REPORT

ABOUT
THE ACTIVITIES OF
THE CENTER FOR PREVENTION AND COUNTERING CORRUPTION AND ORGANIZED CRIME (CPCCOC)
AT THE COUNCIL OF MINISTERS
MARCH 2013 – MARCH 2014

CONTENT

1. CPCCOC – Status and Management

The Center for Prevention and Countering Corruption and Organized Crime at the Council of Ministers (CPCCOC) is a specialized structure for the realization of state policy in the field of preventing and combating corruption and organized crime.

The institution was established by the Council of Ministers with Decree № 158 of July 29, 2010. With Decree № 280 of November 30, 2010 was adopted the Body of Regulations of the Centre.

Originally the Center was established in 2011 when its administrative managment was assigned and the financing of CPCCOCwas secured. From this moment started the technical setup of the Center, the development of hardware and software systems well as project coordination within the innovative cooperation and partnership with an IT organization from Germany and some Bulgarian software companies.

CPCCOC is governed by a Consultative Council (CC) whose members include representatives of the legislative, executive and judiciary power, and the National Audit Office.

CC approves the strategic guidelines for of the Center; it gives its evaluation on the development of new projects and assigns to CPCCOC their implementation; it adopts and approves gradually the different steps and the project results as well as related recommendations; it takes decisions for their implementation and assigns their realization - independently from the Center or in partnership with other organizations.

The decisions of the Consultative Council adopted in 2012 directly determine the tasks and activities of the Center during the reporting period. The essence of some of them required their realization to be programmed for the performing of a long-term plan by CPCCOC.

So were outlined the main guidelines of the CPCCOC activities:

- Development of an intervention system against corruption in field of public procurement, including a plan and a financial statement as well as a legal framework for its implementation.

- Performance of measures scheduled by the Government and the judiciary bodies in compliance to the Mechanism for Cooperation and evaluation (called "Measure 72" or solution for the central coordination of all departments and their actions in the area of prevention and counteraction of corruption in Bulgaria).

2. Activities of the specialized Administration

2.1. Assignments of the Consultative Council

In pursuance of the decision of the Consultative Council of 31.10.2012 on the recommendation of the European Commission from the June 2012 report within the Mechanism for Cooperation and Verification Working Group on March 6, 2013 was proposed the creation of an Independent Board for coordination and monitoring required in the field of preventing and combating corruption / equal representation of the three authorities, representatives of local authorities, the National Audit Office and the Ombudsman /. It is necessary to set an independent monitoring system in order to examine the efficiency of the work of state institutions and the status of combating corruptionas as well as to attract NGOs and media on each step of performance of the assigned functions.

At a meeting of the Consultative Council held on February 6,2013 have been approved the measures proposed in the report of CPCCOC "Solution model for e-assignment of public procurement". A decision was taken to set an interdepartmental working group up to May 20, 2013 to elaborate a detailed plan for the realization of measures to implement the "solution model" with responsable institutions and implementation deadlines accompanied by a financial statement.

The development of a legal framework was assigned with proposals to amend the normative base of laws and regulations, necessary for the implementation of a "Solution Model" as well as to set proposals for the necessary organizational arrangements of its introduction.

The "Solution Model " isbased on a system of intervention measures enhancing six electronic online platform for public procurement, with a coordinated and targeted interaction. On the one hand, measures serve and optimize the procurement process, on the other - provide preventively elimination of "weak points" of corruption; and from a third side - they contribute to strengthening the supremacy of law, to raising openness and transparency, competence and ethical behavior at the level of administrative regulations.

The accompanying organizational measures for setting standards and "pre-qualification" to participate in tendering procedures improve the quality of the administrative service, promote competitive participation on equal terms to a wider range of businesses (including small businesses), provide

and operate the registration and their controlling while limiting the impact of corruption factors.

The Importance of the preventive function of developped anti-corruption measures complements the economic impact of accelerated reduction of red tape and administrative burdens on businesses, simplified procedures and reduced processing time of procurement. Application of innovative organizational and online technologies as a tool against corruption ensures an efficient impact of qualitatively measurable quantifiable results. By the "Solution Model" of CPCCOC will be elaborated an implementation of the EC regulations for the realization of e-procurement till 2016 complementing them with integrated systems of developped anti-corruption measures. They, in turn, can be considered as a new practice to improve the business climate in the country. The measures were discussed with industry branch organizations and chambers of commerce and clearly meet an approval. The Center's activities and developed measures to implement the "Solution Model" realize specific program priorities of the government in the field of public procurement.

On 07.16.2013, the Deputy Prime Minister for Economic Development, Ms Bobeva submitted information on the legislative program of the government in economic and financial fieldsat the Parliament. The Bill on Amending the Law on Public Procurement contains specific measures targeted against conflict of interests, personal enrichment and corruption. Measures are about to be introduced which are designed on the basis of anti-corruption analysis by CPCCOC that contribute to quality new anti-corruption preventive activities of the state.

On March 14, 2014 the National Assembly voted on a second reading of the bill amending the Law on Public Procurement, proposed by CPCCOC at the Parliament. It was adopted a development of electronic platforms, which is a significant step towards introducing electronic public procurement.

2.2. Assignments resulting from the Setup of a specialized Information-analytical System

The development of a specialized software system for performing out analyses and applications creates real conditions for the realization of projects.

For entry into service and full operation of the system is required:

- Test completion and commissioning of specialized software. Retrospective data entry and project development;

- Planning and performing a procedure for cooperation with external project partners of CPCCOC
- Definition of thematic areas for development and implementation of new projects.

2.3. Elaborating Advisory References following the Body of Regulations of the Council of Ministers and its Administration Art. 32 § 6

The Council of Ministers of Republic of Bulgaria assigns with decree № 262 of November 21, 2013 CPCCOC to coordinate each draft of law submitted to him according to the entrusted functional competencies. Organizational measures are taken to ensure the performance of the given assignment. For this purpose, by order of the Director of the Center were approved "Internal Rules of Procedure of the CPCCOC analysts in the coordination of projects."

During the reporting period were received 31 drafts of law by various ministries for consultation on which have been elaborated statements, once applied the analytical methods listed in the approved internal rules. On 13 drafts of law (42% from all the drafts) were found weak points which could lead to corrupt behavior in certain circumstances. There was set a total of 33 proposals for text changes or for inclusion of new texts that have anti-corruption charakteristics. At the time of writing this report at meetings of the The Council of Ministers 18 proposals have been considered and 11 were adopted, i.e. 61.1% of the total were accepted. 15 proposals remain to be considered.

Statements as well as information about the proposals adopted by the Council of Ministers are published on the website of CPCCOC.

In Annex № 1 is provided a reference on already adopted anti-corruption proposals.

Reference upon all prepared statements on amending the bills is presented in Annex № 2.

- The organization allows the aasignment to be performed within the established deadlines;

- The Council of Ministers has adopted more than half of CPCCOC proposals (61%), which proves the usefulness of the methodology adopted for the analysis of the bills;
- As part of a bill are found weak points that would allow performance of corruption acts (so far were identified weak points in 42% of the analyzed bills).

On the initiative of the management of CPCCOC were issued two statements on actual topics of significant public interest. These are:

- The amendments proposed by Members of Parliament concerning public procurement related to the so-called "in-house" procedures.

- President's veto regarding amendments to the Law on Medicinal Products in Human Medicine on 'parallel exports' of medicines.

Statements are presented as Annexes № 4 and 5 to the report given.

2.4. Media Monitoring

Since the beginning of 2014 the Center for Prevention and Countering Corruption and Organized Crime monitors media coverage and trends in the field of politics and economics on issues related to corruption, corruption practices and anti-corruption, having been available to the public by preparing weekly media monitoring and analysis.

Based on the collected and classified information The Center has an opportunity to analyze the forming assay of corruption environment. Through media monitoring and analysis The Center traces in detail the processes, on which basis it evaluates the need for additional data collection to develop the appropriate strategy to taking further steps and actions.

Monitoring covers information channels in three main areas: national newspapers, daily and weekly newspapers, news agencies and the national electronic media, radio and television. At present at the Center are archived 14 analyses with attached materials of media monitoring.

2.5. Analysis of the Concessions Act and proposed Measures to prevent Corruption

During the working processthe analysis of the Concessions Act was extended also to the Mineral Resources Act and the Black Sea Coast Development Act, which are directly related to it.

During the last period the after proceeding as follows:

- Collecting the information needed for an overall analysis;
- Collection, processing and analysis of media reports on corruption in the concession;
- Collection, processing and analysis of materials for the implementation of concession contracts;
- Performing a comparative legal analysis of the Concessions Act with EU Member States;
- Acts and practices in the EU Member States;
- Legal analysis of legal framework;
- Analysis of Court cases;
- Process analysis.

There were a series of working group meetings with experts on concessions from the Council of Ministers, Ministry of Economy and Energy and Ministry of Regional Development. It has been requested and received information from the National Association of Municipalities in the Republic of Bulgaria. It has been also required the assistance of foreign experts from the Institute of State and Law at the Bulgarian Academy of Sciences who have an extensive experience in this field.

As a result of the work performed were found "weak points" that could lead to corruption practices in the organization of the concession activities. There are about to be prepared and proposed amendments in the legislation as well as in the regulations to fix the disclosed "weak points."

Completing the assignment it will be prepared and published a separate report "Analysis of the Concession Act to detect "weak points" and to

elaborate proposals for measures to preventing corruption." The report contains an introduction and five chapters expanded on 182 pages in detail.

In Chapter I "General part" are discussed in detail the nature of concessioning as a legal institution, the need for implementation and the analysis of concessioning; in-depth historical review and analysis of the legal framework of concessioning until 2007 and a review of the EU Law in the field of concessions and generally in the area of Public Private Partnerships. Special attention is paid to the legal framework of the concessioning in Bulgaria after 2007. In addition to the general characteristics of the Concessions Act /IC/ 2006 and its regulations /Implementing Regulations of the Concession Act - IRCA/ hereby is completed a comparative legal analysis between IC 1995 and IC 2006. It traces the development of the IC over the years to the current version and the reasons for the most significant changes. A common features outline has been resumed on the concessioning according to the Underground Resources Act /URA/ and its regulations as well as The Black Sea Coast Development Act /BSCDA/ and its regulations and the Water Act /WA/. A comparative analysis on concessioning has been elaborated considering the CA, URA, BSCDA and WA. Hereby are examined also features following other special laws. Another focus of the report are program documents in the field of concessioning as mirrored in CA, URA, BSCDA, WA and other acts in order to establish the presence or absence of a state policy in these areas. An analysis of the statistics of granted concessions for the period 2006-2013 is performed according to the National Concessions Register. For the purpose of accomplishing exhaustive and encompassing analysis were held meetings with representatives of the Council of Ministers, Ministry of Economy, Ministry of Regional Development and Public Works. An inquiry has been prepared to poll questions on the Concessions Act which was addressed to 264 municipalities in Bulgaria by the National Association of Municipalities /NAMB/. Meetings with representatives of the Association were held after having resumed the information. Collected data, detected issues and "weak points" are outlined in the report, Chapter I, Section VIII.

Chapter II "Statement Analysis" reflects the underlying types of applied analyses on the Concessions Act and identified "weak points" . There are given specific proposals for preventive measures as well. Applicable types of analysis are: comparative legal analysis of IC /2006/ with European acts and best practices in EU member states, organizational analysis of the functions of the bodies in the area of concessioning, legal analyses, process analyses, analyses of Court reports and case analyses; case analyses were also elaborated on various cases in media publications.

Chapter III provides an overview of the upcoming Directive 2014 /0437 of the European Parliament and of the Council on the award of concession

contracts to be implemented in order to establish a compliance between the proposals for measures on the Concessions Act and the requirements of the Directive.

Chapter IV is a general overview of the legislation of other countries in the area of concessioning considering the point to adopt good practices from them.

In Chapter V are resumed conclusions on the types of analysis following on the Concessions Act, identified "weak points" and are made suggestions for preventive measures.

