CORRUPTION ASSESSMENT REPORT 2000

COALITION 2000

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Limiting corruption in Bulgarian society calls not only for institutional and legal measures but also for establishing the rule of law. In this sense, it is of crucial importance to foster a political and economic culture based on trust and respect for public institutions, on transparency and openness in the actions of public administration, and the will to achieve stability and predictability of the economic and social environment.

Coalition 2000 is an initiative of Bulgarian non-governmental organizations which was launched in the spring of 1997 aimed at limiting corruption in Bulgarian society through a partnership between state institutions, non-governmental organizations, and individuals, who developed and have been implementing an Anti-Corruption Action Plan, Corruption Monitoring System, and an anti-corruption public awareness campaign.

The Corruption Assessment Report 2000 follows the structure and approach of the Action Plan adopted by the Policy Forum of *Coalition 2000* in November, 1998. It presents a general evaluation of the state and dynamic of corruption in Bulgarian society and of the efforts to counteract corruption in the year 2000.

Coalition 2000
1 Lazar Stanev Street
1113 Sofia, Bulgaria
Tel.: (359-2) 971 3000
Fax: (359-2) 971 2233
coalition2000@online.bg
www.online.bg/coalition2000

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INTRODUCTION

The phenomenon referred to as „corruption" comprises the sundry forms of abuse of power - economic, political and administrative - which all result in obtaining personal or collective benefits to the detriment of the rights and lawful interests of an individual or of the whole society. The convolution of this phenomenon is a serious challenge to any efforts to assess it comprehensively. The present annual report is the second in a row, which attempts to outline the general framework and the specific dimensions of corrupt practices in Bulgaria seen in their dynamics. As before, our evaluation criteria take into account reputable international analyses and domestic indexes about the spread and the frequency of different forms of corrupt behavior.

The analysis of the Corruption Indexes of *Coalition 2000* shows that, over the past year, the public in this country has still perceived corruption as an obstacle to Bulgaria's development that is especially difficult to overcome. Respondents in various polls have indicated that unemployment, low incomes and poverty are the only factors ranking higher than corruption in terms of social significance. Moreover, the problem of corruption has been given more weight in comparison with the previous year. The latter fact demonstrates that, in the opinion of the public, no sufficiently effective means exist yet to combat corrupt practices so as to suppress them to a tolerable level.

The assessment of corruption as a social phenomenon requires regular monitoring of the social spheres which are highly exposed to corruption risks and of the efforts to combat corruption made by public authorities, non-governmental organizations, the business community and the media. The main priority areas, which predetermine the overall situation with respect to corruption, are considered below.

CORRUPTION AND THE PRIORITIES OF SOCIETY (THE MAIN PROBLEMS BULGARIA FACES) *

	Feb 1999	April 1999	Sep 1999	Jan 2000	April 2000	Sep 2000
1. Unemployment	58,4	64,1	64,6	65,3	71,3	67,8
2. Low Incomes	51,3	49,1	50,2	50,6	48,9	49,0
3. Poverty	31,6	32,9	37,1	41,2	41,9	41,5
4. Corruption	**38,5**	**34,2**	**38,5**	**37,5**	**40,1**	**37,5**
5. Crime	45,4	39,1	32,4	27,9	28,9	25,7

Source: Corruption Monitoring System (CMS) of *Coalition 2000*.
For details regarding the methodology of the surveys included in CMS please refer to: www.online.bg/coalition2000.

* Note: 1) % of those who indicated each factor;
2) Respondents marked up to three answers, which is why the sum total of percentages exceeds 100.

The public sphere as a whole, and **public administration** in particular, are the main areas where corruption persists. Thus, they form the object of targeted anti-corruption measures as part of the reforms. The year 2000 has been characterized by continued lack of clear

distinction between public and private/party interests. This lack of distinction gives rise to a corruption risk, which threatens the very foundations of democracy and of the market economy. For example, a die-hard tradition is that each new government resorts to party criteria to fill the senior administrative posts and the vacant managerial positions in state-owned enterprises. This approach hinders the development of the country's human potential, frustrates the process of public governance and lowers the quality of the public services provided. At the same time, it results in corruption phenomena such as nepotism, clientelism, and trade in influence, which negate both the rights guaranteed by the Constitution and competition in all areas of public life.

Within the framework of **the administrative reform**, legislative measures have been undertaken to regulate the organization and functioning of public administration. These measures would certainly make it possible to achieve transparency and good regulation. Some of the laws passed during the past period are particularly important, *viz*. the Law on Administration, the Law on Administrative Services to Natural and Legal Persons, the Law on Civil Servants, etc. The new legislative rules on the financial and property standing of senior government officials are also expected to have a direct anti-corruption effect. They are primarily contained in the *Law on Property Disclosure by Persons Occupying Senior Positions in the State*, an instrument of strong moral influence that could accelerate the emergence of a new style of conduct among the political elite. Nevertheless, the new legislation is not devoid of gaps and deficiencies. This is for instance the case with the Law on Access to Public Information - as the provisions on the protection of personal data and on official secrets have been substantially delayed, the Law could not materially improve the access of the public to information.

The recommendation of *Coalition 2000* made last year - **that legislative rules on the funding of political parties** be enacted - is still valid. This would make it possible to restrict the corrupt practices in an extremely important area and prevent the illegal symbiosis between economic and political interests. Another unresolved problem along the same lines is the regulation of lobbying in the context of parliamentary practice.

Restricting the use of political „umbrellas" would be crucial for reconfirming the independence and stability of the **judiciary**. In that respect, it is important to ensure the support of the government to the need for judicial reform. In terms of combating corrupt practices, the executive is the branch that should put in place the conditions required to sanction corrupted persons promptly and effectively, to eliminate any possibility of corruption within the judiciary and to improve its functioning of and professionalism.

The **economic sphere** as a whole, and the privatization process in particular, are of key importance for the combat against corruption. Despite accelerated privatization, which is expected to downsize the potential for corruption in the economy in the long run, the non-transparent privatization procedures have again prevailed over the past year. A typical example here is the negotiations with potential buyers. The previous Corruption Assessment Report of *Coalition 2000* already pointed out that such procedures open the door to subjective criteria and corrupt practices.

In addition, the state and non-governmental organizations have failed to

exercise regular **post-privatization control,** which has resulted in obscuring the entire process of ownership transformation in the country. Taken as a whole, all these negative factors keep serious foreign investors away and impede the entrenchment of clear-cut business rules in the private sector. The very fact that, at the yearend of 2000, the government has decided to apply a new strategic formula to the final stage of privatization connotes the deficiencies and irregularities of the model of divestiture followed to date.

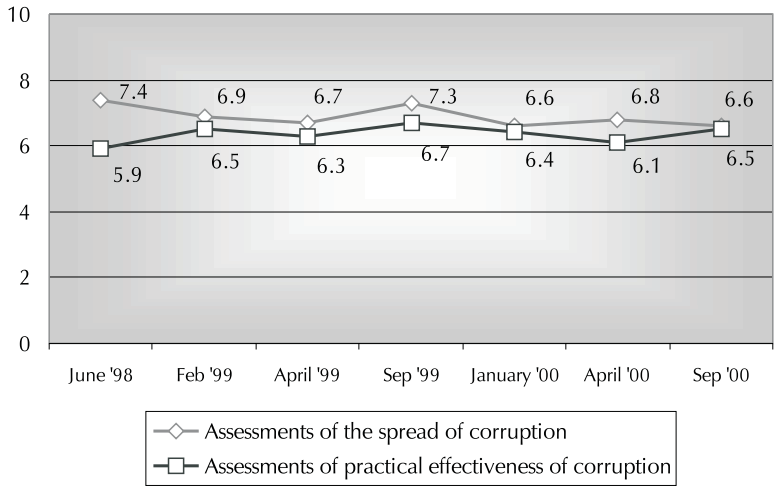
There has been an obvious need to improve **corporate governance as a counterbalance to corrupt practices in the private business**. The implementation of modern corporate governance standards based on transparency and self-regulation is a priority in the joint efforts of *Coalition 2000* and the Corporate Governance Initiative in Bulgaria.

The **symbiosis between corruption and smuggling** has a devastating effect with persistent social implications. According to expert assessments, over the past few years there has been a large degree of criminal interaction between smugglers and civil servants at virtually all levels in Bulgaria. Illegal imports become the source of dirty money and largely fuel the „gray sector" of the economy, which is estimated to be as high as 35 per cent.

When assessing the **dynamics of corrupt behavior and of the public attitude *vis-a-vis* corruption**, we have identified some rather inconsistent trends. On the one hand, the growing public intolerance to corruption „at the top" is tangible. On the other hand, quite so apparent is the opposite trend, *i.e.* the public resignation at the lack of progress made through the actions or inaction of those in power. A disturbing fact is that, for the first time in the past two years, there is a trend of growing overall tolerance to corrupt practices when these are used as an instrument to protect individual interests. This trend goes counter to the heightened intensity and visibility of the public debate on corruption and mirrors the ever more evident discrepancy between the declarations of some political authorities and rep-resentatives of the elite and their actual deeds. A cynical way of thinking would invariably prevail if the words against corruption become an alternative to the fully-fledged measures aimed at its erasure.

Irrespectively of this ambivalence, over the past year there is a growing understanding

ASSESSMENTS OF THE SPREAD OF CORRUPTION AND THE PRACTICAL EFFECTIVENESS OF CORRUPT PRACTICES *



Source: *Coalition 2000*
* Note: the maximum value of the index is 10,0 and indicates the highest possible level of corruption. The minimum value is 0,0 and indicates the practical absence of corruption.

in society that corrupt practices should be opposed by way of specific action, that targeted and systematic efforts need to be undertaken in the public sphere in order to arrive at modern standards of transparency and accountability. This general understanding also mirrors the fact that, in articulating the strategy of the reform during the past year, the authorities have laid a stronger emphasis on combating corruption and have put in place certain legislative and practical measures endowed with a significant anti-corruption potential.

The role of the **civil society** in formulating anti-corruption ethics tends to expand. Similarly, we have witnessed the growing importance of independent media, primarily the press, in voicing the public interest to curb corruption in the public sphere. Non-governmental organizations have had specific contribution in this respect in establishing a **public-private partnership** to combat this phenomenon. The role of *Coalition 2000* is emblematic here, as this is a lasting formula enabling the co-operation among representatives of civil society, public institutions and the community of experts, and journalists.

The efforts of different public groups aimed at curbing corruption in the country could not have been so intense and well focused without the efficient **cooperation**, on a completely equal fo-oting, **with a number of international organizations, world financial institutions and foreign government and non-government agencies,** which are active in combating corrupt practices. Over the past year, this cooperation has concentrated on establishing rules of transparency and openness in international transactions, and Bul-garia's involvement in this process has gained strength through its accession to some newly adopted legal instruments.

Thus, the improved corruption rating of Bulgaria in the period 1999-2000, published by Transparency International, a well-known international NGO, has had visible repercussions in domestic politics. In comparison to the previous two years, Bulgaria has moved ahead to 52nd from among 90 countries (it ranked 67th in 1998, out of 85 countries, and 63rd in 1999, out of 99 countries). This result is due primarily to the legislative efforts made to date and could turn into a stable trend if the authorities manage to transform the anti-corruption measures into a lasting priority of government policy.

A. CREATING A FAVORABLE INSTITUTIONAL AND LEGAL ENVIRONMENT FOR CURBING CORRUPTION

The assessments of the changes, which have or have not taken place in terms of institutional and legal improvement, could be used as a starting point to outline the dynamics of corruption over the past year and highlight the future objectives. The emphasis is laid on one of the spheres most vulnerable to corruption, *i.e.* public administration, and on the development of its regulatory framework. In addition, attention will be drawn to the interweaving of the public and the private sectors and the search for mechanisms to distinguish between them and improve the transparency of their dialogue.

A.1. Public Administration Reform and the Role of the State - Legislative Framework

The fundamental goal of the administrative reform is to turn transparency and accountability into essential characteristics of all structures of power, especially the administration. Thus, citizens would have a larger and better regulated access to public services, while the risks of abuse of power and discretion by the civil servants would be restricted.

