



**European Bank**  
for Reconstruction and Development

# **Commercial laws of Bulgaria**

An assessment by the EBRD

September 2015

# COMMERCIAL LAWS OF BULGARIA

## AN ASSESSMENT BY THE EBRD

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**Basis of Assessment:** This document draws on legal assessment work conducted by the Bank (see [www.ebrd.com/law](http://www.ebrd.com/law)) and was last updated during the preparation of the 2015 EBRD Strategy for Bulgaria, reflecting the situation at that time. The assessment is also grounded on the experience of the Office of the General Counsel in working on legal reform and EBRD investment activities in Bulgaria. It does not constitute legal advice. For further information please contact [ltt@ebrd.com](mailto:ltt@ebrd.com).

## Overall assessment

Prior to becoming a member of the European Union (EU) in 2007, Bulgaria had significantly reformed its commercial law framework in order to comply with EU requirements, and it continues to make further enhancements to it.

The legislative base for electronic communications in Bulgaria mirrors that of the EU framework; the 2012 EBRD Electronic Communications Comparative Assessment revealed high compliance with international best practices. Bulgarian public procurement legislation also follows the principles of EU public procurement directives; in the 2011 EBRD Public Procurement Assessment Bulgarian public procurement law and practice scored medium-to-high compliance with international standards. Following the adoption of the EU *acquis*, securities market legislation complies with high international standards. Furthermore, Bulgaria appears to have duly transposed 90 per cent of all EU *acquis* in the field of company law.

That said, deficiencies persist in several areas of commercial law. The Judicial system remains one of the biggest challenges. Ambiguities in the independence of the judiciary and the need for greater transparency and efficiency have been voiced by the EU as the most widespread concerns regarding the judiciary. Public confidence in the judiciary remains low. The EU also notes a lack of competition in the generally underdeveloped electricity and gas markets. Despite the significant progress brought by the PPP Act into Bulgarian PPP/Concessions legal framework, it has provided a major legal obstacle to implementing most PPPs in the country with the addition of a provision that extends the liability of the project company concessionaire under the Concession Law to its shareholders. The review of corporate governance of banks in Bulgaria, undertaken by the EBRD in 2011, highlighted some weaknesses, especially in the role and functions of the audit committee and of independent directors. Bulgarian bankruptcy legislation appears to be liquidation focused and does not provide an effective judicial reorganisation process.

Several legislative reform processes are being undertaken in the country, to address the above mentioned deficiencies. Constitutional reform, aimed at improving transparency of the judiciary, is currently underway. Further, amendments to the legal framework on access to information have been submitted to the parliament. To enhance transparency and improve the dialogue on the challenges faced by the energy sector, the government has set up an advisory energy board (however, this needs to be accompanied by strengthening regulatory capacity and independence). In August 2015 the Bulgarian

Parliament published a bill containing the new public procurement law that would replace the existing framework; the Bill is said to fully implement the new EU directives on public procurement and is expected to be adopted by 2016.<sup>1</sup>

## Legal system

### Constitutional and political system

The Constitution of the Republic of Bulgaria, adopted in 1991, proclaims Bulgaria as a parliamentary unitary republic. The Constitution provides for the basic rights of citizens and stipulates the structure and functions of the government branches.

The National Assembly exercises legislative power and has the right of parliamentary oversight. It consists of 240 National Representatives elected for a four-year term according to a proportional representation system. The most recent elections to the National Assembly took place in 2014. Eight political parties went over the required 4% threshold to participate in the parliamentary seats distribution.<sup>2</sup>

The Grand National Assembly, consisting of 400 National Representatives, may be convened to exclusively carry out the powers to, *inter alia*, adopt a new Constitution, resolve matters regarding changing the territory of the Republic of Bulgaria or changing the form of state organisation or the form of government.

The Constitution may be amended by a majority of three quarters of the National Assembly, by three votes taken on three different days. Certain constitutional provisions of major relevance may only be amended by the Grand National Assembly. Since the time of its adoption, the Constitution has been amended several times, yet never by the Grand National Assembly.

In mid-2015, constitutional amendments aimed at reforming the country's judiciary to increase its independence have been proposed.<sup>3</sup> The Venice Commission, in its October 2015 Opinion on the draft amendments<sup>4</sup> generally commended the country's efforts to improve integrity of the judiciary and enhance public trust in the judicial system. It noted that several recommendations made by the Venice Commission in its prior opinions have been taken on board (such as, e.g., dividing the Superior Judicial Council into separate chambers for judges and prosecutors), while certain important aspects of the Superior Judicial Council operation were not addressed (e.g., Ministry of Justice role with respect to the Superior Judicial Council, threatening with potential undue interference with judicial independence).

The President, elected for a five-year term, is the head of state. To be elected, a presidential candidate must receive more than one half of the valid votes, provided that more than one half of the eligible voters have participated in the polls. The President is vested primarily with representative functions, as well as certain executive prerogatives, such as concluding international treaties in cases specified by law or exercising the right of pardon. The last presidential election took place in 2011, with the next one anticipated in 2018.

The Council of Ministers, headed by the Prime Minister, is the main body of executive power. The Prime Minister is nominated by the largest parliamentary group, followed by the President handing a mandate to that group to form the government. If the Prime-Minister has not been able to form the government in seven days, the President passes this task to the Prime Minister-designate from the second largest parliamentary group.

The country has largely met the requirements for joining the Schengen free-movement area, with constitutional reform being crucial for the accession.<sup>5</sup>

A council to coordinate preparations for joining the euro zone has been established, however the country leadership announced that accession will take place only after fiscal discipline is restored in all single currency union member countries.<sup>6</sup>

## Freedom of information

Freedom of information in Bulgaria is governed by the Access to Public Information Act (APIA) of 2000. It was a fairly progressive legal instrument at the time of its adoption, yet its implementation requires further improvement. According to the 2014 statistics presented by the Access to Information Programme in Bulgaria (AIP), 62.4% of information requests were answered on time, while 20% of requests remained unanswered and answers for 17.6% requests were overdue.<sup>7</sup>

In 2014, the APIA reform process was launched. The draft law amending APIA is currently with the parliament. The proposed amendments envisage, *inter alia*, more information to be published online as well as creation of a data portal where government information would be available to the general public. The requirement for legislative reform is largely driven by the need to transpose Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information. The draft law amending APIA was analysed in the AIP 2014 report,<sup>8</sup> which noted several drawbacks, among the most notable of them being lack of an oversight body that would coordinate and control the implementation of the APIA.

## Judicial system

Bulgaria's judicial system comprises courts of general jurisdiction dealing with all civil (including commercial) and criminal matters, as well as administrative courts. Commercial matters are brought before either regional or district courts, depending on the value and type of dispute, with appeals lying generally to courts of appeal and the Supreme Court of Cassation. At courts of all levels, commercial matters are heard by specialised commercial panels (divisions). The State Judicial Council is responsible for judicial appointments and discipline and for the overall management of the judiciary. The National Institute of Justice is responsible for the professional training of judges; it conducts a mandatory initial judicial training programme, as well as continuous training courses for judges and magistrates.

Continuous training embraces modules of commercial law and related disciplines such as accounting skills, an area developed with EBRD assistance which has since become a model for a regional training programme.

