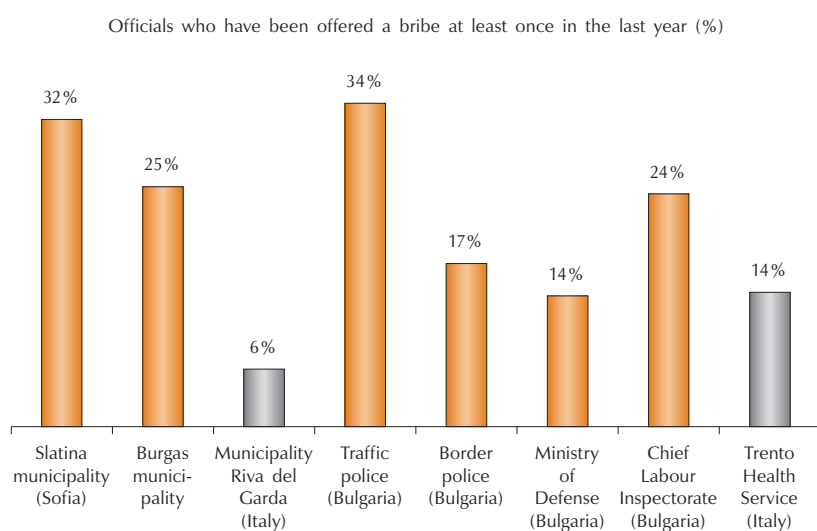


2. ASSESSMENT OF PUBLIC INSTITUTIONS

Evaluation of policy enforcement

Anticorruption policies and their effective delivery require knowledge of the actual actors and transactions, including knowledge of what motivates these actors and the circumstances of their transactions. Thus, “any credible anticorruption effort needs to proceed from a cross referencing each corruption risk with the respective anticorruption policy”.⁹ The most appropriate point for this to be achieved is in specific public organizations. Therefore, before they are implemented national level anticorruption policies should be tested at this level.

FIGURE 7. CORRUPTION PRESSURE IN PUBLIC INSTITUTIONS (2015)



Source: CSD, *Monitoring Anti-Corruption in Europe. Bridging Policy Evaluation and Corruption Measurement*. Sofia: Center for the Study of Democracy, 2015.

Precisely such independent evaluation of anticorruption measures in border police and traffic police was conducted in early 2015 by the CSD through the **MACPI tool**.¹⁰ MACPI (Monitoring Anticorruption Policy Implementation) maps and **assesses the anticorruption policies implemented in public institutions**. The diagnostic carried out with this tool shows whether the corruption vulnerabilities of a public institution are adequately addressed by anticorruption policies (corruption pressure vs policy design gap) and how effective these policies are (policy implementation gap). The analysis of the 2015 results showed that some generally well-designed

measures (in terms of coverage of corruption risks) such as rotation and video surveillance of border guards are strictly implemented (formal compliance), but effective compliance and implementation are lagging behind, and actual deviations from the policy are common and deliberate, which open potential for corruption transactions. This is often related to the inconsistent application of control and sanction measures. The implementation of anticorruption measures in traffic police is suffering from similar shortcomings (video surveillance of roadside checks, automated information system of the traffic police, etc.).

⁹ CSD, *Monitoring Anti-Corruption in Europe. Bridging Policy Evaluation and Corruption Measurement*. Sofia: Center for the Study of Democracy, 2015, p. 145.

¹⁰ Ibid.

A MACPI evaluation of several Bulgarian and Italian public institutions conducted in 2015 showed that corruption pressure on officials in select public institutions in Bulgaria is substantial. Pressure comes not only from citizens and companies who attempt to bypass rules and regulations, but also from colleagues, including superiors. Compared to the average level of corruption pressure in several Italian public institutions, pressure in Bulgarian public institutions is substantially higher (Figure 7).

The ineffectiveness of regulatory and enforcement agencies

A major deficiency in the architecture of government bodies in Bulgaria is the dysfunctional state of most agencies trusted with ensuring compliance with laws and regulations. Referred to collectively in Bulgarian political practice as the “control system,” these include a very wide array of public bodies – independent institutions such as the central bank and the government accounts auditor, regulatory bodies overseeing sectors such as energy and utilities, inspection agencies ensuring compliance with, for example, food, transport or fire safety, internal control departments in ministries and other government bodies, as well typical law enforcement institutions such as the police (see further Box 1). A particular issue of contention has been the differentiation – as well as the complementarity – in the functions of these executive agencies in applying the law and inspecting compliance with regulations and standards from the remit of the prosecution in indicting and prosecuting crime. The defects in the work of this army (numbering over 400) of enforcement and inspection administrations includes both their capacity to identify violations and to effectively enforce sanctions. These flaws stem from low capacity – poor procedures, training or equipment – but also significantly from corruption that is low in intensity but high in scale. Making the institutions more effective, including through better coordination with the prosecution is of primary importance in reducing corruption.¹¹ The issue of such coordination should be placed again on the anticorruption policy agenda. The measures for aligning the anticorruption work of the institutions of the executive and the prosecution should include amendments to the applicable primary and secondary legislation, as well as to the internal regulations of the prosecution. These measures would pursue three broad objectives:

