1. The EU Support Scheme

European funding for WSS sector is important financial source supporting the activities in the water sector in Bulgaria. The funds are allocated by the Ministry of Finance to the relevant sectoral ministries – MRDPW, MoEW, Ministry of Agriculture and Foods. Their distribution to the WSS Sector is shown at the figure below:

1.1. Pre-accession Financial Instruments

During the pre-accession period, until 2007, ISPA programme was the major EU financial instrument providing opportunities for investments in environmental projects with around EUR 600 million funding.
A significant part of the funds – over 75% were directed to the water sector - collection and treatment of waste water. The financial aid amounts to EUR 445 million for Bulgarian investment projects in the water sector.

21 projects for water infrastructure have been funded under ISPA – mainly WWTP and later - integrated water projects. These projects include construction of WWTP in Dimitrovgrad, Stara Zagora, Blagoevgrad, Ruse, Burgas, Sevlievo, Lovech, Popovo and integrated water projects for Targovishte, Balchik, Kustendil, Pazardjik, and Smolian. All these projects are for agglomerations above 10 000 PE and are priority projects according to the EU UWWTD 91/271/EC.

The pre-accession SAPARD programme supported measures for rural improvement and development, rehabilitation and/or construction of small-scale sewerage systems and waste water treatment facilities in rural areas. Until the end of the programme 175 projects (for rural improvement with small-scale water projects) were funded in Bulgaria, the total amount of the subsidy was nearly BGN 75.8 million.

The PHARE programme for trans-boundary cooperation “Bulgaria – Greece” provided assistance for the construction of urban waste water treatment plans. Such were built in Madan, Zlatograd, Rudozem and Razlog. The total investment was EUR 14 million according to financial memoranda.

### 1.2. Structural Funds and Cohesion Fund

Bulgaria started to absorb funds from the Structural and Cohesion Funds after its accession to the EU. Seven operational programmes were elaborated. Some of them can support WSS projects:

Operational Programme “Environment 2007 – 2013”, managed by the Ministry of Environment and Water, envisaged under the Priority Axis 1 “Improvement and development of water supply and sanitation infrastructure in settlements with above 2000 PE and below 2000 PE in cities.” 1284207841 euro, 80% of which is EU funding under the Cohesion Fund and 20% - national co-financing.

The implementation under the Priority axis at December 2012 1 is shown in the table below.

#### Table 1. Implementation of OPE under Priority Axis 1.

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Number of contracts</th>
<th>Contracted</th>
<th>Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>T R TT I C Total (BGN)</td>
<td></td>
<td>Total (BGN)</td>
<td>%</td>
</tr>
<tr>
<td>Technical assistance for preparation of investment projects</td>
<td>158 10 55 5 88</td>
<td>101 893 927</td>
<td>66</td>
</tr>
<tr>
<td>Improvement and development of water supply and sewerage infrastructure</td>
<td>31 1 9 19 6</td>
<td>667 939 174</td>
<td>41</td>
</tr>
<tr>
<td>Development of river basin management plans</td>
<td>1 0 0 1 0</td>
<td>36 048 000</td>
<td>33</td>
</tr>
<tr>
<td>Improvement and development of water supply and sewerage infrastructure in agglomerations above 10 000 PE</td>
<td>58 58 0 0 0</td>
<td>2 207 509 167</td>
<td>3</td>
</tr>
<tr>
<td>Preparation and implementation of projects for Improvement and development of water supply and sewerage</td>
<td>26 11 11 4 0</td>
<td>918 951 156</td>
<td>1</td>
</tr>
</tbody>
</table>
As of December 2012, 20 facilities became operational in 13 municipalities. The investments for these facilities amount to MBGN 165\(^1\).

The annual report of the OPE for 2011 reports the following achievements:

**Table 2. Achievement of OPE up to December 2011**

<table>
<thead>
<tr>
<th>Water supply network (km)</th>
<th>Sewerage network (km)</th>
<th>WWTP (number)</th>
</tr>
</thead>
<tbody>
<tr>
<td>New construction</td>
<td>Rehabilitated</td>
<td>New construction</td>
</tr>
<tr>
<td>29.81</td>
<td>68.62</td>
<td>95.49 (network)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>24.92 (sewerage mains)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>20.94(network)</td>
</tr>
</tbody>
</table>