Public confidence in the judiciary remains low, and concerns persist about a lack of judicial independence and corruption. Bulgaria remains subject to the Cooperation and Verification Mechanism (CVM), established by the European Commission when Bulgaria joined the European Union in 2007 in order to assess the commitments made by Bulgaria in the areas of judicial reform for accession. The Commission's most recent progress report noted improvements in the appointment procedures and reducing of judicial backlogs, however overall progress was assessed to be deficient, with more work remaining to be done. Controversies have continued to arise, such as judicial appointments having to be cancelled due to integrity issues, and revelations about political influence on judges in particular cases. Further, there remain too few examples in which cases of corruption have been brought to conclusion by a court.

The *EBRD Judicial Decisions Assessment* found court judgments in commercial law matters in Bulgaria to be generally predictable and of reasonable technical quality. Case law is accessible to the public through a centralised online system for the publication of judgments of all courts. Guidance notes issued by the superior courts are mandatory for all lower courts, which contributes to a certain degree of uniformity of jurisprudence. The ability of practitioners to request such guidance through the Bar Association allows the guidance to address controversial practical matters. Enforcement of court judgments has improved recently, however the rates of enforcement remain quite low, particularly in relation to disputes with government authorities,

which are within the exclusive competence of the state agents. The speed of justice remains a concern, although improvements have been achieved, in particular through introducing a “fast track” procedure for relatively simple cases.

## Recent developments in the investment climate

The Bulgarian economy remains stable; economic growth is expected to be moderate in the short term.<sup>9</sup>

In the past few years, a number of positive developments in the investment climate took place. The country has made progress in implementing the EU CVM. In 2015, a new law on bank restructuring and recovery, implementing the EU Bank Recovery and Resolution Directive was adopted, provided the authorities with a greater range of instruments to deal with crises in the banking sector.

A number of issues may negatively affect the country’s business climate, among them political unpredictability, inefficient operation of the judiciary, corruption and organised crime. Court independence, integrity and efficiency needs to be enhanced (which was also noted by the January 2015 EU CVM

report).<sup>10</sup> Corrupt practices, particularly widespread in relation to public procurement contracts and construction permits,<sup>11</sup> should be eliminated.

Restrictions on the purchase of agricultural land by foreigners (imposed by a requirement that the purchaser, whether foreign or Bulgarian, must have lived in Bulgaria for at least five years prior to the acquisition); also warrant attention in this context. In addition, in 2013 legislation was passed that banned offshore companies from participation in public procurement, privatisation and concessions. Other sectors of the economy were later closed for offshore firms, including energy, finance, gambling, and media, as well as the purchase of agricultural land.<sup>12</sup>

According to the latest (2016) World Bank Doing Business Report, Bulgaria was ranked 38<sup>th</sup> out of 189 economies (two points down from the 2015 ranking), scoring poorly on getting electricity and a reduction by six points in the starting a business category.<sup>13</sup>

One of Bulgaria’s priorities for 2015, according to the EBRD 2014 Transition Report, was further reducing bureaucratic hurdles and minimising barriers faced by small and medium size enterprises.<sup>14</sup>

## Commercial legislation

The EBRD has developed and regularly updates a series of assessments of legal transition in its countries of operations, with a focus on selected areas relevant to investment activities. These relate to investment in infrastructure and energy (concessions and PPPs, energy regulation and energy efficiency, public procurement, and telecommunications) as well as to private-sector support (corporate governance, insolvency, judicial capacity and secured transactions).

Detailed results of these assessments are presented below starting with infrastructure and energy and going into private sector development topics.

The completed assessment tools can be found at [www.ebrd.com/law](http://www.ebrd.com/law).

## Infrastructure and Energy

### Electronic Communications

Key legislation in the electronic communication sector in Bulgaria includes the Electronic Communications Act 2007. This law transposes the European Union (EU) 2003 sector regulatory framework into national legislation. The EU 2009 framework was further transposed into domestic legislation through December 2011 amendments to the Electronic Communications Act.

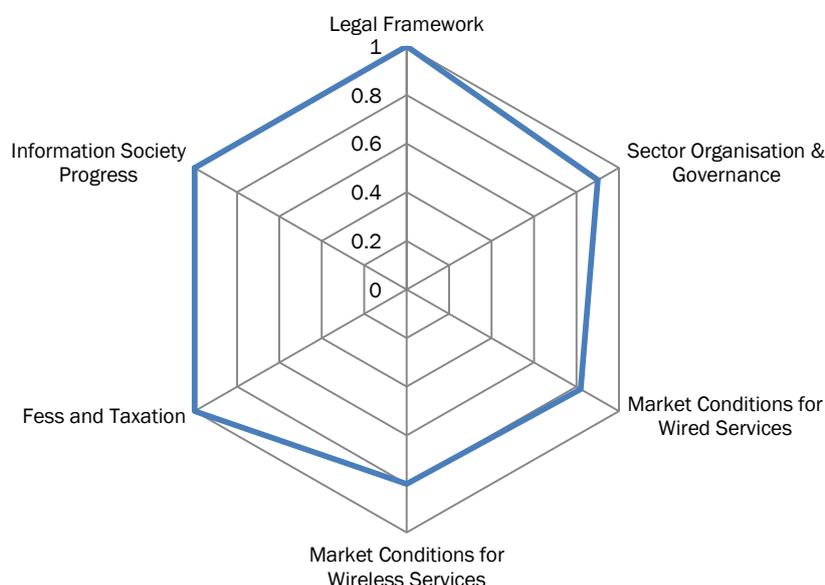
The Electronic Communications Act provides the basis for the Communications Regulation Commission (CRC) to be responsible for the day-to-day regulation of the Bulgarian telecommunications sector. The CRC issues licences for telecommunications and broadcasting networks and services, prepares the national numbering plan, develops the spectrum management policy, monitors quality of radio transmissions, approves telecommunications and postal equipment, works on international standardisation issues and settles interconnection disputes between operators.

As an EU member state, the legislative base for electronic communications in Bulgaria mirrors that of the EU framework. The 2012 EBRD Electronic Communications Comparative Assessment revealed high compliance with international best practices, with slightly lower indicators for Market Conditions Wireless and Wired Services (see Chart 1).

That said, there have been ongoing concerns about the effectiveness of the independence of the sector regulator (the CRC) leading the European Commission to launch infringement proceedings against the regulator in 2007 for, *inter alia*, failing to reduce state influence over the incumbent operator and the sector generally. While that specific issue was resolved, and the infringement proceedings eventually closed, there continue to be issues about some aspects of the effectiveness of CRC, particularly with respect to the enforcement of its decisions.

In April 2015, the law amending the Electronic Communications Act was adopted, reforming, *inter alia*, the CRC power to sanction the operators that are not compliant with regulatory obligations.<sup>15</sup>

Chart 1: Comparison of the overall legal/regulatory risk for telecommunications in Bulgaria with international practice



**Key:** Extremities of the chart = International best practice

**Note:** The diagram shows the quality of the legal framework as benchmarked against international standards (European Union). The extremity of each axis represents an ideal score of 100 per cent, that is, full compliance with international standards. The fuller the “web”, the closer the overall telecommunications legal framework of the country approximates these standards.

**Source:** EBRD 2012 Electronic Communications Comparative Assessment.

## Energy

The Council of Ministers is responsible for developing Bulgaria’s Energy Strategy, upon proposal of the Minister of Economy and Energy, the primary policy-making body. Regulatory implementation is the responsibility of the State Energy and Water Regulatory Commission (SEWRC). SEWRC is an autonomous regulatory agency responsible for electricity, heat, natural gas, water and sewerage. Established in 1999 as an energy regulator, SEWRC gained regulatory authority in the water sector in 2005.

