

## **Information provided by Bulgaria on actions taken after the completion of the First Review Cycle**

After the completion of First review cycle, Bulgaria took a number of measures in order to ensure compliance with the recommendations of the country review report as well as with other international anticorruption standards.

### **A) Legislative amendments**

#### **- Constitution of the Republic of Bulgaria**

In 2015, Bulgaria amended its Constitution to explicitly allow the National Assembly to hear and adopt other reports by the Prosecutor General on the operation of the prosecuting magistracy for the application of the law, counteracting crime and implementation of penal policy (Art. 84, paragraph 16 of the Bulgarian Constitution). Since then, the General Prosecutor has been invited on a regular basis, every three months, by the National Assembly to discuss matters regarding the application of the law and the work of the Prosecutor's Office and the investigation authorities, the necessity to amend the current legislation, the results of combatting crime, including corruption and other issues.

The Prosecutor General submits annually to the National Assembly a report on the activities of the Prosecutor's Office in combating corruption offences, which shall include information and analysis on the corruption offences initiated and concluded. With regard to corruption offences of high public interest the report shall contain information on the procedural stage of the cases, the number of convictions and acquittals, other grounds for concluding the proceedings; an analysis of the time limits for the completion of investigations, the quality of indictments and the reasons for the specific outcome of the proceedings. Corruption offences of high public interest are defined on the basis of criteria that include the person's position in the hierarchy of public authorities, the degree of interest involved and the degree of public importance and public interest.

Apart from the above, the Prosecutor General is also invited to participate in the deliberation in the National Assembly regarding the topic of fight against corruption within the Commission for prevention and countering corruption (Article 24 of the Rules for the organization of the activities of the National Assembly).

The amendments to the Constitution provided new structure and organization of the Supreme Judicial Council (SJC) which led to division of the SJC into judicial and prosecutorial chambers and vetted new powers to the Judicial Inspectorate to carrying out verifications of integrity and conflict of interests of judges and prosecutors and their assets declarations. The constitutional amendments were further reflected into the Judiciary System Act.

#### **- Law on Administrative Offences and Sanctions (LAOS)**

In 2015, Bulgaria amended the Law on Administrative Offences and Sanctions. The amendments aim to provide for a clear procedural framework for sanctioning of legal persons committed in their favor by setting up a detailed regulation of the court proceedings, prescribing the competences of the court and the possibilities for appeal, by adding new grounds for the prosecutor to start proceedings against legal persons etc. The amendments also increased the

maximum penalty against the legal persons from 50 000 EUR to 250 000 EUR in cases where the advantage accruing to the legal person as a result of foreign bribery is not “property”, or if the value of the advantage cannot be ascertained.

In 2020, LAOS was further amended in order to specify the limitation period for administrative proceedings against legal persons. The new provisions envisage that the liability of a legal entity shall be extinguished upon the expiration of a time limit equal to the time limit for the criminal offence from which the legal entity benefited or would have benefited, considered as of the date of commission of the criminal offence.

#### - **Criminal Code**

In 2015, Bulgaria amended its Criminal Code. The amendments led to the abolition of Art. 303 and insertion of a new Art. 304c which made it explicit that active bribery and trading in influence are pursued by the Criminal Code even where the advantage is not intended for the official him/herself but for a third party.

Bulgaria also optimized the regime of confiscation of funds and proceeds of crime by amending its Criminal Code at the beginning of 2019. The amendments made it explicit that subject to confiscation in accordance with Art. 53 CC are the direct or indirect benefit gained through the crime, if they are not subject to return or restoration. If the benefit is missing or expropriated, its equivalent will be awarded. To ensure adequate management of property frozen with a view to possible subsequent confiscation the amendments also provided for that the property secured pursuant to Article 72 of the Criminal Procedure Code will be managed and kept by the Commission on Confiscation of Illegal Assets in accordance with the procedure laid down in the Law on Confiscation of Illegal Assets.

