



## PUBLIC RESPONSIBILITIES, PRIVATE GAINS

### How a governmental agency created a profitable private enterprise

A tell-tale sign of state capture are public institutions placed in servitude to vested interest, coupled with consistent efforts to undermine their authority and functions through an array of corruption practices to the extent where the entire public sector becomes easy prey to various political and economic groups.<sup>1</sup> This process is most prominent in the allocation of public resources and funding, including the award of public procurement contracts and the creation of public-private partnerships. Where the rules governing an activity are not sufficiently clear, opportunities arise for their arbitrary application or for decision-making on the part of government agencies within a wide margin of discretion that exponentially increases the likelihood of public institutions being effectively 'captured' by highly organised private interests.

The **Bulgarian Food Safety Agency (BFSA)** is a case in point and stark illustration of links being forged between a government body and vested interests with a view to enabling private gain through the award to a private company of a public procurement contract for the disinfection of means of transport entering Bulgaria from Turkey.

The Bulgarian Food Safety Agency is the government body responsible for conducting controls to verify compliance with the requirements for the production, storage, distribution, transport and trade in foods and by-products of animal origin and performing veterinary checks (including inspections and disinfection) of the means of transport entering Bulgaria, particularly from third countries, at the Bulgarian-Turkish border. Border veterinary controls are essential for the protection of public health and ensuring food safety in Bulgaria and across the EU.

### The storyline

In March 2013, the head of the BFSA awarded a contract to the **private company P.F.C. Ltd.** for the preventive disinfection of vehicles entering Bulgaria via the Bulgarian-Turkish border. The contract was awarded **without conducting a tender as required by the Public Procurement Act (PPA)**, failing to ensure that public interest is safeguarded – a breach of competition rules and the requirements for transparency and efficiency in the award of public procurement contracts.<sup>2</sup> The subject of the five-year contract was the provision and maintenance of certain technical means necessary to perform the activity envisaged in Article 190 of the *Veterinary Act (VA)* by the private contractor. The company was further obliged to cover the associated costs, ensure that properly qualified personnel was available, and supply the requisite disinfectants.

A major giveaway of the corruption mechanism at work is that the company was established in February 2013, i.e. **weeks before it signed a contract with the BFSA**. According to the publicly available data obtained from the Commercial Register, the specified activities of the company are far removed from the veterinary activities to be performed under the contract. In addition, according to media publications, the first owner of the company, Lidiya Lyubanova, was related to Krassimir Kamenov-Kuro, well known in the criminal underground.<sup>3</sup> The company ownership

<sup>1</sup> *State Capture Unplugged: Countering Administrative and Political Corruption in Bulgaria*, Sofia: CSD, 2016, p. 29

<sup>2</sup> The Head of the BFSA concluded Contract No 9 of 12 March 2013 with the company PFC Ltd. (Company No 202454263) with head office in Sofia.

National Assembly. Question asked by Christian Vigenin, MP, of Rumen Porozhanov, Minister of Agriculture and Food, Ref. No 854-06-1092 of 2 October 2018.

<sup>3</sup> Known also as a partner to the Interpol investigated Hristoforos Amanatidis – Taki:

<https://www.occrp.org/en/daily/4805-bulgaria-businessman-with-suspected-mob-ties-shot-dead-in-sofia>

changed hands on several occasions in 2015 (when Philip Stoyanov became sole owner and director) and most recently in 2019. The current owner of record is Atanas Veselinov Edrev and the managing director of the company is Borislav Georgiev Karev (he has previously managed the affairs of a shipping company and, since 2017, is the owner and managing director of a company operating in the gambling industry).

The first checks on the business of the company, including the contract awarded by the BFSA, were performed in 2013, shortly after it commenced operations. They were prompted by the political changes that took place in the spring and summer of 2013. At the time, business was temporarily suspended and the company was declared dormant. In the spring of 2014, it resumed business in connection with the increasingly complicated epizootic situation in Turkey. The resumption of business came on the heels of an order issued by the Minister of Agriculture and Food<sup>4</sup>, which outlined recently identified epizootic risks that warranted preventive disinfection of the vehicles entering Bulgaria from Turkey via the border crossing points along the Bulgarian-Turkish border.

In the interim period until 2019, the private company continued to perform disinfection activities along Bulgaria's border with Turkey. The case came to light after the Anti-Corruption Fund (ACF) filed an application for and received information under the *Access to Public Information Act*.<sup>5</sup> According to the partial information received in response to the application, the BFSA had **delegated authority to the company** to collect and pay into the central government budget **stamp duty and other charges**. This despite the fact that the collection of such charges is one of the agency's exclusive prerogatives by law. In its annual report for the year 2018, the company expressly noted the delegated task of collecting stamp duty and other charges, payable company in respect of the performed activities, and then transferring funds into the state budget. The company has specified that it carries out these activities on its own account.

