011.
56 2013 Flash Eurobarometer 374.
58 The report delivered by Deloitte commissioned by DG REGIO provides detailed information on the existing shortcomings of the Romanian public procurement system and was also considered in this assessment. The report was made publicly available by the Romanian authorities: http://www.sn-seap.ro/wp-content/uploads/2012/07/DG-Regio-Third-Interim-Report-Part-C-FINAL-RO-version.pdf.
59 ‘Identifying and Reducing Corruption in Public Procurement in the EU – Development of a methodology to estimate the direct costs of corruption and other elements for an EU-evaluation mechanism in the area of anti-corruption’, 30 June 2013, PricewaterhouseCoopers and ECORYS.
verifications concern the use of tailor-made specifications favouring a specific candidate and the direct award of a large number of public contracts by the same contracting authority to a very limited number of economic operators through unjustified use of a negotiated procedure and without publication of tender notice. The current legislation on public procurement does not have clear provisions on revolving door practices and there appears to be a lack of awareness as to the conflict of interest situations that may arise from such practices.

In terms of the supervision of public procurement procedures, a complex institutional structure is in place. However, the effectiveness of internal and external control mechanisms remains to be established. The independent status of the Romanian review authority on public procurement has not yet been fully secured. Moreover, the institutional framework is overly complex and limited inter-institutional cooperation leads to divergent practices. As a result, substantial irregularities go undetected and unpunished. The weak capacity of the contracting authorities to prepare sound tendering documentation, define adequate selection and award criteria, evaluate the offers or put in place clear red flagging mechanisms is also a source of inefficiency and lack of transparency. The National Authority for Regulating and Monitoring Public Procurement (ANRMAP) is currently working on interpretative guidelines for contracting authorities on a number of governance and procedural-related aspects, including conflicts of interest.

An Electronic Public Procurement System (SEAP) is in place, but challenges remain as to its effective functioning. Since January 2013, contracting authorities have been required to upload in SEAP all notifications on direct procurement exceeding EUR 5 000. A study by the Romanian Institute for Public Policy reports significant irregularities in the execution of public contracts, such as acceptance of works or supplies below the standard of quality stated in the initial offer and a lack of sanctions for late execution or delivery, even when the necessary time for execution or delivery was one of the award criteria, while post-award monitoring is almost non-existent.

The most recent CVM reports also stressed that very limited progress was made in the prevention and sanctioning of corruption in public procurement. Few cases of public procurement fraud were concluded in court with dissuasive sanctions. Between January 2006 and the fourth quarter of 2012, only 15 officials received final convictions in cases brought by the DNA. The cases usually take a long time to process, and frequently contracts or projects have been completed by the time corrupt practices are discovered. Some steps have been taken to train prosecutors and judges on public procurement aspects.

A decentralisation reform is being implemented, through a number of bills and administrative decisions at government or ministry levels. Given the significance and nature of the risks associated with corruption, conflict of interest and favouritism, as highlighted in this section and the section below, there is a need for this reform to be accompanied by effective prevention in response to such risks.

In relation to EU funds, according to aggregate DNA statistics, between 2006 and 2012, EUR 36 million in EU funds was diverted in Romania through corruption and fraud. The DNA indicted

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60 The National Authority for Regulating and Monitoring Public Procurement (ANRMAP), coordinated by the prime minister, is in charge of regulating and monitoring public procurement (including systematic ex ante control of tender documents and ex post controls of public procurement procedures based on risk assessments). The Central Unit for Coordination and Verification of Public Procurement (UCVAP), which is part of the Ministry of Public Finance, is responsible for ex ante control of the regularity of procurement procedures (selected on the basis of risk assessments) through local observers participating in tendering committees (their reports are consultative). The National Council for Solving Complaints (CNSC) is a specialised administrative-jurisdictional body competent to hear public procurement complaints in first instance, before contracts are signed. The National Management Centre for Informational Society (CNMSI), which is part of the Ministry of Communications and the Information Society, implements and operates the national Electronic System for Public Procurement (SEAP).


406 defendants, and the courts handed down 82 final decisions against 127 persons. At the local level public procurement is particularly vulnerable to corruption.