In addition, Bulgaria also put efforts in clarifying the difference between the objective elements of active and passive bribery, on the one hand, and their attempt, on the other. On 12 March 2021, the Plenum of the Criminal Division of the Supreme Court of Cassation issued an Interpretative Decision<sup>1</sup> on issues related to bribery. In the decision the Court explains the difference between “offering” and “giving” a bribe as possible forms of the active bribery offence. The Court also held that active and passive bribery are two separate offences and therefore should be regarded as completed not only when the acceptance or giving of the bribe takes place, but also when the other forms of bribery - promising, offering or solicitation or accepting the promise or offer - take place. The interpretative decisions of the Plenum of the Supreme Court of Cassation are binding on the judicial and executive bodies, on the local authorities, as well as on all authorities issuing administrative acts.

#### - **Criminal Procedure Code**

In 2023, Bulgaria also amended its Criminal Procedure Code<sup>2</sup> to allow judicial review of the prosecutor’s refusal to initiate criminal proceedings, thus ensuring that criminal allegations are properly assessed by the competent authorities. According to Article 213, para.3 of the CPC, the right to appeal the decree for refusal is granted to the victim or his heirs, the injured legal entity, and the person who made the report of a crime have.

---

<sup>1</sup> Interpretative Decision No. 1 on case No. 1/2019;

<sup>2</sup> SG No 48/2023;

By the same amendments more rights have been provided to the person who reported a crime, in order to more effectively fight against corrupt practices and to overcome cases where, according to the doctrine and judicial practice, it is not possible to constitute a victim or damaged legal entity. The reporting person is given additional rights relatively parallel to those of the victim and the injured legal entity, with a view to fulfilling to some extent their traditional role in the process. This person will have access to the background check materials in order to effectively appeal the refusal of the prosecutor to initiate criminal proceedings. Access to investigation materials will only be granted at the prosecutor's discretion, as the materials may contain protected information.

#### - **Anti-Corruption Act**

As part of the government's efforts to improve the anti-corruption legal framework and ensure an effective response to high-level corruption, in October 2023, the Anti-Corruption Act<sup>3</sup> was passed. The Act provides for the separation of the existing Commission on Countering Corruption and Forfeiture of Illegal Assets into two stand-alone commissions, the Anti-Corruption Commission and the Commission for the Confiscation of Illegally Acquired Assets. According to the new regulation, the Anti-Corruption Commission will carry out activities related to corruption prevention, detection of conflict of interest, acceptance and verification of declarations of assets and conflict of interest, detection and investigation of corruption crimes committed by high level officials (Members of Parliament, Ministers, managers of State authorities, established by law or Council of Ministers Regulation, magistrates, Members of the Supreme Judicial Council and others).

The Commission is an independent, specialised, permanent State body. The Commission is a collective body consisting of three members elected by the National Assembly for a term of 6 years. The Commission will be chaired in rotation for two years by each of the members. The National Assembly supervises the activities of the Anti-Corruption Commission and its members are obliged to report before the National Assembly and provide information if requested. The Commission presents an annual report on its activities, which is also submitted to the President of the Republic and the Council of Ministers and is published on the website of the Commission.

The Anti-Corruption Act provides for active interaction among State bodies, both with regard to counteracting corruption by detecting illegal conducts of high public officials, and the interaction of the Anti-Corruption Commission with the Prosecutor's Office of the Republic of Bulgaria, the Ministry of Interior, the bodies of the State Agency for National Security, the bodies of the Revenue Agency, the bodies of the Customs Agency, the General Inspectorate of the Council of Ministers, the Inspectorate of the Supreme Judicial Council and the Inspectorates under Art. 46 of the Law on Administration, according to their competence. With regard to the protection of whistleblowers, the Commission interacts with the Data Protection Commission.