The collected fees include both the stamp duty payable for disinfection as is determined by law<sup>6</sup> and a fee for the service provided by the company. In September 2019, the stamp duty payable for the disinfection of motor cars stood at BGN 3.91, plus a service fee of BGN 1.96 payable to the company.

#### ■ Incoming flow of light vehicles entering Bulgaria from Turkey

### Number of Light Vehicles Inspected by the Ministry of Interior

	2013	2014	2015	2016	2017	2018
Border Crossing Point (BCP)	INCOMING	INCOMING	INCOMING	INCOMING	INCOMING	INCOMING
BCP Kapitan Andreevo (Road)	157,599	205,963	353,302	482,894	521,037	639,388
BCP Lesovo	33,585	47,666	74,207	120,174	146,898	179,226
BCP Malko Tarnovo	30,466	38,489	60,379	74,568	84,549	105,754
<b>TOTAL</b>	<b>221,650</b>	<b>292,118</b>	<b>487,888</b>	<b>677,636</b>	<b>752,484</b>	<b>924,368</b>

According to the annual financial statements of P.F.C. Ltd. for the period 2013—2018, filed on record with the Commercial Register, a significant increase was registered in both the income and profit generated by the company. In 2016, the net profit from operation (after tax) stood at BGN 6,562,000, increasing to BGN 7,001,000 in 2017. According to the Annual Financial Report for 2018 the company profit after tax increased by 24.6 % as compared to 2017, reaching BGN 8,728,000. By way of comparison, the profit generated in previous years was significantly lower, respectively BGN 3,340,000 in 2015 and BGN 1,313,000 in 2014. In 2013, the company reported a profit of BGN 55,000 generated in less than a month. When a company is engaged in such a manifestly profitable business (company profits exceed running costs more than ten times) it is logical to ask **why the activity is not performed by the competent government body**, particularly in light of the fact that this is one of the powers expressly vested in the BFSA by law.

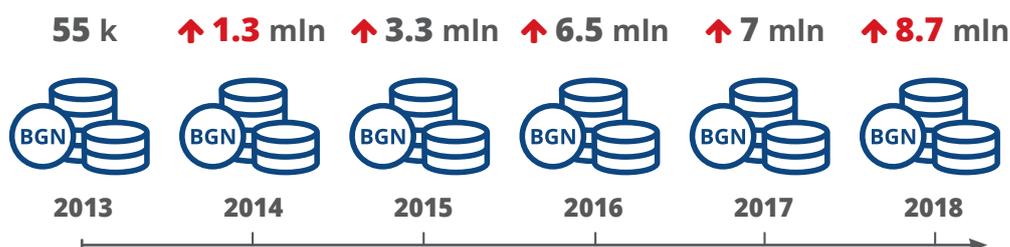
<sup>4</sup> Order No 09-230 of 11 April 2014 of the Minister of Agriculture and Food declaring a state of epizootic emergency

<sup>5</sup> Decision No RD 11-1201 of 4 July 2018 of the Head of the BFSA under an application for access to public information submitted by the ACF

<sup>6</sup> Tariff of the fees collected by the Bulgarian Food Safety Agency, adopted by Decree No 375 of 30 December 2011 of the Council of Ministers, promulgated in the State Gazette (SG) No 1 of 3 January 2012.

■ **Company profit according to the annual financial statements filed on record**

**Annual profit of P.F.C. Ltd. as per Bulgarian Commercial Register**



## Legal analysis

The established facts give rise to reasonable doubts that **statutory powers are unlawfully exercised and that the outsourced activity is performed in breach of applicable law.**

■ **Delegation of tasks within the remit of competence of a body governed by public law to the private company P.F.C. Ltd.**

In accordance with Article 184 of the *Veterinary Act*, issued by the Minister of Agriculture and Forestry, the BFSA performs border veterinary controls on imports and vehicles used to import goods. Controls are performed by means of checks at certain border veterinary inspection posts (BVIP) within the perimeter of which dedicated premises should be established. In addition, BVIPs must be properly equipped, have the necessary properly trained staff, keep records, and receive approval from the European Commission. Controls are carried out by **official veterinarians. The latter are required to perform their duties by law wearing distinctive uniforms** (Articles 186 and 187 of the *Veterinary Act*). The activities performed within the scope of border veterinary control include 'disinfection and disinfestation of the means of transport entering Bulgaria (Article 188(4) of the *Veterinary Act*. Article 190 of the VA lays down provisions on disinfection and disinfestation at border crossing points (BCPs) in epizootic emergencies.