After a certain delay, the yearend of 1998 and the whole 1999 saw a large-scale process of adopting pieces of legislation designed to govern the organization of public administration and its functioning. As a follow-up, 2000 had to be the year of completing the legislative framework, putting in place the required instruments of secondary legislation and successfully launching the enforcement of the new rules aimed at curbing corruption.

However, **numerous difficulties have impeded the enforcement of the laws passed in 1999** (intended to be the legal basis for the public administration reform) and of the regulations adopted later in order to elaborate on and specify the existing fundamentals. The regulatory framework as a whole could be qualified as flawed to a certain extent. Hence, it is difficult to ensure its practical enforcement. Other obstacles relate to the inherited inertia of the governmental structures, the conservative mentality of civil servants, the fact that the changes introduced lacked transparency and the ensuing insufficient public support to the entire process of reform. **One thing has proven true in every main area of the reform, namely that the initial stage has not provided enough details to enable a straightforward conclusion on whether the level of corruption has been affected by the new measures, or not.**

Thus, in implementation of the *Law on Administration* (adopted at the year-end of 1998), Rules of Organization and Procedure were drafted and

later adopted for each of the administrations in the executive branch. These are intended to better the transparency of administrative work and to narrow down the possibilities for corrupt behavior within the state institutions. However, the process of bringing those administrations in line with the Law (which has to take place within one year of its effective date) has not been sufficiently open and public. This is also valid for the numerous state agencies and commissions the administrative structure of which is governed by the same requirements. Working mechanisms to ensure the accountability to or information for the public concerning the operation of different institutions were not created in due course. A Register on administrative structures and on the acts of the administrative bodies recently established (with the *Regulation of the Council of Ministers No. 89/2000*) and accessible online via the web site of the government could have a positive impact in that respect. The maintenance of the Register would give an overview on which administrative body is responsible for the implementation of concrete engagements and on the process of re-structuring of the administration.

In parallel to the general negative effects, **the slow pace of the public administration reform** and the lack of clarity about it bear directly on the efficient implementation of the *Law on Administrative Services for Natural and Legal Persons* (passed at the yearend of 1999). This Law stipulates a set of Rules of Organization and Procedure of the respective administrations to regulate the procedures for providing and organizing the administrative services and that the problems not covered by those Rules should be dealt with in „internal regulations approved by the competent administ-rative secretary". It is vital to ensure the disclosure of any such internal regulations, as this would enhance both the awareness of citizens of their own rights and the fulfilment by civil servants of their duties.

The prevention of the existing arbitrariness and abuses of individual interests requires **thorough and limpid rules on the organization and control of administrative services. In addition, procedural guarantees will have to be introduced.**

For example, the *Law on Administrative Services for Natural and Legal Persons* lays down a general procedure for the provision of administrative services. At the same time, other laws also lay down general administrative procedures to deal with applications and complaints relative to the work of the administration and, which is worse, these same laws refer to different authorities and deadlines. As the different laws provide for different deadlines and authorities, the individuals are really frustrated in trying to defend their rights.

In order to overcome the inconsistency of the existing regulations, **all procedures relative to administrative applications and complaints should be channeled in a single law** on the basis of a general procedure for issuing and appealing against individual administrative acts, in line with the *Law on Administrative Procedure* and while taking account of the good solutions embedded in the *Law on Administrative Services for Natural and Legal Persons*. Such, though limited, codification of administrative proceedings could provide the indispensable legal guarantees for the rights and obligations of citizens in their interaction with the administration. It could also enhance the transparency and control of the conduct of administrative authorities and discourage the resort to „unregulated"

practices in the context of administrative services.

- The *Law on Civil Servants* (in effect from August 28th, 1999) is already being enforced. Some of its implementing regulations have been issued, *e.g. Ordinance on the Official Status of Civil Servants* (in force from March 22nd, 2000), *Ordinance No. 1 of the Documents Required to Take up Position in the Civil Service* (of March 21st, 2000), *Ordinance, setting up the uniform classification of administrative positions*. The State Administrative Commission is in the process of being set up (*Regulation of the Council of Ministers No. 152 of July 28th, 2000 on the Organization and Activities of the State Administrative Commission*, in force from August 1st, 2000). By virtue of the *Law on Civil Servants*, that Commission is given the task to exercise the overall supervision for compliance with the civil servant status and for the fulfillment of the ensuing obligations. It is currently hard to predict how efficient that supervision would be, given that the Commission only *may* but *is not under an obligation* to give mandatory instructions to the appointing authorities to rectify the violations relative to the civil servant status. Currently, the *Rules of Organization and Procedure* of the Commission are under preparation.

  The Law has one drawback in that it has unduly restricted the circle of persons to which it applies. In particular, excluded from its personal scope remain the members of political cabinets, the deputy regional governors and the deputy mayors. Such an approach is at odds with the European standards, which require that the whole public administration be de-politicized.

  In the meantime, an Institute of Public Administration and European Integration was set up which is mainly entrusted with improving the professional skills of civil servants. A *Draft Code of Conduct* for civil servants including rules with anti-corruption effect has been prepared. The measures aimed at promoting the status of civil servants and improving their professional skills should be accompanied by mechanisms preventing the conflicts of interest and reinforcing the internal controls.

  The prohibition for civil servants to make statements on behalf of the administration needs to be made more specific on the basis of a differentiated approach. The point is that compliance with the rule as it is would result in isolating the public administration and encouraging the lack of transparency which, in turn, would certainly give food for suspicions and invite media allegations. In this respect, as well, there is a clear need for rules governing the dialogue with the public and especially the communications with the media.

- **The rules on the financial and property standing of persons occupying senior positions in public authorities has undergone a substantial legislative development.** Their practical implementation would be of key importance for curbing corrupt practices at the highest level of political power. First, the civil servants have been explicitly obliged to declare their property and later, the *Law on Property Disclosure by Persons Occupying Senior Positions in the State* was adopted (in effect of May 13th, 2000). Such persons are required to declare their property on an annual basis, as of May 31st every year, and this obligation extends to any person occupying a senior official position. They should declare not only their own income and property acquired during the respective previous year but also the income of their spouses and

children under 18 years of age.

The Public Register of persons obliged to declare their property under the Law should be kept by the President of the Court of Auditors. The Law has also defined the group of persons entitled to have access to the data contained in that register and lays down the procedure for getting such access.

Though this particular Law contains primarily what could be labeled „wishful" provisions, the disclosure of compliance or failure to comply with the rules is expected to entail strong moral effects. These expectations have already been met in the first months after the Law had come into effect: even **the mere disclosure of the names of persons who failed to declare their income on time has brought about a public response that could be regarded as a deterrent to corruption.** Nevertheless, the need to monitor the enforcement of the Law, and sanction those who have encroached on it, is still there.

MAIN FACTORS INFLUENCING THE SPREAD OF CORRUPTION *

	April 1999	Sep 1999	Jan 2000	Sep 2000
Desire for fast enrichment of those in power	52,9	54,8	57,0	57,8
Low salaries	51,5	43,6	47,2	41,6
Poor legislation	38,8	37,8	35,1	40,5
Overlap of official obligations and personal interest	25,8	28,3	28,3	32,6
Lack of strict administrative control	36,4	33,8	30,8	32,3
Inefficient judiciary	19,6	27,5	24,7	22,2
The moral crisis in the period of transition	19,4	19,4	18,2	17,0
The problems inherited from the communist past	6,8	7,4	7,3	7,8
The specific characteristics of Bulgarian culture	6,9	4,7	5,9	4,2

Source: *Coalition 2000*

* Notes: 1) % of those citing each factor;
2) respondents marked up to three factors, which is why the sum total of percentages exceeds 100.

The long-awaited ***Law on Access to Public Information*** was passed and came into effect on July 11th, 2000. It is expected to furnish the legal prerequisites for the transparent functioning of the public administration. Its adoption, however, has not automatically put in place all the technical, organizational and legal conditions required for that purpose. **First of all**, the existing registers are incomplete, often contain mistakes and have not been kept with the idea of providing general access to them. There are almost no general information systems in the spheres most liable to corruption: real estate transactions, customs, taxes, etc. **Besides**, the access to public information goes hand in hand with the Law on Personal Data Protection and the Law on Official Information, but none of these has been passed to date.

If concepts such as „official secret" are not clearly defined and are not regulated by a law, the public authorities would not lose their freedom to make subjective assessments. This, in turn, could impede the access to public information or could reproduce certain corrupt practices and actions.

In addition, it is impossible to guarantee the protection of the individual against the abuse of personal data by the state or by third parties until stringent rules on the collection of and access to personal information have been set out in a special law. The *acquis communautaire* also requires that personal information should be collected and processed only in strict accordance with a law. In Bulgaria, various secondary regulations are in force, which provide for registration, permission and licensing regimes and require that personal data be gathered and processed. Numerous entities operating under private law - e.g. banks, the Bulgarian Telecommunications Company, the National Electricity Company, the district heating companies, etc. also collect the personal data they need in the course of their business. The overall result is that the domestic legislation in force fails to offer protection of those data and information by virtue of a law. The passing of a law on personal data protection becomes even more important in view of the growing use of electronic data exchange and communication in business relations and in the daily contacts between private persons or between them and the administration. The government has drafted **a bill on personal data protection** which was publicly discussed at the end of September, 2000 (the debate was organized by the Legal Directorate of the Council of Ministers and the Information Centre of the Council of Europe in Sofia with experts from the Council of Europe and the Bulgarian Government, NGOs and the media).

- The *Code of Tax Procedure* was passed which became effective on January 1st, 2000. It contains a number of **measures aimed at preventing and detecting tax offences and reducing corruption in the tax authorities.** An Agency for State Receivables was set up with powers, which could be efficiently used to resist corruption. Internal audit units have been set up as well.

  The measures already in place form a sound basis for a better operation of the tax administration. However, they have not yielded the expected anti-corruption results despite the wide powers given to the tax control authorities. Interestingly, the wide scope of powers has even kindled a discussion as to whether they could be abused and if wider guarantees would be necessary to prevent such abuses. If the tax legislation is amended as envisaged and the applicable tax rates are reduced, the tax burden on private operators and individuals would be eased and the collection rate would certainly improve. Indirectly, this would also limit the number of cases of tax evasion by way of corruption.

- It is still necessary **to reinforce the role of the State Financial Control,** including that of the Court of Auditors, which is the highest governmental institution vested with independent supervisory powers in this area.

  A new *Law on State Financial Control*, in force since January 1st, 2001 was adopted. They introduce a modern system of financial control, based on the preliminary internal control that is combined with the external control, exercised by the Court of Auditors. The institutions in charge of that control would carry out audits and internal inspections at the stage before the Court of Auditors has stepped in, in order to screen the expenditure of funds allocated from the budget. It is necessary also to control the way in which proceeds from privatization

deals are spent. The rules on both types of liability proposed - administrative penalties and financial liability - *must* be improved. In the meantime, in June this year the government presented to the National Assembly a Draft Law on the Court of Auditors but later withdrew it as neither that draft, nor the Draft Law on State Financial Control (mentioned above) contained any rules on the economic, financial and accounting expert opinions delivered in court. At present, there are 28 services for expert opinions, which are attached to the district (second-level) courts but are subordinated to the Ministry of Finance. Their operation is anything but transparent and does not create conditions for the selection of competent experts. The pending proposal is that expert opinions, in cases involving serious financial crime, should be submitted by the Court of Auditors, while in all other cases the court chamber hearing a particular case should be able to choose witness experts from a list of experts authorized by the Court of Auditors. If the reform goes ahead as proposed, it would surely hit back at the possibility for corrupt practices.