The Anti-Corruption Commission implements the state policy on prevention of corruption by collecting, summarizing and analyzing information on national anti-corruption policies and measures; performing analyses, developing and proposing measures for prevention and counteraction of corruption and coordinating their implementation, incl. and by sectors. It also carries out activities for dissemination of information related to the fight against corruption, including anti-corruption policies and measures, etc.

---

<sup>3</sup> SG No 84 of 6.10.2023, in force from 6.10.2023;

It is envisaged that the investigation of high level corruption offences will be carried out by investigators in the Anti-Corruption Commission. The investigation activities will be performed following the rules of the Criminal Procedure Code.

- **Law on Confiscation of Illegal Asset (LCIA)**

The new Anti-Corruption Act narrows the scope of the current Anti-Corruption and Asset Forfeiture Act to the forfeiture of illegally acquired property only. The existing Commission on Countering Corruption and Forfeiture of Illegal Assets is renamed the Commission for Confiscation of Illegally Acquired Assets.

According to the provisions of Art. 106 of the LCIA the Commission for Confiscation of Illegally Acquired Assets initiates confiscation proceedings against unlawfully acquired assets where a reasonable assumption can be made that particular assets have been acquired unlawfully. For this purpose, the Commission starts an examination to clarify the source of the assets of the person under examination, the manner of their acquisition and transformation. The examination shall commence where a person has been formally charged for committing some of the crimes under Art.108 of the LCIA or even when the criminal proceedings have been terminated or suspended. The law substantially extends the list of the crimes by including among others the bribery in private sector. The Commission can also start an examination when the assets and conflict of interests' declarations have not been submitted by the deadline or where the verification of assets declaration established lack of correspondence between the declared property and the real value of the incomes of the declaring subject amounting to not less than 12,500 EUR.

The law contains detailed provisions with regard to the administration of frozen and confiscated property. Generally, frozen assets are managed by the Commission but in exceptional cases the assets may be left for safekeeping to the person under examination or to the person who holds the assets at the time when the precautionary measures are imposed, or to another person appointed by the court. Depending on the type of the frozen property, their safekeeping can be provided to different institutions such as the National Museum of History, the National Library, the Bulgarian Academy of Science, the Bulgarian National Bank, the Ministry of Culture and etc. The costs related to the storage and maintenance of frozen assets are to be covered by the Commission.

The management of confiscated assets is entrusted to an Interministerial Council for Managing of the Confiscated Assets (ICMCA). The ICMCA is a collective body which consists of deputy ministers designated by the Minister of Justice, the Minister of Finance, the Minister of Economy, the Minister of Labour and Social Policy, and the Minister of Regional Development and Public Works and is chaired by a Deputy Minister of Finance. The ICMCA proposes to the Council of Ministers to allocate to budgetary organisations and municipalities the management of the confiscated assets or to order the sale of the said assets. The property for which a decision for sale has been taken shall be sold by the National Revenue Agency in accordance with the Tax and Social Security Procedural Code. At least 30 per cent of the value of the property confiscated to the State shall be used for social purposes, the conditions and procedure being determined by an act of the Council of Ministers.

## - **Law on the European Investigation Order**

At the beginning of 2018, Bulgaria adopted the Law on the European Investigation Order<sup>4</sup> which transposed Directive 2014/41/EU on European Investigation Order in Criminal Matters. The implementation of the Directive by Member States aims to facilitate the legal cooperation between the Member States, accelerate cross-border criminal investigations and overcome largely the difficulties in providing legal assistance. The new law enables the recognition and execution of a European Investigative Order in criminal matters issued in another Member State and the issuing of a European Investigative Order in criminal matters and the transmittal of the said order for recognition and execution in another Member State. The European Investigation Order replaces Letters of Request for investigative measures between Member States bound by this instrument.

## - **Law on the Protection of Whistleblowers or Persons Publicly Disclosing Information about Violations**

On 27 January 2023, the National Assembly adopted the Law on the Protection of Whistleblowers or Persons Publicly Disclosing Information about Violations<sup>5</sup>. The new law regulates the conditions, procedures and measures for the protection of persons in the public and private sectors who submit alerts or publicly disclose information about violations of the law that endanger or damage the public interest. This law is an important tool for fighting corruption as it helps to detect and prevent corrupt behavior and to improve law enforcement.