The 2014 European Commission Assessment of the 2014 national reform programme and convergence programme for Bulgaria<sup>16</sup> notes absence of competition in generally underdeveloped electricity and gas markets. The Commission also highlighted lack of transparency in wholesale markets, which constitutes an obstacle to improving the functioning of Bulgaria’s energy markets. In addition to this, the country’s dependence on imports from a limited number of suppliers and the lack of infrastructure pose supply shock risks.

To enhance transparency and improve dialogue on the challenges faced by the energy sector, the government has set up an advisory energy board.

This, however, needs to be accompanied by strengthening regulatory capacity and independence, as well as a more commercialised approach to energy supply and delivery. Major problems still need to be resolved in the sector, including weak social safety nets, the under-pricing of energy, high energy intensity and lack of liquidity (that is, payment arrears) in the system.<sup>17</sup>

## Electricity

Bulgaria’s electricity sector is unbundled, with the process having been initiated in 2003 and completed prior to EU accession in 2007. On 1 July 2007, Bulgaria fully liberalised the energy market in compliance with the Second Gas and Electricity Directives. Privatisation of the electricity distribution companies was completed in 2004. In addition, several big generating plants and many smaller plants have been privatised, including hydroelectric plants and thermal power plants. Customers of all categories, including households, can change suppliers and there are no barriers to switching supplier.

The regulatory framework and oversight of retail supply tariffs, market activities and transmission access are well established; the regulatory authority is reasonably independent and meets the requirement of indices of autonomy and authority,

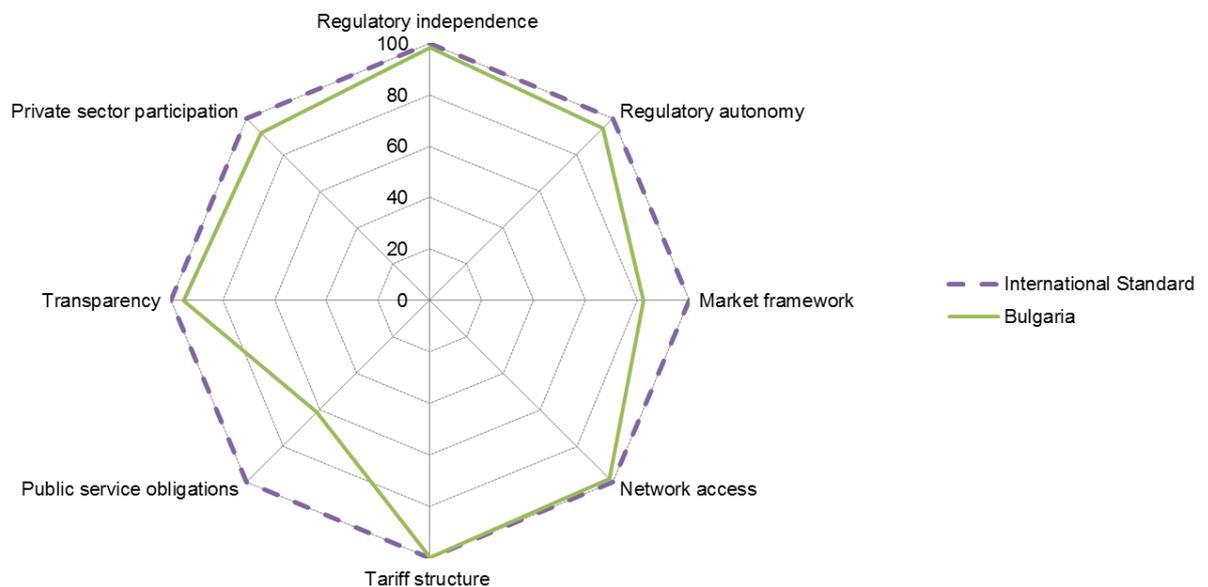
though the relatively recent inclusion of the water sector under its mandate results in some stress on resources and a more cumbersome management and operational structure. With privatised distribution companies and several generation plants, and more than a quarter of the annual demand traded in a competitive wholesale market (largely through bilateral contracts), Bulgaria's market is fully liberalised.

The EBRD 2011 Energy Sector Assessment rated the quality of energy (electricity) legislation in Bulgaria

rather high, with Public service obligations being the worst performing indicator (see Chart 2).

In late July 2015 the parliament approved amendments to the energy legal framework intended to stabilise the financial situation in the state-owned electricity sector. These included, among others, the introduction of the Energy System Security fund, formed by imposing a 5% charge on the sales of energy producers.<sup>18</sup>

Chart 2 – Quality of energy (electricity) legislation in Bulgaria



**Note:** The spider diagram presents the sector results for Bulgaria in accordance with the benchmarks and indicators identified in an assessment model. The extremity of each axis represents an optimum score of 100 that is full compliance with international best practices. The fuller the “web”, the closer the overall regulatory and market framework approximates international best practices. The results for Bulgaria are represented by the green area in the centre of the web.

**Source:** EBRD 2011 Energy Sector Assessment

## Gas

The market for natural gas supply is fully liberalised, with all customers having been entitled to choose their own supplier for natural gas since 2007.

Natural gas supply is carried out by Bulgargaz EAD, which is the public provider and supplies natural gas to 40 natural gas distribution networks. Bulgargaz EAD is the only Public Provider that carries out wholesale trade at prices regulated by SEWRC, with a market share of 96.98% of the total consumption in

2008. The remaining 3.02% share is held by the only natural gas trader, Dexia Bulgaria EOOD.

Market framework and Private sector participation and Public service obligations were ranked the lowest in the assessment of the quality of energy (gas) legislation in Bulgaria carried out under the auspices of the EBRD 2011 Energy Sector Assessment, while the other indicators ranked high (see Chart 3).

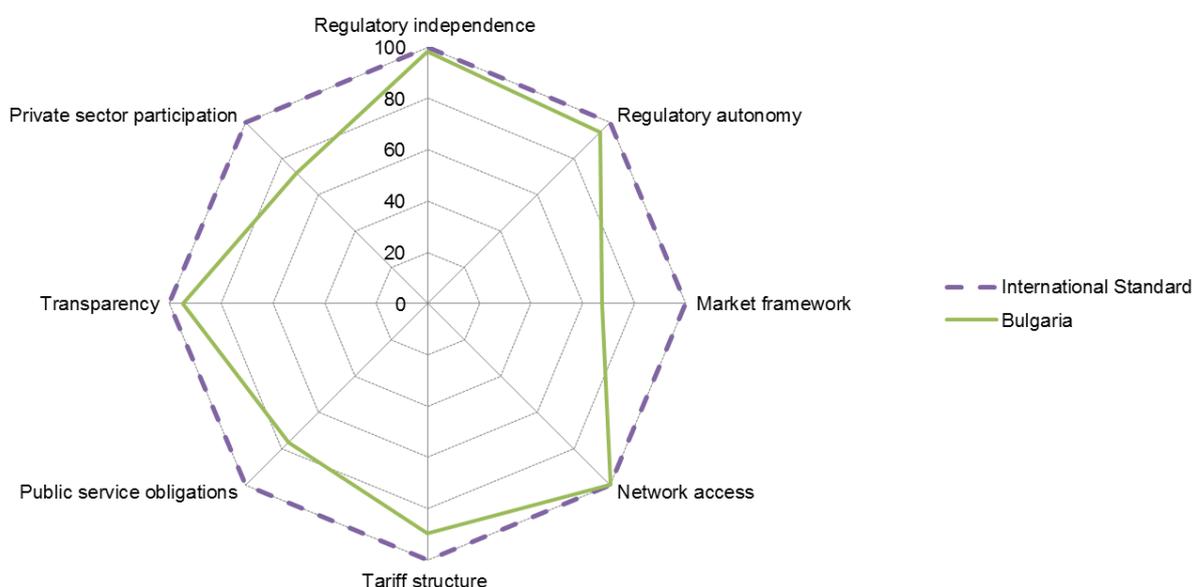
The gas transmission network is owned by Bulgartransgaz EAD, with transmission, transit and

storage activities. The transmission network is connected to distribution companies and about 23 directly connected customers.