Similarly, the findings following URA, BSCDA and WA are summarized as well as identified weak points and proposals are made for the prevention of these laws.

2.6. Definition of Risk Areas – OP "Innovation and Competitiveness 2014-2020"

CPCCOC performs an initial analysis of the opportunities for corruption practices in various sectors of society in order to define risk areas. Based on the defined risk areas, the Center consistently performs comprehensive anti-corruption analyses focused on developing and proposing a set of measures to prevent and counteract the factors favorable to corruption offenses.

Presently there are defined and resumed a couple basic risk areas with potential corruption. Initial analysis of corruption areas have been performed. Main criteria for determination of risk areas are their significance, risk potential for acts of corruption, the volume of generated financial turnover, and the presence of direct and indirect national security threats due to the corruption practices in these areas.

Additional criteria for determination of risk areas and risk sectors are the actual relevance of corruption problems as well as the public intolerance of these practices.

Based on the approach adopted and the underlying analyses CPCCOC identified several risk areas for corruption:

- Strategic and nationally significant sectors, "Energy", "Health", "Judicial system" and "Law Enforcement", "Transport and communication

infrastructure", "Agriculture and Forests", "Regional Development" and "Local Government";

- Financial - economic sector - "European funds and programs," "Economy, privatization, competition and monopolies", "Revenue and supervisory authorities" and "Finance";

- Sectors with potential for generating crises and social pressure, "Illegal Migration and Refugees," "State Reserve and War-Time Stocks", "Disasters, accidents and catastrophes of environmental and random background", "Cybersecurity and e-governance."

Object of analysis in the defined risk areas are separate normative acts as well as overall business of risk authorities and organizations. The above main risk areas related to corruption risk can be defined and complemented with other areas.

As a result, CPCCOC plans a thorough examination in five risk areas in a short-term and medium-term perspective:

- OP "Innovation and competitiveness in the new programming period 2014-2020"

- "Operation and disposal of natural resources"

- "Privatization and Control after privatization"

- "Pharmaceutical policy and medical equipment"

- Schemes on national payments and charges in the common agricultural policy, national additional payments upon the area principle /NPA/, national additional payments for tobacco /NPT/, national additional payments concerning animals /NAPA/ Specific Aid for Farmers /SAF/.

Actually, the teams at the Center analyze opportunities for corruption practices in risk areas - OP "Innovation and competitiveness in the new programming period 2014-2020" and "Operation and disposition of natural resources.".

For the purposes of the analysis in CPCCOC is collected all the relevant information on current regulations, EU Directives and national legal framework. Laws and regulations are explored focused on organizational and technical aspects of relations. Case studies are performed and explored how competent authorities interact with each other related to relevant risk

sectors. For example, in the analysis of risk areas are examined following normative acts:

For the Operational program "Innovation and competitiveness in the new programming period 2014-2020" are analyzed current Regulations: Decree of the Council of Ministers setting performers from beneficiaries of grants from EU funds, Decree of the Council of Ministers establishing the terms to award a grant, Procedure Manual of the managing authority and other relevant legislation acts, strategies of the AFCOS Directorate at the Ministry of Interior and the European Anti-fraud Office /OLAF/, operating in-house regulations related to the topic of corruption etc.

For "Operation and disposition of natural resource" is performed analysis of the Concessions Act, the Black Sea Coast Development Act, The Underground Resources Act, related regulations as well as internal departmental regulations.

These risk areas are examined by various analytical methods and techniques adopted by CPCCOC based on expert-concept including determination of "weak points", legal, process, organizational and matrix forensic analyses designed to developing and proposing a set of measures and comprehensive intervention systems to prevent corruption in zones specified by the analysis.

3. Interaction and Collaboration with National and International Government Agencies, Civil Society Structures, Industry Branches and Business Organizations

The model for project partnership of CPCCOC involves the participation of government institutions, civil society structures, industry branches and business organizations in the planning and development of anti-corruption measures.

3.1. Cooperation with Central and Local Government Institutions

In the activities of the Interdepartmental Working Group (February-May 2013) on elaboration of a Plan for the implementation of the measures recommended by CPCCOC in the area of public procurement were included representatives of government institutions - the Ministry of Interior, Ministry of Economy, Ministry of Finance, Ministry of Transport, Ministry of Regional

Development and Public Works, Public Procurement Agency, National Audit Office, Supreme Administrative Court and others.

In July 2013 the Managing Director of CPCCOC participated in the 19th anti-corruption forum in Vratsa on the topic "Integrity of Public Procurement". It was part of the information and communication campaign of the Regional Public Council for Prevention of Corruption. The discussion was attended by governors, mayors, employers and branch organizations, trade unionsand non-governmental organizations.

The new leadership of the CPCCOC set itself the objective to achieve a better interaction with other government institutions at national and local level engaged in the field of countering corruption. There is a forthcoming signing of agreement and instructions for cooperation with the Supreme Cassation Prosecution Office and the National Security Agency. It is planned an institutionalization of the interaction with the AFCOS Directorate at the Ministry of Interior and the National Revenue Agency. The Center will actively interact as well with other authorities such as the Public Financial Inspection Agency, the Chief Inspectorate at the Council of Ministers, the National Audit Office and the National Customs Agency.

In order to optimize the coordination and interaction with district councils to prevent and counter corruption CPCCOC initiated and held a meeting with their representatives /March 2014/. Opportunities having being discussed to cooperate on specific issues providing methodical assistance and organization of joint training. CPCCOC and district councils will exchange information on significant signals for corruption practices, identified corruption patterns in certain risk areas on procurement commissioned as well as data on the topics of privatization and concession. If necessary CPCCOC will send mobile teams of Center analysts to provide expert assistance at the local level in complex corruption cases.

3.2. Cooperation with NGOs, Business and Branch Organizations

According to the concept of project partnership CPCCOC collaborated in 2013 with non-governmental and industry organizations following the "Solution Model in the field of public procurement" assigned by the Consultative Council. Representatives of the Construction Chamber in Bulgaria, Institute for Legal Analysis and Research, Chamber of Commerce were included in the interdepartmental group to prepare a plan for the implementation of measures of the CPCCOC in public procurement. Participants from the German-Bulgarian Chamber of Industry and Commerce were attracted as well as Austrian and Swiss businessmen.

In April 2013 the leadership of CPCCOC met with representatives of NGOs - the Centre for the Study of Democracy, the Institute for Public Environment Development, Risk Monitor, the Institute for Legal Analysis and Research, the Association Transparency International to present the decisions of the Interdepartmental Working group on a schedule of urgent measures and actions of government and judicial bodies to meet the benchmarks of progress in the area of a judicial reform, combating corruption and organized crime.

CPCCOC collaborated in 2013 with the Center for the Study of Democracy on the topic: efficient synergy between civil society organizations and anti-corruption structures of public administration. In April 2013 was held a meeting of the management of CPCCOC with representatives of anti-corruption units in the Netherlands and Romania as well as with non-governmental entities to get acquainted with anti-corruption policy in Bulgaria and the extent of cooperation between administration and civil society organizations.

The new management of CPCCOC announced its priority to developing and interacting in-depth with non-governmental and branch organizations. The partnership was institutionalized through the signing of bilateral cooperation agreements for joint actions to reduce corruption practices.

The Center and NGOs will collaborate in the following areas: information sharing and analysis, participation in joint initiatives - round tables, seminars, conferences, partnership in common projects of mutual interest, putting together expert advices on specific issues, as well as consultations on assigned CPCCOC projects, etc.

In February and March 2014 were signed memoranda of cooperation with the following organizations:

- Construction Chamber in Bulgaria (CCB)
- Institute of State and Law at the Bulgarian Academy of Science
- Club "Journalists against Corruption"
- Association "Journalists for Transparent Governance
- Institute for Legal Analysis and Research (ILAR)

CPCCOC, together with the Club "Journalists against Corruption" and Construction Chamber in Bulgariahave started an initiative to set a "Register of public procurement impact on the competitive environment" where curious technical assignements will be published and in which the contracting authorities lay in advance such conditions that describe a particular firm

contractor. The register is available on the websites of the organizations.

Within a partnership the management of CPCCOC participates in March 2014 in a Round Table Discussion organized by the Construction Chamber in Bulgaria on the topic "Modernisation of Public Procurement" where the focus was the implementation of e-procurement.

CPCCOC and the Economic Research Institute at the Bulgarian Academy of Science organized on March 20 a Round Table Discussion on the topic "Methodology for risk analysis on tax fraud and tax concealment" which brought together representatives of government agencies, employers' organizations, trade unions, academia and independent experts.

3.3. Partnership with European and International Institutions

The BORKOR project was introduced in May 2013 to members of the special committee on organized crime, corruption and money laundering at the European Parliament. The visit of the management of CPCCOC in Brussels was preceded by meetings of the Managing Director Eleonora Nikolova with MEPs such as Mary Gabriel (EPP / GERB) and Iliana Yotova (PES / BSP).

In April and November 2013 the Center was visited by Leonie Hensgen, Resrach Fellow at the Max Planck Institute for International Public. She is the author of a study on countering corruption in the Danube region. In the study are investigated anti-corruption measures in six countries in the region - Hungary, Romania, Germany, Bulgaria, the Czech Republic and Austria. In the study published by Max Planck the BORKOR project and the activities of the Center are presented as a "good practice" for combating corruption.

The activities of CPCCOC were the focus of discussion of the management of the Center with members of the expert mission of the EC on the 'Mechanism for Cooperation and Verification " on Bulgaria's progress in judicial reform, corruption and organized crime (September 2013). The meeting was focused on the current status of the BORKOR project and the Solution Model in the field of public procurement.

Implementation of the project is subject of the presentation of CPCCOC Managing Director, Eleonora Nikolova in front of eight ambassadors of Member States of the EU and the U.S. at the residence of the Austrian Ambassador His Excellency Gerhard Reiweger (December 2013).

In December 2013 the management of the Center received a Chinese government delegation headed by Deputy Minister in the Ministry of supervision. The delegation was accompanied by the Ambassador of China in

Bulgaria. Purpose of the visit was to search for intersections of cooperation and exchange of information on approaches and practices in combating corruption.

Management Representative of the Center participated at the second meeting of the Parties concerning the agreement setting an International Academy of countering corruption (December 2013).

3.4. Media Policy

In 2013 continued the setting and maintaining long-term good relations and cooperation with the media as a priority in terms of public relations. During the reporting period was always granted access to journalists on the management of the Centre and the activities of analysts.

Primary communication channel of the CPCCOC during the reporting period was the website, which was launched on April 2012. There were published press releases about the institution's activities, consistent with journalistic criteria to the significance of the event and conditions of employment in the media. There were reflected critical press materials and opinions of independent experts. On the website are rapidly published opinions of the CPCCOC with anti-corruption proposals on drafts of law of the Council of Ministers and information on the number of adopted resp. rejected measures of the Center. There are also published reports on the activities of the institution, financial reports and other types of documentation.

4. General Administrative Activities of the CPCCOC

During the reporting year 2013 the administrative Division of the Center manages all the activities related to planning and accounting of the Center project activities, providing legal advise and administrative support, information and business services as well as registrar services and storage of paper and electronic documents.

According to the annual financial statement of the Center there was approved a budget of BGN 4.050.350 in advance and reported a cost accountancy of BGN 3.517.239 /see Annex № 6 /.

During the past year 2013 in strict compliance with the Civil Servants Act and the Labour Code the general and specialized admnistration staff was completed. During the period, there were performed eight competitive recruitment procedures for staff vacancies in the specialized and general administration; five of them have been completed with the appointment of civil

servants and three without appointment.

Top priority in building a human capacity in the Center was the raising of competence and qualification of the employees. In compliance with the approved annual training plan for employees in CPCCOC 2013 were held 29 vocational trainings organized by the Institute of Public Administration and other educational organizations including 153 employees participated. There were organized and performed additional vocational trainings to work with the accountancy records "Archimedes"; training of specialized software system "Borreg;" foreign language vocational trainings; vocational trainings following the Public Procurement Act and other.