Regulation No 47 of 20 April 2006 was issued by the Minister of Agriculture and Forestry and lays down the requirements for veterinary inspection posts and the requirements and procedure for conducting veterinary checks. According to the regulation, BVIPs must be equipped for conducting disinfection or have made arrangements for cleaning and disinfection under a contract concluded with an external party, which has the obligation to properly document the activities performed. The provision of the regulation governing the performance of disinfection activities under contractual arrangements with third parties is imprecise and contravenes the law, which does not envisage this possibility. Furthermore, there are no provisions enabling the delegation of disinfection – an activity strictly within the remit of competence of a public body – to a private contractor.

By law the duties of the official veterinarians at BVIPs include performing documentary checks, physical checks, sampling, performing general examinations and, in epizootic emergencies, the 'disinfection of means of transport as provided for in Article 190 of the *Veterinary Act*'.

Regarding the status of official veterinarians, by law they must be BFSA employees, appointed by a dedicated order of the head of the agency, in which capacity they are authorised to perform border veterinary controls. The law does not provide a possibility for disinfection to be outsourced to and performed by external service providers.

The analysis of the ACF warrants the conclusion that national law does not allow the delegation or outsourcing of the preventive disinfection of vehicles entering Bulgaria – an activity strictly within the remit of competence of a public body – to private contractors. This means that the **service has been outsourced unlawfully**. This is so because the contracting authority failed to apply the *Public Procurement Act* to ensure that public interest, competition rules and the transparency of the procedure are properly safeguarded.

■ **Collection of stamp duty and other charges by P.F.C Ltd. in breach of applicable law**

According to the general principle stipulated in the *Stamp Duty Act* (SDA), stamp duty **may solely be collected by government bodies** (public institutions) or organisations governed by public law, to the exclusion of private companies.

By law disinfection services are provided against the payment of a fee set in a tariff adopted on the grounds of the *Bulgarian Food Safety Agency Act* (BFSAA). According to the cited law, the agency collects fees for performing official controls. **No possibility is provided for such fees to be collected for the respective activities/services and administered by private companies.**

At the same time, the analysis of publicly available information indicates that the private company has significantly inflated the approved stamp duty amount (by adding a mark-up of 20 % to 50 % as compared to that indicated in the official tariff). The government, represented by the agency, has thus created a **highly lucrative 'business' for a private company**, having infringed the imperative requirements for transparency, accountability and protection of public interest. Legislation expressly precludes private companies from collecting stamp duty, let alone retaining as profit part of the payment received for the provided service.

## Recommendations

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The identified irregularities and infringements could have been prevented had compliance been ensured with the following basic standards and procedures:

- **The principle of legality** in the work of administrative bodies requires the avoidance of any conflict between laws and bylaws, and where such conflict is ascertained, action on the part of the competent bodies to ensure that the higher-ranking statutory act is applied (ad hoc the law).
- Government bodies must act in the public interest, refraining from creating advantages and privileges for private entities. In the case at hand, this means that a private contractor should not be allowed to perform an activity/service strictly within the remit of competence of public bodies, where no possibility to do this is provided by law.
- As a matter of principle, activities typically within the remit of competence of bodies operating under public law, are outsourced to private companies in accordance with the *Public Procurement Act*, which ensures transparency, accountability and protection of public interest. This means that resorting to special award procedures that create an advantage for private operators is prohibited.
- When infringements and irregularities are pointed out by citizens, media and other stakeholders, the competent control bodies have an obligation to perform an in-depth investigation to confirm or disprove the allegations made, as opposed to performing superficial checks that fail to address the substance of the alleged infringements.

## ACF actions

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On the basis of the investigation and analysis outlined above, in October 2019, the ACF reported the case to the competent institutions — the Specialised Prosecution and the Public Financial Inspection Agency. To date, we have not been notified of subsequent actions taken by the competent institutions. The ACF has also produced a video outlining the most interesting aspects of the investigation.<sup>7</sup>

In the meantime, the government has removed from office the executive director of the BFSAA without publicly connecting this political move to ACF's institutional activities. It is most likely that the governmental decision is the result of several other cases which have questioned the integrity and professionalism of the agency management, including an ACF investigation into unjustifiably large payments made to mobile incinerators.<sup>8</sup>

<sup>7</sup> <https://acf.bg/en/zlatnata-lokva/>

<sup>8</sup> <https://acf.bg/en/agentsiyata-po-bezopasnost-na-hranite-h-2/>