

# Executive summary

The reform of the administrative penalty legal framework forms part of Bulgaria's anti-corruption agenda. The Anti-corruption Strategy of Bulgaria 2015-2020 emphasised integrity risks in the enforcement of laws and regulations through administrative penalties and included the reform of the legal framework as part of the strategy to mitigate them. This approach was confirmed by the Anticorruption Strategy 2021-2027, which set as one of its priority objectives the improvement of legislation on the control and sanctioning of the administration with a view to limiting the scope for corrupt practices.

Although recent efforts and reforms have improved the legal framework, several challenges remain. The legal framework is fragmented and lacks coherence, creating risks of corrupt practices in its enforcement, and more generally endangering the rule of law and the capacity of the administration to carry out its functions effectively.

The report analyses key challenges of the legal framework on administrative penalties and proposes concrete and practical recommendations that will form the basis for developing proposals for legislative amendments. In particular, the report identifies three main areas where reform is most needed.

First, the scope of application of the legal framework could be more clearly and comprehensively defined. This is particularly true for the regime applicable to legal entities, whose liability arises when a natural person commits certain crimes and the legal entity has benefited or could benefit from it. Although the latest amendments to the Administrative Violations and Penalties Act (AVPA), which entered into force in December 2021 filled certain gaps, the liability of legal entities and sole traders could be regulated more comprehensively and in greater detail in relation to issues such as: the categories of crimes from which the legal entity may derive benefit; the status of persons whose criminal conduct can trigger liability; the criteria and incentives determining the penalty; and the incompatibilities for representing legal persons. Plus, there is no uniform practice in sanctioning branches of legal entities and entities without legal personality such as partnerships under civil law. Coherent and proportional rules could also be established for sanctioning the admitter and the principal when the offence is committed by their subordinates, since most special laws establish liability for admitters and, rarely, for managers who have ordered their subordinate employees to commit violations.

A second area where reform includes the typologies, criteria and levels of administrative penalties provided for in both the general and special legal framework. The introduction of new typologies of sanctions in the AVPA should be part of a broader strategy to increase compliance with penalties, considering that the collection rate of monetary fines is currently below 50%. Bulgaria recently introduced a new typology of sanction, unpaid work for the benefit of society; its implementation may reveal some gaps. In the meantime, additional typologies could be considered based on the experience of other EU member states, including the possibility to debar legal entities.

Ensuring the uniformity, coherency and proportionality of the level of sanctions through the special administrative legal framework is a significant challenge, for instance because the ranges of sanctions are either too wide or too narrow. This could be addressed by intervening in all the special laws being affected by inappropriate levels of sanctions. Alternatively, or subsequently, Bulgaria could initiate a systemic

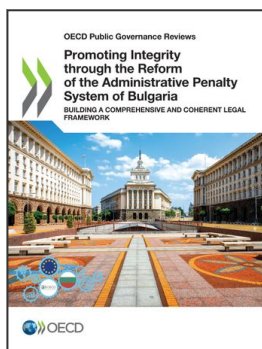
reform by setting a limited number of sanction ranges and having each special law deciding the applicable one depending on the gravity of the offence.

Third, the reform of the legal framework should address several gaps and inconsistencies concerning procedural issues of administrative penal law. The AVPA contains very few provisions for investigating administrative violations, so it could either make more extensive reference to the relevant rules of the Code of Criminal Procedure or it could be integrated with a specific set of rules along with the rules proposed in the draft Code of Administrative Violations and Penalties of 2015.

From the perspective of those who enforce the legal framework, one of most significant challenges concerns difficulties in serving the acts and papers and thereby ensuring the participation of all actors in the proceedings, who in some cases take advantage of legal shortcomings to seek impunity. Additional rules for the AVPA are thus proposed for the serving of summonses and notices to natural and legal persons, including in cases when they are not residents of Bulgaria. It is also proposed to specify limited cases in which proceedings may take place *in absentia*, when even the offender has not been presented and served the act.

With regards to appeal proceedings, the reference to two different procedural regulations – criminal and administrative - is considered to cause contradictions and inconsistencies in practice. To address them, the AVPA could consider using only those regulations laid down in the Code of Criminal Procedure, given the origins and foundations of the Bulgarian administrative penal system. For the sake of procedural economy, the AVPA could regulate the consolidation, separation and suspension of proceedings. There is also a need to differentiate between preclusive time periods and statutes of limitations to allow more time to collect evidence, which some entities consider to be too short.

Another area of reform in the AVPA is the execution of penalties imposed abroad or the execution abroad of penalties imposed by Bulgarian administrative bodies. As pointed out by respondents to the OECD questionnaire and interviews, the issue of international legal co-operation in administrative penal cases is becoming more and more relevant, so the legal framework could explicitly and comprehensively regulate such cases. This could address situations when another EU member state or a third country has imposed an administrative penalty for a violation that is subject to sanction or has already been sanctioned by the Bulgarian law enforcement authorities. Similarly, a mechanism could be developed for collecting costs and pecuniary sanctions in administrative penal cases from foreigners without a permanent or known address the Republic of Bulgaria. To fully develop regulation involving foreigners and guarantee their procedural rights, more specific rules would also be needed for the translation and interpretation during proceedings.



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