**Table 1. Achievement of indicators of OPE up to December 2011**

<table>
<thead>
<tr>
<th>Indicators</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional population served by sewerage (thousands)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Baseline value</td>
<td>45</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Target value:</td>
<td></td>
<td>1,295</td>
<td>1,845</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Progress:</td>
<td></td>
<td>66</td>
<td>182</td>
<td></td>
<td>(10% achievement in 2011)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Population connected to WWTP       | | | | | | | |
| Baseline value                      | 42.2%|      |      |      |      |      |      |
| Target value:                       |      | 58.04%| 66.46%|      |      |      |      |
| Progress:                           |      | 0.10% (2.4%) | 1.85% | 49.18% |      |      |      |

| New and rehabilitated WWTP          | | | | | | | |
| Baseline value                      | 1    | 1    | 6**  | 11** |      |      |      |
| Target value:                       |      |      | 22   |      | 65   |      |      |
| Progress:                           |      | 2    | 1    |      | (21% achievement in 2011) |

*Contribution of OPE, 2.4% is the total progress in the country  
**10 WWTP constructed under ISPA (5 in 2009 and 5 in 2010)  
Source: Annual report of implementation of OP Environment 2007-2013, 2011

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\(^1\) http://ope.moew.government.bg/bg/pages/sektor-vodi/27
The implementation of the OPE experienced difficulties both in efficiency of implementation and achievement of objectives (target values of the indicators). As seen from the above data the progress with achievement of the target indicators is insignificant.

The initial implementation of the programme lacked focus. For example 104 contracts out of 156 under first technical assistance procedure for preparation of investment projects were for agglomerations under 10000 PE. After the review of this procedure of 32 (now 55) projects were terminated because of incompliance with the priorities of the program and violations in the implementation². (For more on the effectiveness of allocation of funds under OPE see point 4.6 below)

Rural Development Programme 2007-2013 provides funding to municipalities for investment (construction of new and rehabilitation of existing facilities) in water supply and sewerage infrastructure under measure 321 Basic services for the economy and rural population³. Eligible are municipalities in rural areas with below 2000 PE. The programme covers 100% of the eligible expenditures providing grants up to 3’000,000 euro. It has been reported that about 80% of the investments under this measure are for water supply and sewerage⁴. At the end of 2011 under measure 321, 122 municipalities were supported. The projects contracted up to 2011 will result in reconstruction of 123 km water and sewerage systems and construction of 160 km new water supply and sewerage network.

<table>
<thead>
<tr>
<th>Common output indicator</th>
<th>Water supply and sewerage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of supported actions</td>
<td>196</td>
</tr>
<tr>
<td>Total volume of investments (M EUR) 2007-2011</td>
<td>140</td>
</tr>
<tr>
<td>Reconstructed water supply and sewerage in villages with below 2000 PE (km)</td>
<td>123</td>
</tr>
<tr>
<td>Constructed new water supply and sewerage systems in villages with below 2000 PE. (km)</td>
<td>160</td>
</tr>
</tbody>
</table>


² Evaluation of effectiveness of the closed procedures for project selection under priority axes 1,2 and 3 of the Operational Programme “Environment 2007-2013”, Ecorys, 2010
³ The measure also provides funding for rehabilitation and construction of roads, cultural sport and leisure infrastructure, social services and information and communication technologies
2. **Efficiency in spending of EU funds**

The efficiency of spending of EU funds in WSS sector for the last five years was unsatisfactory. Non-priority projects and projects with unjustified high investment cost were funded. Part of the built WWTPs are oversized and do not correspond to the settlements development.

As main obstacles for efficient spending in the last 5 years can be specified:

- Complicated water management at national level and local level – consisting the five ministries (MRDPW, MoEW, MoAF, MH, MEE), regulatory authority and municipalities;
- Lack of authority, taking decisions for regional problems at national level;
- Lack of an up-to-date strategic document for key decisions concerning the development specifically of the WSS sector;
- Lack of a reliable database for WSS sector assets, need at national and municipality level for decision making;
- Lack of clarity on the implementation of the Water Act prevents a mechanism of engaging the operator in full or in part in the financing of municipalities’ own contribution to the project.
- Inadequate financial resources for WSS sector development for last 20 years;
- Delay in preparation of projects documentation for tendering procedures and for implementation;
- Fragmenting of WSS systems between a large number WSS operators;
- Tendency among municipalities to develop specific projects according to the specific announcement and open schemes, which not always coincide with their actual needs and are not based on a thorough analysis;
- Need of specialized expertise for project preparation and management that the municipalities often do not have;
- Shortages of adequate personnel to manage water and sanitation programs (i.e., inadequate trained, skilled and motivated staff);
- Provision of municipal co-financing for project implementation is a challenge due to the fact that municipalities’ own revenues are not sufficient to finance their own contribution to major infrastructure projects. The Fund for Local Authorities and Governments (FLAG) provides loans to the municipalities to support them in ensuring co-financing for the projects funded under the EU Structural and Cohesion funds. However, not many municipalities apply for it. In the period 2008-2012, 40 loans for water projects supported under OPE have been granted.