Since 2010, several audits by the European Commission have highlighted substantial shortcomings in the Romanian public procurement system. The fact that these were not prevented, detected or corrected by the national management and control system, is indicative of systemic deficiencies. The Romanian institutional set-up for public procurement was found to have insufficient capacity and capability for effective controls on spending of EU funds. These shortcomings led to temporary interruptions of payments within Structural Funds to protect the financial interests of the EU. The Commission also raised reputational reservations in 2011 regarding 2007-13 programmes in Romania. The management and control systems were adapted and financial corrections were accepted and implemented by the Romanian authorities, as a result of which the Commission lifted the reservations and resumed payments.

Conflicts of interest and favouritism

As illustrated in the previous section, conflicts of interest and favouritism appear to be among the most recurrent problems in the allocation and spending of public money (including EU funds) both at central and at local levels while current prevention and control mechanisms are difficult to enforce or not sufficiently dissuasive. The detection and notification rate of conflict of interest by public procurement authorities appears rather low as compared to the size of the actual risks related to this issue as demonstrated by the ANI's findings. To remedy this, memoranda were signed in 2013 between the Public Procurement Authority (ANRMAP) and the ANI to launch an integrated information system for preventing and detecting through ex ante controls potential conflicts of interest.

In 2012, the ANI carried out a study on local administration which revealed a high number of cases of conflicts of interest. Many local councillors concluded contracts with their own companies or with companies controlled by their relatives. The ANI found 78 cases of local elected officials incompatible or in conflict of interest. Of these, 33 cases were submitted to the prosecution service on suspicion of criminal conflict of interest, and an additional 17 on suspicion of other alleged criminal offences, including corruption and forgery. 75 incompatibility decisions were issued, of which 24 became final and 51 are currently being challenged in court.

The ANI reports that more than 80% of court decisions confirm its reports on conflicts of interest and incompatibilities. While this represents an improvement, the case-law in the area of conflicts of interest remains inconsistent. Courts have issued contradictory decisions for comparable cases. For example, in three cases concerning presidents of county councils who in their official capacity signed contracts on behalf of local administration with their own companies, two courts decided that there was a conflict of interest, while a third decided there was not. The CVM report of January 2014 also noted that more remains to be done to ensure dissuasiveness of sanctions applied and effectiveness in recuperating the damage caused to the public interest. Separate court proceedings are required to adjudicate on appeals lodged against a finding of conflict of interest, and then to enforce the final decision and revoke any legal acts signed while the offending official had the conflict of interest. Such proceedings can take years to complete, delaying the sanctioning.

To remedy this situation, a more systematic approach to ex ante checks is needed, a task to which the ANI is best suited, provided it is given the necessary resources. In April 2013, the Government

64 Period 2008-2013.
approved a memorandum\textsuperscript{66} tasking the ANI to carry out systematic ex ante checks on conflict of interest using a nationwide database of all public officials who manage EU funds. Careful consideration must be given to the capacity needed for the implementation of this verification system.

While conflict of interest is a criminal offence under Romanian law, prosecution services have long been reluctant to prosecute such cases. Recently they have become more active. During 2008-2013, 138 cases were referred for prosecution on suspicion of criminal conflicts of interest. More than half of these concerned elected public officials. Effective criminal investigation remains limited: 7\% of cases were sent to court and an additional 7\% resulted in pre-trial proceedings. In 36\% of cases no proceedings were launched, and the remaining 50\% are under investigation by the prosecution. In March 2013, the acting Prosecutor-General overturned prosecutors’ decisions not to bring charges in 15 conflict of interest cases involving former and current MPs. In 2012 and 2013, 20 indictments were made with regard to conflict of interest cases. In mid-2013, all prosecutors' offices attached to courts of appeal developed regional strategies for addressing conflict of interest. As mentioned above, in early December 2013, Parliament adopted a number of amendments to the criminal code narrowing the scope and application of the conflict of interest offence, removing public officials and administrative decisions from its scope and limiting applicability to contractual personnel of public authorities. The amendments were declared unconstitutional by the Constitutional Court in January 2014.

