

# BULGARIA

## Little or no enforcement

**0.2% of global exports**

### Investigations and cases

In the period 2016-2019, there were no known foreign bribery investigations, cases commenced or cases concluded with sanctions.

### Recent developments

In early 2018, Parliament passed the European Investigation Order Act, transposing the Directive 2014/41/EU regarding the European Investigation Order in criminal matters.<sup>1</sup> In mid-2019, legislation was adopted implementing the EU Council Framework Decision 2008/909/JHA on mutual recognition of judgements in criminal proceedings.<sup>2</sup> Since 2017, the EU Cooperation and Verification Mechanism (CVM), set up in 2007, has undertaken yearly reviews of the country's efforts to reform the judiciary and fight corruption and organised crime. Following a 2017 CVM recommendation, the government established a National Monitoring Mechanism for the fight against corruption and organised crime, judicial reform and the rule of law. It also established a Coordination and Cooperation Council ("post-monitoring council"), which will be responsible for monitoring progress with judicial

reform and the fight against corruption, once the CVM is dissolved.<sup>3</sup>

### Transparency of enforcement information

Enforcement data is partially published, but foreign bribery data is not easily accessible. In 2016, the Supreme Judicial Council mandated separate treatment of foreign bribery cases when collecting and providing summarised statistics on court activities.<sup>4</sup> In 2017, the Chair of the Supreme Court of Cassation ordered that data about all corruption and related cases, including foreign bribery, be published monthly.<sup>5</sup>

The Supreme Judicial Council statistics are published twice a year and contain aggregated numbers of cases commenced and concluded by national courts, broken down by instances. However, foreign bribery enforcement data is difficult to access.<sup>6</sup> The Supreme Judicial Council also publishes data, often with delay, regarding investigations carried out by the Prosecutors' Office and by the National Investigation Office.<sup>7</sup> This data is broken down by chapters of the Criminal Code only, and is therefore not comparable with the information from the courts. This prevents the tracking of cases by offence. The Prosecutor's Office publishes in its annual reports statistical data on requests for mutual legal assistance (MLA) made and received.<sup>8</sup> However, there is no breakdown by type of crime. Data regarding MLA requests to and from courts is not published.<sup>9</sup>

<sup>1</sup> Prom. SG 16/2018.

<sup>2</sup> Law on recognition, enforcement and forwarding of judgments imposing custodial sentences or any measure involving deprivation of liberty, prom. SG 45/2019, in force as of 1 January 2020, <https://parliament.bg/bills/44/902-01-12.pdf>, p.35.

<sup>3</sup> Council of Ministers Decree No. 240 of 24 September 2019; [https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498\\_en.pdf](https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498_en.pdf)

<sup>4</sup> A new methodology for collecting statistics was developed in 2015. See "Improvement of competencies of judicial statisticians in judicial authorities" project, Activity Report for 1 April-30 June 2015, pp.2-3, <http://www.vss.justice.bg/root/f/upload/9/stat-rep-2015-2.pdf>. This is periodically updated by the SJC (latest, February 2018, [www.vss.justice.bg/root/f/upload/18/Metodika-13.02.2018.docx](http://www.vss.justice.bg/root/f/upload/18/Metodika-13.02.2018.docx)). Since 2016 there is a separate line for cases under Criminal Code Art. 301 para 5 (passive bribery involving a foreign official) and Art. 304 para 3 (active bribery involving a foreign official). The statistics also provide data on Art. 304b Criminal Code – regarding trading in influence, including over foreign officials.

<sup>5</sup> Order no. 474/ 01.03.2017. The data is collected and published at the SCC website, <http://www.vks.bg/dela-za-korupcionni-prestaplenia.html>

<sup>6</sup> All statistics on courts' activities published by SJC are available at <http://www.vss.justice.bg/page/view/1082>.

<sup>7</sup> <http://www.vss.justice.bg/page/view/1082>

<sup>8</sup> [https://www.prb.bg/media/filer\\_public/77/40/7740438f-08a8-4970-abd8-0ad7a98a7b26/GD%202018%20PRB.pdf](https://www.prb.bg/media/filer_public/77/40/7740438f-08a8-4970-abd8-0ad7a98a7b26/GD%202018%20PRB.pdf), pp.71-73

<sup>9</sup> An inquiry to the Ministry of Justice for the purposes of this report received the reply that out of total 7,307 MLA requests made or received in 2016-2019, none concerned foreign bribery cases.

Court decisions and other actions are published in full, except for personal and corporate data.<sup>10</sup> This generally applies at all levels, though in practice some courts do not do it. The Supreme Judicial Council maintains a dedicated website, which can be searched for decisions.<sup>11</sup>

Both the Supreme Judicial Council and the Prosecutor's Office declined to provide information about foreign bribery enforcement for this report.

## Beneficial ownership transparency

Company beneficial ownership information is part of the records of the Commercial Register, which is centralised, electronic and publicly available.<sup>12</sup> A declaration of beneficial owners is compulsory for all companies registered in Bulgaria, pursuant Article 63 of the Measures against Money Laundering Act.<sup>13</sup> The same obligation is also imposed on companies registered in tax havens operating in Bulgaria in certain sectors.<sup>14</sup> The Commercial Register indicates the ownership of companies and the natural persons engaged in their control bodies.<sup>15</sup> However, there are still legal mechanisms which allow a person to exert control over a company without formally being among the owners or members of its control bodies.