3. **Procurement process**

The public investments and spending should be implemented through a public procurement procedure.

As an EU member state, Bulgaria brought its national legislation in line with the European public procurement directives, particularly with the Classical Directive 2004/18/EC and the Utilities Directive
2004/17/EC. All other European regulations concerning thresholds and standards forms are also part of the legislation in force in the country.

In Bulgaria the public procurement is regulated by the Public Procurement Act/PPA\(^5\). Since then, the act has undergone many changes. It was last amended on October 26, 2012. The main by-law regulating the enforcement of PPA is the Rules for Implementation of PPA.

3.1. **Structures responsible for procurement at central, local and regional level**

The main actors in Bulgarian public procurement system and their functions are as follows:

**Policy and policy implementation:**
- Ministry of Economy, Energy and Tourism;
- Public Procurement Agency.

**Appeal:**
- Commission for Protection of Competition;
- Supreme Administrative Court.

**Control:**
- Public Financial Inspection Agency;
- Bulgarian National Audit Office.

The state policy on public procurement is implemented by the Minister of Economy, Energy and Tourism. The Public Procurement Agency is an Independent entity which supports the Public Financial Inspection Agency (PFIA) and the National Audit Office act as controlling authorities with the regard to adherence to public procurement legislation (Article 123 of the PPA).

The legality of any decision, activity or inactivity on the part of a contracting party in the course of public procurement procedures until contract conclusion is subject to an appeal with the Commission on Protection of Competition (Article 120 of the PPA). The decisions of the Commission on Protection of Competition may be appealed with a three-member committee of the Superior Administrative Court.

Since the beginning of 2009 the Public Procurement Agency has new responsibilities in exerting ex-ante control over public procurement. On the one hand, accordance with Article 19, paragraph 2, point 22 of PPA the Agency assist Managing Authorities and Implementing Bodies with ex-ante control of public procurement procedures over the EU thresholds, financed with EU funds. On the other hand, in accordance with Article 19, paragraph 2, point 24 of PPA the Agency executes ex ante control of negotiated procedures without publication of notice (for all cases but those according to Art.31, par 1,(a) and (b) and par 2, (c) of Directive 2004/18/EC).

One of the principal functions of the Agency, facilitating the activities of all public procurement stakeholders, is the maintenance of the public Procurement Register (PPR). It is an electronic database containing the full set of information on the procedures conducted and the contracts.

\(^5\) Promulgated, SG No.28/2004), effective as of October 1, 2004
concluded, which contracting authorities and entities are obliged by law to provide. The PPR is an essential tool guaranteeing adherence to the principle of openness and transparency, which is a precondition for free and fair competition on the public procurement market.

### 3.2. Main organizations responsible for procurement within the WSS Sector

There are no specific organizations responsible for procurement within the utilities in all their activities the contracting entities rely on the guidance and support of the sectoral ministries and agencies, and especially the Ministry of Economy, Energy and Tourism and the Public procurement Agency, which is subordinate to the Ministry.

### 3.3. Supervision bodies

The compliance with the PPA is exercised by National Audit Office and by the authorities of the Agency for the State Financial Inspection\(^6\).

### 4. Efficiency of the procurement process

The Public Procurement Act often changes. Between 2007 and 2012 it was subject to 18 amendments and supplements. Although the amendments aim to improve and simplify the Act, as the introduction of “corrigendum decision” similar to the form used by the Publications Office of the European Union, the frequent amendment lead to uncertainty and mistakes in the application of the procedures both in the administration and with the bidders.