In accordance with the Energy Law, SEWRC amended the “Ordinance for Regulating the Prices of the Natural Gas” in 2007. This Ordinance sets forth the methods of regulating the prices, setting rules for their formation, approval or modification, the rules for provision of information, for submission of rate applications and for approval of prices. Regulated tariffs are set *ex post* after application of the

regulated utilities based on principles set forth in the Ordinance, and cover: the public supplier, end suppliers that sell to households and small business customers and gas storage. The price regulation of gas-distribution companies takes into account the specific conditions for operation of gas-distribution companies in the country, namely, the lack of constructed networks for distribution of natural gas and a small number of connected consumers. SEWRC applies a price cap method of regulation designed to incentivise investment.

Chart 3 – Quality of energy (gas) legislation in Bulgaria



**Note:** The spider diagram presents the sector results for Bulgaria in accordance with the benchmarks and indicators identified in an assessment model. The extremity of each axis represents an optimum score of 100 that is full compliance with international best practices. The fuller the “web”, the closer the overall regulatory and market framework approximates international best practices. The results for Bulgaria are represented by the green area in the centre of the web.

**Source:** EBRD 2011 Energy Sector Assessment

## Energy efficiency/renewable energy

Bulgaria's energy intensity is one of the highest in the EU. The current policy framework for the energy efficiency (EE) sector of Bulgaria is set out in the Strategy, which states that improving energy efficiency is one of the country's priorities. Further details with regard to the relevant targets and the implementing measures are provided in the sector-specific National Energy Efficiency Strategy and the National Energy Efficiency Action plans. The national

savings target for 2020 is an increase in energy efficiency by 25% and 50% energy intensity reduction compared to 2005 levels. Overall, the policy framework has advanced over the last few years but further efforts need to be taken in its implementation. Separate policy objectives for the individual sectors are in place (although the transport sector policies need to be better defined) and individual energy saving targets have been set for industrial entities with annual consumption over the specified threshold. Industry, energy traders and owners of public buildings are named as obligated parties with respect to national savings target, and

there has been certain progress with respect to achieving the targets over recent years.

The main legal act regulating the sector is the Energy Efficiency Law of 2004 (the “EE Law”) supported by a number of implementing regulations. The EE Law aims to transpose the EU sector *acquis* by introducing mandatory energy audits of specified industry consumers and new buildings, as well as existing buildings with large common-use areas, and relevant energy certificates. There are also minimum EE standards for new constructions and electricity appliances. The public sector still has to include minimum EE criteria in tenders. Labelling requirements have been largely transposed, though they do not cover all appliances yet. There are certain training programmes but these do not comprehensively address the capacity needs of both public and private sectors. The energy services market is being developed, with functioning ESCOs and energy traders. The Energy Efficiency and Renewable Energy Fund (the “EE and RE Fund”) has been established to provide financing for projects promoting EE measures. It is currently financed by the Bulgarian Government and external donors, including the World Bank. Energy companies are now obliged to contribute to the Fund or provide competitively priced services; however, there have been no contributions as of the end of 2013.

Stability in the sector will require price adjustments, new capital and, most importantly, improved regulation. The current system of low tariffs and cross subsidisation does not provide incentives for energy savings. Energy efficiency improvements across the sectors are therefore important to mitigate the increasing electricity demand and support a more sustainable economic development. In addition an ESCO advisory assistance programme would help municipalities consider and structure ESCO contracting for public buildings maintenance.

In terms of adaptation activities, there is potential in developing climate resilience/water efficiency activities in water infrastructure and water efficiency in industry (including manufacturing, agribusiness, mining, etc.).

Implementation of EE measures requires substantive financing. Several financing programmes have been under implementation in recent years, including EBRD credit facilities. The recent initiatives include KIDSF - a programme by the EBRD supported by the Ministry of Economy and Energy and the Kozloduy International Decommissioning Support Fund to increase EE investments in public buildings and services in Bulgaria and help develop further the ESCO market. In line with the Second National Energy Efficiency Action Plan approved in 2011, a number of measures and programmes have been considered and are being implemented in order to achieve the national energy efficiency targets. These include modernisation of programmes for the

massive renovation of multi-apartment buildings with EE technologies, implementation of energy-efficient street lighting, promotion of EE measures in SMEs, introduction of modern innovative technologies, and further development of financing instruments to promote private sector participation in the implementation of EE measures.

As an EU Member State, Bulgaria had an obligation to increase the share of renewable sources (RE) in gross final consumption to 16% by 2020. According to recent data, the country is one of the three that has already achieved their 2020 targets.<sup>19</sup> The Energy Strategy of the Republic of Bulgaria till 2020 (2011) (the “Strategy”), adopted in 2011, is the country’s long-term strategy for the broader energy sector in line with the EU energy *acquis*.

The legal framework for the RE sector is set out by the Energy Law and the Energy from Renewable Sources Law of 2011. Key support measures for the RES producers are feed-in-tariffs. Recent legislative changes, however, have effectively decreased the level of the support measures and abolished the right to priority connection. The high prices for green energy and the overall crisis in the energy sector, have led to a controversial change of policy towards renewable energy. In January 2014 new rules were adopted for wind and solar producers, which place limitations to the volume of electricity purchased at feed-in tariffs and introduce a new fee applicable to wind and solar producers.

Subsidies are available for the use of renewable energy for heating and cooling, including by the European Regional Development Fund and several loan schemes. The Bulgarian Energy Efficiency and Renewable Energy Credit Line (BEERECL) extends loans to participating banks which on-lend to private sector companies for industrial energy efficiency projects and small renewable energy projects. In transport, there is a quota system that obliges companies importing or producing petrol or diesel to ensure that biofuels make up a defined percentage of their annual fuel sales. Further Capacity building programmes are being put in place, including a professional training programme for RES-installers.

Bulgaria signed the Kyoto Protocol to the United Nations Framework Convention on Climate Change on 15 July 1998 and ratified it on 13 December 2002, with an 8% reduction commitment which has been already met. The latest changes to the RES framework are not consistent with the EU *acquis* and have had a negative effect on investors. Credible reforms and improved regulation needs to take place in order to manage the existing energy crisis.

## PPPs / Concessions

Bulgarian PPP/Concessions legislation is centred on the Concessions Act of 2006 (the “Concessions Act”) and the recent Public-Private Partnership Act of 2012

(the “PPP Act”), supported by a number of implementing regulations.

The EBRD 2012 PPP Legislative Framework Assessment in relation to the quality of the PPP legislative framework revealed significant issues in the area of Security and Support Issues, Project Agreement and Definitions and Scope of the Law (see Chart 5). In terms of PPP legislation practical implementation, policy and institutional frameworks are least close to international good practices (see Chart 6).