In 2013 in order to ensure better working capacities and assuming responsibilities were developed and validated functional characteristics of directorates in the general and specialized administration.

Essential contribution is the holding of procedures to ensure healthy and safe working conditions for employees at the CPCCOC.

During the reporting period were developed and validated four new internal normative acts - "Rules for rendering first aid"; "Audit trail of medicinal drugs"; "Regulations for running the record"; "File order of cases at the CPCCOC" assigned by the Consultative Council.

For providing a better and a higher quality performance of assigned activities are completed updates on the internal rules, regulations, audit trails.

Arrangements for keeping a register of complaints and notifications received in the CPCCOC from citizens and organizations; hereby in the legally set terms are issued statements and suggestions.

There was organized a participation of employees as well in building a system for access control with the specialized software "Andromeda Pro".

5. Governance - Conclusions

During the reporting period ended the first stage of development of hardware and software system at the CPCCOC and training skills of analysts to apply different kinds of analysis to identifying weak points and to developing measures to counter corruption as well as an elaboration of an organized intervention system.

It is important in this and the following years the created potential to be valued and disclosed in public, especially among the partners of the Center.

Analyzing legislative acts of the executive power and elaborating advises is an important task, which allows for the accumulation of knowledge, experience and professional self-esteem and is an important step in strengthening the capacity of specialized administration.

Analysis of individual risk areas, starting with the legal framework, in the institutions, their responsibilities and performance of assignements as well as reaching individual work processes, technical procedures and competences to make decisions - these are the new priorities of the management of the Center.

Development of an effective system of measures that influence a particular field of management and administrative work within a preventive aspect is a major assignment.

Development of an effective system of measures that impacts on a particular field of management and administrative work within a preventive aspect is a major assignment.

Measures developed in the Solution Model in the field of public procurement and their realization faster meet the recommendations addressed to Bulgaria, as ISAs (MCO) and within the overall assessment of the state of corruption.

The goal that the management of the Center actually sets for 2014 is that CPCCOC becomes an efficient instrument for the realization of the Integrated Strategy for Combating Corruption and Organized Crime.

Annex № 1

REFERENCE

for offered and adopted anti-corruption measures according to coordination procedure after Article 32 of the Body of Regulatios of the Council of Ministers and its administration (BRCMA)

Amending Act	Proposed	Accepted	Not accepted	Pending
Tourism Act	4	4		
Health Act	5			5
Customs Act	1	1		
Agricultural Land Conservation Act	1	1		
Law on Integration of People with Disabilities	1	1		
Labour Code	3	1	2	
Agricultural Lands Ownership and Use Act	1			1
Conflict of Interests Ascertainment and Prevention Act	3		3	
Act repealing the PPP Act	5	3	2	
Measurements Act	2			2
Public Sector Internal Audit Act	1			1
Diplomatic Service Act	3			3
State Aid Act - new	3			3
Total	33	11 61%	7 39%	15

Annex № 2

REFERENCE

ABOUT ISSUED STATEMENTS ON DRAFTS OF LAW (BILLS) AMENDING:

1. Tourism Act – four offers presented and adopted;

2. Health Act – two statements with five offers are still pending at the Council of Ministers;

3. Customs Act – an offer presented and adopted;

4. Penal Code – no comments and suggestions;

5. Protection Against Harmful Impact of Chemical Substances and Mixtures Act – no comments and suggestions;

6. Agricultural Land Conservation Act – an offer presented and adopted;

7. Genetically Modified Organisms Act – no comments and suggestions;

8. Law settling the rights of holders of long-term building savings accounts – no comments and suggestions;

9. Law on Integration of People with Disabilities – an offer presented and adopted;

10. Energy from Renewable Sources Act – no comments and suggestions;

11. Employment Promotion Act – no comments and suggestions;

12. Labour Code – three offers presented, one adopted;

13. Agricultural Lands Ownership and Use Act – an offer still pending at the Council of Ministers;

14. Social Assistance Act – no comments and suggestions;

15. Conflict of Interests Ascertainment and Prevention Act – three offers presented, none adopted;

16. Law on the administrative regulation of production and trade with

optic discs, matrices and other carriers containing subjects of copyright and related to it rights – no comments and suggestions;

17. Copyright and Related Rights Act – no comments and suggestions;

18. Public Libraries Act – no comments and suggestions.

19. Agricultural and Forestry Equipment Registration and Control Act – no comments and suggestions;

20. Act repealing the Public Private Partnership Act – five offers, three adopted;

21. Measurements Act – two offers to be considered next by the Council of Ministers;

22. Spatial Planning Act – no comments and suggestions;

23. Commodity Markets and Auctions Act – no comments and suggestions;

24. Environmental Protection Act – no comments and suggestions;

25. Public Sector Internal Audit Act – an offer to be considered next by the Council of Ministers;

26. Diplomatic Service Act – three offers to be considered next by the Council of Ministers;

27. Civil Aviation Act – no comments and suggestions;

28. Military Police Act

29. Defense and Armed Forces Act

30. Disabled Veterans Act

31. State Aid Act (entirely new) - a statement with three offers.

Annex № 3

SUMMARY

Of CPCCOC observations on the coordination of laws following Article 32, Paragraph 6 of the Body of Regulations of the Council of Ministers and its Administration according to its functional competence with specific anti-corruption offers**:**

NOTICE: The complete text of the bills quoted below is available on the website of relevant ministries supporting the initiation of changes.

I. According the Amending Act on Conflict of Interests Ascertainment and Prevention Act:

1. The most substantial gap that we consider for necessary to point out, although the proposed amending standards do not affect it, is the incomplete coverage of the term "conflict of interest" in the current Conflict of Interests Prevention and Ascertainment Act versus its regulated European legal concept. According to Article 57, item 2 of Regulation № 966/2012 of the European Parliament and of the European Council of October 25, 2012 on the Financial Regulation applicable to the general budget of the European Union and repealing Regulation № 1605/2002 2, "conflict of interest exists, where the impartial and objective exercise of the functions of a financial actor or other person referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other interest that is common with that of the recipient". In this sense is to be interpreted also Regulation № 2342/2002 of 23 December 2002. Evidenced by the notion of "conflict of interests" in Article 2 in conjunction with § 1, item 1 of AP of the current Conflict of Interests Prevention and Ascertainment Act has the same narrow range of action, its scope does not include options for available conflict of interests in the area of benefits from tangible and/or intangible nature between participants caused by emotional closeness /friendship/, national or any other interest that is shared with the recipient. In fact, in life experience terms, these are the most common situations that generate corrupt payments /mostly within public procurement/ remaining however unpunished, since they are based on different types of emotional or other proximity; the latter are not included in the applied field of the Conflict of Interests Prevention and Ascertainment Act (CIAPA). At the same time Bulgaria has to be in compliance with Regulations 966 and 2342 as well as with European law, these have an immediate direct

impact. In view of the said above, the operational programs co-financed by the Structural and Cohesion Funds apply the "General guidelines to avoid conflict of interests following the meaning of Article 52 of Regulations 1605 of 2002 and the principle of impartiality and independence in the management of operational programs co-financed by the Structural and Cohesion Funds "created precisely to fill the gap in the current Conflict of Interests Prevention and Ascertainment Act (CIAPA) as well as achieve complete unification of the concept with European law. It follows that there is a double standard of handling EU funds. On the one side are applied the rules governing the broader notion of "conflict of interests". And on the other side during working with the state budget is applied a narrow concept of "conflict of interests" as defined in the current Conflict of Interests Prevention and Ascertainment Act (**CIAPA**).

ADVISORY REFERENCE: We offer the concept of "conflict of interests" in the current Conflict of Interests Prevention and Ascertainment Act (**CIAPA**) to be complemented in order to obtain a full compliance with the concept in European law regulated by Article 57, item 2 of Regulation № 966/2012, at the Eeuropean Parliament. We believe that this would eliminate the currently existing double standard of legal regulation of the term and it will cover all potential cases of corruption caused by emotional closeness, national or any types of interest.

2. According to Amending Act § 3 of CIAPA, Art. 2 and 3:

According to Article 19, § 2 of the current CIAPA in case of suspected conflict of intereststhe person holding a public office position may by authority election / appointment / or by a relevant committee per Article 25, paragraph 2, items 1 and 3 to request the Committee for the Prevention and Ascertainment of conflict of interests, hereinafter referred to as "the Committee" to determine whether a conflict of interests is evident. In contrast to the norm in item 1, which introduces mandatory obligation per Article 3 of the subjects to submit a private interest declaration in a specific issue, the norm in paragraph 2 it has a preventive action in order to avoid any conflict of interest in the case of good faith on the part of the subject, in case of doubt on his part regarding conflict of interests and this has a protective role in any future proceedings before the Committee. The offered proposal in § 3, Art. 2 and 3 of Amending Act of CIAPA is foreseen a repeal of the right of a subject /or subjects/ per Article 3 to refer to the Committee; only the appointing authority /selection/ and the committees according to Article 25, 2, items 1 and 3 are entitled to send a signal to the Committee in failures to be observed on CIAPA, yet does not provide any other possibility for referral to the Committee by any subject per Article 3. Considering the above mentioned, we believe that the repeal of the text of

Article 19, 2 of the current CIAPA offers a reality driven, legal possibility to prevent conflict of interests of persons holding public positions.

As an additional argument in this area, it should be pointed out the fact that the proposed repeal of paragraph 2 of Article 19 is disproportionate and does not correspond with the regulations of Article 23, paragraph 1 and Article 24, paragraph 4 of the CIAPA intended to ascertain conflict of interests by a signal conveyed to the Committee, by decision of the Committee or "upon request of the person holding public office", submitted in written form and registered. The identified inconsistency creates confusion and inaptitude to the objectives of the problem area and can lead in certain circumstances to the occurrence of corruption behavior.

ADVISORY REFERENCE: We propose to preserve the text in Article 19, paragraph 2 of the current CIAPA keeping in view the legal possibilities for prevention.

3. According to Amending Act § 6 of CIAPA:

According to Art. 22b of the current CIAPA committee members may only Bulgarian citizens with permanent residence in the country, who have higher education in law and enjoy a public authority and confidence wherein should be a clear absence of circumstances referred to in paragraph 2. Given that requirements to the members of the Committee are mostly generally defined we welcome as a necessary anti-corruption measure the proposed amendment to Art. 22b, paragraph 1 on the inclusion of an "acquired legal capacity," added to the appearance of expert members of the Committee. At the same time we pay attention to the lack of formulated demand on the existence of minimum professional experience of the members of the Committee, which is of major significance regarding the fact that the Committee acts as a specific jurisdiction and imposes administrative sanctions. In this sense, there could be defined, in the provision of Art. 22b, full fledged, specifically formulated competence criteria for the members of the Committee acting as lawyers. Otherwise, it is probable that an election or appointment of incompetent members takes place. A lack of sufficient professional competence would negatively affect the implementation of functional responsibilities and the quality of decisions, because thereby is reduced the risk of disclosing violations, possible consequences and necessary sanctions for the perpetrator.

ADVISORY REFERENCE: We propose art. 22b to be complemented regulating the minimum requirements for professional legal experience which should have the members of the Committee. Depending on the professional quality of the members this experience could be different. As appropriate the

highest requirements are to be ascertained to the President and Vice-President of the Committee.