- improve the quality of the referrals submitted by inspection and enforcement bodies to the prosecution by making the evidence collected both specific and thorough;
- the prosecution would have a proactive role in identifying and indicting violations *within* inspection and enforcement bodies at the central and

¹¹ The reasons for the poor coordination identified by the prosecution include: most enforcement and inspection bodies are not capable of collecting and presenting quality evidence, which is useable in a court of law; referrals are often submitted without proper investigation; the tendency of imposing minimum sanctions for administrative violations; lack of feedback from the prosecution on progress on the referrals (see „Ефективно взаимодействие на Прокуратурата с контролните органи за противодействие на закононарушенията и престъпленията в защита на обществения интерес и правата на гражданите”, 2010, Available at: http://www.opac.government.bg/archive/images/stories/docs/703_Doklad_PRB.pdf). To overcome the identified problems, the prosecution developed a methodology for effective interaction with enforcement and inspection bodies, which included step-by-step practical guidelines aimed to assist prosecutors in their communication with these bodies.

local levels, thus discontinuing the practice of these bodies of taking no action in the face of blatant violations;¹²

- a “value for money” assessment tool would be developed to carry out annual monitoring of the correspondence between spending by these institutions and the effect of their work, including in terms of the number and value of the sanctions imposed, the number and the quality of referrals as measured by the rate of their successful prosecution, the benefits of crime prevention and the reduction of the damage incurred by crime.

A pertinent example can be found in the work of the Commission for the Protection of Competition (CPC) and the Financial Supervision Commission (FSC), which can initiate procedures for violation of free market principles and impose sanctions on individual companies. They can create conditions for the increase of corruption and hidden economy because of low efficiency and wide-spread corruption practices among the agencies’ administration. In turn, the institutional integrity of these institutions could become compromised to favor certain economic actors.

Box 1. The system of enforcement and inspection bodies in Bulgaria

The system of enforcement and inspection bodies encompasses all state bodies authorized to supervise compliance with the legislation in particular spheres of public life. In exercising their powers, these bodies conduct inspections, identify violations and impose administrative sanctions to those infringing on the law. If, while exercising their powers, such bodies uncover data pointing that a criminal offence has been committed, they are obliged to refer the evidence to the prosecution where criminal proceedings should be initiated. To tackle crime and corruption with any success, it is essential that the respective control bodies and the prosecution effectively communicate and exchange information with each other.¹³

This network comprises a number of both central and local public bodies and/or their units. These could be grouped within the following types:

¹² Although the prosecution has already set itself such objectives (“being more active in exercising prosecutorial oversight over the work of the control institutions of the state”; “making the prosecution the lead institution in the work of control institutions” (<http://www.prb.bg/bg/news/proekti/rezume/>), it is not very close to achieving them.

¹³ In 2009, in an attempt to improve its interaction with the control system, the prosecution office identified the 15 control bodies it most often interacts with. These were: the State Agency for Child Protection, the Social Assistance Agency, the GLIEA, the National Construction Control Directorate, the Regional Water and Environmental Protection Inspectorates, the Executive Forests Agency, the National Parks Directorate, the National Veterinary Service, the Regional Inspectorates for Public Health Protection and Control, the State Agency for Metrological and Technical Surveillance, the Road Transport Administration Executive Agency, the Public Financial Inspection Agency, the Consumer Protection Commission, the Customs Agency and the Post-Privatization Control Agency, transformed in 2010 into the Privatization and Post-Privatization Control Agency.

Independent bodies: the National Audit Office, the Bulgarian National Bank, etc.

Administrative bodies reporting to parliament: the Central Electoral Commission, the Energy and Water Regulatory Commission, the CPC, the Commission for Personal Data Protection, the Commission for Protection against Discrimination, the Assets Forfeiture Commission, the Commission for Prevention and Ascertainment of Conflict of Interest, the Communications Regulation Commission, the FSC, the National Social Security Institute, the National Health Insurance Fund, the Council for Electronic Media, etc.