- **The application of the *Law on Public Procurement*** (in force from July 5th, 1999) **has invited criticism** in the sense that the indispensable organizational, regulatory (secondary legislation) and administrative prerequisites do not exist yet in order to enforce the principles enshrined in the Law: openness and transparency, free and fair competition, equal participation opportunities for all candidates. One of the negative reactions has actually come from representatives of the private business who believe that the Law, as it is, and its incompetent implementation by the contracting authorities do not encourage the business and prompt abuse and corruption instead. Thus, **it has been proposed to modify the law so as to meet a number of essential targets:**
  - better transparency of the procedure of awarding public contracts and controlling their performance;
  - faster and more efficient appeal procedures;
  - refined relations among the Court of Auditors, the State Financial Control and the Public Procurement Directorate at the Council of Ministers;
  - accelerating the setting up of the Public Procurement Register; the information obtained from that register must be fit to be used as evidence in court (an *Ordinance on Keeping the Public Procurement Register* was issued);
  - fixed minimum level of deposits for participation in tenders;
  - setting up a body (*e.g.* a Public Procurement Agency) which should operate as an out-of-court instance to settle disputes between contracting authorities and contractors;
  - gradual transition to online procurement, to take account of the new information and communication technologies and of the pending proposals for two EC Directives (of May, 2000) on electronic public procurement (the expectations are that the share of on-line procurements should reach 20 per cent by the year 2003).
- **The new foreign exchange legislation** - the *Law on Foreign Exchange* (in effect from January 1st, 2000) and *its implementing ordinances* - **has**

considerably liberalized the foreign exchange transactions and contributed to the free movement of capital and current payments while **conforming to the standards and measures against money laundering**. A more systematic, flexible and differentiated framework has been created which relies mainly on registration combined with minor elements of authorization and a few prohibitions, the latter only being applicable in the cases expressly listed in the Law. The foreign exchange control has also been organized more consistently.

However, the practice of enforcing the new foreign exchange rules so far has shown that further streamlining would be needed. The procedures to apply for and obtain from BNB the authorizations prescribed, the collection of information from the existing registers, etc., are still quite complicated and cumbersome.

- **The *Law on Measures against Money Laundering* is to be amended and supplemented.** This is necessary in order to bring the Bulgarian law fully into line with the Directive of the Council of the European Community on prevention of the use of the financial system for money laundering. The amendments should enlarge the control mechanism used to check compliance with the Law, extend the powers of the Financial Intelligence Unit, and regulate its relations with the tax and other State authorities. Besides, the data provided to the Financial Intelligence Unit should be better protected.

- As early as 1999 a *Draft Law on Combating Corruption and Financial Crime* was prepared and presented to Parliament. The controversial issue in the law is the status of the proposed new entity - Government Agency for Combating Financial Crime and Corruption (*i.e.* financial police) - which should be a specialized body with the Council of Ministers. The different views on this body, however, should not prevent the search for more appropriate solutions in this sphere as well.

- In September, 2000 the Council of Ministers adopted *Rules on the New Information System,* which is to link the data of the customs, the Ministry of Interior and the judicial system. The system shall be set up with the National Statistical Institute in order to concentrate all the activities in combating crime that are undertaken by the Ministry of Interior, the Ministry of Defense, the investigation services, the courts and the public prosecution offices. The project is in its initial phase. The technical prerequisites for its full implementation do not exist yet, though technical improvement is especially needed in the courts in order to enable the registration of all court files and the processing of information on their closing. Though an inter-institutional group has been set up for that purpose, the register is expected to become partially operational only in the spring of 2001. At the same time, there are no legislative rules on the official information or the protection of personal data and, hence, there are no guarantees against the abuse of data. This entails a substantial risk of corruption, especially when data on serious crimes are at stake.

  In conclusion, the development of the legislative framework for the public administration reform and the role of the state during the past year have revealed the need for legal prerequisites of a sufficient range that could efficiently deter corruption. **Regardless of the progress on paper, the sectors most exposed to corrupt practices have not been affected tangibly.**

A.2. The Institutions and the Public

The defects of the legislative framework of the reform and the lack of sufficient, sustainable legal prerequisites preventing corruption impact immediately on the functioning of governmental institutions and of the civil society, and render the building up of an anti-corruptive institutional environment virtually impossible.

SPREAD OF CORRUPTION IN PUBLIC INSTITUTIONS *

	April 1999	Sep 1999	Jan 2000	April 2000	Sep 2000
Customs	8,78	9,10	9,02	9,10	8,90
Privatization Agency	7,46	7,86	7,96	8,28	8,06
Court system	7,62	7,88	7,68	7,68	7,60
Foreign Aid Agency	-	-	-	7,78	7,54
Tax Offices	7,10	7,98	7,68	7,56	7,54
Governmental Departments	6,94	7,40	7,24	7,44	7,50
Government	6,58	7,12	6,94	7,10	7,44
Parliament	6,78	7,16	6,96	7,24	7,42
Police	7,16	7,54	7,30	7,24	7,14
Committee on Energy	6,40	6,84	7,00	7,10	7,00
Local authorities	6,90	7,32	7,02	7,04	6,94
B T C	-	-	-	6,28	6,60
Municipality Administration	6,64	7,24	6,82	6,74	6,54
Commission for the Protection of Competition	6,14	6,40	6,18	6,68	6,54
Securities and Stock Exchange Commission	6,24	6,28	6,22	6,50	6,46
National Audit Office	5,74	5,86	5,54	5,84	5,98
Bulgarian National Bank	5,34	5,32	5,34	5,16	5,72
National Statistics Institute	4,80	4,54	5,00	4,68	5,02
Army	4,88	5,06	5,06	5,08	4,98
Presidency	4,46	4,50	4,28	4,52	4,52

Source: *Coalition 2000*

* Note: the maximum value of the index is 10,0 and indicates the highest possible level of corruption. The minimum value is 0,0 and indicates the practical absence of corruption in the respective institution.

- State institutions still manifests a stronger reflex of defensiveness and self-preservation rather than of developing mechanisms to protect the citizens and the society against the abuse of power. The democratic decentralization of the state has not taken place yet. Though the private business prevails as a result of the privatization process, the traditional major role and functions of the state in the sphere of economy have not been replaced by an adequate mechanism or by new functions. **The issue of the relationship between public administration and the private sector in the economic area has remained unsolved.**

The newly-established market relations have resulted in a predominantly private sector in the economy. This necessitates a change in the functions of the administration, especially in the line ministries dealing with the economic sector, and requires that a new type of communication be established among them. The lack of norms regulating that communication paves the way for corruption and feeds the public suspicions that corruption flourishes**. The relations in question should be based on clear rules.** This could not only enhance the business development and the building up of a modern and efficient administration, but would also curtail the opportunities for corruption.

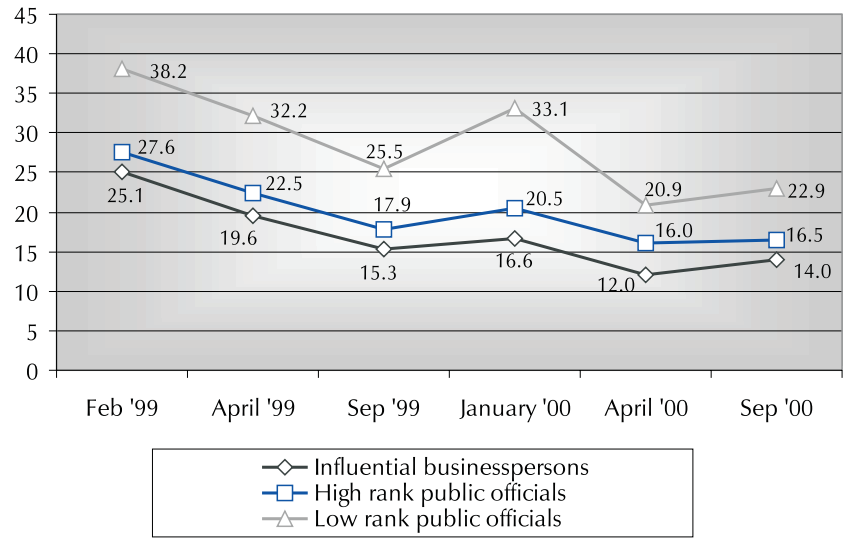
No progress has also been made in terms of **transferring some public functions onto private entities**, despite the repeated requests of the private sector and the pressure it exerts to that effect. A curious example

here is the proposal of the professional guilds to be endowed, by virtue of a law, with the power to issue authorizations to practice any trade or activity, except those bearing on national security or public health, or regulated by international instruments.

The transfer of some functions of the state to non-governmental organizations is an outspoken feature of modern democratic countries. It is also **a must in the development of an anti-corruption model** of relations between the state and civil society in the countries in transition.

The envisaged amendments to the Constitution and the set of draft laws relative to local governments should make the municipalities much more independent in general and in respect of taxation. However, there is no well-defined view, substantiated in public, on the specific solutions and objectives to be implemented or pursued and this issue is rather mentioned in the context of the pre-election campaign.

EVALUATION OF THE COMMITMENT OF THE GOVERNMENT TO FIGHT CORRUPTION AMONG CIVIL SERVANTS AND BUSINESSMEN (RELATIVE SHARE OF RESPONDENTS INDICATING THAT „THE GOVERNMENT MAKES SERIOUS EFFORTS")



Source: *Coalition 2000*

- The system of political parties is not built along principles and models that would make it more transparent and independent of the state. Moreover, there have been ostensible attempts to subject the interests of the state to private political interests and priorities. The growing number of party-affiliated persons at the highest layers of the civil service clearly betrays the on-going merger between the governing party and the state apparatus.

There is no **legislative solution yet to the funding of political parties.** It is urgently needed to introduce state funding based on objective criteria and accountability and while observing strict rules to ensure the transparency of party finances as a whole and of the funds used during pre-election campaigns in particular, in order to curb corruption related to political parties and cut off the informal bonds between political parties and private interests.

A *Draft Law on Political Parties* has been presented to the National Assembly. It is the outcome of consultations among the political parties and would prohibit political parties from engaging in economic operations. In addition, parties represented in Parliament would receive an annual subsidy from the state budget. The development of rules on political parties is closely connected with the election laws, though the discussions on possible amendments to other pieces of legislation are still held at different levels and in an isolated manner.

- In the year 2000, as a result of the initiatives of *Coalition 2000*, not only the society but senior politicians have endorsed the idea of **setting up a specialized Ombudsman-type institution to supervise and monitor the work of the public administration.** Within the framework of *Coalition 2000*, a concept paper and a *Draft Law on the Ombudsman (Public Mediator)* have been developed and widely disseminated and discussed. Adequate public support already exists that such a mechanism is needed as an additional hurdle to corruption and arbitrariness on the part of the administration.

Such an institution, in one form or another, exists and functions well not only in Sweden, its native land, but also at the European Union level and in nearly all European countries, including almost all Southeast European countries.

The passing of a special law would make it possible to build up a nation-wide mechanism - as well as municipal level institutions - operating on the basis of high ethical standards and reputation in order to counteract abuses by the administration, to resist the blurring of the distinction between private and public sphere, and to protect the citizens and their rights. The Center for the Study of Democracy and the Center for Social Practices have launched experimental projects for introducing the position of *civic observer* and *public mediator* in several municipalities, and the results have reconfirmed how useful it would be for the society to have such mechanisms at its disposal.

After a delay of almost 10 years, in September, 2000 the *Law on Non-Profit Legal Entities* was passed (to become effective on January 1st, 2001). The law lists the types of non-profit legal persons: public benefit organizations (PBOs) and mutual benefit organizations (MBOs). Upon setting up, PBOs should be entered in the Central Public Register with the Ministry of Justice. They shall be controlled on an annual basis: a PBO should submit to the public register, until May 31st every year, information on its activities and on any changes registered in court, a list of the members of its governing body, certified annual financial statements or an audit report by a qualified chartered accountant, an annual report, a declaration of the taxes, fees, customs duties and other outstanding public debts, and any changes in the Articles of Association or an alternative constituent instrument. The openness and control of the operation and finances of PBOs would be important tools in resisting abuse and corruption.