4. According to Amending Act § 17 and § 18 of CIAPA:

According the current CIAPA, Art. 34, paragraph 1, a person holding public office who fails to file a declaration under Article 12 in the legally ascertained deadline shall be punished by a fine of 1,000 BGN to 3000 BGN. While repeated (paragraph 2) one pays a fine of 3000 to 5000 BGN . Art. 12 of CIAPA provides submission of 4 types of declarations per Article 3 of the subjects - a declaration of incompatibility per Article 5 (as well as Article 12, item 1), a declaration of private interests per Art. 12, item 2, a declaration of change of circumstances per item 1 and 2 (Article 12, item 3), a declaration of private interests on a specific issue (Article 12, item 4). However in Art. 37 of the CIAPA is settled also an administrative criminal liability for persons holding public office when the obligation under Article 16 / for untimely submitted declaration of private interests on a specific issue / article 12, item 4 / is not fulfiled; the fine payable in that cases is from 7000 to 10,000 BGN. The proposed amendments foresee a reduction of the minimum amount of a fine under Article 34, paragraph 1 and 2 which is 200. - BGN resp. 1000.- BGN. Logically, in order to eliminate the contradiction between Article 34 and 37 of CIAPA on untimely submission of the declaration of private interests on a specific issue / Article 12, item 4 / is foreseen to amend the text of Article 37, so that current text completely changes and regulates an administrative criminal liability for persons not submitting information to the Committee within the prescribed period.

Supporting the refinement of administrative criminal sanctions, but finding for appropriate and target oriented to have specifically differentiated sanctions according to the offense committed and its severity. We find it appropriate, since the norm of Article 34 summarizes the four assumptions - failure to file within deadline a declaration under Article 12, item 1, for untimely submitted declaration declaration under item 2 respectively item 3and respectively. under Article 12, item 4 of CIAPA, i.e. there is performed an act of varying gravity of infringement, defined by the siginificance of the types of declaration under Article 12. Given the current large difference between the minimum and maximum amount of a fine is provided by the proposed changes of Article 34 by the Amending Act of CIAPA / from 200 to 3000 BGN. While repeated fine is from 1000 to 5000 BGN / for non submission of any of the four types of declaration under Article 12, without any concretization, consistent with the importance of the type of declarationrespectively the gravity of the offense,

there is a real danger of subjectivity in the determination of the fine by the Committee.

ADVISORY REFERENCE: To discuss the possibility of refinement in Art. 34 by specifying the minimum and maximum limits of the fine due to non-submission of any of the four types of declaration under Art. 12 in compliance with the act and the gravity of the infringement defined by the failure not to file within deadline the corresponding type of declaration.

5. According to Amending Act § 19 of CIAPA:

Article. 43, paragraph 1 from the Amending Act of CIAPA stipulates that fines and sanctions under Art. 34, 36, 37, 38, 39, 40 and 41 shall be imposed with a penalty decree issued by the President of the Committee. Acts for establishing an administrative violation shall be issued by an official appointed by the President. According to paragraph 2 of Article 43 of the current CIAPA the penal provision under paragraph 1 shall be appealed under the Administrative Violations and Sanctions Act.

It follows that the provision of Article 43 is incomplete because it uniquely specifies the procedure for appealing the penalty decrees, but does not specify in which order will be ascertained offenses, how and in which order will be issued and executed sanctions. There is no explicit reference to the legal act that regulates the ascertainment of violations, issuance and enforcement of penal provisions, by analogy with the text of Article 43, paragraph 2 of the current CIAPA which causes ambiguity in the interpretation and application of the norm.

In addition, the provisions of Article 43, paragraph 1 of the Amending Act of CIAPA there is a gap on the point who, how and in what order will be set criminal acts and decrees in cases under Art. 35 of the current CIAPA, i.e. when violations of the provisions of Chapter II of the current CIAPA take place.

ADVISORY REFERENCE: The norm of Article 43 to be further refined and elaborated by allowing fines and pecuniary penalties under Article 34, 35, 36, 37, 38, 39, 40 and 41 to be imposed with a penalty decree issued by the President of the Committee or by an authorized person by him for the convenience and completeness in case of absence of the President and and is to be explicitly regulated that "the ascertainment of violations, issuance, appeal and execution of penalty decrees follows the procedure established by the Administrative Violations and Sanctions Act."

II. According the Amending Act of Labour Code:

1. According to Amending Act § 3 of the Labour Code:

In article 230, paragraph 1 and paragraph 2 of the Amending Act of the Labour Code is foreseen that a learning outcome in the contract under Art. 230, paragraph 1 shall be determined by examination of the student (paragraph 1) and upon successful completion of the testthe employer shall issue a document certifying the acquired qualification to the student (paragraph 2). The contract of employment with an opportunitz of vocational training at work according to Art. 230, paragraph 1 is a contract under which the employer is obliged to train the employee "on the job" in a certain profession and the learner has to master it. The term "profession" is defined in § 2 of the Provisions of the Vocational Education and Training Act as a "type of work for which is organized vocational education and training." According to Article 6, paragraph 1 of the same Act, vocational guidance, vocational training and vocational education are provided in professions and specialties included in the list of professions for vocational education and training approved by the Minister of Education and Science. The regulation of this type of contract presupposes the cumulative presence of two assumptions pressing workforce to perform a specific job function in the work process within the framework of profession for which the student will work. Evidenced by the deadline for this type of contract, it is obvious that it should in principle be concluded for the internalization of not particularly skilled work, for which a six-month period of vocational training is sufficient for its assessment. The proposed option in Article 231, paragraph 1 and 2 of the Amending Act of Labour Code on exam performance of the student by the employer and the issuance of a document certifying acquired qualification does not correspond entirely with the provisions of the Vocational Education and Training Act which provides as well special requirements on the exam organization and composition of the exam committee for performing exams of professional qualification, ensuring independence and impartiality, as well as special requirements on the documents certifying completion of training. In this sense, the offered proposals in Art. 230 do not provide sufficiently an opportunity for subjective attitude on the part of the employer regarding the proposed amendments to Art. 232, paragraph 3 of the Amending Act of Labour Code, under which, if the student has no legitimate excuse for not completing his training, due to the employer's satisfaction adequate to incompletion at a rate agreed upon by the parties, but not exceeding six times the gross salary for the job position.

ADVISORY REFERENCE: Considering the above mentioned we suggest the procedure for performing exams after completion of the training contract in Art. 230, paragraph 1 to be complemented in analogy to the Vocational Education and Training Act, in order to eliminate any possibility of subjectivity that fosters potential occurrence of corruption behavior.

2. According to Amending Act § 4 of the Labour Code:

In Art. 232, paragraph 2 of the Amending Act of Labour Code is foreseen that if the employer fails to provide a work according to the acquired qualification to the employee after a successfully completed training he owes him a gross salary for the relevant position in the time that he has not been provided with such a job, but for no more than six months, unless otherwise agreed. According to the foreseen amendment as provided in paragraph 3, if the student without a valid excuse has not completed training or after it has ended, does not take the job secured by the employer or leaves it before the deadline, he owes a satisfaction to the employer corresponding to the incompletion to meet the size, agreed by both parties, but not exceeding six times the gross salary for the relevant position. It follows that no assumptions are provided, neither suspension nor interruption of the period of training at certain reasons - "respectful reasons" as well as it is unclear what can be disrespectful cases for which the student cannot complete vocational training or after having completed it, does not take the job secured by the employer or leaves it before the deadline. There is insecurity and incompleteness of the norm that generates an option for corrupt behavior under certain conditions. In practice there is a number of assumptions in which an effective training can be suspended for objective reasons for example for use of temporary sick leave or other type. The lack of explicit regulation in this field in accounting for the final six months of this type of contract resp. lack of a substantive definition of "possible respectful reasons" for incomplete training would put in vagueness the relations between employer and employee in practice and thus could lead to an opportunity of corrupt behavior. Another kind of danger of corrupt behavior could be due to the circumstances described in par. 3 where the employee after successfully passing an exam has been assigned a contract of employment for a period no longer than three years and decided to leave before the end of period. In this case, as foreseen in paragraph 3, he owes satisfaction to the employer corresponding to incompletion on the amount agreed by both parties, but not exceeding six times the gross salary for the relevant position. In an improper fulfillment of obligations under the conditions of an employment contract by the employer or non-payment of due wages, if the employee leaves before the deadline he should obtain from him a satisfaction provided in paragraph 3, as far as he owes satisfaction in these cases under the general provisions of Article 220 and 222 of the Labour Code.

ADVISORY REFERENCE: We propose Art. 232, paragraph 2 and 3 to be refined and complemented due to the elimination regarding the above ascertained by us weak points which could provoke appearance of corrupt behavior.

I. According to Amending Act § 6 of the Labour Code:

В предложените изменения в чл.233 б от ЗИД на КТ, относно трудовия договор с условие за стажуване липсва предвидена разпоредба за гарантиране на получаването на трудово възнаграждение в определен размер по аналогия с трудовия договор с условие за обучение по време на работа по чл.230, ал.1 от ЗИД на КТ. Given the fact that the contract is signed on Art. 233b for work positions that match the qualification already acquired by the person as opposed to a contract according to Art. 230, paragraph 1 of the Labour Code, we consider it appropriate to regulate obtaining of the salary of the trainee as performed out by him in compliance with the terms of the contract, but not less than the minimum wage established for the country.

ADVISORY REFERENCE: We suggest Article 233 b of the Amending Act of Labour Code to be complemented by providing that the employee under contract of apprenticeship during the time of internship is remunerated according to the performed work in accordance with the terms of the contract, but not less than the minimum wage established for the country.

II. According to Amending Act § 10 of the Labour Code:

According to Art. 408, paragraph 1 of the current Labour Code, employers are required to provide an inspection book in the enterprise and its divisions, facilities and work sites, with a purpose of recording the findings of examinations and prescriptions supervisory bodies for compliance with labor legislation. In Article 408, paragraph 2 of the Labour Code is regulated the obligation of the employers to provide mandatory certified audit books available to the control authorities in checking "on the spot" for the observance of labor legislation. These provisions have a dual destination. On the one hand, they introduce the supervisory authorities with the findings to the moment and prescriptions in prior audits as well as allow verification of their performance, on the other hand they file the new findings and recommendations of the supervisory authorities. Regular maintenance of the inspection book is an important and official source of information on compliance with labor legislation and matters in determining the possible administrative sanctions to

take into account the severity and repeated violations of the relevant labor legislation.

In § 10 is provided revocation of Art.408 of the Labour Code, so that the proposed amendment is justified by the advancement of electronic technologies and the demand for a legislative change to eliminate unnecessary difficulties for employers. However, it is provided a measure which secures entry of findings from the completed examinations and prescriptions as well as ensure the availability of complete information on compliance with labor legislation by employers necessary to the supervisor authorities in subsequent checks. This legal loophole could lead to both: lack of or inadequate criteria and methods for inspection and monitoring by the supervisory authorities and insufficient features to ensure preservation of labor legislation by employers, which could under certain conditions facilitate corrupt behavior.

ADVISORY REFERENCE: Guided by the above considerations, we propose to consider and regulate the measure to fulfill the purpose of the revision books which are repealed. Such a comprehensive measure would create and maintain a single electronic register at the Executive Agency "General Labour Inspectorate", with regard to its power as a supervisory body in which are to be recorded administrative acts issued and findings, imposed administrative sanctions, administrative enforcement measures and other recommendations issued by supervisory authorities on the activities of every employer in Bulgaria. The access to it could be secured as public, in order to foster the observance of labor legislation, both by employers and by employees and also to perform intended use of the revision books. Alternatively the access to this register should be realized through a special code that allows only supervisory authorities and the employer to enter into this register and perform examinations. As an additional argument in this direction, we recall the proposed amendment to the Amending Act on the Employment Promotion Act, where in § 1is foreseen the ascertainment of a new paragraph 3 in Article 78, regulating an obligation of the General Labour Inspectorate maintaining updated list of the employers who are subject to administrative sanction on employment of illegallz residing foreigners in the last 5 years that would be published on the website of the General Labour Inspectorate. In this sense, one viable solution would close the circle by regulating the obligation of the Labour Inspectorate to maintain an updated list of employers who are subject to administrative sanctions and coercive measures not only on the recruitment of illegally residing foreignersand and about all violations of labor legislation.