Trusts, trust funds and other similar foreign legal entities are required to keep records of beneficial owners in the BULSTAT Register.<sup>16</sup> Similar to the Commercial Register, the BULSTAT Register is an

electronic database with free access to most of its data.<sup>17</sup>

## Inadequacies in legal framework

The legal framework does not provide for adequate protection of whistleblowers against retaliation in both the public and private sectors,<sup>18</sup> although the channels for receiving reports on wrongdoing are comparatively well developed.

As noted in the Concept for Penalty Policy 2020-2025, adopted by the Council of Ministers in May 2020, one of the most serious shortcomings is the frequent changes in anti-corruption legislation.<sup>19</sup> For instance, the 2018 Prevention of Corruption and Forfeiture of Illegal Assets Act has been amended eight times.<sup>20</sup> Frequent amendments reduce the effectiveness of the legal framework and prevent a comprehensive and qualitative impact assessment of the legislation.<sup>21</sup>

## Inadequacies in enforcement system

Grand corruption crimes are almost never prosecuted and punished. Shortcomings in the enforcement system include the heavy workload of the judiciary and law enforcement authorities, and the lack of adequate training and expertise of enforcement authorities. A key shortcoming, however, as indicated by the European Court of

<sup>10</sup> The SCC also provide for an annual summarised review of its decisions on corruption cases, e.g. for 2019, <http://www.vks.bg/dela-za-korupcionni-prestaplenia-reshenia/2019.pdf>

<sup>11</sup> <https://legalacts.justice.bg/>

<sup>12</sup> Commercial Register and Register of Non-for-Profit Legal Entities Act, Art. 2 para 1, <http://www.brra.bg/Default.ra>

<sup>13</sup> Prom. SG 27/2018.

<sup>14</sup> Art. 6 para 3, Economic and Financial Relations with Companies Registered in Jurisdictions with Preferential Tax Treatment, Entities Controlled by Them and Their Beneficial Owners Act.

<sup>15</sup> <https://balkaninsight.com/2020/02/05/power-struggle-over-bulgarias-gambling-industry-sees-tycoon-detained/>

<sup>16</sup> Art. 63 para 2, Measures Against the Money Laundering Act and Art. 7 para 1 point 19, BULSTAT Register Act.

<sup>17</sup> BULSTAT Register is available at: <http://www.bulstat.bg/>. For information about the Commercial and the BULSTAT registers in English, [https://e-justice.europa.eu/content\\_business\\_registers\\_in\\_member\\_states-106-bg-maximizeMS-en.do?member=1](https://e-justice.europa.eu/content_business_registers_in_member_states-106-bg-maximizeMS-en.do?member=1).

<sup>18</sup> Chapter 7 of the Prevention of Corruption and Forfeiture of Illegal Assets Act consists of three articles, regulating protection of complainants who submitted a report to CPCIFA from potential reprisal. The provisions are rather vague, and compensation might be received in a lawsuit under the general regime (art. 51).

<sup>19</sup> [http://rai-see.org/wp-content/uploads/2015/08/Bulgaria\\_Anti-corruption\\_strategy\\_-2015.pdf](http://rai-see.org/wp-content/uploads/2015/08/Bulgaria_Anti-corruption_strategy_-2015.pdf)

<sup>20</sup> By March 2020; the last amendment entered into force in October 2019.

<sup>21</sup> Draft Concept for Penalty Policy 2020-2025, <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=4946>

Human Rights in 2016, is the systematic problem of ineffective criminal investigations. The CVM has made substantial recommendations on this issue, some referring to the process for initiating criminal investigations, the role of preliminary enquiries and the possible need for judicial review of prosecutorial decisions not to open an investigation.<sup>22</sup>

There are many anti-corruption bodies in Bulgaria – the Supreme Judicial Council, the Ministry of Justice, the National Council for Anti-Corruption Policies, the Commission for Prevention of Corruption and Illegal Asset Forfeiture, the above-mentioned new National Monitoring Mechanism, to name a few. This requires further efforts at coordinating and inter-agency cooperation.

The CVM has also noted that “a particular challenge in the Bulgarian context – faced by institutions such as the new anti-corruption agency and the prosecution service – is the need for anti-corruption institutions to build public trust and gain a reputation over time for independence and professionalism in their work”.<sup>23</sup>

Shortcomings in MLA practice are mainly connected to lack of skills in making and processing MLA requests, heavy workload of practitioners and insufficient language skills.<sup>24</sup> After the establishment of the National Judicial Network for International Cooperation in Criminal Proceedings, there has been gradual improvement in this area.<sup>25</sup>

## Recommendations

- Collect and make publicly available statistical open data, including on sanctions imposed on legal persons for corruption-related crimes, in the same form for preliminary enquiries, investigations and court cases
- Comprehensively regulate the protection of whistleblowers reporting corruption-related acts in the public and private sectors
- Update the National Strategy for Preventing and Combatting Corruption, taking into account the CVM's recommendations
- Strengthen law enforcement agencies' capacity and improve inter-agency cooperation and international cooperation in the detection and investigation of foreign bribery

- Provide training to judges, prosecutors and investigators on foreign bribery offences.

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<sup>22</sup> [https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498\\_en.pdf](https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498_en.pdf)

<sup>23</sup> [https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498\\_en.pdf](https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498_en.pdf)

<sup>24</sup> The necessity of continued training of magistrates is noted in the 2016 Activity Report of the National Judicial Network for International Cooperation in Criminal Proceedings, p.11, <http://www.vss.justice.bg/root/f/upload/14/otcet-2016.pdf>

<sup>25</sup> [www.vss.justice.bg/root/f/upload/23/Otchet-za-deinostta-NSMMSHD-2015\\_2018.pdf](http://www.vss.justice.bg/root/f/upload/23/Otchet-za-deinostta-NSMMSHD-2015_2018.pdf)