State agencies: the State Agency for Metrological and Technical Surveillance, the State Agency for Child Protection, etc.

State commissions: the State Commission on Commodity Exchanges and Markets, the State Commission on Information Security, etc.

Executive agencies: the Executive Environment Agency, the Executive Forest Agency, the General Labor Inspectorate Executive Agency (GLIEA), the Public Procurement Portal, Audit of European Funds Executive Agency, the Road Transport Administration Executive Agency, the Bulgarian Drug Agency, etc.

State bodies reporting to ministers: the Customs Agency, the Public Financial Inspection Agency, the State Commission on Gambling, the National Revenue Agency (NRA), the Regional Water and Environmental Protection Inspectorates, the River Basin Directorates, the National Parks Directorate (reporting to the Minister of Forestry and Environmental Protection), the Bulgarian Food Safety Agency, the Directorate of Natural Parks, the Regional Directorates of Forestry, the Regional Agriculture Offices (governed by the Minister of Agriculture and Food), the Regional Education Inspectorates (reporting to the Minister of Education and Science), the National Construction Control Directorate (reporting to the Minister of Regional Development and Public Works), the Regional Health Inspectorates (governed by the Minister of Healthcare), etc.

Inspectorates in the state administration: all ministries as well as administrations that are not directly reporting to any particular ministry have inspectorate. Their activities are coordinated by the General Inspectorate at the Council of Ministers, which reports directly to the Prime Minister.

In 2014, (the latest publicly available data), control powers were vested in a total of 465 administrations, including 63 administrations at central level and 402 administrations at local level. The total number of administrative units authorized to establish administrative violations and impose sanctions, was 2,927 units employing 33,412

public officials (17,637 inspectors, 4,779 experts and 9,072 other officials). This means that about 23.8 % of all public administration officials have supervising powers.

The institutions with the highest number of officials with supervisory powers were the MoI (10,215 officials), the NRA (4,413 officials), the Customs Agency (2,220 officials), the Bulgarian Food Safety Agency (1,658 officials) and General Directorate Security of the Ministry of Justice (1,337 officials). The number of officials authorized to establish violations and impose sanctions at the local level was 7,663 and the municipalities with the highest number of such officials were Sofia (372 officials) and Plovdiv (227 officials).

The work of these units in 2014 resulted in the establishment of 363,633 violations and the issuance of 314,615 sanctioning orders. The highest number of violations were established by the MoI (176,606 established violations and 169,994 imposed sanctions), followed by the NRA (53,290 violations and 22,177 sanctions), the Executive Forests Agency (14,329 violations and 10,607 sanctions), the National Health Insurance Fund (13,229 violations and 12,337 sanctions), GLIEA (9,817 violations and 9,595 sanctions) and the Public Financial Inspection Agency (1,614 violations and 814 sanctions). At the local level, the most violations were established in the municipalities of Sofia (4,046 violations and 1,417 sanctions) and Plovdiv (2,620 violations and 2,207 sanctions). The fines, imposed in 2014, amounted to BGN 125,087,830 but only BGN 48,270,268 were actually collected.

In 2014, the public administration received 111,382 complaints for corruption and checked 108,313 of them (97.24 %). Most of these complaints were registered in the Sofia municipality (97,386 complaints of 87.4 % of all complaints in received in 2014). Other institutions with significant number of complaints included the administration of the government (3,393 complaints), Ministry of Agriculture and Food (2,393 complaints), MoI (1,235 complaints), the Executive Forests Agency (700 complaints) and the NRA (173 complaints). The number of cases referred to the public prosecution was 1,552 (199 cases of unlawful actions or lack of actions, 65 cases for corruption of public officials, 21 cases for violation of official duties or ethical rules, six cases of corruption of executive authorities, five cases of violation of internal rules and 1,256 cases for other violations).

Source: *State of Public Administration Report 2014*.¹⁴

¹⁴ The information in the *State of Public Administration Report* is a compilation of the data which all central and local administrations provide through the special Information System for Completion of Reports on the State of the Administration (ISCRSA). The information is collected through a questionnaire and most of it is not verified. There are several disclaimers throughout the report that the figures might be inaccurate due to the fact that some administrations either have failed to submit information or have not properly understood and, respectively, filled in the questionnaire.