B. REFORM OF THE JUDICIARY

The fundamental objectives of the judicial reform are **to create conditions for the quick and efficient sanctioning of corrupt practices and to preclude any possibilities for corruption in the judicial system.** These objectives directly correspond to the degree of independence and stability of the judiciary, and to the level of professionalism and the public confidence in it. These goals determine **the priorities of the reform**: improving the legal basis of the reform in terms of substantive and procedural laws (legislative reform *stricto sensu*), education and training of judges, public prosecutors and investigators, and reform of the court administration. The need for judicial reform and its priorities are shared by the *Judicial Reform Initiative* which brings together eight NGOs (one of them being the Center for the Study of Democracy) and representatives of governmental and international institutions, following the model of *Coalition 2000*. The consensus-based document - **Program for Judicial Reform** - which was drafted and endorsed at a Policy Forum in May, 2000 identifies the areas of action and lists specific proposals within the framework of the priorities identified.

An important development in this field over the past year has been the growing recognition, at the highest level of government, that judicial reform is actually needed. Thus far, the government has been reluctant to agree that the term „reform" should apply to the judiciary. Following the developments within the judiciary and under pressure by civil society, including the professional associations of magistrates, the executive branch now recognizes the inefficiency of the existing court administration, the difficulties with the administration of justice and the problems with the training and recruitment of magistrates and court staff. As a result, in October, 2000 a *Draft Law to Amend and Supplement the Law on the Judiciary* was prepared on the initiative of the Ministry of Justice and a number of NGOs. The proposed amendments to the Law on the Judiciary, which is the organic act of the Bulgarian judicial branch, provide that competitions should become the main method of recruiting magistrates, offer a new approach to the training of magistrates, introduce a status of magistrates by analogy with the status enjoyed by civil servants, and suggest measures for the capacity-building of the Supreme Judicial Council and its better co-ordination with the Ministry of Justice.

B.1. Legal Basis of Judicial Reform

B.1.1. Criminal Law and Procedure

Criminal substantive and procedural legislation directly bears on corruption. This legislation has been developing, though on a rather piece-meal basis, in **introducing criminal sanctions corresponding to modern forms of crime, including corruption, and to ensure a speedier and more efficient administration of justice.**

- In the year 2000, **the *Criminal Code* was amended on two occasions**. **The first set of amendments** (in effect from March 21st, 2000) **enhanced the criminal measures in areas often marked by corrupt actions.** They affected drug trafficking by incriminating two new aggravated offences - enticing or forcing someone to take drugs. The sanctions were increased and the forms of crime were expanded relative to the theft of motor vehicles and smuggling and on the other hand the imprisonment previously imposed for libel and slander was replaced with fine and those crimes will now be prosecuted on a complaint of the victim. **The second set of amendments** to the Criminal Code (in effect from June 27th, 2000) **increased the sanctions for bribery.** Aggravated crimes were introduced, as well as criminal liability for the officials. Two completely new offences were incriminated - promising and offering bribes. The act of the official who has asked for or has accepted bribery is criminalized. A scope, in cases of active bribery of foreign officials and outside the carrying out of an international commercial activity has been broaden. Incriminated ware also an act of promising and offering of a bribery to the foreign officials. The provision on what is known as „loyalty check" (provocation to bribery) was substantially improved.

With the latest amendments to the Criminal Code, the main forms of corrupt behavior have been covered to a fuller extent. Nevertheless, the results of the combat against the heaviest forms of corruption are far from satisfactory. Corruption-related crimes are difficult to prove, so **the criminal-law measures will have to be reinforced.** These measures should not only punish those guilty of corruption but also prevent the corrupt practices through their deterring and educational effects and promote an overall public intolerance to corruption. **In order to improve the legislative rules on bribes** (often perceived as a synonym to corruption), **the following steps should be undertaken:** 1. The criminal liability for bribery should be differentiated in view of the perpetrator: the list of people who could be the possible perpetrators of bribe-related crimes has been extended by the Criminal Law Convention on Corruption of the Council of Europe, which is signed but not yet ratified by the Republic of Bulgaria. For instance, aggravated passive bribery offences could be included in the Criminal Code when the wrongdoer works in the judiciary. Along the same lines, the bribery of municipal servants should be incriminated. 2. „Trade in influence" should be incriminated, of course after the indispensable legislative rules have been introduced on lobbying; 3. The list of perpetrators of passive bribery should be extended; 4. The „loyalty check" should be decriminalized if it is intended to expose corrupt public officials.

One important issue to be resolved with the possible future amendments to corruption-related criminal rules is **the immunity from criminal prosecution.** Such immunity is currently enjoyed by Members of Parliament and by magistrates.

In the long run, **a new Criminal Code should actually be drafted on the basis of a comprehensive new policy** of criminal prosecution and an approved strategy of combating the modern forms of crime.

- **The amendments to the *Code of Criminal Procedure*** (in effect from January 1st, 2000) **had to transform the trial phase into a central stage of criminal procedure**, at the expense of the pre-trial

proceedings which are not public by definition and, hence, are deemed to be more beneficial to corrupt practices. The judicial control has been enhanced of the various „measures for non-absconding" and, generally, of any measure that interferes with individual rights. Plea bargaining has been introduced which enables the prosecution and the defense to negotiate the penalty. This is a flexible instrument that would speed up the process of criminal prosecution and would prevent the corrupt practices in the relations between defendants and magistrates.

The latest amendments to the Code of Criminal Procedure have been in force for a relatively short period but have evoked fairly contradictory comments among the magistrates. Public prosecutors have reservations about the efficiency of the new solutions and have even criticized some of them, *viz*. the scope of police proceedings, the fact that the procedural measures undertaken by investigators are not admitted as evidence in court, the reduced powers of the prosecution, and the judicial control over the right of the prosecutor to discontinue the criminal proceedings or to suspend the execution of the penalty of imprisonment. Opinions are voiced that, instead of accelerating the criminal proceedings, the amendments to the Code of Criminal Procedure slow down the movement of cases and that corruption has now changed house and moved to the court. The judges, on the other hand, insist that judicial control of all steps undertaken at the pre-trial stage should be kept as a crucial characteristic of modern adversarial criminal proceedings and that public trials best protect the interests of citizens. Apparently, a comprehensive analysis should be made to find out why some of the controversial provisions have not worked well enough. An objective survey is also needed of the case-law as this is the best instrument to gauge the appropriateness of a given solution.

In parallel, a long-term concept should be elaborated which should serve as a basis for an entirely **new Code of Criminal Procedure. All conditions should be put in place to ensure the openness and transparency of criminal proceedings, the rapid and non-expensive prosecution and penalizing of petty offences, and to accelerate the procedure in the event of serious crime, with the concept of „serious crime" encompassing all forms of corruption.** The structure of the future new Code of Criminal Procedure should be accurately weighted so as to cover the use of special surveillance means, unify the modern terminology and change the evidence rules, while emphasizing on the guarantees against arbitrariness in the process of gathering evidence.

B.1.2. Civil and Administrative Law and Procedure

- The development of civil and administrative legislation, though not always directly affecting corruption, could also deter or contribute to it. The numerous amendments to the existing laws and the many new laws are not always consistent with each other and yield **contradictory results in terms of law enforcement**. This **could facilitate corruption**, especially when private interests are interwoven with powers vested in a public authority.

As far as property law is concerned, attention should be given to the *Law on the Cadastre and the Property Registry* adopted in the year 2000 (to come

in force on January 1st, 2001). This instrument is expected to be a major step in the transition from the „owner-based" to an „estate-based" system of real estate registration. This will certainly provide genuine guarantees for all real estate transactions - an area currently marked by significant instances of fraud and abuse.

In the year 2000, the *Commercial Code* was amended but the amendments are not in force yet. One of the provisions **expected to improve the quality of the administration of justice and to have a distinct anti-corruption effect** is the new Section 613b. It enables appeals before the Supreme Court of Cassation against all rulings delivered in the course of or putting an end to insolvency proceedings and also prevents local level versions of insolvency case-law and the dispute resolution based on local interests and conjuncture, rather than on law. Thus, the Supreme Court of Cassation would be able to exercise its Constitutional power, *viz*. to exert the final control for the correct enforcement of the existing legislation.

An expert group with the Center for the Study of Democracy developed a *Draft Law on Electronic Documents and on the Electronic Signature,* which was presented to the National Assembly in October, 2000. Its passing would enhance the speed and the certainty of online transactions and of electronic data exchange in general. Its implementation in the relations between public administration, on the one hand, and citizens, organizations and merchants, on the other hand, would not only accelerate the provision of administrative services but would make the whole process much more transparent and reduce to a minimum the possibilities to solicit or offer bribes.

The *Law on Consumer Protection and on the Rules of Trade* (in effect from July 3rd, 1999) was the first piece of legislation to set out rules in this specific area. The initial stages of its enforcement are marked by some difficulties that should be quickly solved. The Law provides for the so-called „class actions" but the Code of Civil Procedure contains no provisions on such actions. This major gap has to be bridged by introducing the necessary legislative amendments.

- The *Code of Civil Procedure* was amended in 1999. The new provisions guarantee the impartiality of the court, reduce the opportunities to postpone the hearings, introduce summary proceedings, and limit the insolvency proceedings to two court instances. These amendments, however, have not brought about any tangible improvement of court proceedings. **Further amendments will be needed along these lines in order to eradicate any chances of protracting the procedure on purpose or abusing procedural rights, as all this generates corruption.**
- The execution of judgments is the part of civil procedure, which concludes the process of civil litigation but has been least reformed. The clumsy and inefficient, frequently corrupted, execution proceedings negate all efforts to improve the administration of justice. **Legislative amendments are required in order to minimize the possibilities for endless delays in the enforcement proceedings** and supply creditors with better guarantees.
- **The administrative procedure** in the country is governed by several regulations: the *Law on Administrative Proceedings*, the *Law on the*

Supreme Administrative Court, some provisions of the *Code of Tax Procedure*, the *Law on Regional and Urban Planning*, the *Law on Administrative Offences and Penalties*; in some instances references are made to the *Code of Civil Procedure* which thus becomes applicable to administrative disputes. All these legislative instruments were passed in a different era, when the social and economic conditions were quite dissimilar. As a result, the rules are inconsistent and, moreover, serious contradictions are frequently encountered. The lack of a lucid framework of administrative procedure is equal impediment to citizens, the administrative authorities and the courts. **A *Code of Administrative Procedure* should be adopted** in order to bring the various administrative proceedings under the same roof and make them coherent. Such a code should solve a number of problems: it should set out the legal criteria for administrative acts that would not be subject to judicial control; the equality of the parties to administrative disputes should be promoted, especially with respect to the collection of evidence; legal guarantees should be provided for the enforcement of court judgments by the administrative authorities (*e.g.* by elaborating a more efficient system of fines and other sanctions).

B.2. Reforming the Organization of the Judiciary. Training of Magistrates

Legislative amendments alone could not ensure the success of the judicial reform. In order to consolidate the independence of the judiciary, its organization should be modified, the operation of the courts, the public prosecution offices and the investigation services should be modernized, the recruitment of magistrates should be refined, the professional training of judges, public prosecutors and investigators should be improved. In addition, the court staff should be better trained and sufficient financial resources should be made available.

The composition of the judiciary and its organization are in the hands of **the Supreme Judicial Council**. This body **needs a fundamental institutional strengthening and a strategy to help it solve the following extremely important problems** (also relevant to the fight against corruption):

- developing and adoption of transparent criteria for the recruitment of judges, public prosecutors, for their promotion and for the imposition of administrative/disciplinary sanctions on them;
- developing a system of control over and standards for the professional conduct of magistrates, while also improving the procedure for lifting, where necessary, the immunity from criminal prosecution;
- setting up a specialized structure in charge of investigating the allegations of corruption in all units of the judicial system.