III. According the Amending Act of the Agricultural Lands Ownership and Use Act:

1. According to Amending Act § 4 of the Agricultural Lands Ownership and Use Act:

In the envisaged amendment of Art. 37i, paragraph 3 of the Amending Act of ALOUA is regulated rental or lease of fields and pastures of the state land fund under Art. 24a, paragraph 2. to owners or associations of owners of registered animals in the pasture land in proportion to their number and type, market price determined by an independent appraiser and conditions laid down in the Implementing Regulations of the Law. Remaining free pastures are auctioned to persons who undertake obligation to maintain them in good agricultural and environmental condition.

Thus may arise circumstances / weak points / favorising friendly acts of corrupt practices related to the determination of future conditions in the Implementing Regulations of the Act, in respect to which will be attributed fields and pastures of the state land fund to be leased and rented to owners or associations of owners of registered grazing animals in proportion to their number and type, market price determined by an independent appraiser.

ADVISORY REFERENCE: Aiming to prevent and avoid eventual corruption in determining market prices of fields and pastures by an independent evaluator appointed by the municipality, it is appropriate the value setting by an evaluator to comply with minimum annual rents stipulated in a regulatory act in which to be reported the category of land and other factors having impact here. We consider it necessary to reflect on extending the existing Regulations on the Determining Price Procedure of agricultural land or to create a comprehensive framework of Regulations applying the ALOUA.

IV. According the Amending Act of the Health Act

1. According to Amending Act § 4 of the Health Act:

In Article 72c is not made an assumption for cases in which in the area of the object with emitting facilities under Art. 72b are covered also other emitting objects. In these cases could be reported aggregate emission of other sources per Art. 72b. Thus Amending Act of the Health Act allows spurious

measurement and calculation of protected areas, because each emitting facility will be aligned individually. The problem of separation is even more - stronger when subjects are going to different owners, and each of them receives a score for his object without taking into account their mutual influence and overall appearance.

ADVISORY REFERENCE: The provision of art. 72c to be supplemented with a new norm, by which to be determined general hygiene-protective zone in the vertical and horizontal plane to protect the population from the harmful effects of electric, magnetic and electromagnetic fields that are emitted by more than one facility in a common area.

2. According to Amending Act § 4 of the Health Act:

The concerned in the Amending Act (Art.72c) of the Health Act development processes, documentation setting and rules for the coordination procedures are insufficiently regulated resp. not precisely defined on the scope of the objects. It is not clear whether the focus is on already established objects or constituent objects to come. In paragraph 8 of the same Article is evident a lack of clarity on the legal consequences of termination of the coordination of sanitary protective zones of objects with emitting facilities. The unclear regulation rules in the law allow the procedure to be incomplete and inaccurate, because of the possibility of unequal treatment and subjective decision making.

ADVISORY REFERENCE: The procedures should be complemented by a specific text on the coordination of existing cases of installed emitting objects and determination of specific legal consequences of non-compliance in the documentation.

3. According to Amending Act § 5 of the Health Act:

We consider the offered proposals to amend Art. 106 as having anti-corruption essentials. At the same time there are not exhaustively listed within the scope of paragraph 2 all reasons to deprive a doctor from his rights to be part of the Territorial Expert Medical Committee (TEMC) and the National Expert Medical Committee (NEMC). Identified gaps in the rule should be supplemented.

ADVISORY REFERENCE: The text of Art. 106, paragraph 2 should acquire the following shape:

"(2) In carrying out medical examination can not participate a doctor:

1. Who was involved in drafting the contested expert decision;

2. Who was involved in the treatment of surveys;

3. Who consulted the person in connection with the certification on his expertise of temporary disability, type and degree of disability or long-term disability;

4. Who is spouse or lineal relative without limitation, in the collateral line to the fourth degree or by marriage to the third degree on surveys;

5. Who lives together in partnership with the certificated;

6. Who is related to other circumstances that cause reasonable doubt in his impartiality."

We propose to discuss the possibility for the inclusion of a new paragraph 3 with the following content:
"(3)" Every meeting doctors from the Territorial Expert Medical Committee (TEMC) and the National Expert Medical Committee (NEMC) should declare the absence of the circumstances under paragraph 2 ".

4. According to Amending Act § 7 of the Health Act:

In article 125d, paragraph 3 there are no clear rules on the various ways and objectives of funding and co-financing by municipalities for other centers established on their territories. In the law there are not regulated the types of accountability and control in cases of co-financing by municipalities.

ADVISORY REFERENCE: To consider the need for financial support to other centers outside the municipal centers. If the proposed assumption is maintained, we propose in Article 125d a regulation by criteria for financial support to be implemented.

5. According to Amending Act § 18 of the Health Act:

In article. 234c are indicated officials performing inspection activities on violations of the rules for the implementation of water-saving activities and safeguarding prevention on the water areas and pools for public use. Administrative control exercised by the officials performing the control activities creates opportunities for making subjective decisions.

In order to reduce the risk of corruption on the above mentioned control activities and increase its transparency, it should be appropriate to create a central public register of sites subject to control and safeguarding, the number of the performed checks as well as the disclosed administrative violations and sanctions adopted. We consider this way as increasing the visibility and awareness of the population and at the same time will create an opportunity to increase the number of signals and reported irregularities concerning breaches on the activities referred to in Art. 234c.

ADVISORY REFERENCE: To create a new paragraph. 2 of Art. 234c with the following content: "The Ministry of Health maintains a central public register in which shall be entered the sites subject to control and safeguarding, the number of the performed checks as well as the disclosed administrative violations and sanctions adopted."

V. According to Amending Act of the Agricultural Land Conservation Act:

Based on this analysis, was ascertained a potential gap in § 5 on the Amending Act of the Agricultural Land Conservation Act (ALCA), Art. 40, paragraph. 1, item 9, namely:

The nature of possibly emerging issues left for clarification is unsufficiently defined. Why the targeted change of use of agricultural land should be delayed when considering an object.

The unclear rules regulation in the law allows the procedure to be incomplete and inaccurate, because of the possibility of unequal treatment and subjective decision making.

ADVISORY REFERENCE: The assumption proposed in § 5 of the Amending Act of the Agricultural Land Conservation Act (ALCA), Art. 40, paragraph. 1, item 9 should be supplemented with a specific text on the type and nature of possible clarifying questions that require delay on the change of use of agricultural land.

VI. According the Law on Integration of People with Disabilities:

As a result of performed analyzes in this bill has been established the existence of a situation context which under certain circumstances could facilitate corrupt behavior as follows:

In Art. 29a of the Amending Act of the Law on Integration of People with Disabilities is foreseen the Executive Director of the Agency for Persons with Disabilities or an authorized officer within 10 days from application entry to register a specialized company; it should be issued an entry order or a reasoned order refusing registration of the specialized enterprise or cooperative of people with disabilities. In case of ascertainment of omissions in the documents the Agency for Persons with Disabilities gives the applicant 7 days delay for their elimination. It follows from the above mentioned that in the legal norm there is not a regulated obligation of the Executive Director of APD or a person authorized by him, to investigate each application and its accompanying documents, related to the availability of all required documents and to the presence or absence of conditions according to Art. 28 of the Amending Act of the Law on Integration of People with Disabilities. In this sense, there is a lack of sufficiently regulated criteria for inspection and control by the Executive Director or a a person authorized by him in connection with the documents necessary for registration of specialized enterprises and cooperatives of people with disabilities in the register. In this case lacks in practice a sufficient legal regulation of this process, which allows for subjective criteria when deciding on entry or denial of entry in the register and therefore can be assumed that the same is threatened by corruption.

ADVISORY REFERENCE: We propose to discuss the supplementing of Art. 29a of the Amending Act of the Law on Integration of People with Disabilities by providing an explicit regulation to control not only on the availability of documents under Art. 29, paragraph 5 of the Amending Act of the Law on Integration of People with Disabilities but also related to the availability or absence of conditions according to Art. 28 of the Amending Act of the Law on Integration of People with Disabilities.

VII. According to the State Aid Act /ASA/:

1. In Article 13, paragraph 2, Article 14 and 20 are outlined the powers of the administrator help giving him the right and duty to plan, develop, inform, report and control the lawful provision of de minimis aid in accordance with current EU regulations on the application of Art. 107-108 of the Treaty on the Functioning of the EU. In that case is provided admin support to simultaneously perform administration and control, i.e. it was attributed disproportionately high operational autonomy to take decisions. The reconciliation of administration and control represents a concentration of power that could foster an eventual corrupt behavior. At the same time we consider the functions of admin help in the definition of "controller support" in paragraph 1, item 4 of the Supplementary Provisions / ETC / as

differing from the functions of the controller in Article 13, paragraph 2 and Article 20, since there are no supervisory rights incumbent to the administrator regarding the granting of state aid.

ADVISORY REFERENCE: We propose to consider the splitting of control from the executive functions and their taking over from two authorities independent of each other to implement effective control.

In this context we would like to stress that according to Article 13, paragraph 3 the Minister of Agriculture and Food exercises control over the legitimate provision of de minimis aid in the field of agricultural products and for all other areas the control is performed by the Aid Administrator.

2. In Article 21, paragraph 7 is showed how to ascertain the amount of aid in case of recovery need of illegal and incompatible State aid concerning non individualized recipients. Under this provision "the amount of aid is ascertained on the basis of available information at the controller or assessment adopted by the administrator - in all other cases." It remains unclear what are the other cases, given the fact that each admin maintains its own register according to Article 15, paragraph 3 of the project. In this context we consider it for necessary to be clarified what are the circumstances that could lead to a lack of information on the amount of aid admin.

ADVISORY REFERENCE: We propose to specify which are "all other cases" according to Article 21, paragraph 7, item 2 of the State Aid Act.

According to Article 21, paragraph 11 of the draft of the State Aid Act (SAA) when the assessment under Article 21, paragraph 7, item 2, is not accepted by the administrator, the same assigns an expert re-evaluation of three experts. There are no concrete reasons for rejection by the administrator on the aid assessment which allows subjectivity in determining criteria for acceptance of an evaluation elaborated by an independent expert.

ADVISORY REFERENCE: To supplement Art. 21, paragraph 11 by indicating reasons for rejection of expert assessment in order to prevent corruption.

VIII. According to Amending Act of the Tourism Act:

1. According to Amending Act § 1, Art.4 of the Tourism Act:

According to article 5, paragraph 4 of the Amending Act of TA, the state policy for sustainable tourism development is integrated into sectoral policies and implemented by the Minister of Economy and Energy involving other executive bodies within their competence. At the same time in art. 5, paragraph 1 of the Amending Act of TA, it is foreseen that the Council of Ministers referring to a proposal of the Minister of Economy and Energy approves a National Strategy for Sustainable Development of Tourism in Bulgaria. The obligation of the Council of Ministers to adopt strategies on various tourism types, resp. the obligation of the Minister of Economy and Energy to elaborate these strategies have been dropped away. In this context is foreseen a cancellation of the previously existing provision of Article 5, paragraph 4 of the Tourism Act which requires approval of various types of strategies, provided under Article 5, paragraph 1, of available valid position on environmental assessment for coordination or decision that does not require an environmental evaluation issued under Chapter 6, Section II of the Environmental Protection Act /EPA/. Actually Art. 81 of the Environmental Protection Act does not provide environmental assessment and evaluation of the environmental impact of strategies, and plans, programs and investment offers for construction, activities and technologies or modifications as well as extensions with possible significant impacts on the environment. In view of the importance of social relations regulated within the scope of economy, spatial planning and environmental protection ac well as the commitment of liabilities of competent authorities under the Environmental Protection Act and the Tourism Act, including regional governors and mayors, and taking into account the intended change of Art. 5, paragraph 4 of the Amending Act of the Tourism Act regulating the obligation of the executive to contribute то the implementation of state policy on tourism development in various sectors we consider there is a gap in the legal regulations framework ип a common development of a National Strategy for sustainable development of tourism from various state executive authorities in the areas of risk, economy, spatial planning and Environmental Protection Act. Since the three domains are extremely important and endangered by corruption, we consider the absence of an explicit provision that should provide regulations of a National Strategy for Sustainable Tourism Development in collaboration with experts of competent government authorities together with representatives of tourist associations and professional organizations, can lead to the adoption of a formal strategy which could remain

unperformed as well as could endanger the aforementioned areas.