The Concessions Act regulates various forms of concessions such as BOT (Build-Operate-Transfer) and some of the derived models, including BOO (Build-Own-Operate) and BOOT (Build-Own-Operate-Transfer). Concessions can be granted in the majority of sectors, through a competitive procedure and in a flexible project agreement framework. Application of a fair and transparent tender selection process is mandatory under the law, as well as proper remedies for breach are available.

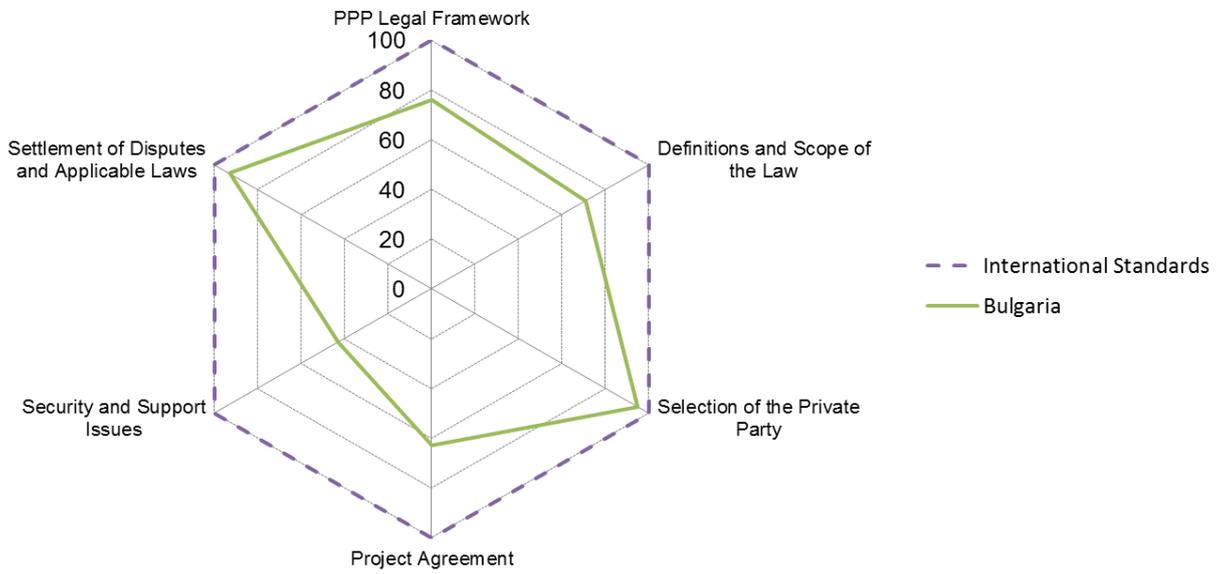
However, the Concessions Act does not deal with non-concessionary forms of PPPs, which has been deemed a substantive bottleneck for the development and implementation of a wider range of PPP projects, in particular PFI-type projects in “non-cash-generating” sectors. Addressing this gap has been the major goal of the government in promulgating the PPP Act in 2012.

The PPP Act regulates contracts where public sector finance provision is restricted or where a consumer fee is insufficient to attract private sector interest. The PPP Act therefore allows Private Finance Initiative-type of projects and overall creates quite a comprehensive framework for the PPP projects. In particular, the PPP Act defines sectors in which PPP projects can be developed, including urban and social infrastructure, and guides through the principles of distribution of risks between the public and private partner. The PPP Act further sets forth rules of selecting a private partner to a PPP project and governs the key terms of a PPP contract. The PPP Act employs several modern instruments, such as unsolicited proposals and institutional forms of PPP.

Despite the significant progress brought by the PPP Act, it has provided a major legal obstacle to implementing most PPPs in the country with the addition of Article 18a to Chapter Two of the Concession Act which extends the liability of the project company concessionaire under the Concession Law to its shareholders contrary to the basic principle of project financing.

The PPP-based models have been used in the transport and municipal sector with a number of new projects foreseen in the pipeline in transport, energy and social infrastructure.

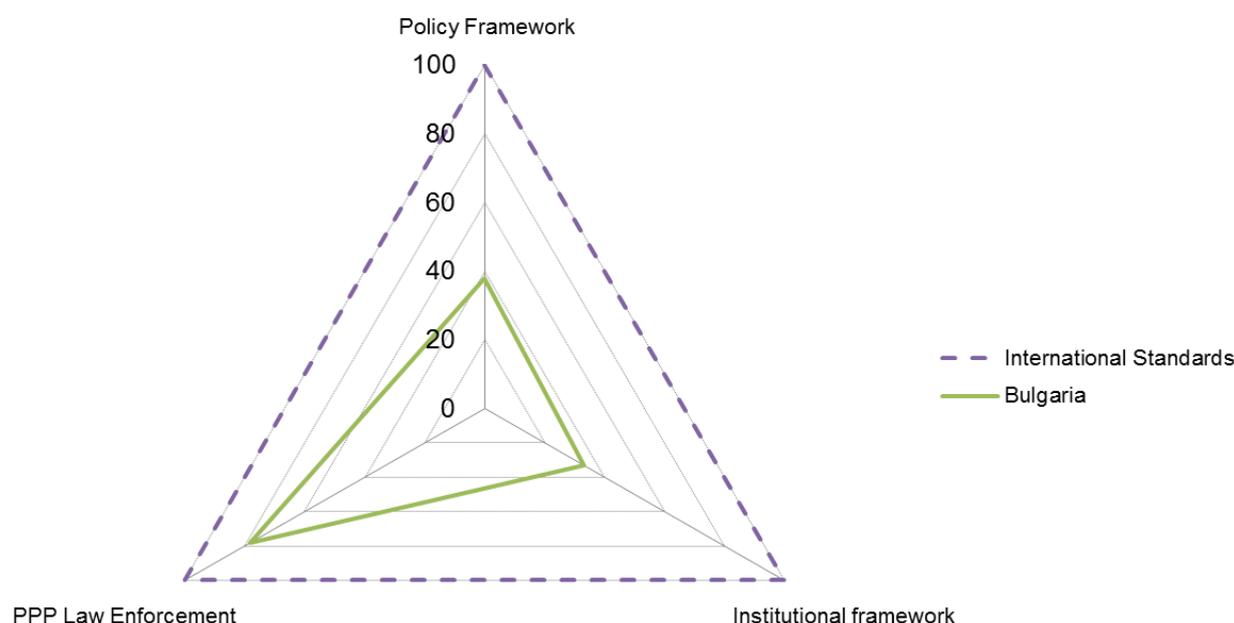
Chart 5 – Quality of the PPP legislative framework in Bulgaria



**Note:** The extremity of each axis represents an ideal score in line with international standards such as the UNCITRAL Legislative Guide for Privately Financed Infrastructure projects. The fuller the “web”, the more closely concessions laws of the country approximate these standards.

**Source:** EBRD 2012 PPP Legislative Framework Assessment (LFA)

Chart 6 – How the PPP law is implemented in practice in Bulgaria



**Note:** The extremity of each axis represents an ideal score, that is, a fully effective legal framework for PPPs.

**Source:** EBRD 2012 PPP Legal Indicator Survey (LIS).

## Public procurement

The current Public Procurement Act was adopted in 2004 and has since undergone several amendments. In addition, the Regulation for Application of the Public Procurement Act (the Regulation) was adopted by the Council of Ministers in 2006 (SG issue 53/2006) and has been amended several times since then.