On April 27th, 2000, a *Law Amending and Supplementing the Law on the Judiciary* was passed. In a sense, it departed from the goals of the reform as the members of the Supreme Judicial Council were stripped of their right to bring a motion for disciplinary proceedings. At present, this power is given, in a rather mitigated form, to those who are SJC members by operation of law: the President of the Supreme Court of Cassation, in respect of judges working at the Supreme Court of Cassation and the courts of appeal; the President of the Supreme Administrative Court, in respect of judges working at that Court, and the Prosecutor General, in

respect of all public prosecutors and investigators. With the adoption of the amendments, the then pending disciplinary proceedings against magistrates were discontinued.

The Law on the Judiciary must be amended in order to create the *sine qua non* for achieving the important objectives of the reform.

- Throughout the process of judicial reform, **the administrative staff of the judicial system** has been unduly neglected. This staff **is still organized in accordance with old-fashioned rules**, **the officials' work in a way and in an environment that incites to corruption** in the contacts between staff and citizens. No instruments of secondary legislation exist on the work of the administrative staff employed at courts, prosecution offices or investigation services. Numerous registers are kept, most of them manually, the working conditions are primitive, citizens and barristers could hardly get the information they need and all this is conducive to bribery. The existing *Ordinance No. 28 of 1995 laying down the Functions of Servants in Auxiliary Units and Secretariats of County, District, Military and Appellate Courts* does not take account of the need to modernize and optimize the court administration and its work. The Ministry of Justice has drafted some amendments to that Ordinance but has not adopted them yet.
- At present, efforts are also devoted to **automating the administrative functions in the judicial system**. The work under way should result in, *inter alia*, developing a single compatible product for the administrative processing of papers received by all the units of the judicial system; implementing a single software application for statistical data gathered at all levels of the system; linking the information systems of the different courts in a single network and connecting that network to other institutions in order to enable the exchange and use of information (for instance, between the mortgage registration services, the tax authorities and the Cadastre office).
- As far as the training of magistrates is concerned, **the Magistrate Training Centre** (MTC) set up in April, 1999 as a non-governmental entity **is already operational and functions quite well**. The forthcoming amendments to the Law on the Judiciary should tackle the status of the training offered there and the commitments of the Ministry of Justice *vis-a-vis* MTC. Steps should be undertaken also to cover the training and retraining of court administrative staff.

The development of the judicial reform should match to the fullest possible extent the general need for new legal regulation and organizational changes, in line with the new social and economic environment in the country, and should be aimed at achieving both legal stability and confidence in the judicial system.

C. THE FIGHT AGAINST CORRUPTION IN THE ECONOMY

The need to fight corruption in the economy could not be overstated, as this is the domain of the so-called „big" corruption characteristic for illegal transfers of considerable resources. Corruption flourishes on the pitfalls and the unintended consequences of the economic reform whose major goals are to define the new role of the state and its agencies within the institutional framework of transition, to transform ownership in the course of privatization, to create a favorable environment and rules promoting competitive markets, to create productive methods of interaction between the public administration and private business, to stimulate the growth of market institutions and promote self-regulation in private business. All of these goals have a strong anti-corruption potential but they will hardly work without explicit measures targeting various corrupt practices in the economy.

The new configuration of public and private interests in the process of transition to a market economy coupled with the lack of mature mechanisms of prevention has become a breeding ground of for various illegal and semi-legal activities which usually surface in the form of the so-called hidden or „gray" economy defined by the criminal symbiosis of organized crime, semi-legal business entities and corrupt administrators. A particular challenge in the process of transition from a centralized to a market economy comes from the transformation of ownership and redefinition of property rights. In the assessment of the corrupt practices in the economy we should note the contradictory logic of the long-term general anti-corruption potential of the reform, on the one hand, and the lack of transparency in privatization deals, the remaining over-bureaucratized procedures, the lack of effective state control and regulation of market participants, on the other hand. It should also be noted that corruption and bureaucratic routine are among the major impediments to the growth of investor interest in Bulgaria.

C.1. Corruption and Privatization

The process of privatization is the sector of the reform in which the risk of corrupt practices is the greatest. The general conclusion that progress in the course of the reform goes hand in hand with existing bureaucratic procedures breeding corruption is true for the process divestiture; as a result, reform measures remain to a large extent ineffective.

If we consider the current state involvement in the economy we should note that **the share of state ownership has continued to decline in the year 2000, thus limiting the potential for corruption on this basis**. So far, 75 per cent of the state-owned asset targeted by the privatization program have been divested. According to the Privatization Agency 663

of the 673 transactions planned for the year 2000 have already taken place.

At the same time, the state has kept a strong presence in the economy. Thus additional efforts are necessary in order to complete the process of privatization and further limit the opportunities for corruption. There are still about 600 state-owned enterprises (excluding companies in the energy sector, railways, the utilities and the public health not targeted by the privatization program yet). By the yearend of 2001 divestiture in industry, construction, transportation, agriculture and services is expected to be over. Within the same time frame all currently open procedures of liquidation should be completed too - no additional liquidation procedures are expected to take place further.

The state continues to have residual ownership stakes in the equity of a large number of partially privatized enterprises. By mid-year the sale of these residual equity stakes should have been divested as planned in the privatization program for the year 2000 but so far this hasn't been done. This delay creates additional opportunities for corruption - not only it shows administrative incapacity but also a bureaucratic reluctance to permanently give up the opportunity for direct influence in the work of companies functioning as private business entities. The presence of state officials on boards of directors and other managing bodies of joint-stock companies with private majority ownership perpetuates informal links between private business and state agencies, create conflict of interests and undermine the spirit of the reform. **An accelerated sale in the year 2001 of the shares owned by the state in the partially privatized companies** through all available methods (direct sale for cash, centralized public tenders, offering on the stock market, etc.) **will be the best litmus test for the commitment of the state to do away with corruption**.

Divestiture in the sphere of social services, including companies with monopoly power, has begun since mid-2000. The role of these enterprises in the national economy requires special strategies for restructuring and privatization guaranteeing transparency and competition.

Regarding the methods of divestiture used in the year 2000 did not witness any significant change, which would limit the opportunities for corruption. **Negotiations with potential buyers remained the preferred method**, even in cases of sale of small and medium size enterprises. The recommendations of the business community and the international financial institutions for wider use of the mechanisms of competitive tender auctions and the stock exchange remain just a wish, or in the best case scenario, declarations of intent in official government documents with no further follow-up.

The revised government strategy for privatization represents a corrective measure regarding the instruments and modalities of privatization for the purpose of allowing the political authorities to keep at least partial public and investor support as well as trust in its capacity of managing privatization in an honest and transparent manner.

In all of its major policy papers *Coalition 2000* recommends to the privatizing bodies to use transparent public procedures with clear rules for competition and equal treatment. The special recommendation of the Second Policy Forum of *Coalition 2000* in December, 1999 on the need for general rules of negotiations with potential buyers regarding the

application of this method of divestiture was accepted as part of the necessary changes to be introduced in the process of privatization. In spite of the delay, the long-awaited implementation of such measures should further limit opportunities for corruption.

The discussion of the fight against corruption in the economy should not ignore the instances of **corruption of high government officials.** At present, six cases of alleged corruption in the course of privatization involving ministers and deputy-ministers in governments of the ruling coalition are currently under investigation; the officials allegedly involved in illegal activities have been dismissed. These developments may be a sign of a new style of government - they show the growing commitment of the authorities to get rid of the existing corrupt practices. The effectiveness of the measures undertaken in this respect, however, will ultimately depend on the effectiveness of the law enforcement system and its independence from the incumbent political authorities.

Post-privatization control has been actively debated in public this year and political speculations on this issue have been abundant. In its current state post-privatization control is poorly regulated in the legislation; the scarcity of information creates an impression of a biased approach of the state administration in favor of the buyers in certain privatization transactions. It would be unrealistic, however, to insist on revision of certain „shady deals" as the fight against corruption by canceling the deals with alleged corruption involved might lead to new corrupt practices by further delaying privatization and giving administrators and private businessmen new opportunities for collaboration in favor of special interests. Solving the existing problems and avoiding serious unexpected consequences of the process requires a reasonable and flexible approach to the implementation of investment projects and involvement of an optimal number of the employees in privatized companies. A major element of this approach should be the adoption, unification and observation of **clear and transparent rules and procedures for post-privatization control** which will bring to a minimum the existing temptations for an administrator to get involved in illegal or improper activities; without such procedures no provisions for post-privatization control included in the contracts with private investors could be effectively implemented.

The same approach should apply to the related issue of **compliance with concession contracts** taking into consideration the longer time frame of these deals as well as the lack of experience in this respect. It is logical to expect that with the end of the process of privatization *per se* certain officials may try to use these particular contracts for illegal gains as the other opportunities will have significantly diminished.

As the „stormy privatization" is coming to an end the opportunities for illegal gains of public officials at the expense of the public interest will substantially decrease. Nevertheless, even though most of the transformation of ownership has been accomplished, privatization should continue with clear, detailed and transparent rules and under strict civil control. This is of particular importance for the transactions yet to come involving the utilities and other large companies of strategic importance for their respective industries as well as the social services sector. In this sense, **the amendments to the Privatization Law, proposed by the government, and the new strategy which targets many of the pitfalls**

of privatization so far should make the necessary corrections in implementation mechanisms and help achieve the fundamental goals of the process.

An important element of the anti-corruption measures in the economy would be further progress in the field of **corporate governance reform**. The weaker and less effective corporate governance is, the greater the opportunities for corruption are. *Coalition 2000* is working in close collaboration with the Corporate Governance Initiative in Bulgaria (www.csd.bg/cgi) whose goal is to stimulate and support the reform of corporate management in Bulgaria. Among the individual steps to undertake in this respect with expected significant effect for limiting the incentives and opportunities for corrupt behavior we should note the promotion of such principles of modern corporate governance as access to information about the structure of ownership and possible equity crossholding, strict sanctions for abuse of insider information, appointment of external directors in the governing bodies of the companies, regular independent audit and publication of its findings, creation of effective legal and institutional environment for protection of creditor rights, etc.

C.2. Corruption and Business Environment

The year 2000 can be described as the period of **laying the foundations for limiting the corruption pressure on business**. It marks the beginning of active efforts of the state institutions to abolish and bring down the number of licensing, registration and consultation regimes. This has happened in the course of a debate with wide public participation involving business associations as collective intermediaries between private business and the state. Obviously, the corruption pressure continues to be very strong - the „unofficial" payments for obtaining import and export licenses are still widespread, which also shows that the state has not retreated enough from economic activities and the efforts to ease bureaucratic restrictions and routine are yet to produce substantial results.

BUSINESS ELITE ASSESSMENTS OF THE ENVIRONMENT FOR ECONOMIC ACTIVITY (%)

	Fully agree	Rather agree	Rather disagree	Fully disagree
The influence of the „power groups" in the Bulgarian economy is strong	27,5	43,2	21,5	7,8
In Bulgaria state interference in the private sector is too big	18,8	41,0	27,1	13,1
The private business in Bulgaria faces many administrative obstacles	56,8	33,4	5,4	4,5
The Bulgarian public administration is independent and is not influenced by some private economic interests	3,9	12,4	44,4	39,3
The taxation in Bulgaria is good and stimulates the development of businesses	2,6	5,8	41,9	49,6

Source: *Coalition 2000* CMS, Business Elite Survey (October, 2000)

In general, it could be concluded that in spite of the progress in limiting the obstacles to business **bureaucratic red-tape has not been overcome and there has not been enough progress toward transparency and accountability.** The space within which private business interacts with state institutions remains a high-risk zone of corruption.

The government deserves credit for its work towards lowering administrative barriers to

entrepreneurship, business and trade - 55 regimes have been abolished or eased; in addition, 40 regimes are expected to be eased by the yearend of 2000. The Council of Ministers has approved and submitted to the National Assembly draft laws for easing 44 more regimes. The number of regimes, either abolished or eased, as well as those expected to be abolished or eased in the near future is 166 of a total of about 400 in existence. It is not unrealistic to expect that in the coming years the assessment of the business community for the environment in Bulgaria will reflect an improved business climate.