Research suggests that the allocation of public funds in Romania, notably at local level, remains a problematic area where political favouritism often prevails over objective criteria and the public interest.\textsuperscript{67} To measure the extent of political clientelism in public administration, the research looked into different types of funds transferred from the state budget during 2004-2011. These ranged from reserve funds to funds for environmental purposes. The allocation of these funds was analysed in correlation with the political affiliation of the allocating officials. The research revealed a high correlation between the two to the detriment of public interest considerations. For example, the research suggested that the national disaster relief emergency fund, earmarked for natural disasters, had been influenced by all political parties in government to channel resources to allegedly partisan reasons unrelated to the occurrence of natural disasters. The share of funds allocated to the main government party ranged from 49\% in 2004 and 45\% in 2008 to 62\% in 2010.\textsuperscript{68}

Another research report shed light on other opportunities for discretionary allocation, such as the funds for roads (county and rural), schools, rural water systems and bridges.\textsuperscript{69} In addition, only 25\% of Romanian municipalities are able to cover their payroll expenses from revenues alone, creating a serious dependence on discretionary allocations. The largest allocations, worth over EUR 1 billion, were made during the boom years of 2007-2008. This period overlaps with the highest level of clientelism identified by the research.

The study on clientelism also pointed to major flaws in the management and supervision of state-owned companies and assessed the impact of discretionary allocations on the balance sheets. The most widespread practices involve the overstating of public procurement contracts, where state-owned enterprises conclude non-competitive purchase contracts above market prices with favoured partners or sales below market prices.

\textsuperscript{66} Memorandum 05/04/2013.
\textsuperscript{68} http://www.sar.org.ro/dincolo-de-perceptii-a-devenit-guvernarea-romaniei-mai-integra-dupa-2004-3/
Informal payments are widespread in the Romanian public healthcare system. Low salaries of doctors and medical staff in the public sector make it more difficult to address this issue effectively. A 2005 national study conducted by the World Bank for the Romanian Ministry of Health estimated the extent of informal payments in healthcare at around EUR 280 million annually.\(^\text{70}\) The actual numbers might be even higher.

According to the 2013 Special Eurobarometer on Corruption, 28% of Romanian respondents who visited public medical facilities in the preceding year had to make an extra payment, or offer a gift or donation besides the official fees. This is the highest percentage in the EU, far above the EU average of 5%. Half of the respondents (highest percentage in the EU, against an EU average of 19%) felt they had to make an extra payment or offer a gift before care was given. Local research carried out in 2011 showed that only 33% of respondents believed that co-payments would reduce informal payments in the health system, while 83% believed that medical personnel is poorly paid and considered this a core cause of corruption in this field.\(^\text{71}\)

The European collaborative research project ASSPRO CEE (2008-2013) studied informal payments across six countries\(^\text{72}\) and found that they were made by 55% of outpatient healthcare users and 72% of inpatient care users in Romania.\(^\text{73}\) 81% respondents would prefer to convert the current payments to a system of additional formal payments, while 54% would prefer to use private services instead of paying bribes. 34% of respondents considered informal payments inevitable.\(^\text{74}\)

Several projects and strategic plans to address informal payments have been considered by the Ministry of Health, but to date no concrete results have been achieved in reducing the spread of this practice. Recent attempts to set up hotlines for reporting corrupt practices in the medical system failed due to low awareness and reluctance of the general public to report corruption in this sector.\(^\text{75}\) Several measures were also considered in the context of a healthcare reform.

In 2012, a co-payment law was passed requiring some medical services to be paid with coupons, thus reducing the risk of informal payments.\(^\text{76}\) Co-payments started being implemented in March 2013, but only in small fixed amounts for services (except emergencies).

As for procurement in the healthcare sector, general public procurement rules apply. Corruption risks are present not only in the public procurement process as such, but also in preceding stages related to eligibility for the national lists of drugs, procurement for the National Health Programmes or in relation to adding a specific drug, equipment or medical device to the list of reimbursed services and gratuities covered by the National Social Health Insurance Fund. Currently, only the drugs, devices and materials covered by the National Health Programmes follow a centralised procedure of procurement. A law for re-centralisation of public procurement of medicines, materials, devices and equipment was adopted in 2013 establishing the Ministry of Health as a centralised contracting authority.\(^\text{77}\)

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\(^\text{70}\) Medical care in Romania comes at an extra cost, 8 March 2009.

\(^\text{71}\) Romanian Institute for Evaluation and Strategy about the general perception of Romanian healthcare (IRES) 2011.

\(^\text{72}\) Poland, Romania, Hungary, Bulgaria, Lithuania and Ukraine.