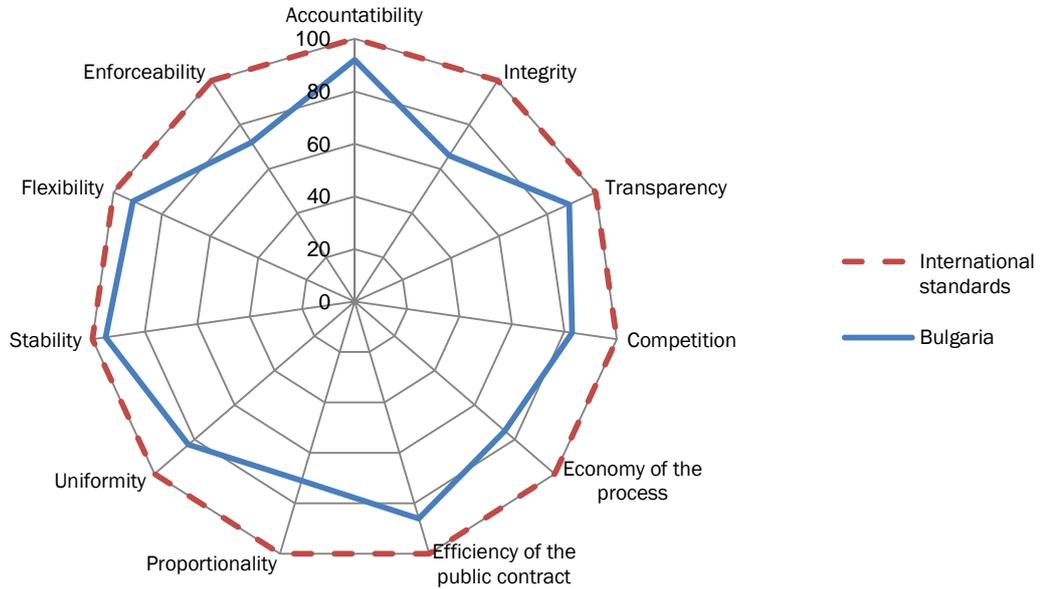
Bulgarian public procurement legislation follows principles of EU public procurement directives and covers all public contracts in the state and utilities sector. In the 2011 EBRD Public Procurement Assessment Bulgarian law and practice scored medium-to-high compliance with international standards; however it was found that several transparency safeguards and efficiency instruments were not incorporated in legislation. As regards the quality of public procurement legislation, major

deficiencies were recorded in the area of integrity, proportionality, enforceability and economy of the process (see Chart 7). Major weaknesses related to the quality of public procurement practice lie in the areas of enforceability, flexibility, transparency and economy of the process (see Chart 8).

Overall the Bulgarian public procurement framework is in need of reform to meet the standards of the 2014 EU public procurement directives. In August 2015 the Bulgarian Parliament published a bill containing the new public procurement law that would replace the existing framework. The Bill is said to fully implement the new EU directives on public procurement and is expected to be adopted by 2016.<sup>20</sup>

The National Strategy for the Development of Public Procurement Sector in 2014-2020 was approved in 2014.

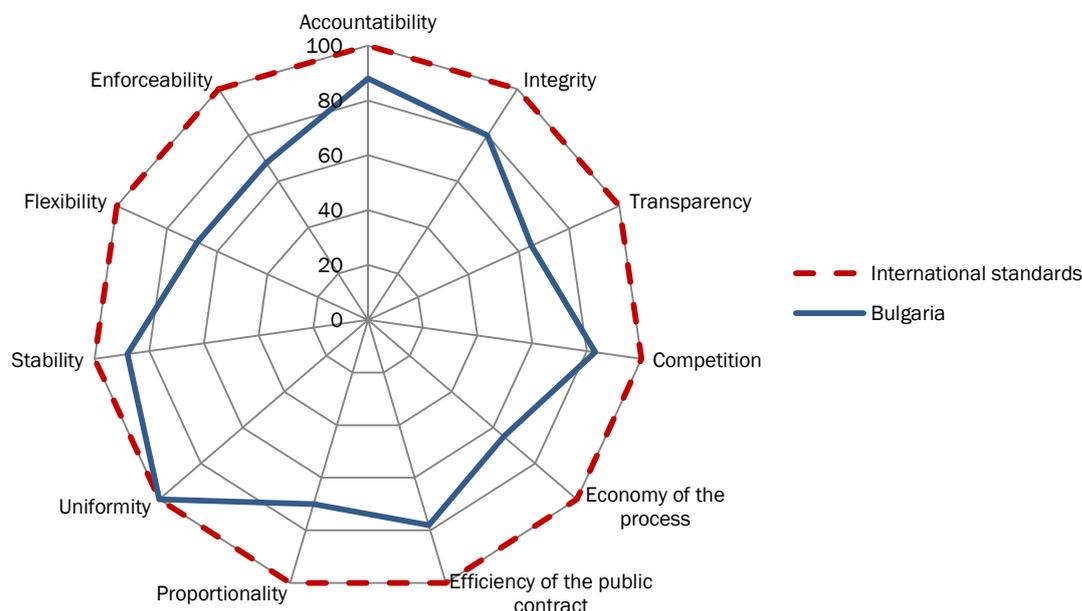
Chart 7 –Bulgaria’s quality of public procurement legislation



**Note:** The chart shows the score for the effectiveness of the national public procurement laws. The scores have been calculated on the basis of a questionnaire on legislation that is developed from the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each Core Principles benchmark indicator. The bigger the “web” the higher the quality of legislation.

**Source:** EBRD 2011 Public Procurement Assessment

Chart 8 - Quality of public procurement practice in Bulgaria



**Note:** The chart shows the score for the extensiveness of the national public procurement laws. The scores have been calculated on the basis of a questionnaire on legislation that is developed from the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each Core Principles benchmark indicator. The bigger the “web” the higher the quality of legislation.

**Source:** EBRD 2011 Public Procurement Assessment

## Private Sector Support

### Access to finance

Major legal instruments governing access to finance include the Law on Obligations and Contracts (Official Gazette No. 275/22.11.1950), as amended, the Registered Charges Act, (Official Gazette No. 100/22.11.1996), as amended, Code of Civil Procedure (Official Gazette No. No. 59/20.07.2007), as amended, and Commercial Act, (Official Gazette No. No. 48/18.06.1991), as amended.

#### Secured Transactions

Security over immovable property (mortgage) is governed by the 1950 Law on Obligations and Contracts. A mortgage can be created only for a specified amount of debt. It also secures the interest (if specified in the mortgage contract) for the two years preceding the start of enforcement until the date of sale of the property and the creditor's claims for expenses incurred for creation and enforcement. Where the mortgage secures a non-monetary obligation, the mortgage contract should specify the

monetary amount which the mortgage is intended to secure. Registration of ownership of real estate in Bulgaria is still mainly based on a deed registration system, i.e. registration is made of the deeds entered into by the parties, rather than against the property. In parallel, during the last few years, Bulgaria has been implementing the cadastre and property register, which would allow the registration to be made with respect to the specific immovable property - the Real Estate Registry Office having jurisdiction at the place where the real estate is located. As not all of the immovable properties are registered with the cadastre, it is still not always possible to ascertain ownership on the basis of a registration for a specific real property. In order to establish the valid title to property with sufficient certainty, a chain of ownership must be traced on the basis of various notary deeds and other title documents. The register is available online in Bulgarian but, as stated, the database is not yet complete.