The high level of corruption is not just one of the major factors for **the low level of competitiveness of the Bulgarian economy** - it also reinforces the perception that the business climate in Bulgaria is not very favorable. A KPMG study on the barriers to foreign investment in Bulgaria in the year 2000 identified it as the fourth largest obstacle, coming right after the cumbersome bureaucracy, the incoherent and unstable legal system and the limited purchasing power of the population.

- In the course of the **adoption of the budget** for the year 2001 a number of changes in the tax laws are expected to be introduced with the purpose of creating a favorable environment for both big and small business, stimulating investment and diminishing the tax burden on the population. The changes in the Tax Procedure Code are supposed to provide support to businesses in their efforts to achieve profitability as well as decrease the incentives for giving a bribe in cases of tax fraud or ambiguous interpretation of legislative texts.

- In Bulgaria there is little strategic vision or accomplishments in the field of **interaction between private business and state institutions**. This relationship lacks regulation and transparency, which naturally spurs suspicion of corruption in the interaction between private and public entities. State institutions have not come up yet with clear rules of communication with the public and work with the business community. There have been multiple cases of total disregard of proposals coming from the business community by the executive and the legislature just because of the lack of a clear policy on the subject matter of these proposals and existing fear of being accused of illegal or improper contacts with private business. This situation necessitates adoption and strict application of rules and regulations which could both provide transparency and reciprocity and promote a cooperative relationship between the state and private business fully in compliance with the laws and free of corrupt practices.

- In the year 2000 there were initial efforts to formulate **rules and norms of ethical behavior** in business and to seek better understanding of the potential of self-regulation as a means of fighting corruption within the private sector itself. The Forum of Bulgarian Business Leaders adopted a *Handbook for the Preparation of a Code of Fair Business Practices* - a document which should be given wide publicity; all professional and business associations, individual businesses and other interested parties should be involved in its discussion and follow-up activities.

- The assessment of the business environment should also cover the issue of the **scope and the strength of the „gray" economy as a**

source of corrupt practices. According to experts of *Coalition 2000* its share in the GDP of Bulgaria has been between 32 and 35 per cent over the last few years, which creates a large potential for corruption. In this respect anti-corruption measures should include further work on the implementation of the institutional reform with the goal of moving these activities out of the shade and bringing them to legality.

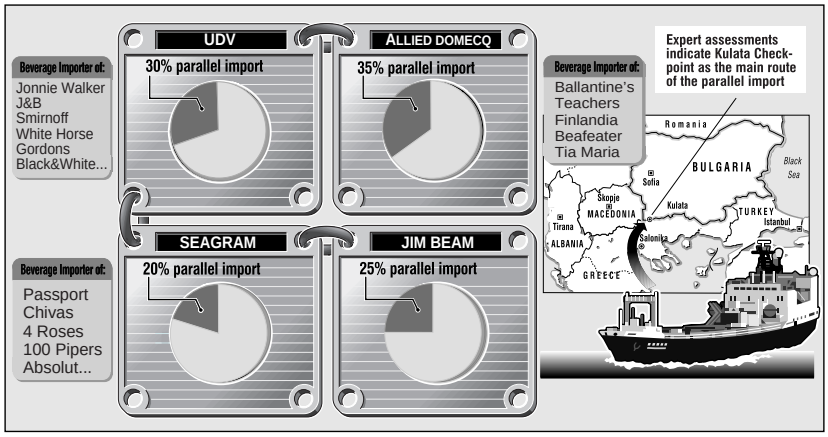
- **Corruption is intricately linked with the different forms of illegal import and export activities, which represent a large portion of the „gray" economy.** Moreover, the more corrupt law enforcement bodies are, the greater the scope and size of smuggling. According to experts of *Coalition 2000* over the last few years a constant criminal interaction between smugglers and state officials practically at all levels has been forged in Bulgaria. Elaborate schemes for serving the combined interests of both smugglers and corrupt officials have come into being.

PARALLEL CLASSIFICATION OF ILLEGAL TRAFFICKING AND CORRUPTION

Type of Trafficking	Forms of Corruption
Small-scale smuggling („suitcase trade")	Administrative corruption
Smuggling channels	Corruption networks
Trafficking sponsored at the political level	„Grand" corruption

The report on *Corruption and Illegal Trafficking: Monitoring and Prevention*, prepared by Center for the Study of Democracy, throws light on the scope and size of the phenomenon by providing data on the so-called **unregulated payments** (the bulk of which represent pure instances of bribery) in cross-border transportation of goods. Such payments amount annually to BGN 1.5 m. for the import of citrus fruit, BGN 2 m. for coffee beans, BGN 3 m. for cosmetics, BGN 1 m. for computer hardware, about BGN 10 m. for oil and fuels, BGN 8 m. for tobacco products, BGN 3.2 m. for alcohol drinks. The persisting levels of smuggling and the accompanying practices of corruption deprive the state of legitimate income and deal a serious blow to the competitiveness of local economy. At the same time, the cash generated in these activities is used to provide a political cover for semi-criminal interests as well as to finance all kinds of dealings, legal and illegal alike.

MONITORING OF THE LEGITIMATE IMPORT OF BRAND SPIRITS FOR THE FIRST HALF OF 2000



Source: *Coalition 2000*

The efforts of the government to contain illegal trafficking and bring **the import of certain goods to a legal status** in the

year 2000 (alcohol drinks, detergents, etc.) have had some effect - the illegal import of liquor to Bulgaria is considered to be limited to 25-30 per cent of the total as compared to almost 90 per cent in the year 1998.

For the measures aimed at imposing limits and gaining control over illegal trafficking and related activities to be successful a more effective legal and institutional framework should be created. An important measure in this respect could be the creation of an information system to be used by the different branches of the state apparatus involved in prevention and monitoring of these criminal activities; the cooperation of interested NGO and other parties, both at a domestic and international level, should be sought in this matter.

D. THE ROLE OF CIVIL SOCIETY

D.1. Non-governmental Organizations

After initiating - together with the independent media - the public debate on corruption, a number of Bulgarian NGOs became permanently engaged in, and committed to, anti-corruption efforts. Furthermore, throughout the year, institutionalized forms of fighting corruption were extended with spontaneous initiatives and civic action, which mobilized the public energy of informal organizations and individual citizens. The increased public sensitivity to the misuse of public office and discretionary authority within the public sector is likewise the outcome of the growing corruption pressure in certain social sectors following the introduction of paid services as a standard procedure.

The civic sector in general, and NGOs in particular, are increasingly affirming their public role in the prevention of corruption, which is becoming a prime area of activity for them. Indicative of the results of the efforts of the civil society to limit corrupt practices is the broadening public support for the exercise of independent control over government, as well as for the overcoming of the outright negativist attitude towards civic initiatives for transparency on the part of the authorities. A tangible anti-corruption effect was achieved as a result of the improved interaction between non-governmental organizations, the media, and civil society as a whole, which also helps overcome the alienation between the various social spheres.

In the course of the year 2000 NGOs, together with the independent media and representatives of other social spheres, have reinforced their leading role in **a number of anti-corruption areas**:

- **Anti-corruption education** was initiated for the first time. The *Anti-Corruption* handbook published by *Coalition 2000*, intended for the secondary and higher-education system, and the specialized studies on various aspects of corruption, have generally had an awareness-raising effect on civil society.
- **Civic monitoring of corruption** and above all, the quarterly Corruption Indexes of *Vitosha Research*, have become an important and frequently consulted source of information about the actual levels, manifestations, and spread of corruption, as well as an indicator of the progress made in the efforts to curb it.
- Business associations and other professional organizations have been playing an increasingly active role through self-regulation and the introduction of **codes of ethics,** as well as by clearly stating the vested interest of business in the abolition of the bureaucratic obstacles and in transparent interaction with state institutions.
- There has emerged a lasting tendency for anti-corruption activity to spread from the center to the periphery through the involvement of non-governmental organizations in a number of towns and

municipalities. There have appeared the **rudiments of a national anti-corruption system** through the application of the partnering formula of *Coalition 2000* on a local level, which encourages cooperation between local authorities and civic structures.

- There has been a clear evolution towards greater professionalism on the part of the civic organizations committed to anti-corruption initiatives, as evidenced by the establishment of local **ombudsman institutions** (civic mediators), civic observers, as well as other forms of civic mediation (for instance in Shumen, Smolyan, Varna, Sofia, Koprivshtitsa, and other towns).
- NGOs have been more active in the **debate and expertise in the process of draft-law development** in areas of relevance to the prevention of corruption. One such example was the draft law on the parliamentary ombudsman and the local civic mediators prepared by the Center for the Study of Democracy.
- **Regional anti-corruption partnership** was launched between non-governmental organizations and institutions from the neighboring Balkan countries. Building on the experience of *Coalition 2000*, regional anti-corruption monitoring was conducted for the first time, comprising Albania, Bulgaria, and Macedonia.

It should be noted that despite its role as initiator and avant-garde in counteracting corruption, the NGO community is itself not immune to this phenomenon. In the past year **some non-governmental organizations came under anti-corruption criticism**. In connection with the problems arising within this sector, the issue of corruption acquired a broader interpretation. Other related phenomena, such as money-laundering, the symbiosis between the state and NGOs, the lack of transparency about donations, etc., also became subject to critical analysis. In turn, the public allegations against some NGOs brought up the critical issue of the insufficient differentiation between government and the party structures, between state institutions and NGOs. Another set of problems concerns the lack of modern legislation introducing standards of transparency in such presumably legitimate areas as partnership relations, lobbying, donations, and other activities, which in fact often verge on corrupt practices. The anti-corruption effect of the newly adopted Law on Not-for-Profit Legal Persons, to be enforced as of January 1st, 2001 is yet to be assessed.

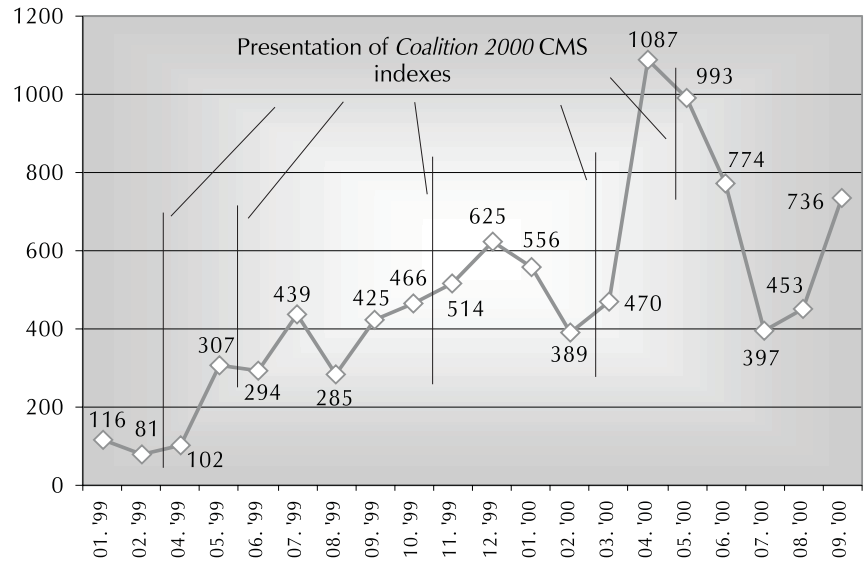
The very debate on corruption within the NGO community makes it possible to focus the efforts to achieve grater transparency within non-governmental organizations.

D.2. The Media

Even in the year 2000, the media - and more specifically, independent media - have played an extremely important role in mobilizing public opinion against corrupt practices. They should be credited for creating an adequate public discourse on this phenomenon.

There were certain periods of highly incisive and extensive journalistic criticism in connection with corruption scandals at the political level. Despite the apparent **intensification of anti-corruption reporting**, it tended to display certain ups and downs. The peak in this respect occurred in the period March-June. In this connection the government started

NUMBER OF CORRUPTION ARTICLES IN THE PRESS BY MONTHS *



Source: CMS - media monitoring.
* Media monitored: „24 Chasa", „Trud", „Sega", Standard", „Pari", „Novinar", „Monitor", „Demokratzia", „Duma", „Capital", „168 Chasa" and „Banker".

speaking of a „defamation war" in the media.