In view of the complex structure of forms of private gain and forms of deliberate violation of rules, law enforcement and judicial institutions in the country face serious difficulties in the prosecution of corruption behavior cases: in most cases, even though the corruption cases are “clear”, the collection of evidence that would be good enough for a court trial proves too difficult. Focusing on the most complicated way of proving corruption (proving private gain resulting from a violation of rules) does not appear to be an effective strategy. Even if the presence of both elements of corruption (gain and violation of rules) is proved, it might be impossible to prove that both elements are connected. Therefore, this widely adopted criminal justice strategy leads in many cases to failure to convict officials and is not effective (charged officials are pronounced “clean” and reclaim their positions in public institutions). To counter corruption effectively, it would be more effective to address “gain” and “violation” separately. Though violators will not be convicted for corruption but for other offences, the overall effect on corruption would most probably be positive.

Against the background of the high prevalence of corruption, specialized anticorruption bodies and control system institutions prove ineffective and of low capacity. This in turn creates new corruption mechanisms making them susceptible to political interference. Revealing in this respect are cases of **selective application of anticorruption repression** by the Commission for Prevention and Ascertainment of Conflict of Interest. Selective enforcement has actually created a new layer of corruption transactions aimed at protecting elected politicians and senior civil servants from prosecution. Selective enforcement has also been used against business competitors and political opponents.

TABLE 3. ANNUAL BUDGETS OF SOME ENFORCEMENT AND INSPECTION BODIES (THOUSAND BGN)

Institution	2016	2015	2014	2013	2012	2011
Asset Forfeiture Commission	6,132	5,132	5,401	6,145	6,145	5,145
Commission for the Protection of Competition	3,591	3,591	3,318	3,775	3,805	3,705
Commission for Prevention and Ascertainment of Conflict of Interest	1,300	1,233	1,310	1,490	1,500	0
Financial Supervision Commission	10,442	10,172	10,430	11,867	13,689	13,638
Commission for Public Oversight of Statutory Auditors	1,286	1,086	1,086	1,235	0	0
Total:	24,767	23,229	23,559	26,525	27,151	24,499
National Security Service	33,916	31,616	32,984	35,254	30,940	31,240
National Audit Office	15,307	15,207	15,207	15,207	15,057	15,056

Source: Ministry of Finance.

Overall, Bulgarian regulatory agencies need to improve their oversight, reporting of sanctions and inspection procedures, because results in this respect are modest. Regulatory control has turned out to be to simply the performance of large numbers of inspections without adequate focus on the outcome. Such practices interfere with the operation of business and with its compliance with regulations, many of which require control and inspections. Furthermore, most of these public bodies lack formal risk assessment procedures and do not provide timely and comprehensive information with regard to their activities and planning.

Box 2. Anticorruption in the Ministry of Interior

In the second half of 2013 and throughout 2014 the anticorruption activities of the Mol were stalled, while the work of the Internal Security Directorate was significantly compromised due to personnel reductions, reappointments, resignations and other changes. Although its activities were reinforced and anticorruption efforts were stepped up in late 2014, these developments indicate that political instability and the lack of independence of key investigative structures from the political leadership can put in question the sustainability of anticorruption efforts. In early 2016, the Ministry adopted a concept paper for prevention and countering corruption in the Ministry of Interior 2016 – 2020, based on a 3-pillar approach: training, prevention and enforcement.

Control over sensitive data and how it is used within the ministry has the potential to be strengthened through establishing two new units to manage information security and the use of internal databases located at the Internal Security Directorate. Consequently, its personnel increased to 250 people,¹⁵ but the number of investigative officers involved directly in corruption checks remained unchanged. Overall, the increase of sanctions imposed (disciplinary, administrative and penal) as a result of the work of the Internal Security Directorate is expected to reduce corruption practices among police officers. There is also a slight increase in the number of disciplinary sanctions for senior police officers. There are some effects of sectorial anticorruption measures already visible, for example in the area of traffic control. An unintended consequence of the introduction of the Automated Information System for video recording of the traffic control was a sharp increase in the number of disciplinary sanctions in 2015.

A more comprehensive administrative reform and modernization of the police would require also pushing through more sensitive issues

¹⁵ Ministry of Interior, Structure of the Internal Security Directorate. Available from: <https://www.mvr.bg/NR/rdonlyres/1741B92B-3A8D-416C-9346-8CDF6993DDE9/0/DVS.pdf> (Accessed 28 February 2016).

such as the long overdue separation and greater independence of the police professional management from the political leadership and the highly necessary restructuring and re-categorization of the administrative staff who have no operational duties as opposed to police officers.