ADVISORY REFERENCE: We recommend to regulate in Art. 5 the development of a National Strategy for Sustainable Tourism Development in collaboration with various state bodies of executive power in the areas of risk, economy, spatial planning and Environmental Protection Act together with representatives of tourist branches and associations.

2. According to Amending Act § 3 of the Tourism Act:

According to Article 8, paragraph 1 of the Tourism Act, the National Tourism Council / NTC / is an Advisory Body at the Ministry of Economy and Energy, which aims to assist the Minister in the formulation and implementation of state policy in tourism. In cases under Article 8, paragraph 1, item 5 of the Tourism Act, the National Tourism Council (NTC) is entitled and obliged to address issues related to land development, construction and maintenance of tourism infrastructure and attracting foreign investments in tourism. Under Article 8, Paragraph 1, Item 7 of the Tourism Act, the National Council of Tourism discusses the performance of the authorities entrusted with the control in tourism and related industries, providing recommendations for improvement of their work, which is the governor according to Article 171, Paragraph 1, item 3 of the the Tourism Act. In addition, under Article 8, paragraph 2 of the the Tourism Act, the National Council of Tourism expresses advisory statements and gives suggestions on issues related to tourism development - land development, construction and maintenance of tourism infrastructure, use and protection of tourism resources, taxation of tourism activities, the implementation of visa and more. Despite the fact that the functions of the NTC are connected and intertwined with the functions of regional governors under Article 10 of the Tourism Act and other laws, they are not included among the members of the NTC, explicitly referred to in Article 7, paragraph 2 of the Tourism Act. We consider that there is a weak spot, because of the assumed technical omission of regional governors among the members of the NTC, which is illogical, given the importance of the territorial infrastructure, urban development and functions of the provinces under Article 10 of the Tourism Act. In this sense, it could be assumed that the gap in the legal framework on the involvement of regional governors in National Council of Tourism endangers significant public interest domains related to involved within control functions of the regional governors and their functions related to the territorial infrastructure of the area, in case of decisions taken on these issues in the absence of these persons.

ADVISORY REFERENCE: We recommend Art. 7, paragraph 2 to be complemented explicitly regulating the participation of regional governors in the

National Council of Tourism.

3. According to Amending Act § 4, item 2 of the Act of Tourism:

As provided in the new paragraph 2 of Article 10 of the Amending Act of the Tourism Act, regional governors are required to publish on the website of the district administration the strategy under Article 10, paragraph 1, item 1 of the Tourism Act and to inform the Minister of Economy and Energy about any updates. In that case the Amending Act of the Tourism Act does not provide a time limit for performance of that obligation, and a penalty in case of failure. There is no reference to other regulatory legal rule to settle the terms and conditions for connection and interaction between the central and local authority. The lack of strict regulation can lead to formalities and consequently to a non performance of obligations.

ADVISORY REFERENCE: We consider it as appropriate to supplement the norm by providing time and / or penalties for failures of regional governors in Tourism Act or to refer to other laws or regulations that settle it.

3. According to Amending Act § 5, item 2 of the Tourism Act:

As provided in the change of Article 11, paragraph 3 / new / of the Amending Act of the Tourism Act, the adopted program for the development of tourism in the municipality is delivered to the Minister of Economy electronically or on paper. **The provision does not indicate who is responsible and in what terms should be sent the information as well does it bring any sanction for failures and delay.** The missing regulation under Article 11, paragraph 3 of the Amending Act of the Tourism Act can lead to formalities and consequently failure to perform obligations as well as lack of liaison between the mayors and regional governors.

ADVISORY REFERENCE: We consider it appropriate, Article 11, paragraph 3 of the Amending Act of TA to be complemented by providing deadlines and / or sanctions for failure to governors in TA or to refer to other laws or regulations that settle it.

4. According to Amending Act § 19, item 2 of the Tourism Act:

According to Art. 82, paragraph 10 of the current TA, tour operator shall preserve tour contracts signed by him or through a travel agent for a period of three months from the date of their conclusion. The proposed changes include a deletion of the provision. Removal of Article 82, paragraph 10 of the Tourism Act hinders users who have problems with tour operators and / or travel agents and will not be able to prove their rights in any legal case. The proposed changes would favorise a potential dropping of legal claims against tour operators and resp. to a violation of consumer rights.

ADVISORY REFERENCE: We propose to retain the text in Article 82, paragraph 10 of the current Conflict of Interests Ascertainment and Prevention Act keeping in view the legal possibilities for prevention.

5. According to Amending Act § 71 of the Tourism Act:

In the report and its arguments it is stated that the proposed bill will have a direct or indirect impact on the budgets of ministries, since the charges are cost-oriented and therefore there is no financial statement attached to the package of documents. At the same time in the Amending Act of TA is foreseen to drop out any categorization of independent food and entertainment facilities, of tourist cabins, tourist vocational centers and dormitories. It is also planned an amendment on Article 115 of the Local Taxes and Fees Act / LTFA /. According to it there is no charge for the issuance of certificates on tax obligations under Article 87, paragraph 6 of the Tax-Insurance Procedure Code.

ADVISORY REFERENCE: In view of the above mentioned, we consider it as appropriate to develop and implement financial statement to assess the impact on the state and municipal budgets concerning to drop out the categorization and charges according to the Local Taxes and Fees Act.

Annex № 4

ADVISORY STATEMENT

Subject: Proposals for an amendment of Article 12 of the Public Procurement Act adopted in the Legal Affairs Committee at the National Assembly on 18.12.2013 and 16.01.2014.

Concerning the proposed amendment of Article 12 of the Public Procurement Act /PPA/ adopted by the Legal Affairs Committee at the National Assembly on 18.12.2013 and 16.01.2014 we express the following statement:

On 18.12.2013 is held a meeting of the Legal Affairs Committee at the National Assembly, which is placed to discuss the provision of Article 12, paragraph 6 of the PPA. According to the quoted provision, PPA does not apply to contracts on services, deliveries or construction concluded by the contracting authority under Art. 7, item 5 or 6 / so-called sectoral contracting authorities / with a related company, provided that at least 80 percent of its average annual turnover from the realized in Bulgaria services, procurement or construction for the past three years is by providing them with associated companies. It follows form the above mentioned that the statutory provision settles the possibility that sectoral contracting authorities enter into direct contracts on deliveries, services and construction with its related companies, provided that these companies have made a minimum turnover of at least 80 percent on the performance of activities of the contractor or other related businesses. In practice, in this case there is an internal contract between the sectoral entity and its daughter affiliations established to perform at least 80% of the activities of the contracting activities or other related companies.

During the discussions of the meeting on 18.12.2013. have been expressed observations that in practice there are many cases in which at the ministries and the municipalities were created companies or enterprises and most of them are entirely state-owned, and that in such situations are other institutions as well created by a normative enactment such as research institutes, universities and others who perform specific assignments without having exclusive rights. It is indicated that European Court of Justice / EU / investigating such cases has allowed the possibility for direct award of contracts in such cases, provided that the public authority entirely owes the company active, the contracting authority exercises control over the company, similar to the control over its own departments and divisions and the company carries out essential part of its activities with those of the contractor. It is indicated that in order to avoid distortions of the award is necessary that these conditions to explicitly be regulated by the national legislation. It is emphasized that the proposed turnover

derives from the practice of the Court of Justice, in the solution of which it is not considered as a necessary condition the total turnover of the business to be with the contracting entity. If required, it is recognized that such a turnover that has been made by the company with other public contracting authorities. In this connection is expressed a position that companies owned by the Issuer should have the same opportunities as well as state owned. And it follows by the legislation to be regulated companies that are 100% state property, so that they could be awarded contracts. It is pointed out that most of the public funding will be saved if the National Assembly approves a similar change in the law. It is therefore suggested minimum turnover requirement to be reduced from 80% to at least 2/3. In order to reduce the lower limit of turnover, and in order not to distort the market, proposals are made for each in-house assignment /domestic procurement in which the state and municipalities have the right to be awarded without performing procedures/ to pass to authorization, e.g. by CPC or PPA or even to eliminate the provision on Article 12, paragraph 6 of the exceptions to awarding by PPA. The reason for the second offer is the fact recalled that at the last inspection of the three energy distribution companies has been ascertained a spended amount of 130 million BGN without performing procedures which occurred due to direct contracting of three companies with their daughter affiliates. Finally, because of the prominent reasons for the existence of corrupt practices in the awarding of public contracts and the large cost of funds is accepted that an in-house method will cause lower costs for the state and municipalities. The proposal put to a vote for dropping out a possibility of directly awarding contracts without tender by sectoral contracting authorities is not accepted and in the final version is supported the following text on the provisions of Article 12, paragraph 6:

Article 12. The subject under Article 3, paragraph 1, PPA does not apply to:

Item 6. Contracts for services, deliveries or construction concluded by the contracting authority under Article 7, item 5 item 6 or with a related company, provided that at least two thirds of the average annual turnover of the company for the last three years was performed from providing such services, deliveries or construction of associated businesses.

On 16.01.2014. the Legal Affairs Committee continued the debate about amending the PPA and is subject to to discussion of the provision of Article 12 , item 13, under which there should not be subject to awarding under the PPA contracts on utilities concluded by contracting authorities in art. 7, item 1 / called Classic contractors / being territorially executive authorities or their associations with the company incorporated under the Municipal Property Act, which is the contractor according Art. 7, item 3 and fulfilling following conditions at the same time:

a) its capital is entirely municipal property;

b) it is subject of a control similar to that exercised by contracting entities on their own structural units;

c) the object of its activities is under its constituent or regulating documents to perform communal services;

d) at least 90 percent of its turnover is formed by providing communal services to the relevant contracting entity or a consortium of contracting authorities.

After having pointed to distinguished motives, similar to those in the previous session, as well as arguments for rescueing companies entirely state owned such as "Terem" or other outsourced state and/or municipal companies, was adopted the following text of the provision:

Article 12. PPA under Article 3, paragraph 1, does not apply on subjects about:

"13. Contracts closed by contracting entities under Article 7, items 1, 3 and 4 with a company or a state enterprise under Article 62, paragraph 3 of the Commercial Code which match the following conditions at the same time:

a) its capital is entirely state and/or municipal property, respectively entirely-owned holding company which capital is completely state or municipal property;

b) it is subject of a control similar to that exercised by the contractor on his own structural units;

c) More than two thirds of its turnover is formed by activities associated with ensuring the performance of the the contracting entity."

Due to concerns raised about distortion price formation in these cases and the possibility of opening a large door to corruption and abuse it is recommended in the Applying Regulations under the PPA to settle in detail the procedures. It is suggested in the regulation, which provides a more detailed framework to introduce the possibility of price measurement or to create tool with which to verify the prices, so to find a reasonable balance between the two opportinities. In conclusion it is proposed a supplement to Article 12, item 13 with another wording: "The methods for ascertaining the price are to be determined by the Regulations under the PPA." It is not entirely clear which is its final wording due to extra arguments about deadlines for issuing regulatory legislation.

Based on the above facts and circumstances, and taking into account the adopted amendments to the text of Article 12, item 6 and/or item 13, concerning two of the exceptions to the scope of PPA we express the following statement:

I. Focused on the adopted version of Article 12, paragraph 6 of PPA concerning the sectoral entities we consider the following:

1. Apparently from the above performed comparative analysis between current text and that of the newly adopted provision of Article 12, paragraph 6, is ascertained that there is only one change, reducing the requirement to have a minimum turnover, which is a condition for direct awarding by the sectoral contracting entity to an affiliated enterprise from 80% to 2/3, i.e. 66%.