Other problems affecting the efficiency of procurement are listed below:

**Delays due to appeals by beneficiaries**

There is an abundance of appeals against the decisions for selection of contractors by discontented candidates in the public procurement procedures. All appeals go through every step of the procedure. This takes significant amount of time (months) during which the contract cannot be signed to enable the start of implementing of the project activities. This, in turn, causes delays in contracting and implementation of the investment projects.

**Lack of transparency**

The Public Financial Inspection Agency found that 300 of the public procurements, comprising more than BGN 200 million had not been properly performed by the contracting authorities\(^7\). This is around 10 % of all public procurement procedures. According to foreign investors, lack of transparency, vague requirements and the inconsistent practice of the Competition Protection Commission are among the factors that complicate their business in Bulgaria.

Contacting authorities only rarely translate the procurement documentation and additional information, even in cases where major international companies are targeted as contractors. As a result interested foreign companies are hindered from preparing the correct documentation. Many contractors are not

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\(^6\) In accordance with Article 123, paragraph 1 of the PPA

\(^7\) Public Financial Inspection Agency
aware of the provisions of the Bulgarian PPA and the possibility to challenge restrictive and discriminatory requirements.

**Slow and inconsistent procedures**

A study between the representatives\(^8\) of OPE consider as most problematic the Public Procurement Act and Council of Ministers Decree № 55/2007. The application of the procedures leads to delays in contracting and in the implementation of projects. The requirements are too strict, the changes are too frequent. Often beneficiaries are required to exceed regulatory requirements due to differences between the internal rules of the Certifying Authority, the regulatory framework (in particular the Council of Ministers Decree № 55/2007) and the internal rules of the MA. In addition, each institution interprets the legislation differently, develops its own guidelines to beneficiaries, leading to a lack of stability and sustainability of decisions.

As a result, the administrative burden blocks and slows down the process of implementation and accountability and leads to delays in projects implementation. Too many restrictions are imposed and they impede the management of structural instruments.

**Signature of contracts with inappropriate contractors**

Often contracts for big investment projects in the area of WSS are signed with newly established companies or companies that do not have appropriate experience. The inexperienced companies use subcontractors to implement the activities. Also sometimes an experienced foreign company signs the contract but most of the activities are implemented by local subcontractors, which are not properly monitored (and or paid). This leads to difficulties, delays, lack of responsibility and poor final results. The PPA does not stipulate clear ways to terminate the contracts with such contractors and sue them and to eliminate such situations.

According to the National Centre for Cooperation Institute of Due Diligence and Research, over the past four years, administrative violations have been found in over 60% of cases in application of public procurement procedures\(^9\). It was found that the violations in public procurement continue to grow in parallel with the increase of the amount of funds allocated through contracts.

The most common violations announced on the website of the Commission for Protection of Competition in the implementation of the Public Procurement Act include:

- Separation of the order of parts to avoid higher selection criteria;
- Conditions of illegal contracting;
- Placing restrictive conditions and giving priority to certain applicants;
- Unclear methodology for the evaluation of tenders in most economically advantageous tender;
- Mixing of criteria for selection with evaluation indicators;

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\(^8\) "Evaluation of the implementation of the Structural instruments according to the objectives set in the National Strategic Reference Framework 2007 – 2013", Sofia, June, 2012

\(^9\) An excerpt of the Court of Auditors of 5500 procedures for the award of contracts for 5 billion BGN
• Unjustified assessment and failure to state reasons;
• Improperly removed participants;
• Illegal admission of a candidate up to ranking;
• Unlawful extension of time for performance of contracts;
• Delay in payment by the contractor;

The violations of the Public Procurement Act are mainly due to the following factors - the lack of capacity of local experts, knowledge and experience, lack of resources in municipalities to engage business advisers or lawyers and the lack of internal rules to comply with the law and in some case deliberate breakage of the law and corruption issues.

5. Allocation of Funds under OP Environment 2007-2013

Approximately 70% (EUR 1,28 billion) of the total budget of the OPE has been devoted to the Priority Axis 1 “Improvement and development of water and waste water infrastructure in settlements with over 2000 PE and in settlements below 2000 PE within urban agglomeration areas) of OPE (2007-2013)”. This would provide for approximately 68% coverage of the needed financial resources as identified in the Indicative Programme for compliance with Directive 91/271/EC requirements.

The planning of the investments under OPE is made through Indicative Annual Working Program (IAWP). The IAWP lists the procedures and measures, funds allocated to them and the eligible beneficiaries.