Green borders are another critical area with high corruption pressure, where an integrated surveillance system has been put in place at the Bulgarian-Turkish border. Due to the high priority of border control for national security, these control measures (which also seek anticorruption effects) receive broad political support, while officers from outside border police also take part in control activities (from Frontex and SANS). Furthermore, cases of illegal migrants detected inside the country are analyzed in order to establish the point of entry and routes, upon which the Internal Security Directorate has conducted numerous operations against border guards in 2015. The main challenge remains **the lack of capacity within the MoI and specialized bodies to investigate corruption related to the smuggling of migrants.**

In comparison to the real magnitude of the problem, countering corruption in law enforcement institutions is fairly modest both in terms of allocated resources and in terms of achieved results. The statistics of the Ministry of Interior, for example, show that after 2010 the number of corruption complaints within the ministry has been on a steady decline (Table 4).

TABLE 4. COMPLAINTS OF POLICE CORRUPTION

	2008	2009	2010	2011	2012	2013	2014	2015
Cases of conflict of interest	n/a	n/a	n/a	5	4	n/a	2	n/a
Initiated (internal) investigations	n/a	n/a	n/a	n/a	115	86	59	n/a
Initiated disciplinary proceedings	121	115	135	130	100	65	32	n/a
Dismissed officers	77	64	65	97	68	38	12	27
Other sanctions	35	15	29	16	15	17	3	354
Officers relocated to another position (away from corruption risk)	9	10	14	6	49	27	10	11
Referrals to the prosecution on conventional crime charges	57	85	76	72	63	26	14	38
Preliminary investigations	27	58	73	67	103	71	27	58
Received corruption complaints	491	562	549	495	372	319	217	261

Source: Internal Security Directorate, Ministry of Interior.

Overall, most public institutions assigned to enforce the law and verify compliance with standards and regulations are failing both their remit and public trust. Their failure affects practically every aspect of social life, production and commerce, health and environment. This result should come, however, as no surprise in a political environment in which the capturing of government institutions at the highest level has become routine.

Box 3. Tackling traffic police corruption

Eurobarometer survey data from the period 2006 – 2014 indicates that Bulgarian police officers are among the public officials most vulnerable to corruption pressure, with bribes elicited on an annual basis reaching between 350,000 and 400,000 EUR. Analysis of the available information reveals an important characteristic of police corruption in Bulgaria – upward of 90 % of cases are related to traffic violations. Experience from previous anti-corruption initiatives shows that traditional repressive measures are not sufficiently effective in tackling this problem, due to the large amount of financial and human resource required to address the significant number of small-scale corrupt transactions.

Removing the powers of the security police to monitor and sanction traffic violations can be noted as a positive development. Studies show that since 2006, corruption instances often involved this branch of the police force due to their large number (15 000 to 17 000) and different core competence. The measure leaves issues of traffic control entirely to the traffic police, which comprises a staff of about 1200 to 1500, thus allowing for less contact between police and drivers and more oversight of officers with sanctioning powers.

At the beginning of 2015, the automatization of the process of recording and sanctioning traffic violations was undertaken. The use of stationary cameras to record a number of pre-defined violations (mostly related to speeding) was instituted. The most widely utilized corruption enabler, the possibility for police officers to use speed measuring mobile devices and to sanction according to personal judgement, was removed. Nevertheless, the low numbers of cameras at the disposal of MoI and the lack of sufficient funding proved to be a significant challenge. To deal with this restriction, toll cameras operated by the Road Infrastructure Agency were also utilized for the purpose of recording traffic violations. In addition, cameras were installed in 30 % of traffic police vehicles by the end of 2015. The automatic processing of recorded offences has also been initiated and is carried out in a national center, thus removing the possibility to engage in corrupt practices on the local level.

Traffic police is now also required to enter in real time the personal information of offenders in a database, which retrieves information

about any irregularities (unpaid taxes or traffic insurance, lack of technical inspection, outstanding traffic fines etc.) with regard to the vehicle in question. Pulling over and checking a vehicle is to be carried out only in front of the second camera of the traffic police car, which should be with a switched-on microphone. However, a risk analysis shows that until mid-2015 there was no sufficient personnel for reviewing these recordings. As a result, in August 2015, a special control system was created and implemented in the 28 Regional Directorates. In addition, a parallel control organ was set up at the Internal Security Directorate. By the end of the year, checks have resulted in sanctions for 20-25 % of traffic police staff.

A nationally representative study carried out at the beginning of 2016 provides an assessment of the impact of the measures mentioned above.

FIGURE 8. IMPACT OF ANTI-CORRUPTION MEASURES