The exceptions which apply to sectoral entities in cases of public procurement of linked enterprise and conditions are specified in Article 23 of the current at the time Directive 2004/17/EC of the European Parliament and of the Council of March 31, 2004 concerning coordination of public procurement procedures by contracting entities operating in the domain of water, energy, transport and postal services. Under that quoted provision the Directive does not apply to contracts for delivery and construction or services awarded by contracting entities operating in the domain of water, energy, transport and postal services, their associated companies, joint ventures to perform common activities on services or companies of the joint ventures, construction enterprises, provided that at least 80% of the average turnover of the affiliated company to deliver as well as construction activities or services for the previous three years deriving from operation of such services for the contracting entity or joint ventures are available.

It follows form the above mentioned that the provision is completely transposed in Article 12, item 6 of the PPA and causes legally unacceptable reduction of the minimum threshold level of turnover from activities with the contracting authority or other associated companies. Infringement of duty is here a reason for bringing criminal procedure against the Republic of Bulgaria, as under Article 72 of the Directive /monitoring mechanisms/, because EU Member States are required to ensure the implementation of the Directive by effective, available and transparent mechanisms.

Furthermorewe would like to point out that on 15.01.2014 a new directive on sectoral contracting entities was voted by the European Parliament as Directive 00075 and is expected to come into force by March 2014. The deadline for transposition is 2 years since entry into force. Considering it appropriate the new Directive provides a possibility for the exclusion of certain contracts on delivery, services and construction works by performing procedures under certain conditions. These are the cases of public procurement without procedure

by a sectoral contracting entity of an associated company or joint ventures / consortia of other contractors with the sectoral contracting entity / which main activity is rather the provision of such services, deliveries or construction works to the group of which it is part rather than its placing on the market. In this regard the motives on the following restrictions are expressly mentioned in argument 20 in the preamble to the directive: "It is, however appropriate also to ensure that this exclusion does not lead to distortion of competition in favor of companies or joint ventures that are associated with the contracting authority; it is appropriate to provide an adequate set of rules particularly on the maximum level to which businesses can realize part of their turnover from the market and above which they would lose the ability to obtain procurement without a call of a procedure on the composition of joint ventures and on the persistence of links between these joint ventures and contracting entities by which they are constituted. It is also appropriate to clarify the interaction between the provisions on cooperation between public authorities and the provisions on public procurement of associated enterprises or in the context of joint ventures." Exemption regulations of public procurement in this case is governed by Article 21 of Directive 00075 according to which:

Contract awarded by a contracting authority to another private or public legal entity is outside the scope of this Directive when all the following conditions are available:

a) contracting authority exercises over the legal person a control similar to that exercised over its own departments; more than 80% of the activities of the controlled entity is executed in the performance of tasks assigned by the controlling contracting authority or other entities controlled by the same contracting authority;

c) the controlled entity has no direct private equity with the exception of forms of private equity that are not related to control or blocking powers required by the provisions of national law in accordance with the Treaties and which have a decisive influence on the controlled entity.

A contracting authority is considered to exercise control a legal entity, similar to that one which exercises over its own departments within the meaning of paragraph 1, point a), where it has a decisive influence over both strategic objectives and significant decisions on the controlled legal entity. Such control may be exercised by another person, which in turn is controlled in the same way by the contracting authority.

2. Paragraph 1 shall also apply in cases where a controlled entity which is a contracting authority awards a contract to its controlling contracting authority or other entity controlled by the same contracting authority, provided

that the legal entity being awarded a public contract has no direct private equity excluding forms of private equity that are not related to control or blocking powers required by the provisions of national law in compliance with the contracts and which have a decisive influence on the controlled entity.

Given the foregoing, it is evident that in the new Directive 00075 remains the requirement to have a minimum turnover of 80%, which is a condition for direct awarding by the sectoral contracting entity the associated enterprise.

As further arguments we consider it necessary to mention the following:

Under Article 7, item 5 and 6 sectoral contracting entities are public companies or consortia or businessmen or even other persons who, on the basis of special or exclusive rights to perform one or more activities according to Art.7 to 7e of PPA, namely have activities related to natural gas, heat or electricity, drinking water, transport services /provision or operation of networks for public services in the field of railway, tram, trolleybus or bus transport, as well as automated transport systems or cable lines/; activities related to the provision of universal postal services; activities related to research, exploration or extraction of oil, natural gas, coal or other solid fuels and operation of airports, ports or other terminal facilities used for transport by air, sea or inland waterways.

Interpreting the adopted provision of Article 12, paragraph 6, we come to the conclusion that each of the above sectoral contracting entities will be allowed to conclude direct contracts without any call procedure with their subsidiaries or associated companies which have implemented turnover of activities with him or with other related businesses amounted to at least 66%. Therefore, reducing turnover expands the range of potential contractors, which could exclude the application of PPA. The exact funds that would be spent by the sectoral contracting authorities in these cases without procedure and without regulated order can be ascertained only after a financial and economic analysis, consistent with the number of entities under Article 7, paragraph 5 and 6 and related with these companies. Expanding the range of potential contractors is possible for several related companies to compete when they perform the same function or serve contracting entity activities of the segment. At the same time when no regulations are available on HOW and WHAT criteria, the contracting authority will select an associated entity to perform the service, construction and delivery, and how the price will be determined in these cases, given the fact that these companies are set up to serve the contracting entity resp. related companies, and therefore their gain results to be lower. Hereby any control mechanism will be missed, given the fact that the award, procured without any procedure, is not subject to any control by the National Audit Office or by the Public Financial Inspection Agency. The absence of these guarantees may result in "draining" the contracting entities providing services in energy, water, postal

services and transport, which in turn will lead to higher prices for their services. Furthermore, those companies associated with the sectoral contracting entity will be allowed to participate in the market competition and procedures with other contracting entities, which will lead to a distortion of competition in their favor.

ADVISORY REFERENCE: The adopted proposal to reduce the minimum required turnover of supplies, services and construction for the past three years from 80% to at least 2/3, which is a condition for awarding by procedure, is a violation of Article 23 of the Directive currently in force 2004/17/EC of the EP and the Council of March 31, 2004. This proposal would be in violation of Article 21 of Directive 00075, which forthcoming entry into force is on March. It should be taken in mind as well that the breach of the obligations under Directive is a reason and can lead to the initiation of criminal procedure against Republic of Bulgaria. Guided by the above mentioned considerations, we propose to retain the current text of Article 12, paragraph 6 of the PPA considering a control mechanism to ensure the effectiveness of spent resources on direct awarding in these cases.

II. Focused on the adopted version of Article 12, section 13 of the Public Procurement Act concerning "in-house awarding" when Classic Contractors / direct awarding on services in favor of public interest /:

From the comparative analysis between current text and the one of the newly introduced provision of Article 12, item 13, it was ascertained that there is a widening of the scope on the norm in three areas: broadening the range of contracting authorities, of the objects procured and of potential contractors in cases of domestic awarding. Under the current wording of Article 12, paragraph 13, contracting entities of this type of "in house" awarding are only contracting authorities under Article 7, item 1, territorial executive authorities and consortia; evidenced by the adopted provision there will be able to assign in this order also contracting authorities under Article 7, item 1, item 3 and item 4, namely: state authorities, the President of the Republic of Bulgaria, the Ombudsman of the Republic of Bulgaria, BNB, other state institutions established by a legislative act, public organizations and their consortia. Under the current provision object of being awarded are only contracts for communal services. Forthcoming there can be procured hereby also any contracts for deliveries, construction works and services. Under the current provision, potential contractors of this type awarding can be companies formed under the Municipal Property Act, which are contracting authorities under Art. 7, paragraph 3 matching at the same time following conditions:

a) its venture capital is entirely a municipal property;

b) it is subject of control similar to that exercised by contracting authorities on their own structural units;

c) subject of activity under its constituent or regulatory documents is to perform communal services;

d) at least 90 percent of its turnover is formed by providing communal services to the relevant contracting entity or a consortium of contracting authorities;

After adopting the new text of Article 12, section 13, direct awarding without procurement will be performed by the following potential contractors: commercial companies or State enterprises under Article 62, paragraph 3 of the Commercial Code, which match all of the following conditions at the same time:

a) their capital is entirely state or/and municipal property resp. completely owned by a holding company which capital is entirely state or municipal property;

b) they are subject of control similar to that exercised by the contractor on his own structural units;

c) More than two thirds of their turnover is formed by activities associated with ensuring the performance of the entity.

Therefore, in conclusion, under direct awarding could be assigned public procurement for deliveries, services and construction, since state and municipal authorities, public enterprises and their associations will be able to award contracts without tender entities /state and municipal companies with entirely state and/or municipal property resp. owned by a holding company which capital is entirely state and/or municipal property and/or business entities under Article 62 of the Commercial Act/, created to perform their functions if at least 66% of their turnover is formed by activities related to ensuring the performance of the the contracting authority and are subject of control similar to that which a contracting authority exercises on its units. Unlike to Art. 12, item 6, there is no requirement that the turnover should be form the provision of these services for the last three years.

It follows form the above mentioned that the distinct widening of the applied scope of exemptions for domestic awarding would be in breach of competitive process to benefit of potential contractors, and would constitute unlawful State aid within the meaning of the State Aid Act. In this sense is also the CPC decision № 621 of 12.05.2011 on the bill (draft of Law) amending the PPA / 2011 / and in particular on the possibility of introducing in the Bulgarian national legislation the so called Institute "in-house awarding" by 2011,

requested considering the lack of explicit regulation of these awarding exceptions , current directives and practice of the European Court of Justice in this area / Case C 159/11, Case C-182/11, Case 183 / 11 case Tekal S-107/98, 450-/03 case C, Recueil-case 295/05, case C 371/05, 324/07 and others. As a result of court practice the Court of EOI adopted a regulation that if a contractor has sufficient own resources to convey its functions, to provide a service to the society by its own technical and financial resources and has the human resources, then efficiency of spending of budgetary resources is achieved if it does not violate the principle of equality and free competition at the same time.

Apparently from Decision № 621 of 12.05.2011, / Appendix 1 / CPC considers that "in-house" application mode has to be be limited to the right of contracting authorities to apply the rules of direct negotiation only in the provision of services, and that on services related to the statutory functions of the contracting authority which are of public interest. Hereby should be dropped explicitly some types of services such as those in the field of information technology and service deliveries. The expressed position is that this will ensure the utmost application of rules for direct awarding only in cases where there is a need for public authorities to ensure performance of specific obligations for the provision of public services at acceptable prices and terms of quantity and quality, similar to those achieved in an adversarial procedure, regardless of the profitability of individual companies. Thereby is indicated that the characteristics of public procurement, related to deliveries and construction work, a high public interest, a merely objective opportunity to meet the needs of public entities and intense competition in these areas, it is recommended to address general rules of public procurement prescribed in the PPA. Given the foregoing reasons, CPC conveyed a proposal resulting in the adoption of the current provision of Article 12, section 13 of Public Procurement Act, which introduces "in house" awarding only regarding activities on communal services /deals of inter-municipal cooperation according to the European Court of Justice/ namely under the strict conditions of the provision. The motive of CPC "Within the scope of persons who may be directly entrusted with the implementation of certain activities includes companies /stock companies and Ltd/. The opportunity should be carefully considered as far as a possibility of being suspected in certain cases that State aid according to State Aid Act § 1 is allowed uniquely after a permission from the European Commission. It should be considered as well that a violation of the State aid rules may result in the initiation of criminal procedures against the Republic of Bulgaria."