The initial approach to implementation of the OPE, where there were no priorities in investment and the funds were granted depending on the readiness of the municipalities and their ability to propose mature enough for funding projects, proved inappropriate. Instead of focusing on the national priorities and mainly achievement of compliance with the requirements of the EU UWWTD, the funds were provided for projects in small settlements that are not a priority. Furthermore, there were indications that some of the projects are too costly and overdesigned, leading to inefficient spending and waste of resources.

The analysis of the implementation of the infrastructure programmes under Priority axis 1 of OPE notes significant discrepancies between the value of the contracts and the average cost per km sewerage infrastructure and euro investment per Pest up in the Programme for implementation of UWWTD and as indicative values set up as a guidance for preparation of infrastructure projects under priority axis 1 of OPE. Other example of ineffective planning is construction of WWTP prior to the construction of the sewerage network. Many of the WWTP are with higher that the actual estimated loads and population size, leading to inefficient operation of the facilities.

The implementation of the programme was also hindered by the existing arrangements with the ownership of the facilities and the role of the WSSC. The last have been stated as programme beneficiaries with the aim to involve them in the preparation of the projects and thus ensure better

10 Audit report of the Court of Auditors, 2011
11 http://ope.moew.government.bg/bg/notice/noticedetail/from/noticecurrent/id/22
technical expertise and then sustainability of the operation of facilities. However the WSSC cannot be beneficiaries as they are commercial entities.

The above problems have been addressed through a change in the Water Law in 2009, which stipulated for creation of Water Supply and Sewerage Associations and changing the ownership of the WSSC to public state ownership and municipal ownership for the networks within the settlements.

In 2009, as a result of the review of the projects in the water sector, the MA of OPE withdrew the financing of the projects, which do not comply with the priorities and the principles of sound financial management. The same year two procedures for selection of project proposals were cancelled. Later in 2009 two other grant procedures under the Priority Axis 1 were cancelled. All the contracts concluded under grant procedures BG161PO005/08/1.10/01/02 were reviewed by experts of the MoEW and EC with the purpose to determine to what extent the approved for financing projects complied with the objectives of OPE. The main disadvantages of the above procedure were the very wide range of eligible beneficiaries, the very wide range of the requirements for eligibility of actions (without focus or priority) and the minimum requirements for project readiness. All mentioned preconditions led to approval of projects which cannot be defined as strategic for achieving the objectives of Directive 91/271/EEC, which were not effective and with different extent of readiness. The conclusion was that the mistakes resulted to great extent from characteristics of the procedures and their design. In 2009 the Managing Authority of the OPE defined a new Approach and Methodology for Selection of Project under Priority Axis 1. The approach includes the following changes:

- Prioritization of projects – project proposal will be scored, priority will be given to the project in agglomerations above 10 000 PE with highest score allocated to agglomerations above 50 000 PE;
- Prioritization of the technical assistance projects for preparation of infrastructure projects again in favour of agglomerations above 10 000 PE and active dialogue with and support to the beneficiary municipalities.
- Ensuring efficiency of the project proposal – priority is given to projects which bring more benefits with less resources;
- Priority is given to construction of WWTP for already existing sewerage systems;
- Priority is given to integrated projects.

The change in the selection and funding approach was a positive step towards improvement of efficiency of investments under OPE. However, the problems with the lack of cooperation between the municipalities and the WSSC, inefficient technical decisions, the time consuming preparation of the proposals and launching of the projects, as well as delays and problems during the construction of the facilities continue to exist. These stem from incomplete and delayed reform in the WSS Sector, lack of strategic approach in the sector, insufficient capacity of the municipalities both in the preparation and management the implementation of the projects.
The beneficiaries should contribute to the national co-financing of the project with 5% of the eligible costs for the projects contracted in 2010. The beneficiary's co-financing will be increased up to 8% in 2011 and 10% in 2012. The municipalities experience difficulties to ensure the co-financing contributions, especially after 2008 in the conditions of reduced budgets. The annual report for implementation of OPE 2011, points out there is no mechanism to engage the operators (WSSC) in the projects including in provision of the co-financing for the revenue generating projects, where the revenues go to the operators but municipality should ensure the co-financing.

Water sector will continue to be important for the next programming period. The eligible measures again are expected to include both water supply and waste water collection and treatment infrastructure.