The law provides for a comprehensive and streamlined legal framework for whistleblowers' protection and aims to implement fully Directive 2019/1937/EU of the European Union on the protection of persons who report breaches of Union law. It also takes into account the 2021 OECD Recommendations in this regard.

The purpose of the law is to ensure the protection of persons in the public and private sectors who signal or publicly disclose information about violations of public interest and of Bulgarian legislation or acts of the European Union, which became known to them during or in connection with the performance of their work or official duties or in other work context. Protection will be granted to any person who discloses information about irregularities that became known to them in a work context. It also covers job applicants, former employees, volunteers, interns, as well as people related to the whistleblower.

Whistleblower protection refers to the reporting of wrongdoing related to breaches in the field of tax fraud, money laundering or offences related to public procurement, product and transport safety, environmental protection, public health and consumer and data protection. The scope of the law also extends to reporting of criminal acts including foreign bribery and corruption. The law provides for a three-tier system for reporting – internal and external reporting, as well as public disclosure. The companies with more than 50 employees, public sector institutions, authorities as well as municipalities with 10,000 or more inhabitants are obliged to set up suitable internal reporting channels. According to the law, these channels shall be managed in a manner that ensures the completeness, integrity and confidentiality of the information and prevents unauthorised persons from accessing that information. Obligated entities (public and

---

<sup>4</sup> SG No. 26/2018;

<sup>5</sup> SG No. 11 of 2 February 2023 and entered into force on 4 May 2023 and last amended SG No 88 of 20 October 2023;

private sector employers) are required to provide clear and easily accessible information on the conditions and procedures for reporting and protection. The information shall be made available on the websites of the obliged entities as well as in prominent places in the offices and work premises.

The Commission for Personal Data Protection (CPDP) is designated as a central body for external reporting. The external whistleblowing channel shall be an independent structural unit of the Commission, provided with a sufficient number of staff specially trained to deal with whistleblowing.

The whistleblower can choose whether to report a violation internally within the company or to use the external channel or both of them. Whistleblowers also have the right to disclose information about a violation directly to the public. They enjoy protection in all cases.

The law affords protection against any form of retaliation. An employer who violates the prohibition on retaliation shall be fined from 1 000 EUR to 4 000 EUR. In the meantime, the competent authorities shall issue binding prescriptions for the cessation of the retaliation acts until the completion of their inspection. Persons who have suffered harm as a result of the whistleblowing may seek compensation for the damage suffered (Art. 51 of the Law on Obligations and Contracts).

The whistleblowers also have right to supporting measures such as right to information or advice, assistance before public authorities with regard to exercising their right to protection and legal assistance in criminal, civil or administrative proceedings in connection with the whistleblowing.

Shortly after the adoption of the new law, a separate administrative unit within CPDP structure was established to perform the functions of a central body for external reporting (the so-called “Channel for Whistleblowing External Reporting Directorate”). Competitions under the applicable legislation for recruitment and appointment of civil servants were held for the positions of a director of the directorate and the expert staff. The latter will be responsible for dealing with reports submitted through the external channel. As from the entry into force of the new Law on the Protection of Whistleblowers or Persons Publicly Disclosing Information about Violations, an information campaign has been started and is constantly ongoing. The purpose of this information campaign is to explain the benefits of the introduction of the new legislation and to help obliged entities to build their internal channels in line with the legislation.