The expressed position of the CPC will be valid up to a transposition of PPA provisions of the new Directive 00074 for Classic contracting authorities, which was adopted on on 15.01.2014and namely is due to come into force on March 2014. The deadline for the transposition is 2 years, considered from the date of entry. Regardless of the fact that it settles for the first time the possibility

of public procurement without tender entities of the public sector, in the arguments / reasons 14, 14a and 14 b is explicitly stated:

In the national legislation of each country should be clarified in which cases procurement rules do not apply to procurement contracts concluded in the framework of the public sector; since this exception is based on the practice of the European Court of Justice. It should be ensured that the exception from applying the rules for cooperation between public authorities does not distort the concurrence regarding private economic operators to the extent that sets a private service provider in a better position and should be applied to contracting authorities when the procurement contract is concluded exclusively between contracting authorities. Conditions for "in house" awarding are regulated in Article 11 / Annex 2 /. Under Article 11 of the forthcoming Directive about Classic Contractors 00074 a public contract awarded by a contracting authority on a private or public entity is outside the scope of this Directive when all the following conditions are available:

a) contracting authority exercises over the legal entity a control similar to that one which exercises over its own departments;

b) more than 80% of the activities of the controlled entity is executed in the performance of tasks assigned by the controlling contracting authority or other legal persons controlled by the same contracting authority;

c) the controlled entity has no direct private equity with the exception of forms of private equity that are not related to control or blocking powers required by the provisions of national law in compliance with the Contracts and which have a decisive influence on the controlled entity.

ADVISORY REFERENCE: Guided by the above mentioned considerations we believe that the adopted on 16.01.2014 provision of Article 12, item 13 of the Public Procurement Act would be in violation of the Competition Protection Act and the State Aid Act pursuant to Decision № 621/2011 of the CPC and even the requirements of the forthcoming Directive 00074, which could be a reason for the initiation of criminal procedures against Bulgaria. In this regard, we propose to preserve text of the the current provision of Article 12, paragraph 13 of PPA considering a control mechanism to ensure the effectiveness on spent resources when direct awarding in these cases regulating the award criteria, methods for determining the value of the contracts / cost of services / and strengthening control of procurement and execution of such contracts.

III. According to the adopted proposal for amendment of Article 34, item 2, lowering the requirements for professional competence of the members of the

committee for examination, evaluation and ranking of tenders is to be discussed and recommended.

Under the current provision of Article 34, paragraph 2 of the PPA in the composition of the committee should be involved necessarily a qualified lawyer and the other members have to be persons with appropriate qualifications and experience in compliance with the object and complexity of the contract. On the meeting of 16.01.2014 is proposed and adopted following text on Article 34, item 2 as follows:

"(2) The staff of the Committee includes at least one qualified lawyer. At least half of the other members shall be persons with professional competences related to the subject of the contract. The committee shall consist of an odd number of members, at least five and and in the cases under Article 14, paragraph 3 at least three."

As a motive for adopting the provision is given an outstanding argument that there is a tendency of the CPC's decisions and their confirmation by the SAC, where the contracting authorities have failed to demonstrate that all members have appropriate qualifications addressed to the subject of the contract and therefore the decision of the the contracting authority in most cases falls. It is therefore accepted the proposal, which, on the opinion of the submitter finds a balance between the requirement to provide a qualified committee and to prevent a dropping out of a decision of the contracting authority.

We consider as unacceptable the lowering of the requirements for professional competence and experience of the members of the committee to examination, evaluation and ranking of bids. We find that the presence of persons who are not competent and do not have experience according to the complexity and nature of the contract is a circumstance which, besides being unnecessary and pointless, may give rise to corrupt practices, focused on the decisions of the committee and the danger the decision to be taken by incompetent persons. Furthermore, we find the adopted provision for a framework giving rise to corruption focused on the planned remunerations which are awarded to members of the committee under Article 34, paragraph 7 of the PPA.

ADVISORY REFERENCE: We propose to preserve the text of the current provision of Article 34, paragraph 2 of PPA. In order to prevent the practice of inclusion of persons without necessary professional competence and experience, it could be considered an introduction of administrative and penal sanctions of the contracting entity or the responsible officer having designated persons without the required qualification in the committee.

In conclusion, considering the importance of the raised issues and possible financial consequences for the Republic of Bulgaria as well as referring to Article 82, Paragraph 5 of the Body of Regulations of the Council of Ministers and its Administration in conjunction with Article 79, paragraph 3 of the Body of Organizational Rules and Procedures of the National Assembly, we highly recommend a statement to be requested from the Minister of Economy and Energy on the Amending Act of Public Procurement Act.

Annex 5

ADVISORY STATEMENT

Subject: The adopted mode 'parallel exports' of medicinal products in the Amending Act of the Medicinal Products in Human Medicine Act (MPHMA) issued by the 42th National Assembly on January 16, 2014

In an elaborated analysis on the Amending Act of the Medicinal Products in Human Medicine Act (MPHMA), Decree 621/2011 12 from 29.01.2014 of the President of Republic of Bulgaria, several reports of the Health Committee at the National Assembly, transcripts of meetings was ascertained the following:

In the bill of the Amending Act of MPHMA passed through public discussion and submitted by the Council of Ministers in the National Assembly was not mentioned § 16, Chapter Nine "b" "Export of medicinal products which is subject to the Decree of the President". The recently created new § 16, Chapter Nine "b" "Export of medicinal products" (with Art. 217a - Art. 217d) follows a proposal of MPs Nigyar Jaffer Raynov and Emil Raynov, conveyed at the first discussion on the AA of MPHMA in the Health Committee at the National Assembly. At the second voting the bill of the Amending Act § 16 of MPHMA was updated and adopted in its current form.

In the new chapter already pointed are regulated the so-called 'parallel exports' of medicinal products that will be performed after sending a notification to the Bulgarian Drug Agency (BDA). According to the adopted text, the Director of the Agency will be able to authorize or refuse such, if the drug is in limited quantity on the Bulgarian market. Failure to comply with the provisions of Chapter Nine "B" Amending Act of MPHMA are provided fines respectively property sanctions under the provisions of Art. AA 268c of MPHMA.

In the report for the first voting on 10/10/2013the Health Committee at the National Assembly are objectified the motives of MPs, which shows that the proposed amendments have as "a goal to introduce a monitoring mechanism on parallel exports of medicinal products, which would not infringe the principle of

free movement of goods and services in the European Union, but also would enable the competent authorities to intervene in cases of ascertained deficiency of a medicinal product, which endangers the health of the population" as well as that "the presence of the lowest producer prices in Bulgaria in the European Union has given rise to parallel trade with medicinal products and deficits of certain drugs in the national pharmacy network, which in turn leads to limiting patient access to these drugs."

It is evident from the minutes of the meeting of the Health Committee at the National Assembly on 10.10.2013that the text of § 16, Chapter Nine "b" "Export of medicinal products" with Art. 217a -Art. 217 is supported by the Deputy Minister of Health and by MPs from different political parties.

The highlighted Amending Act of MPHMA was adopted by the 42nd National Assembly on January 16, 2014. By Decree № 12/29.01.2014of the President of Republic of Bulgaria has been laid veto on a part of the law submitted by MPs Nigyar Jaffer and Emil Raynov which has been returned for further consideration.

Within the reasons of the Decree № 12/29.01.2014 on the return of the Amending Act of MPHMA are exposed following arguments:

- Lack of clear criteria to create equal legal conditions or introduce the same restrictions on all exporters of a medicinal product for a period of time when these drugs are not sufficient or may occur temporary shortage to meet the health needs of the population or where failure could seriously jeopardize the life and health of citizens;

- lack of clear criteria and placing economic agents at a disadvantage, which creates prerequisites for subjective decision by the competent authority.

Within the reasons stated it is possible the taking of subjective decisions by the Director of BDA and to creating an opportunity for corrupt practices. According to the motives the adopted text of the Amending Act of MPHMA "there are no criteria to be applied by the Executive Director of the BDA, assuming a situation in which two wholesale licensed dealers simultaneously submit a notification to export the same product. The refusal of the Executive Director of the BDA regarding one of them can it be justified as a tacit consent for the other exporter with the "motive" that the quantities of drugs that were insufficient are provided? This will lead to unequal placing of those subjects. Inequality will result by assuming "temporary shortage" on the concerned medicinal product as well. Denial of exporting amount requested by the first

filing a notification does not present an exporting obstacle for the next dealer, because the amount is "already provided" by refusing to the first exporter."

Under the EC Treaty Art. 28 and 29 is stated that quantitative restrictions on import and export between EU Member States as well as all measures having equivalent effect are prohibited. In Article. 30 of the Treaty is foreseen that all restrictions and prohibitions on import, export or transport across, justified on grounds of public morality, public policy or public security, fall away; and this for the protection of health and life of humans, animals or plants; for the protection of national treasures possessing artistic, historic or archaeological value; for the protection of industrial and commercial property. Such prohibitions or restrictions may not constitute a means of arbitrary discrimination or a disguised restriction on trade between EU Member States.

In its judgment the European Court of Justice on 11.09.2008 in Case S-41/07 having for subject an ascertainment request for failure to perform obligations by a Member State within the EC Treaty item 46 has been expressed a position by the court. "Regarding that it should be recalled that the life and health of humans rank foremost among the assets or interests protected by Article 30 of the EC and the EU Member States should consider in the contractual framework set by the the extent to which they intend to provide protection of public health and how it should be achieved ', item 51 - "According to a permanently settled Court case practice, set out in item 46 of this judgment, in assessing compliance with the principle of proportionality in the field of public health should be taken into account the fact that a Member State may decide to what extent it intends to ensure protection on public health and how must be achieved that degree. Since the degree may vary in different Member States, therefore should be allowed an evaluative discretion on the latter; and in item 60: "Regarding that although the objectives of a purely economic nature cannot justify a violation on the basic principle of free movement of goods, yet when it comes to interests of an economic nature, which purpose is to maintain a balanced and accessible to all medical and hospital service, the Court accepts that such a goal could also fall under one of the exceptions on grounds of public health as they contribute to achieve a high level of health protection."

Given the above mentioned, it can be outlined the following conclusion:

Quantitative restrictions on import and export of medicaments among EU Member States and other countries are eligible as they do not endanger the public health.

CPCCOC conveys the following proposals:

I. The ways of implementing state regulation on export of medicinal products through a legal delegation may be prescribed in the by-law to the Medicinal Products in Human Medicine Act in which:

1. The creation of clear and objective rules for the implementing of state regulation and monitoring of the market in order to avoid deficiency of a medicinal product, endangering the lives and health of the population;

2. The creation of clear criteria guaranteeing equal treatment for economic operators and not to obstruct free commercial activities.

Writing down of provisions that allow a possibility for a state regulation should not be contrary to the Directive 2001/83/EC of the European Parliament and the Council from November 6, 2001 on affirming a Community code related to medicinal products for human use, given in items 46, 51 and 60 of the decision of the European Court of Justice on 11.09.2008 in Case S-41/07 and the introduced practice on state regulation by the other EU Member States.

II. In order to obtain more publicity and to be further regulated at the BDA creating a public register which contains information on:

- All notifications submitted for export of medicinal products;
- All the refusals of the Director of BDA;
- All the realized exports;

As well as any other information having a crucial significance;

Annex № 6

INQUIRY

ON THE DISTRIBUTION OF BUDGET EXPENDITURE OF THE CPCCOC

2013

Expenditure / Components	Adjusted Budget 2013	Expenditure Total 31.12.2013	Administration	Expenditure to develop an information system of the complex BORKOR model
Staff incl. Insurances	**1 142 350**	**1 070 229**	**1 016 763**	**53 466**
Salaries Employees	820 350	797 232	797 232	
Insurances	240 000	192 207	192 207	
Other Remuneration	82 000	80 790	27 324	53 466
Maintenance	**2 208 000**	**1 885 133**	**175 153**	**1 709 980**
Services and other		1 812 600	115 739	1 696 861
Materials, Supplies		17 372	9 018	8 354
Other Materials and Equipment		24 535	19 770	4 765
Current Repairs and Renovation		12 680	12 680	
Taxes and Fees		17 946	17 946	
Capital / Expenditures	**700 000**	**561 877**	**7 918**	**553 959**
Hardware	200 000	4 030	4 030	
Software	500 000	556 275	3 888	552 387
Other		1 572		1 572
Expenditure / Total 2013	**4 050 350**	**3 517 239**	**1 199 834**	**2 317 405**