\(^\text{73}\) 20-35% of them had to borrow to be able to pay and one third of respondents did not go to a doctor because they could not afford to.

\(^\text{74}\) Mihaescu-Pintia C., Florescu S., ASSPRO CEE, 2012.

\(^\text{75}\) www.medalert.ro.

\(^\text{76}\) The co-payments are to be calculated as a percentage of the value of health services received, while the total amount for an insured person should not exceed 1/12 of their annual net income.

\(^\text{77}\) Law 184 of 2013.
In 2011, an integrity department was set up within the Ministry of Health, tasked to develop and implement strategies to fight corrupt practices and counter risks within the healthcare system. It coordinates prevention and combating of corruption policies in public procurement and budgetary allocations within this sector, but has not been tasked to address the issue of informal payments. Since its establishment, the department has faced considerable challenges that have prevented effective verification. These were related to the powers, tools, financial resources and staff it has been given. The department has started to carry out a few checks, but their impact and follow-up remain to be seen.

3. **Future steps**

Corruption, both petty and political, remains a systemic problem in Romania. While some anti-corruption reforms have been pursued over the past years, their outcome proved to be unstable and easily reversible. Positive results were noted in the prosecution and more recently in the adjudication of high-level corruption cases, following efforts by specialised law enforcement bodies, prosecutors, and judges. However, the political will to address corruption and promote high standards of integrity has been inconsistent over time. The Cooperation and Verification Mechanism (CVM) Report of January 2014 highlighted that, while progress was made in many areas of judiciary and anti-corruption policies, 'the readiness with which the foundation stones of reform could be challenged in Parliament served as a reminder that there is far from consensus about pursuing the objectives of the CVM.' Accountability and integrity of elected and appointed officials remain matters of concern. More determined efforts are needed to address corruption effectively within the judiciary and healthcare systems, and in connection with public procurement. The policy for preventing corruption remains underdeveloped and inefficient.

The following points require further attention:

- Ensuring that all necessary guarantees remain in place to safeguard the stability, independence and continuation of the track record of anti-corruption institutions and the judiciary regarding non-partisan investigations and effective court proceedings concerning high-level corruption cases, including with regard to elected and appointed officials. Implementing coherent preventive and awareness-raising measures, accompanied by an effective sanctioning regime, to reinforce integrity standards in the judiciary, actively involving all relevant actors in the judiciary, including the Superior Council of Magistracy, the Judicial Inspection, magistrates’ associations, courts and prosecutors’ offices.

- Implementing comprehensive codes of conduct for elected officials and ensuring corresponding accountability tools and dissuasive sanctions for corrupt practices, conflicts of interest or incompatibilities. Consider developing ethical codes for political parties or establishing ethics pacts between parties to promote high integrity standards. Ensuring that all decisions regarding lifting of immunities are duly reasoned and taken promptly, and that no obstruction of justice is allowed.

- Developing uniform and effective prevention tools within contracting authorities and public procurement supervisory institutions, with particular focus on conflict of interest at local level. Ensuring systematic monitoring and transparency of the implementation of large-scale public contracts, including EU-funded projects. Ensuring the stability of the legal framework on conflicts of interests and the incompatibility rules applicable to elected

representatives and local level officials. Developing a more efficient system permitting to early detect, remedy and effectively sanction conflicts of interest in public procurement. Effectively implementing clear rules on revolving door practices in public procurement and raising awareness of the risks such practices entail. Establishing effective control mechanisms targeting the allocation of government funds to local administrations and state-owned companies and implementing safeguards against discretionary allocation to the detriment of the public interest. Strengthening anti-corruption safeguards for public procurement processes within state-owned companies.

- Implementing effective strategies to achieve a reduction in the level of informal payments in the public healthcare system, including by considering improving remuneration and working conditions for medical staff. Ensuring the necessary powers, professionalism and operational independence of the integrity department within the Ministry of Health and enabling it to carry out effective integrity controls, including on budgetary and procurement aspects. Ensuring effective follow-up of the department's findings.
Brussels, 3.2.2014
COM(2014) 38 final

ANNEX 2

ANNEX

BULGARIA

to the

EU Anti-Corruption Report

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BULGARIA

1. INTRODUCTION – MAIN FEATURES AND CONTEXT

Anti-corruption framework

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

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

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

3 Council recommendation 2013/C 217/03 of 9 July 2013.
4 http://www.government.bg/cgi-bin/e-cms/vis/pl7?s=001&g=0213&n=480&g=20 September 2013.
5 The lack of independent, proactive anti-corruption institutions has inhibited progress, leading to administrative activities that tend to be reactive and to focus on formal compliance alone. CVM Report, July 2012.
6 The Criminal Law Convention on Corruption and the Additional Protocol to this Convention, the OECD Convention on combating bribery of foreign public officials in the framework of international business transactions, and the United Nations Convention against Corruption.
the right direction, even if many of the appointments have continued to raise doubts about political influence.