## **B) Reform of the judiciary system**

In 2022, the National Assembly amended the Criminal Procedure Code<sup>6</sup> to set up an effective mechanism for accountability of the Prosecutor General or his deputies. The amendments allow for a judge, appointed by Prosecutorial Chamber of the Supreme Judicial Council on a random basis, to investigate the Prosecutor General or his deputies when there are grounds to suspect that they have committed a crime. The judge is selected from a list of potential candidates for ad hoc prosecutors comprising judges from the Supreme Court of Cassation and judges from district and appellate courts with the rank of judges of the Supreme Court of Cassation. If there is no information about criminal activity, the signal is forwarded to the Sofia City Prosecutor’s Office for further actions. In the event that charges are brought against Prosecutor General or

---

<sup>6</sup> SG No 48 of 02 June 2023 and entered into force on 06 June 2023.

his deputies, the investigating prosecutor shall make a reasoned request to the Plenum of the Supreme Judicial Council for his temporary removal from office until the criminal proceedings are completed. The Plenum shall take a reasoned decision within 14 days of receipt of the request by a majority of not less than 13 votes. By the same majority, not less than 13 votes, the Plenum shall decide to make a proposal to the President for the appointment and dismissal of the Prosecutor General. The internal control over the acts of the prosecutor investigating the Prosecutor General shall be performed by another judge selected from the same list of judges who shall be appointed as Deputy Prosecutor General. This mechanism provides guarantees that every report or complaint against the Prosecutor General will be investigated objectively and according to the facts found.

On 28 July 2023, a draft Law amending and supplementing the Constitution of the Republic of Bulgaria was submitted to the 49th National Assembly. The amendments relating to the Prosecutor's Office aim at ensuring greater accountability and responsibility of the Prosecutor General, including guarantees for independent investigation, as well as limiting the functions of prosecutors strictly within the criminal process, while abolishing the general supervision of legality. The draft law provides for the establishment of a Prosecutorial Council, which will exercise the main personnel and disciplinary powers over prosecutors. The Prosecutor General would be appointed by the Prosecutorial Council on the initiative of the Minister of Justice or three members of the Prosecutorial Council, and his term of office would be reduced to 5 years. It is proposed that the structure of the prosecution offices should be in line with that of the courts dealing with criminal cases and that the Prosecutor General should be the sole administrative head of the Supreme Prosecution Office.

Of importance is the forthcoming reform of the Judiciary Act, which will ensure the transparent and free from political influence election of members of the Supreme Judicial Council and the activities of its Inspectorate. The amendments to the Judiciary Act are expected to follow immediately after the amendments to the Constitution of the Republic of Bulgaria.

### **C) Other measures for countering corruption and measures of the competence of the Prosecutor's Office**

In compliance with the provision of Art. 379, para. 1 of the Judiciary System Act, the Prosecutor's Office is responsible for the establishment, maintenance and use of the core of the Unified Information System (UIS). The electronic systems of the judicial and law enforcement authorities are connected to the core of UIS and feed it with information. The system ensures access to the Central Electronic System of the Investigative Services, which is administered by the National Investigation Service, the investigation units within the Customs Agency and the investigative units within the district prosecutor's offices. Currently, the Prosecutor's Office has temporarily provided to the Ministry of Interior the exploitation of the Central Electronic Systems of the Investigative Services for the purpose of investigation until the Ministry of Interior introduces its own internal electronic system for exchange of information.

In 2017, the General Prosecutor issued an order for establishing rules for use of data from the Information System of the Registry for Bank Accounts and Safes, managed by the Bulgarian National Bank for the purposes of specific criminal proceedings or checks in accordance with Art. 145, para 1, points 2 and 3 of the Judiciary System Act.

In order to implement application of the Package of measures, adopted by the Prosecutor General, for the implementation of the recommendations in the report of the European

Commission under the Cooperation and Verification Mechanism dated 22 January 2014 and with the aim to prioritize the work of the Prosecutor's Office on corruption cases, on 18 March 2014 the Prosecutor General issued an order establishing a Common catalogue of the corruption cases. The catalogue is divided into three parts following the definitions of corruption as provided for in the Criminal Law Convention on Corruption, the Civil Law Convention on Corruption and the United Nations Convention against Corruption. The catalogue is periodically up-dated taking into account the amendments to the Criminal Code.