The year 2000 was marked by **improved quality of the coverage of corruption issues:**

- Public criticism focused on behind-the-scenes schemes of corruption and on **untypical forms of corruption** such as nepotism, trade in influence, misuse of public office, etc.;
- There was an increased **follow up coverage of developments to corruption disclosures** over a relatively long period of time;
- An altogether **new type of editorial positions** was demonstrated by several national papers (among which, those with the largest circulation), which challenged the „right of adjournment" of the authorities and demanded specific answers and facts under a number of corruption allegations against top officials; some media introduced into journalistic practice techniques characteristic of watchdog-type NGOs (hot lines, legal consultations for citizens exposed to corruption pressure, etc.);
- In a number of studies and publications corruption was set in a global context and was articulated as an **international and global problem;**
- Another positive development was the **expansion of public dialogue in the media** through inclusion of the point of view of civil society and individual citizens, through broad coverage and popularization of the experience of *Coalition 2000* and other civic initiatives and organizations;
- The anti-corruption concern and awareness of the **regional and local media** have increased substantially and they often treated corruption-related topics with professionalism, managing to provoke reactions on the part of the competent local authorities;
- It can generally be concluded that for the large part the media no longer tend to act as speakers of certain subgroups of the political establishment, but have managed to formulate more deep-seated public concerns and attitudes, to articulate issues of concern to the general public. In this sense there has been a **rise in the prevention potential of the mass media** in the framework of anti-corruption initiatives on a national level.

Along with these positive trends towards improved coverage and analysis of corruption-related phenomena, as well as the reinforcement of the civic function of the media, there were still instances of fragmented approach, shallow interpretations, sensationalism, and lack of professionalism.

Serious investigative journalism is impeded by imperfections in the existing legislation, as well as by the obsession with secrecy and the lack of transparency about the activities of most state and municipal institutions, inherited from the communist period. The hopes that the adoption of the Law on the Access to Public Information would improve relations between reporters and the authorities have so far failed to come true. This is partly due to the fact that the provisions are not exhaustive and leave much room for court interpretation. Furthermore, the introduction of excessive fines under the various offences has a deterring effect on many journalistic investigations. There is a continuing tendency to actively persecute and exert administrative pressure on public officials, who violate the collective institutional *omerta* on providing information to reporters. In this sense, even though Bulgaria adheres to the world practice of guaranteeing reporters' right not to reveal their sources, the action taken by the authorities has been aimed at disclosing and sanctioning these sources.

Attempts have continued to impose the political will of those in power in the process of elaborating the editorial policy of the state electronic media and the coverage of priority public issues on Bulgarian National Television (BNT) and Bulgarian National Radio (BNR). There have been indications of recourse to the practice of „telephone instructions" from those in power, which was notorious in the past, and in fact constitutes a political shield against public criticism. In this sense, the claims of these media that they are representing all-national, rather than party-and-group interests are not convincing. Little progress has been made in their transformation into public institutions in the modern sense of the term. This to a large extent accounts for the lesser attention by state media towards corruption disclosures, and more specifically, those implicating persons and interests at the top of government.

A new issue raised by politicians in power and widely publicized in the past few months was the subject of corruption within the media. The problems of media ownership, the symbiosis between business and media, the relations between the authorities and the owners of various media, are the Achilles' heel of journalism with regard to reporters' objectivity and professionalism. All too often journalistic investigations with anti-corruption potential fail to receive adequate in-depth treatment and are not backed by sufficient facts under the influence of interests that remain anonymous to the public at large.

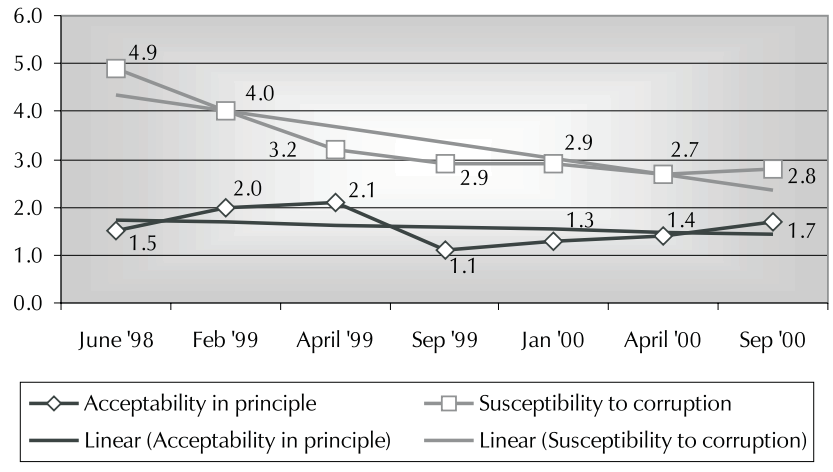
A positive result of the increased public concern over corruption in the media was the increased support for the introduction of clear-cut, and approved by all members of the professional community, rules of conduct and standards of exercising this critical activity in defense of the freedom of speech and in the public interest.

E. DYNAMICS OF CORRUPT BEHAVIOR AND THE CHANGE IN PUBLIC ATTITUDES TOWARDS CORRUPTION

In the year 2000, as a result of the greater public concern with corruption and the identification of a broader range of specific corrupt practices, the public attitudes and actions of Bulgarian citizens underwent the following notable changes:

- There was a tendency towards **a shift in the public criticism from „everyday" corruption to „big" corruption**. While in 1999 the manifestations of this phenomenon were sought primarily in activity on the lower levels of public administration, in the past year public attention turned to the actions of the political class and the high ranks of power. This means that the phenomenon of corruption is increasingly perceived as a problem of politics, and the efforts to curb corrupt practices are considered an inherent part of society's democratic priorities.
- As a consequence, there has also been an observable **broadening of the scope of public criticism to comprise the more amorphous forms of corruption such as nepotism, trade in influence, and other instances of corruption of a „barter" type**, characteristic of "big", or political corruption. Topics and problem areas that used to be taboo until recently, such as privatization of large enterprises, political and economic clientele practices, the budget of government institutions, the private lives of public figures, etc., have come to generate civic pressure for transparency and public access to information.
- **Customs, the tax administration, the court system, and the police were firmly de-**

PRECONDITIONS FOR CORRUPTION

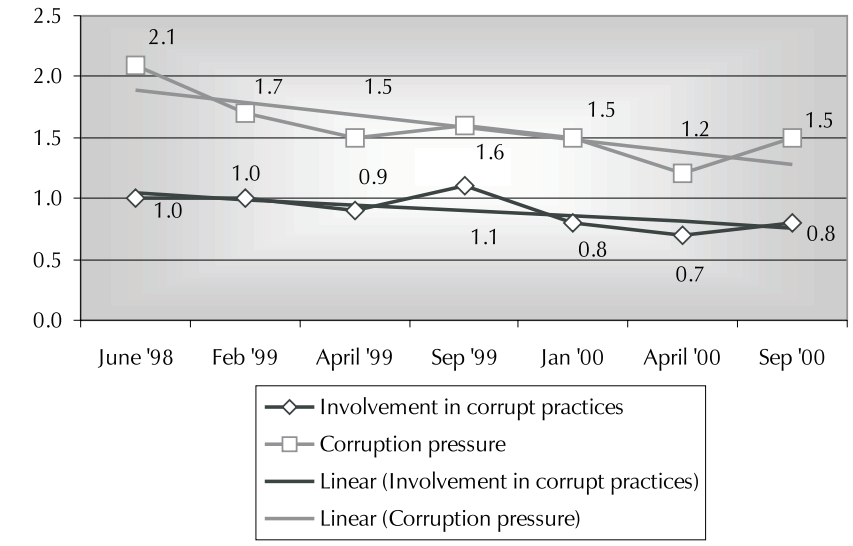


Source: *Coalition 2000*

fined as corrupt. Unlike the previous year, **„big" corruption hotbeds came to include the legislative and executive branches of power, as represented by MPs and ministers**.

- Realization of the gravity of the problem, on the one hand, and the considerable divergence between the declared intentions and real actions of the authorities, on the other, have leveled the index of **the positive tendency towards lower public tolerance and increasing moral inadmissibility of corruption** registered by the *Coalition 2000* Corruption Monitoring System (CMS). Yet, compared to 1998, Bulgarian society still proves less inclined to encourage corruption and recourse to various forms of corrupt behavior.
- A positive development was registered with regard to the pressure to pay bribes exerted over citizens by public sector employees. In this respect the actual results should be attributed mainly to the favorable evolution up to April, 2000. Regarding the frequency of acts of corruption involving the citizens, there is reason to claim that **the number of acts of corruption in this country has remained stable and relatively invariable.**
- According to public opinion, corruption is still widespread in Bulgarian society. Lack of fluctuation of this index suggests that in the short term no substantial changes are likely to occur in these evaluations. This conveys that in Bulgaria corruption continues to be a highly effective tool for addressing private problems. The more general conclusion is that **the social environment is generating the preconditions for corruption has not undergone any serious changes**.

INVOLVEMENT IN CORRUPT PRACTICES



Source: *Coalition 2000*

- The expectations of Bulgarian public opinion regarding prospects to reduce corruption are moderately pessimistic ones. The capability of Bulgarian society to deal with corruption does not only imply a change in public attitudes, which, although positive and necessary, is insufficient to address this grave problem. There is a need for essentially new social mechanisms that should be legally regulated, morally acceptable, and effective in practice.
- The monitoring of corruption-related perceptions and attitudes of businesspersons indicates that the business elite in Bulgaria unanimously notes the existence of established channels through which corrupt practices are sustained. They run in parallel to the officially

regulated relations between the political elite, public administration, and business managers. Corruption occurs in such areas as public procurement, privatization auctions and tenders, the issuing of licenses or permits for legitimate activities, the payment of taxes, etc.

ASSESSMENTS OF THE LEVEL OF SPREAD OF CORRUPT PRACTICES IN THE BUSINESS SPHERE (%)

Corrupt practices	Low spread level	High spread level
Acceptance of bribes by officials and politicians for influencing the state procurement	7,1	82,7
Acceptance of bribes by officials and politicians in privatization t nders	5,0	85,2
Acceptance of bribes by officials and politicians in issuing licenses	10,7	79,5
Acceptance of bribes by officials and politicians in hiding or reducing taxes	19,6	66,4
Acceptance of money or gifts for performing one's professional duties	15,2	75,0

Source: *Coalition 2000,* Business Elite Survey (October, 2000)

According to public opinion, in the year 2000 the **three major factors** favoring the spread of corruption in Bulgaria were:

- the quest for fast enrichment by those in power;
- the low salaries, and
- the imperfect legislation.

Above all these results are indicative of how Bulgarian citizens perceive the problem of corruption and respectively, of the areas in which counteraction is expected. Save for the level of remuneration, which is closely dependent on the level of economic development of the country, the data of CMS of *Coalition 2000* clearly indicate that what the public expects is an honest and disinterested political class, on the one hand, and clear-cut legislation, on the other. In this respect, specific disclosures and in-depth approach to corruption marked the past year. Along with disappointments, dealing with the problems [of corruption] in their specificity raised the critical attitude towards the concrete practical steps of the political class and the anti-corruption policy of the government. Thus the **new expectations go considerably beyond the actual anti-corruption measures and the demonstrated resolve of the political class to seriously confront the problem of corruption**.

The analysis of the evolution of public attitudes and the dynamics of corrupt behavior in the period since mid-1998 indicates that the country has passed through **several distinct stages**:

- raising the problem of corruption (1998),
- acknowledgement of the existence of such a problem by the political and executive power (1999),
- outlining the actual scope of the problem through a series of disclosures (1999-2000).

What is crucial at present is the speedy and pragmatic transition to the next stage in the evolution of the problem of corruption - working out and enforcing comprehensive solutions. Such are the expectations of the public and the strategic interests of Bulgaria.