**Opinion polling**

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

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

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

**Background issues**

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

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

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9 2013 Special Eurobarometer 397.
10 2013 Flash Eurobarometer 374.
14 Commission for Prevention and Ascertainment of Conflict of Interest, discussed in greater detail in the section of this chapter on the independence and effectiveness of anti-corruption institutions.
16 See CVM Reports of July 2012, p. 15 and July 2011, p. 10.
amendment to the law extended the range of officials required to declare their assets, although it did not increase institutional capacity to handle and monitor such declarations.\textsuperscript{17}

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

**Financing of political parties.** The National Audit Office (NAO) publishes online the annual financial reports and donor lists of political parties. The 2011 Electoral Code and amendments to the Political Party Act expanded the NAO’s role, improved coherence in the framework for supervision of political financing, banned anonymous donations and donations by legal persons. Parties that fail to comply with reporting requirements may lose their state subsidy until the next parliamentary election or be fined EUR 2,500 to EUR 5,000; repeated failure may result in the dissolution of the party, pursuant to a court decision.\textsuperscript{25} Party officials who obstruct a NAO audit may be fined EUR 500 to EUR 1,000.\textsuperscript{26} Bulgaria satisfactorily implemented GRECO recommendations concerning provisions on fundraising events, a single campaign bank account, the conservation of financial records, and NAO cooperation with the National Revenue Agency. GRECO also welcomed an increase in material support and campaign bank account, the conservation of financial records, and NAO cooperation with the National Revenue Agency. GRECO also acknowledged a more coherent range of sanctions. However, the amounts of

\begin{itemize}
  \item 17 http://cpaci.bg/2011-08-03-09-36-42/4-2011-08-03-09-17-27.
  \item 18 ‘Excellence in Public Administration for competitiveness in EU Member States’, report prepared in 2011 - 2012 for the European Commission, DG Enterprise and Industry by Austrian Institute of Economic Research (WIFO), Vienna; Center for European Economic Research (ZEW), Mannheim; IDEAConsult, Brussels. p. 1.44.
  \item 19 ‘Excellence in Public Administration for competitiveness in EU Member States’, report prepared in 2011 - 2012 for the European Commission, DG Enterprise and Industry by Austrian Institute of Economic Research (WIFO), Vienna; Center for European Economic Research (ZEW), Mannheim; IDEAConsult, Brussels. pp. 60 and 61.
  \item 22 Проект на Закон за изменение и допълнение на Закона за административни нарушения и наказания, http://www.justice.govament.bg/Files/ZID_ZANN-11_07_13_65510366159549739.doc.
  \item 23 These statistics relate to Article 83a of the Law on Administrative Offences and Sanctions on legal persons which (would) have benefited from various crimes, including all crimes under the bribery section of the Criminal Code, committed by company staff in the course of their duties. Prosecutor’s Office of the Republic of Bulgaria (17 September 2013) Доклад за прилагането на закона и за дейността на прокуратурата и на разследващите органи през 2012 година http://prb.bg/main/bg/Information/3923/ p. 71.
  \item 24 http://ec.europa.eu/europe2020/pd/themes/07_shadow_economy.pdf.
  \item 25 Article 40(1) Political Parties Act.
  \item 27 http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282012%2914_Bulgaria_EN.pdf.
\end{itemize}
administrative fines are not dissuasive when compared with campaign spending limits, while the dissolution of a political party is too severe a sanction to be of practical use. In February 2013, the Electoral Code and the Law on Administrative Offences and Sanctions were amended in response to some pending GRECO recommendations. The amendments require the designation of campaign finance managers, prohibit the use of public resources for campaigning, and extend the relevant statute of limitations to two years. However, concerns remain about the extent to which official financial information submitted by parties reflects reality; one party in government declared that it had received no donations in 2012.