A mortgage is established by execution of a mortgage agreement in the form of notary deed and its

registration with the Real Estate Registry, which is done within the day of signing the mortgage agreement or on the next day. A third party can check the status of the property (with respect to the ownership, encumbrances and other charges, registered claims, etc.) which have already been entered with the registry on-line (on the web-site of the Registry Agency) and can apply for an official certificate issued by the Real Estate Registry. Enforcement is performed through a “court controlled” public sale and requires involvement of a bailiff. The length of the proceedings vary on a case-by-case basis and depends on the borrower’s actions, the liquidity and marketability of the mortgaged real estate, etc. However, according to local practitioners, enforcement usually last between 6 months and 2 years and can be very expensive.

The Registered Charges Act governs the establishment of non-possessory security interests over a wide range of movable (tangible and intangible) assets. A registered charge can only be granted by a "merchant", as defined in article 1 of the Commerce Act (natural or legal person engaged by occupation in any of the commercial transactions listed in the article), or any of the persons listed in article 2 Commerce Act (that is mainly farmers, artisans and members of the professions). This limitation does not apply in the case of charges over non-material securities, equity shares in general and limited partnerships, limited partnerships with shares and limited liability companies, as well as charges over rights in patents for inventions, utility models, registered trademarks, industrial designs, topologies of integrated circuits and certificates for plant sorts and animal breeding (taking charges over these assets being regulated in the Act). On the other hand there are no restrictions on who can take a charge. A charged property can be defined in generic terms and a charge can be established over future property (including crops). It is also possible to establish a charge over enterprise and in that case charges must be registered with the Commercial Registry as well as in a particular registry for every type of asset it consists of (real estate, movables, intellectual property, etc.). A third party acquires assets free of charge if sold in the chargor’s ordinary course of business. Charges can secure revolving, contingent or future debt.

Charges are registered against the name of the charger with the Special Charge Registry (unless for particular assets the act prescribes differently, e.g. intellectual property in the registry held at the Patent Office). Entry application forms, contact information, and other general information on the Registry are available online. The central registry is computerised (however not accessible on-line) and this facilitates the process of registration and searching.

The rules underpinning charge enforcement are modern and flexible: the charge can in principle

obtain possession of the charged assets and sell them (via a depositor appointed by him) two weeks after registration of the commencement of foreclosure, provided that the conditions and method of sale were expressly stipulated in the charge agreement. However, in practice, the process is often hampered by the chargor’s obstruction and the courts are reportedly not handling cases as efficiently as they could be.

### Credit Bureaus

The credit reporting system in Bulgaria consists of two separate systems: (1) the Central Credit Register, operated by the Bulgarian National Bank, and (2) a private credit bureau called Experian-Scorex Bulgarian Credit Bureau, owned and operated by the global information company Experian since 2004. The two institutions provide similar information and services, but are governed by separate legal and regulatory frameworks. The CCR was established in 2000 by the BNB and is currently governed by “BNB Ordinance No. 22, On the Central Credit Register,” which came into effect on 1 October 2009. Experian-Scorex is regulated by the Personal Data Protection Commission and operates under a license for personal data processing issued by the Commission.

### Leasing

Financial leasing contract is mentioned in the Art. 342 – 347 of the Law on Commerce and the leasing contracts have to be registered in the Central Register of Charges. The law only provides a very general definition of the financial leasing and does not develop all peculiarities of a typical leasing relationship (e.g. transfer of risk, repossession rights, termination, term of the contract, transfer of title at the end of the term, etc.). Leasing companies are regulated – they require a licence to operate and are supervised by the Bulgarian National Bank.

### Factoring

Bulgarian law does not specifically regulate factoring transactions (except for the definition of factoring in the Law on Corporate Income Taxation and the mentioning in the list of banking transactions in the Law on Credit Institutions). There is no special legislation of factoring apart from general “assignment of claim by contract” provisions of the Obligations Law which provides a basis for assigning account receivables. As a result there is no definition of factoring services or types of factoring transactions which can help increase legal certainty of the factoring transactions and hence reduce involved costs and risks of re-characterisation of transactions. Factoring companies are regulated, require license and are supervised by the Bulgarian National Bank.

## Capital Markets

Following the adoption of the EU *acquis communautaire* securities market legislation complies with international standards. The securities market regulator is considered highly effective in pursuing complex cases. The domestic equity market is reasonably well capitalised and liquid to provide a viable funding source in conducive market conditions. The financial crisis resulted in a major decrease in the market capitalisation on the Bulgarian stock exchange though market infrastructure remains in place and functioning. Government bond markets are well developed, with regular and frequent issuance of government securities, although secondary market liquidity is still lacking.

## Corporate governance

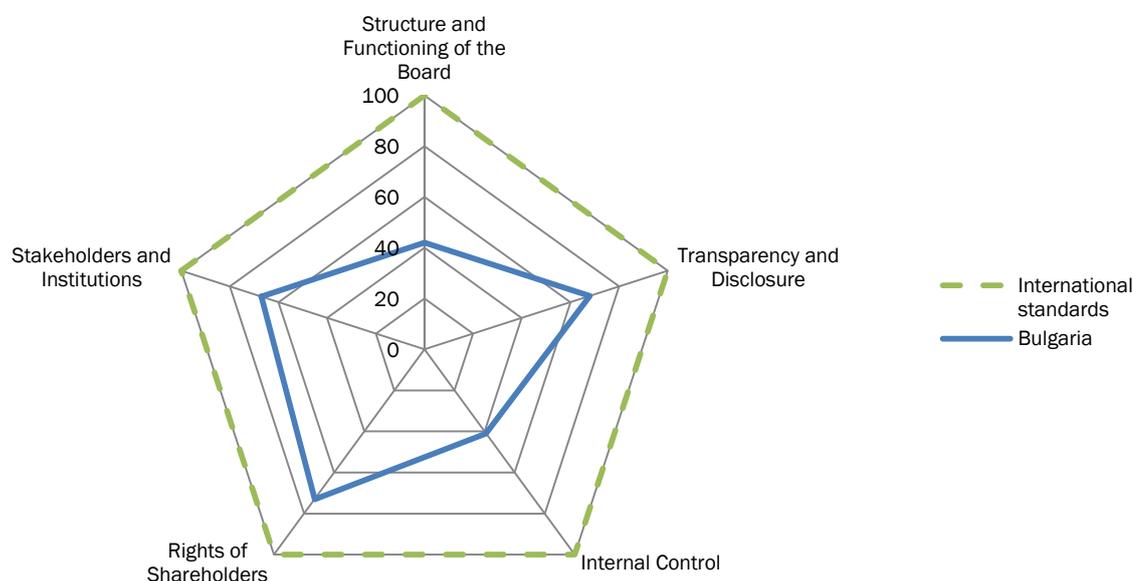
The Commercial Act enacted in 1991 (as amended) is the main legal instrument setting forth the rules on the establishment and operation of companies. Other relevant primary laws include the Law on Credit Institutions of 2006, the Accountancy Act of 2001 and the Act on Independent Financial Audit of 2001. In addition, a National Corporate Governance Code was enacted in October 2007 and amended in February 2012. The Code contains recommendations to Bulgarian companies on the application of good corporate governance practices and principles. The

Code comprises rules on board functioning in both the one-tier and two-tier board systems, on statutory audit and internal controls, on the protection of shareholders' rights, disclosure of information, etc. The Code is to be implemented according to the so-called "comply or explain" principle.

Overall, Bulgaria appears to have duly transposed 90 per cent of all EU *acquis* in the field of company law. However, while the legal framework "on the books" has improved, still some gaps exist. The 2014 EBRD Corporate Governance Assessment found Bulgaria only 60% compliant with international good practices on corporate governance (namely, OECD Principles of Corporate Governance). Major challenges were observed in the areas of Structure and Functioning of the Board and Internal Control (see Chart 9).