F. INTERNATIONAL COOPERATION AGAINST CORRUPTION

In the year 2000, corruption continued to draw an overall attention with the efforts of the international community engaged for its curbing. **The globalization of the phenomenon is further perceived as one of the most serious threats for the stability of the democratic institutions and the functioning of the market economy not only in the countries in transition but likewise in the developed democracies.** Thus, the activities of a number of international organizations, among them the United Nations, the Council of Europe (CoE), the Organization for Economic Cooperation and Development (OECD) and the European Union (EU), have been directed to the elaboration of legally binding anti-corruption instruments, carrying into effect a strong monitoring of the fulfillment of the associated commitments and the development of regional programs for counteracting corruption.

Bulgaria remained an active participant in the international cooperation against corruption throughout the year; its efforts primarily aimed at introducing the best international standards in the field of prevention and sanctions imposed on this type of crime. Anti-corruption policy was carried out in conformity with the objectives and the tasks of the Single National Strategy for Combating Crime adopted by the government in 1998 as well as according to the international commitments of the country. The most important legislative and international law activities were again undertaken in the context of the cooperation within the Council of Europe and OECD and of the preparations for the accession to the EU.

F.1. Legislative Dimensions

It is important to indicate **the comparatively good pace of bringing the Bulgarian legislation in line with the international legal instruments** for fighting corruption in the year 2000.

The efforts for approximation of the national legislation to the anti-corruption instruments of the Council of Europe and OECD reflect also the recommendations of the EU as regards to the preparation of Bulgaria for EU membership. Their implementation in effect fulfills the commitments for the adoption of the *acquis communautaires* of the EU in the sphere of justice and home affairs and particularly in the field of the fight against corruption and the organized crime. Thus, the implementation of legislative amendments made the Bulgarian legislation correspondent to the standards of the EU anti-corruption instruments - The Convention on Combating Corruption Involving Officials of the Community and Public Officials in the EU Member Countries as well as the two Protocols to the Convention on the Protection of the Financial Interests of the Community. In this sense, the legislative amendments carried into effect in the year 2000 are part of the progress in preparing

the integration with the EU.

Important Legislative Amendments, Adopted Under the International Commitments of Bulgaria in the year 2000

- Ratification of the *Civil Law Convention on Corruption of the Council of Europe*

  The ratification document of the Convention, signed for Bulgaria, was submitted on June 8th, 2000, during the conference of the European Justice Ministers in London. In this way Bulgaria became the first member-state of the Council of Europe having ratified this international instrument, which obliges the countries to introduce effective internal law procedures for compensation of persons who suffered damages from acts of corruption.

- The a*mendments to the Criminal Code,* also adopted in the year 2000, were primarily directed to implement the standards of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the OECD and of the Criminal Law Convention on Corruption of the CoE making the latter likely to be ratified shortly. The amendments criminalized the promising and the offering of a bribe to local and foreign public officials as well as the demand and the consent of a local official to receive a bribe. The law abolished the restriction for sanctions on the active bribery of foreign public officials only in case they are engaged in international business activities. In addition, stricter sanctions were envisaged for all types of bribery.

- In compliance with the standards of the two conventions mentioned above the *Draft Amendment to the Law on Administrative Offences and Penalties* was elaborated introducing property liability for legal persons for corruption and other crimes committed by their high officials in their personal interest. On September 13th, 2000 the bill passed on first reading at the National Assembly. The law is expected to be adopted in December, 2000.

- In the year 2000, measures were undertaken which aimed at increasing the public intolerance of acts of corruption and establishment of adequate ethic rules of conduct for the public officials. The *Law on Property Disclosure by Persons Occupying Senior Positions in the State* was adopted aiming at prevention of a possible corruption conduct of those persons (presented in detail in Chapter 1). Similar measures represent an important instrument for prevention of corruption and are thus recommended by all international organizations dealing with this subject.

- The government also elaborated a Draft Law of the Code of Conduct of the Public Official, corresponding to the Recommendation NoR (2000) 10 of the Committee of Ministers of the Council of Europe to the member-states for the codes of conduct of public officials, adopted on May 11th, 2000.

In summary, it should be pointed out that accession to the international conventions and, in particular, the operation of the various mechanisms for monitoring, facilitates the introduction of modern legislative regulations for the prevention and sanctioning of corruption in Bulgaria. In fact, the year 2000 was a period of a rapid pace of adoption of the international standards into the internal anti-corruption legislation. The legislative measures and the intensive international activities carried out by the government and by the non-government organizations reaffirmed Bulgaria as a country, closely involved in the development of the regional initiatives and programs for anti-corruption cooperation.

The next step in the for compliance with international standards as regards the definition of a bribe should be the provision against a number of „services" which are not of immediate pecuniary or property benefit but nevertheless amount to corruption. This important legislative amendment would directly fulfill the commitments under the OECD Convention creating preconditions for ratification of the Criminal Law Convention on Corruption of the CoE.

Furthermore, in view of the upcoming monitoring of the implementation of the 20 Guiding Principles of the Council of Europe for combating corruption, further legislative and institutional measures directed towards the specialization of the agencies investigating corruption should be introduced. These measures should also include the introduction of limitations to the immunity from criminal prosecution granted to certain types of persons.

F.2. Institutional Aspects

Almost all bilateral and multilateral development agencies in Bulgaria identify corruption as their priority. The successful participation of Bulgaria in the international cooperation against corruption - particularly in the adoption of the best international practices - requires an institutional structure which facilitates both the effective absorption of international aid and the implementation - including monitoring of implementation - of the assumed commitments and standards. In this sense the intergovernmental mechanisms of interaction should be complemented with a broader participation of the non-governmental institutions in the country.

In the year 2000, Bulgaria participated in the monitoring procedures in the framework of the OECD Working Group on Bribery in International Business Transactions and the countries from GRECO, a group established in 1999 through a partial and enlarged agreement of the CoE. In July, with the participation of Bulgaria participating, the first stage of the OECD Working Group's monitoring was completed. That same phase involved evaluation of the legislation, adopted by the countries in compliance with the commitments under the Bribery Convention of the OECD and the Revised Recommendation of the Council of the OECD of 1997. In mid-2000, GRECO started the first two-year round for evaluating the measures for implementation of some of the 20 Guiding Principles of the Council of Europe for combating corruption in ten countries. In the year 2001, Bulgaria, together with another ten countries, will be monitored by the GRECO mechanism.

Experience during the year 2000 indicates **that the participation of the remaining public institutions and the civil society in the mechanisms for international cooperation in the field of combating corruption need to be encouraged**. This conclusion is based on the following reasons:

- The adoption of the best international practices in the fight against corruption should be perceived as a *long-term effort* in order to generate investment and political confidence in the country. This would be possible only through a broad institutional and public support for the respective measures.
- Bulgaria would not be able to absorb effectively the increasing international technical and financial support in the fight against corruption if cooperation is to be carried out only through the means of the public administration.

The institutional „bias" towards the executive branch in the international anti-corruption cooperation is a structural consequence of mechanisms established at a time when diplomatic channels were the exclusive means of communication. The globalization of corruption and its sources warrants a much broader institutional outreach than established in the post World War II intergovernmental mechanisms. The pure intergovernmental approach, applied to the problems of corruption, proves to be less and less adequate due to the need of complex measures for overcoming this problem in societies where it is widespread. Since corruption concerns society as a whole, it is indispensable to secure the broadest possible public participation for counteracting it both in the realization of national measures and in the international cooperation.

With this aspect in mind, some international organizations (OECD) and western governments (the US government above all) put an emphasis on the development of the cooperation between the public institutions and those of the civil society. This approach is prioritized because of the growing understanding of the limited - in time as well as in scope - efficiency of solely governmental measures carried out without large public and institutional involvement.

From this point of view, **it is recommended that the tendency for concentrating the efforts of some of the international organizations on partnership with the institutions executive branch exclusively be overcome.** Programs for technical support and cooperation in the fight against corruption often have for partners ministries or other government agencies only. In this way, corruption in the public administration is counteracted by means of that same administration. The projects with international support, carried out by the public administration solely, without the participation and the cooperation with civil society, risk to remain isolated and inefficient because they do not contribute to fostering of one of the major anti-corruption factors - public trust in institutions.

Thus, for instance, the bulk of the anti-corruption assistance, provided by the EU and administrated by the European Commission, is provided only in cooperation with the institutions of the executive power. Other stakeholders - the non-governmental organizations (NGOs), the judiciary, and the business - do not participate in an appropriate way in this process. Apart from creating impression of non-transparency - the projects and their results are not sufficiently publicized - this approach does not assist the establishment of mechanisms for interaction between the public and

the private sector in counteracting corruption.

It is therefore indispensable that a number of measures for encouraging the participation of other interested institutions in this process be undertaken. One way of achieving this is, for example, through opening the process of the annual programming cycle of the national PHARE program. A positive step in this direction was broad public discussion of the PHARE 2001 priorities suggested by the European Commission in July. A recommendation to this effect could also be made to the mechanism GRECO within the Council of Europe, which is to a great extent closed for public participation outside the respective government ministries.

The approach of the United States Agency for International Development (USAID), which encourages in all its programs the interaction between the public and the private sector, should be acknowledged. In the implementation of its anti-corruption strategy for Bulgaria the Agency encouraged above all the partnership between the state institutions and the NGOs. **The Bulgarian government has largely welcomed this and in the year 2000 demonstrated a will for cooperation with NGOs in relation to the international aspects of the fight against corruption.**

The *Coalition 2000* experience proves that the emphasis on the interaction with public institutions is a precondition for efficiency of national programs, particularly those with international participation. In this respect, the wide international recognition of the approach of *Coalition 2000* is significant. Thus, for instance, Bulgaria - represented by *Coalition 2000* - was the only non-member country of OECD which was invited to make a presentation on the issues of anti-corruption at the Paris Forum 2000 in June; in its regional strategy paper „The Road to Stability and Prosperity in South Eastern Europe", published in March, 2000, the World Bank called *Coalition 2000* a „groundbreaking" effort in the region because of its emphasis on partnership with public institutions; a number of other countries - for example Albania, Ukraine - are establishing anti-corruption programs based on the experience of *Coalition 2000*.

F.3. Regional Approach

In the last few years, both in Bulgaria and among international institutions, there is an increased understanding that the regional approach should be one of the main emphasis on combating corruption. Thus the Stability Pact for Southeast Europe came up as a forum to coordinate these efforts. The anti-corruption initiative of the Pact (adopted in February, 2000 in Sarajevo) incorporates a wide variety of international legal and organizational measures and mechanisms for assessing their performance.

Unfortunately, **the Stability Pact work in the field of anti-corruption concentrates primarily on closed meetings of representatives from the relevant ministries and departments where projects implemented by the public administration are discussed.** The access of NGOs to the work of Working Table III - security issues, justice and home affairs, including corruption - is very limited.

A positive example for cooperation between pubic and private institutions in this field, in the last year, was the development of the Southeast Europe Legal Development Initiative (SELDI) (www.seldi.net). The anti-corruption component of SELDI is in a process of implementation with the support of USAID. The initiative aims to include representatives of public and private institutions - civil, business associations, etc., in combating

corruption and to draft a regional anti-corruption action plan.

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Curbing the corruption in Bulgaria is a long-term effort, involving both the public sector and the business and civil society as well. The most optimistic fact for the past year is that the public-private partnership, while countering corruption, continues to develop on the basis of specific initiatives for transparency and accountability.

In this respect Corruption Assessment Report 2000 is the outcome of these efforts by summarizing for a second successive year the data from the systematic monitoring of this social phenomenon. The report also formulates concrete proposals and solutions, whose implementation would result in improving the corruption environment in this country. The addressees of the report are both political and state institutions, as well as civic organizations, professional associations and media.

Compared to the previous reporting period the year 2000 marks a certain progress, though a slow one, towards the establishment of modern legal and institutional environment, which would increase the social cost of the corrupt behavior in this country. This tendency however is not irreversible and it is highly dependable on the clear and consistent political will of those in power for achieving modern standards of transparency and civic control.