Whistleblowing. The Administrative Procedure Code and the Conflict of Interest Prevention andAscertainment Act contain provisions on the protection of whistleblowers’ identities, while the Criminal Procedure Code requires citizens, and specifically public servants, to report crime. However, effective administrative arrangements for whistleblowers are not yet in place. 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. 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.

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

Media and access to information. Media freedom is protected by law and there is a wide variety of media. However, media ownership is increasingly concentrated, compromising editorial independence. 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. 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. An increase has been noted in media self-censorship due to corporate and

28 Campaign expenditure is capped at EUR 2 million for parliamentary elections and EUR 1 million for presidential elections.
34 Except for the provision of financing and equipment under international treaties and projects.
35 Commissioner Neelie Kroes and EU Member State ambassadors in Sofia have raised concerns about transparency and concentration of media ownership.
political pressure.\textsuperscript{38} Bulgaria has the lowest rank among EU members in the World Press Freedom Index.\textsuperscript{39}

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

2. **Issues in Focus**

*Independence and effectiveness of anti-corruption institutions*

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

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

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

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

\textsuperscript{40} ‘Study to examine the links between organised crime and corruption’, Philip Gounev and Tihomir Bezlov, Center for the Study of Democracy, 2010.
\textsuperscript{44} The Minister of Finance is Vice-Chair of the Commission.
was not taken earlier on indications that smuggling and drug-trafficking suspects were being shielded from within law enforcement.

Repeated wiretapping controversies revealed flaws in the system for authorisation and conduct of surveillance, with significant implications for Bulgaria’s capacity to address corruption. Leaked transcripts of wiretapped conversations appear to indicate political interference in the prosecution service and media, and shielding of businesses from investigation. In April 2013, prosecutors launched an investigation into a former minister and other officials amid claims of mass unauthorised wiretapping of politicians, magistrates and business people. A court verdict, acquitting a former defence minister of bribing an investigator to shelve an earlier investigation, noted irregularities in the approval and handling of surveillance material. These cases highlighted the need for stronger guarantees against the risk of surveillance abuses, as the European Court of Human Rights ruled in 2007 and 2012. In August 2013, Parliament overrode a presidential veto over amendments to the Special Surveillance Devices Act. The veto had been based on concerns over judicial independence and the powers of the newly created Bureau for control over special surveillance devices to request information and issue binding instructions.

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

In 2013, an overhaul of the security apparatus transferred the Interior Ministry’s Directorate-General for Combating Organised Crime to the SANS. Control over surveillance was transferred from the Interior Ministry to the Council of Ministers. The outcome of these reforms remains to be seen. As noted in the January 2014 CVM report, personnel changes since May 2013 have reinforced concerns about the political independence of officials responsible for fighting corruption and organised crime, and about continuity in the law enforcement sector. Parliament’s fast-track amendment of the SANS Law in 2013 and the election of a controversial MP as head of the SANS raised concerns in Bulgaria and beyond. The European Commission urged the authorities to make key appointments in the fight against corruption and organised crime on the basis of merit and integrity, and following extensive

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

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

The Commission for Prevention and Ascertainment of Conflict of Interest became operational in 2011.\textsuperscript{53} It has not yet succeeded in acting systematically and independently to prevent or uncover risks of political corruption. Instead, there are indications of an arbitrary and formalistic approach. An example is a probe into a former minister of economy, energy and tourism on his resignation in 2012. The commission established a conflict of interest based on dividends drawn on company shares nominally worth about EUR 140.\textsuperscript{54} In July 2013, prosecutors charged the chair of the commission with abuse of office on the basis of evidence of politically manipulated investigations. An appeals court upheld his dismissal. An MP resigned over the same case.

The Law on the Forfeiture of Illegally Acquired Assets, which entered into force in November 2012, applies to all citizens and envisages proceedings regardless of criminal or administrative liability.\textsuperscript{55} The dissuasive effect of the new provisions will depend on cooperation with prosecutors and administrative control authorities, and consistency of judicial interpretation regarding the burden of proof. In September 2013, the Asset Forfeiture Commission\textsuperscript{56} and the Prosecutor’s Office agreed to establish joint teams in cases of discrepancy between the income and assets of persons under investigation.\textsuperscript{57} The first such team is to investigate a former senior MP charged with money laundering. In the 2013 Eurobarometer, 12% of respondents in Bulgaria say that measures against corruption are applied impartially and without ulterior motives (EU average 33%).