The review of corporate governance of banks in Bulgaria, undertaken by the EBRD in 2011, which looked at the legal framework and practices of banks in the country, highlighted some weaknesses in the corporate governance of banks, especially in the role and functions of the audit committee and of independent directors. Weaknesses in the corporate governance of banks must be addressed in order to preserve and enhance confidence in the system. The central bank announced its intention to join the European Single Supervisory Mechanism, which may require major preparations for admission, but if accepted, would strengthen banking supervision in the country.<sup>21</sup>

Chart 9 – Quality of the Corporate Governance Legislative Framework in Bulgaria



**Note:** the extremity of each axis represents an ideal score, that is, legislation fully in line with the OECD Principles of Corporate Governance; the fuller the ‘web’, the better the quality of the legislative framework.

**Source:** EBRD Corporate Governance Assessment 2014

## Debt restructuring and bankruptcy

The main legal instrument governing insolvency matters is the Commercial Act, as amended (the “CA”).

The CA envisages one bankruptcy procedure, which can theoretically result in either liquidation of a business or its rescue pursuant to a reorganisation plan. In practice, the bankruptcy framework is overwhelmingly liquidation focused, and very few reorganisation plans are proposed and/or succeed. Judicial reorganisation under the bankruptcy provisions of the Commercial Act is only available for businesses that are technically insolvent and is not, as is common now in other jurisdictions, available also for businesses that are at risk of insolvency. The law provides that the creditors’ committee may vote on a reorganisation plan. Nevertheless the formulation of the reorganisation plan is debtor driven and occurs late in the bankruptcy proceedings, once the date of the initial insolvency has been determined and creditors’ claims have been submitted. There is no mechanism for agreement of an accelerated or pre-packaged reorganisation plan under the Commercial Act. A

European Commission recommendation on insolvency, issued in March 2014, sets out a number of principles to be reflected by Member States, including Bulgaria, in their national insolvency/bankruptcy legislation. An accompanying press release from the Commission cited Bulgaria as one of the EU countries that currently fails to promote the early judicial reorganisation of businesses.

In addition to the issue of the weak judicial reorganisation procedure referred to above, concerns were expressed by stakeholders about the general process for admission and approval of claims in bankruptcy, including the admission of bogus unsecured claims and failure by certain debtors to list or notify existing creditors of the bankruptcy proceedings; underrepresentation of secured creditor interests in the creditors’ committee; lack of cooperation and information sharing by debtor’s management and shareholders with the appointed trustee or receiver and inability to compel their assistance with the office holder; and an overall lack of transparency and information-sharing during the judicial process with creditors.

The bankruptcy system relies on strong judicial control. Although creditors are free to select the insolvency office holder and determine his/ her

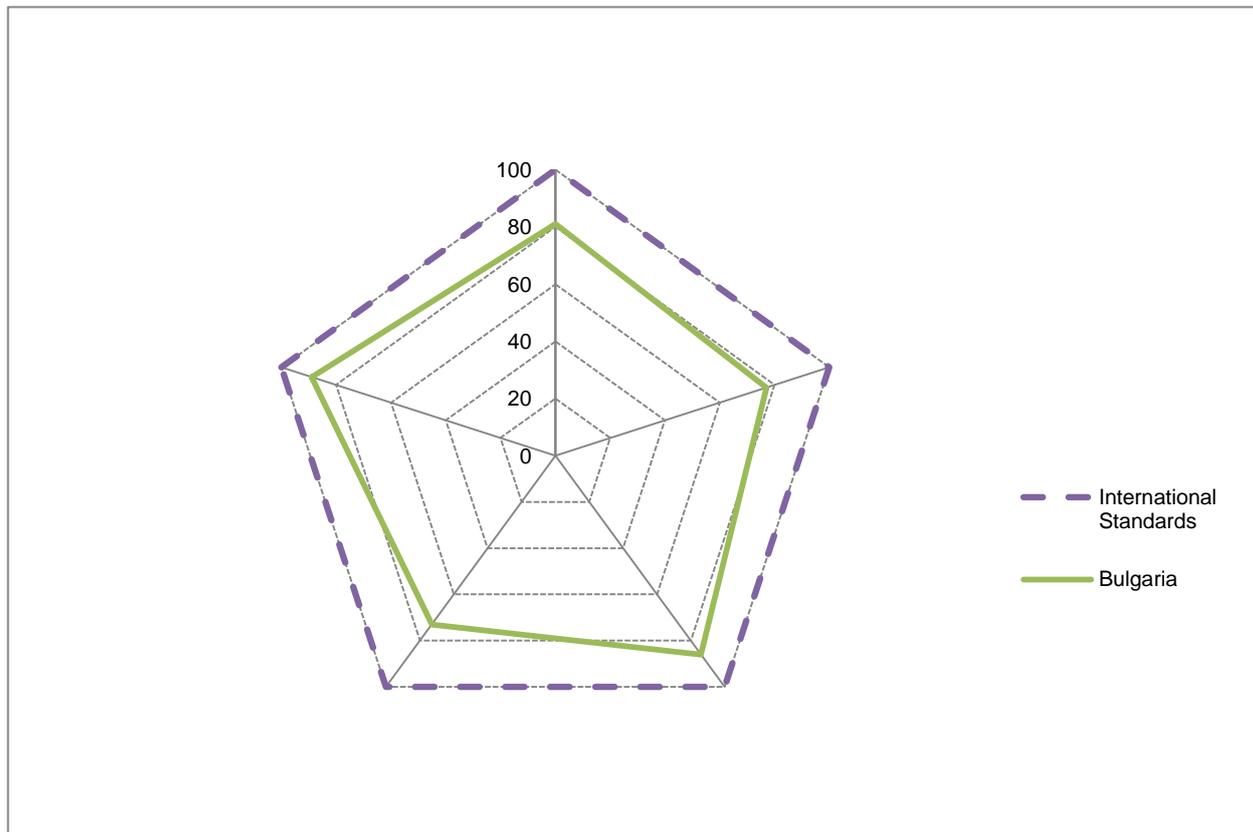
remuneration, the appointee is required to submit monthly reports to the Court and to obtain permission from the Court to carry out key tasks in the administration of the bankruptcy case.

The 2009 EBRD Insolvency Sector Assessment highlighted the reorganisation process as the main

weakness of insolvency legislation in Bulgaria (see Chart 11).

The CA was reformed in 2013 to limit the previously open-ended claw back provisions, which had caused significant legal and commercial uncertainty for local creditors.

Chart 11 – Quality of insolvency legislation in Bulgaria



**Note:** the extremity of each axis represents an ideal score, that is, legislation fully in line with international standards such as the World Bank's Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, the UNCITRAL Working Group's "Legislative Guidelines for Insolvency Law"; and others. The fuller the 'web', the better the quality of the legislative framework.

**Source:** EBRD Insolvency Sector Assessment 2009

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11 Economist Intelligence Unit Country Report: Bulgaria (generated 1 September 2015)

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<sup>14</sup> <http://2014.tr-ebd.com/bulgaria/>

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<sup>17</sup> <http://2014.tr-ebd.com/bulgaria/>

<sup>18</sup> Economist Intelligence Unit Country Report: Bulgaria (generated 1 September 2015)

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<sup>21</sup> <http://2014.tr-ebd.com/bulgaria/>