A unified standard for accounting and monitoring of cases of organized crime and corruption has been introduced in compliance with the Common catalogue. All prosecutor's offices report on these cases every month. In 2017, in order to improve the monitoring, a unified standard form for reporting has been adopted. The data on corruption cases is also reported and monitored taking into account the position occupied by the accused person.

The Prosecutor General has issued Instructions on Special Monitoring and Methodological Guidelines in Corruption Cases and Cases of Organized Crime. According to the Instructions prosecutors with the higher prosecutor's office must provide guidance in every case to the prosecutors directly reporting to them in order to support the work of the lower prosecutor's office.

The annual reports for the implementation of the legislation and the activity of the Prosecutor's office and the investigative bodies, which are submitted to the Supreme Judicial Council and adopted by the National Assembly every year, contain statistical data on the work of the Prosecution on criminal cases, including criminal cases of significant public interest (corruption, organized crime, trafficking in human beings, drug trafficking, money laundering, tax crimes, frauds affecting the Union's financial interests and other crimes). The reports also contain proposals for concrete measures for improving the legislative framework, as well as the qualification of the investigating authorities in order to overcome difficulties in the law enforcement.

Since 2017 the Prosecutor's Office prepares an analysis on the results of its activity regarding the implementation of the recommendations of the European Commission in its Follow-up reports on the progress made by Bulgaria in the framework of the CVM as well as of the recommendations in the decisions of the European Court for Human Rights.

#### **D) Training of magistrates**

The offence "bribery" has been included as a separate module in the training programs on criminal law for the newly appointed candidates for junior judges and prosecutors as well as in the seminars for continuous qualification of magistrates and in the distant learning courses, organized by National Institute of Justice. The trainings are focused on issues related to interpretation and enforcement of the provisions of Section "Bribery" of the Criminal Code, including cases where in the event of active bribery the advantage is intended for a third party and where the subject matter of the bribery is non-material advantages.

The Prosecutor General has established Special Rules on Training and Qualification of Prosecutors within the Bulgarian Prosecutor's Office. The rules provide for annual update of the in-house training and qualification programme and its implementation through different training projects, among which trainings financed by the EU and trainings provided by the National Institute of Justice or other training providers.

The in-house training programme for 2019 and 2023 included a cycle of 15 trainings concerning the substantive and procedural legal aspects of the effective investigation of crimes of corruption. In total, 31 prosecutors and 12 investigators participated in the trainings.

### **E) International cooperation**

After the adoption of its UNCAC review report Bulgaria signed extradition agreements with Belarus (2011) and Kazakhstan (2015).

International legal cooperation on criminal matters and European Investigation Order (EIO) were among the main issues covered by the in-house training programme for prosecutors and investigators in 2018.

More than 25 joint cooperation agreements have been signed between the Prosecutor's Office of the Republic of Bulgaria and foreign prosecution offices and international organizations for the purposes of exchange of information and mutual assistance in criminal matters.

For the period 2020 - 2022, Bulgaria has received 11 MLA requests based on the UNCAC. All of them were handled with due consideration.

A specialized section on international cooperation has been created on the internal website of the Bulgarian Prosecutor's Office, which is accessible by all prosecutors and investigators. The section contains all the acts that are relevant to the proper application of the international legal instruments in the field of mutual legal assistance:

- Practical Guide on JITs, as developed by the JITs Network in cooperation with Eurojust, Europol and OLAF;
- Joint Paper on Assistance in International Cooperation in Criminal Matters for Practitioners by the European Judicial Network and Eurojust;
- Joint Note of the Eurojust and EJM on the practical application of the EIO;
- Note on the meaning of "corresponding provisions" and the applicable legal regime in case of delayed transposition of the EIO Directive;
- Explanatory memorandum to the electronic version of the forms annexed to the Directive 2014/41/EU regarding the European Investigation Order in criminal matters and the Guidelines for filling in the European Investigation Order form.