\textit{Independence and integrity of the judiciary}

Specialised international bodies such as UNCAC\textsuperscript{58} and GRECO\textsuperscript{59} have confirmed that a satisfactory legal framework is largely in place to allow the prosecution of corruption-related offences, with some remaining room for improvement. The lack of results in terms of final court rulings on high-level corruption is attributable to weaknesses (including perceived corruption) in investigative and judicial practice. UNCAC reviewers noted that legislative

\textsuperscript{50} \url{http://europa.eu/rapid/press-release_SPEECH-13-561_en.htm}.
\textsuperscript{51} Centre for Prevention and Countering Corruption and Organised Crime. \url{http://borkor.government.bg/en/}.
\textsuperscript{52} Centre for Prevention and Countering Corruption and Organised Crime (2013), ‘Първи доклад на ЦППКОП относно проекта „Модел на решение в областта на обществените поръчки”, \url{http://borkor.government.bg/en/}.
\textsuperscript{53} Commission for Prevention and Ascertainment of Conflict of Interest. \url{http://cpaci.bg/en/}.
\textsuperscript{54} \url{http://cpaci.bg/images/reshenia/109-16.08.pdf}.
\textsuperscript{55} Law on the Forfeiture of Illegally Acquired Assets, \url{http://www.mvr.bg/NR/rdonlyres/2991F5B0-8DF9-4460-92FB-41D1CA6791DC/0/ZOPDNSI.pdf}.
\textsuperscript{56} Commission for Forfeiture of Illegally Acquired Assets, \url{http://www.ciaf.government.bg/}.
\textsuperscript{57} Commission on Forfeiture of Illegally Acquired Assets (3 September 2013) Инспектори на КОНПИ и прокурори ще работят съвместно в разследвания екипи.
\textsuperscript{58} \url{http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1187232e.pdf}.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

67 2013 Flash Eurobarometer 374.
Local governments are responsible for a significant proportion of public procurement. According to CVM reports, municipalities implemented anti-corruption measures such as a ‘one-stop shop’ system to reduce the number of officials in direct contact with the public, enhancing transparency through the use of municipal newsletters and websites, codes of ethics, establishing systems for internal financial management and control, recruiting some 400 internal auditors and recruiting local public mediators (local ombudsmen). All 28 regions in Bulgaria have anti-corruption councils, which should include representatives of local government, territorial structures, the judiciary, various ministries, civil society and business. The impact of these councils on the reduction of corrupt behaviour in local and regional public bodies remains difficult to assess, as no concrete information has been made public.

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

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

**Accountability and integrity of elected officials**

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

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

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

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

**Electoral irregularities**

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

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

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

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\textsuperscript{78} Le processus électoral en Bulgarie — Principaux risques et déficits, Fondation RiskMonitor, Sofia 2011, p 90.

\textsuperscript{79} Art.167, para.2 and para.3 of the Criminal Code.

\textsuperscript{80} The penalty is one to six years’ imprisonment and a fine of EUR 2,500 to EUR 10,000. State Gazette 17 of 2013.

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

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

3. FUTURE STEPS

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

The following points require further attention:

- Ensuring effective coordination of anti-corruption institutions, shielding them from political influence and appointing their management in a transparent, merit-based procedure. Conducting consistent checks and applying dissuasive sanctions for conflicts of interest.

- Applying clear integrity criteria for appointing magistrates and evaluating their performance in a transparent procedure, and ensuring random assignment of cases in courts through a single, effective nationwide system, as recommended by the CVM.

- Adopting a code of ethics for Members of the National Assembly and establishing an effective oversight mechanism. Ensuring dissuasive sanctions for electoral fraud, including for higher-level organisers, and developing a comprehensive multi-disciplinary strategy to focus on vulnerable parts of the population.

- Further extending the scope of compulsory ex ante control of public procurement, including technical specifications and exceptions from the applicable legislation, effectively using the ex-officio powers of the State Financial Inspection Agency for ex-post controls. Effectively applying dissuasive sanctions for corruption in public procurement at national and local level.
